

STATEMENT ON NETWORK FEES

Following the announcement by the European Commission of its “Connectivity Package” on 23 February 2023, including an exploratory consultation on the “Future of the electronic communications sector and its infrastructure”, the undersigned entities wish to express their collective concern with regards to calls at EU level to introduce a mechanism establishing significant direct payments (“network contribution”, “network fee”, “fair share”) from content providers and technology companies to large European telecommunication companies.

We welcome the European Commission’s decision to only launch an exploratory consultation on the matter, and many of us intend to submit contributions. That being said, we fear that the process could lead to misleading conclusions on the need for and consequences of a network fee. This fear seems to be shared by other stakeholders: leading MEPs have already publicly called this consultation “biased”¹ because of its assumptions and structure, which do not allow all stakeholders to contribute in an equal way (i.e. civil society, consumers, academia compared to ECNs and CAPs).

A mechanism of direct payments to telecom incumbents would in fact have immediate and wide-ranging negative consequences, not only on European businesses, but also on consumer interest. A new fee or contribution would directly impact consumer costs and choice, with far ranging negative consequences on the diversity and quality of products and services.² We thus jointly **call on the European institutions to refrain from introducing such a counterproductive measure.**

Firstly, **there is no evidence that a real problem or market failure exists** in the telecommunication sector. There has been no credible evidence **warranting imposing such a network fee.** As BEREC notes in its preliminary assessment of the proposal, “[...] *the internet has proven its ability to cope with increasing traffic volumes, changes in demand patterns, technology, business models, as well as in the (relative) market power between market players. These developments are reflected in the IP interconnection mechanisms governing the internet which evolved without a need for regulatory intervention.*”³ It also notes that other (smaller/medium-sized) network operators “[...] *mention that there is sufficient capital available for investments in fibre networks, especially by private investors.*”⁴

The concept of the contribution stems from large internet providers proposing a favourable solution for a problem that has not been identified, justified nor clarified. This “solution” would harm and discriminate against every other part of European business and consumer good, to the single benefit only of large telecom providers.

Besides being unjustified, traffic-based direct contributions pose **serious competition concerns.** For instance, additional payments to incumbents would increase the profitability gap that already exists between traditional telecom operators and smaller alternative operators and MVNOs, not to mention all other services providers (i.e. content) that rely on their networks and provide vital competition and choice for consumers. Furthermore, the proposed fee system has no guaranteed benefit of pass-through to consumers by way of lower prices or improved infrastructure. It would de-facto enforce dominant telecom operators’ agenda, create so-called termination monopolies and create a distortion

¹ Tiemo Wölken MEP, Internet Society’s event on “The Future of the Connectivity: Why Sender-party-pays Is Not a Solution”, March 2023 <https://www.internetsociety.org/events/cost-sharing/>

² BEUC preliminary position “Connectivity infrastructure and the Open Internet”, Sept 2022 https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-096_Connectivity_Infrastructure-and-the_open_internet.pdf

³ BEREC preliminary assessment of the underlying assumptions of payments from large CAPs to ISPs, Oct 2022 https://www.berec.europa.eu/system/files/2022-10/BEREC%20BoR%20%2822%29%20137%20BEREC_preliminary-assessment-payments-CAPs-to-ISPs_0.pdf , page 3

⁴ BEREC preliminary assessment of the underlying assumptions of payments from large CAPs to ISPs, Oct 2022 https://www.berec.europa.eu/system/files/2022-10/BEREC%20BoR%20%2822%29%20137%20BEREC_preliminary-assessment-payments-CAPs-to-ISPs_0.pdf , page 5

of competition, thus disincentivising other players from investing in infrastructure or content distribution.

The threat to competition is even more obvious if we consider the **Commission’s proposed Recommendation on regulatory promotion of Gigabit connectivity**, published alongside the exploratory consultation. European alternative operators’ have already warned⁵ that the draft Recommendation would have “detrimental impacts on competition, on the EU internal market and on consumers’ interests”, due to its focus on “increasing the profitability of ex-monopoly telecom operators” (via lighter price control obligations). The pattern is thus clear – as is the risk of disproportionately enhancing the power of telecom incumbents, whether by deregulation or via direct contributions.

The risks of introducing network fees are many, but ultimately the biggest threats would be to consumer rights, costs, and freedom of choice. Users of the internet and mobile networks are the key players in the debate, not content providers. Consumers access content (and thus drive internet traffic and take-up), so the fee would effectively be a **fee on consumer behaviour and choice**. Consumers, who already pay for their (high-speed) broadband subscriptions, would likely have to pay twice, if not more, for the same or less quality of internet service. Unfortunately, it is likely that newly ‘taxed’ companies will need to pass on fees to their subscribers, while also likely defacto undermining Net Neutrality in Europe.⁶ These consumers would also possibly have access to less content, as content companies would have less funds available to invest in content and distribution.

In light of all this, **we ask European policymakers and Member States to stand against imposing direct payment obligations in favour of the largest telecom operators**. The current system is sustainable, built on the shared success on telecom operators, content distribution and consumer choice.

We also call on the **EU Commission and Regulatory Scrutiny Board to duly apply Better Regulation principles throughout the whole process**. Any type of policymaking should always be based on evidence, involve all relevant stakeholders (incl. citizens and businesses) and follow a thorough, comprehensive impact assessment. There should not and cannot be any shortcuts on this.

SIGNATORIES:



⁵ ECTA press release on Gigabit recommendation, Feb 2023 <https://www.ectaportal.com/news/ecta-press-releases/1606-ecta-warns-against-undermining-the-european-model-with-the-proposed-ec-recommendation-on-the-regulatory-promotion-of-gigabit-connectivity>

⁶ MVNO Europe paper, Aug 2022 <http://mvnoeurope.eu/mvno-europe-position-paper-on-network-investment-contributions/>

CelticBroadband

ClearWave



D³ DEFESA DOS DIREITOS DIGITAIS



ELECTRONIC FRONTIER FOUNDATION EFF



ivertec
Fibre Broadband



netzkommune



Level7
Internet Service Provider





FULL LIST OF SIGNATORIES:

- Access Now
- Article 19
- Association of Commercial TV & VOD Services in Europe
- Alphawave Ltd./Premier Broadband
- ApTI
- Aptus Ltd
- BBNet
- BEUC (The European Consumer Organisation)
- Celtic Broadband Ltd.
- ClearWave
- D3 - Defesa dos Direitos Digitais
- Danish Cloud Community
- Digitale Gesellschaft
- EDRI (European Digital Rights)
- Electronic Frontier Finland
- Electronic Frontier Foundation (EFF)
- Electronic Frontier Norway (EFN)
- Epicenter.works
- High5!
- HighSpeed Broadband Ltd
- Homo Digitalis
- Integrated Media Services

- ISFE (Interactive Software Federation of Europe)
- IT-Pol
- Ivertec Ltd.
- Level7
- Lighthouse Networks Ltd.
- Lightnet
- Link Broadband
- Metamorphosis
- MPA (Motion Picture Association)
- Munster Wireless
- MVNO Europe (Mobile Virtual Network Operators Europe)
- Netzkommune GmbH
- NLConnect.org
- OneContact Ltd
- OpenBSD Amsterdam
- Orion Communications Ltd.
- RealBroadband
- SCC Broadband Ltd
- SROC (Sports Rights Owner Coalition)
- TIBUS
- Titania
- Total Wireless Ltd
- Verbraucherzentrale Bundesverband (VZBV)
- VOD Coalition (EU Video-on-Demand Coalition)
- Warian
- Webworld
- Wikimedia Europe
- Wireless Connect Ltd.