

“CEE perspective on network fees - fair contribution or a risk to regional growth?” webinar summary

Background

The European Union is preparing a regulatory initiative, aiming to introduce a network fee, mandating payments to telecommunication companies (Internet service providers; ISPs) from online Content and Applications Service Providers (CAPs). The fee earmarked for improvement and maintenance of network infrastructure proposed by the European Telecommunications Network Operators' (ETNO) would be an example of an SPP (Sending Party Pays) system. The proposal aiming to boost CAPs contribution to the costs of rolling out access network infrastructure is based on claims that CAPs (also known as edge companies) should pay a larger share of broadband infrastructure costs as they are responsible for the online traffic.

On January 25th, during the “CEE perspective on network fees - fair contribution or a risk to regional growth?”, a group of experts discussed the idea, its history and highlighted the concerns of European consumers and business. According to participants of the webinar, introduction of the network fee will most likely be harmful to European consumers and innovative companies in the digital single market. Indeed arguments were made that such regulatory intervention is not required and will increase the costs for end-users, harm the quality of online services as well as hamper growth of innovative branches of the EU economy. **Summary of their discussion and key points made during their conversation can be found below.**

Previous attempts at Sending Party Pays (SPP) regulations

During an introductory presentation (attached) and the following discussion, guests of the webinar looked into the previous attempts of introducing similar regulatory solutions, such as the proposal made by ETNO in 2012, aiming to mandate network fees based on the volume of traffic sent by CAPs over an operator's network. It was noted that the 2012 proposal was met with concerns of various bodies, including opposition of BEREC (Body of European Regulators for Electronic Communications) and that ultimately no such system was implemented. According to participants of the meeting, there is no clear information on whether the new proposal would be any different from the last attempt, but it is indeed based on the same premise.

Experts pointed out that the previous proposal of the SPP framework was based on the solutions introduced before in South Korea, which provides a valuable example and insight into functioning of such SPP regulations. In their opinion, the Korean case shows that network fees lead to less-efficient traffic flows, higher prices, and lower content quality, while effectively creating an unwelcoming environment for foreign content providers.

Contribution to network infrastructure

Significant portion of the debate was devoted to the claim fundamental to ETNO's proposal, stating that large telecoms are alone in their financial commitment to developing network infrastructure and CAPs contribution is not enough. Data was presented pointing out that in fact CAPs have spent \$883 billion on internet infrastructure (e.g. data centres, submarine fibre cables) from 2011 to 2021 and that their investments in internet infrastructure are higher than their investments in content and applications for end users

Another claim fundamental to the proposal of a network fee, stating that the traffic generated by CAP's customers is the main driver of network costs was also considered. Experts have noticed that while online traffic is constantly growing at a steady rate, total operating costs of telecom companies remained mostly unchanged and thus, the relation between the two is not as clear.

Recurring concerns

Participants of the webinar pointed to a list of concerns revolving around the network fee proposal, which have been raised by consumers' organisations, regulators of electronic communication and industry associations alike. During the webinar, the position of **European Consumer Organisation BEUC was highlighted, as it stated that the introduction of a potential network fee payment scheme brings a set of risks and challenges e.g. distortion of competition on the telecom market, negatively impacting the diversity of products, prices and performance, potential impact on net neutrality, which could undermine the open and free access to Internet as consumers.**

Experts argued that while not much is known about the specifics of the potential fee, placing any fee in the value chain is bound to be moved around in the chain and that in this case, it will most likely affect consumers and content creators in Europe.

Lacking details

It was widely agreed upon by those in attendance that little is known about details of the potential proposal. Experts agreed that while the general outlook on SPP regulations is not positive, all stakeholders must be patient and wait for specifics to be shared by the officials.

During the recent webinar, an argument was made that the Internet has proven its ability to self-adapt to changing conditions, such as increasing traffic volume and changing demand patterns. Experts highlighted that currently there is no new, adequate justification for regulatory intervention in the network market based on voluntary, freely negotiated peering and transit company-to-company agreements. It was one of the reasons why proposals of policies introducing network usage fees have been rejected in the past. Experts also warned about the risks of overregulation.

Experts argued that regulatory interventions should be focused on providing value to Europeans rather than attempting to tax and limit value coming from outside of the EU. Indeed, it was highlighted that regulatory efforts should focus on making the European digital economy more competitive rather than attempting to bring down foreign players investing in Europe.

Need for further debate - insufficient justification?

Participants of the webinar recognised the need for regulations to keep up with technological landscape and to remain relevant at the current stage of digital development. According to the experts, some EU Member States have indeed called for regulatory action updating the framework in which telecommunication infrastructure is being financed and developed.

While speakers were in agreement that there is with no doubt a direct link between the telecommunications infrastructure in use and the flow of traffic and content on the Internet, an argument was made that the current ISPs' narrative fails to address how customers (end-users) could benefit from the proposed network fee in a convincing manner, while it is certain that they will bear its costs.

Joint effort and need for proportionality

Speakers highlighted that the European network should bring people together, not drive them apart and that access to the Internet should be a common, universal right in Europe. Thus, it was argued that players benefiting from telecom infrastructure should perhaps contribute to the public good of Internet access in some way. It was however noticed that issues of fairness and proportionality will be crucial for regulating the issue of network fee.

Webinar was concluded by expressing hope that the European Commission will gather insights from market players and stakeholders involved in the way the Internet operates in Europe soon during consultations, which will surely impact the outcome of regulatory intervention regarding the network fee proposal. It was clearly stated that the consultations of the idea are highly anticipated and should be as thorough as possible to reflect the concerns and questions of various stakeholder groups.

Speakers of the meeting were:

- prof. Žiga Turk, former Minister responsible for information society of Slovenia
- Jari-Pekka Kaleva, Managing Director at European Games Developer Federation
- Vlaho Hrdalo, President of Croatian Association for Blockchain and Cryptocurrency
- Aleksander Sołtysik, Counsellor, Digital Attaché at Permanent Representation of Poland to the EU
- Jaromir Novak, lawyer and an expert on regulation in telecommunications

The discussion was moderated by:

- Michał Kanownik, President of Digital Poland Association