
POSITION OF THE CONSUMERS FORUM FOUNDATION ON THE INTRODUCTION OF THE SENDING PARTY PAYS (SPP) REGULATION, THE SO- CALLED NETWORK FEE FOR THE DEVELOPMENT AND MAINTENANCE OF TELECOMMUNICATIONS INFRASTRUCTURE

THE CONSUMER FORUM FOUNDATION OPPOSES THE IMPLEMENTATION OF THE SENDING PARTY PAYS (SPP) REGULATION, ALSO KNOWN AS THE NETWORK FEE FOR THE DEVELOPMENT AND MAINTENANCE OF TELECOMMUNICATIONS INFRASTRUCTURE, AT THIS CONSULTATION STAGE, BECAUSE IT HAS THE POTENTIAL TO PASS ON THE COSTS TO THE CONSUMERS AND IT POSES A POTENTIAL THREAT TO THE NETWORK



POLICY PAPER

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POSTULATES

- 1. The Consumers Forum Foundation opposes the telecom industry's suggestion to introduce network fees for content providers, as such fees would jeopardize the fundamental principles of net neutrality, market competition, and the Internet economy, and it would place an excessive financial burden on network users, i.e., the consumers.**
- 2. A mechanism that introduces supplementary fees could lead to a significant increase in consumer spending, a reduction in the number of digital services available to them, and a deterioration in the quality of services. Instead, the EU legislature should take a holistic approach, which in this case means that market forces should be allowed to continue to operate freely.**
- 3. Furthermore, the Consumer Forum Foundation asserts that the consumers would unequivocally bear the costs associated with such fees being transferred to them, resulting in an inferior quality of Internet usage.**
- 4. The Consumers Forum Foundation cannot endorse a regulation that does not prioritize the consumers' interests, disregards their rights and freedoms, and solely serves the interests of the telecommunications industry and their representative entities.**
- 5. In conclusion, the Consumers Forum Foundation demands that the European Commission launches public consultations regarding the current proposals. All interested groups, such as civil society, business, and consumer associations, must have the opportunity to comment.**

INTRODUCTION

The Consumer Forum Foundation, representing the interests, rights, and freedoms of consumers, expresses some legitimate concerns, based on publicly available information, regarding the potential violation of consumer interests resulting from the presented legislative initiative on communications infrastructure in relation to the calls made by European telecommunications network operators for the so-called "FAANG" (which refers to the shares of four prominent US technology companies: Meta, Amazon, Apple, Netflix, and Google) to pay a fee to support the costs of implementing network infrastructure, which includes the proposed implementation of the Sending Party Pays (SPP) regulation, also known as the network fee for the development and maintenance of telecommunications infrastructure.

The Consumer Forum believes that measures such as the proposed Sending Party Pays (SPP) regulation, which involves the network fee for the development and maintenance of telecommunications infrastructure, should only be introduced after detailed scenarios are developed, considering the comprehensive impact assessments, public consultations, and after analyzing the regulations in a fair and transparent manner for the benefit of consumers. And what is most important is to evaluate both the positive and negative effects that these measures may have on consumers.

The Consumer Forum gives significant consideration to potential risks that may arise concerning the five most crucial elements in safeguarding consumer interests, namely quality (the possibility of a decline in services offered to consumers), price (the likelihood of increased costs for consumers), neutrality (the risk of undermining the principle of net neutrality), competitiveness (the chance of negatively impacting the diversity of services and products offered), and accessibility (the risk of obstructing open and free access to the Internet).

Despite the concerns, the Consumer Forum maintains that access to high-quality connectivity and an open and free Internet is of utmost importance for consumers to have a broad spectrum of options when it comes to using digital products and services.

It is noteworthy to mention the European Commission's strategy published in 2021, titled "2030 Digital Compass: the European way for the Digital Decade," which lays out a vision and four primary objectives for Europe's digital transformation by 2030. An important element of the strategy is to guarantee in cyberspace the fundamental rights that apply in the real world.[1] The Commission emphasizes that digital technologies should be secure, centered around humans, and in accordance with the existing legal framework, which guarantees, among others, the right to privacy, freedom of expression, data protection, and enhanced access to the Internet. This is especially vital from the standpoint of every consumer and user of the network. The Commission also envisions establishing a set of digital principles and laws to guide policymakers and digital operators.[2]

It is essential to emphasize that the Internet, which ensures access to and distribution of Internet content and services without any discrimination against providers in the market, is now a necessary condition for a fair economy and a diverse European society. Therefore, investing in network infrastructure, particularly the development of 5G networks, presents a significant opportunity to enhance the availability, accessibility, and quality of services offered to consumers in the European Union.

Nevertheless, it is crucial to ensure that these activities do not lead to any distortion of competition in the telecommunications market, or have any negative effects on product diversity, pricing, and performance, which may in turn have potential implications for net neutrality and ultimately threaten consumers' open and free access to the Internet.

[1] Source: <https://www.gov.pl/web/cyfryzacja/cyfrowy-kompas-na-rok-2030-europejska-droga-w-cyfrowej-dekadzie>

[2] Source: <https://www.gov.pl/web/cyfryzacja/cyfrowy-kompas-na-rok-2030-europejska-droga-w-cyfrowej-dekadzie>

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[2] Source: <https://www.gov.pl/web/cyfryzacja/cyfrowy-kompas-na-rok-2030-europejska-droga-w-cyfrowej-dekadzie>

1. WHY DOES IT MATTER TO CONSUMERS?

DEVELOPMENT OF NETWORK INFRASTRUCTURE AND DIGITALISATION

The fundamental concept behind the Internet is that it comprises a collection of independent networks that are interconnected to create a unified communication system for all users involved. Hence, in the last decade, the use of the Internet has become an essential aspect of the everyday routine for millions of people in Europe, and the consumption of data is increasing at a double-digit rate when comparing 2021 with 2022. This evolution has been supported by the massive transformation of fixed and mobile telecommunications networks. This network transformation, however, came with considerable effort and cost.

Currently, the Internet connection is voluntarily agreed upon under one of the following forms of business arrangements:

1. Network pays another network to carry traffic to all parts of the Internet (transit).
2. Network pays another network to exchange traffic between its customers (paid peering).
3. Network establishes a toll-free relationship with another network to exchange traffic between its customers (often called "settlement free" peering).

In a world of global Internet traffic, it is unlikely that content will always remain on one network. Rather, this traffic often flows through many different networks to reach its destination. The process of exchanging data between these networks is called "peering." Peering agreements are as much a business arrangement as a technical one; network operators bargain their way to an agreement, often based on the volume of traffic flowing from one network to another. For example, if traffic flows are roughly equal, network operators often agree not to charge for connecting their networks. This is known as settlement-free peering. In other cases, a network that receives more traffic than it sends to its counterpart charges the sending network to compensate it for the asymmetric network load. Although peering negotiations are often unnoticed by end-users, they play an important role in ensuring successful Internet traffic routing, in addition to standard broadband contracts concerning the first and last mile.

Regrettably, in recent times, policymakers in European Union countries, and elsewhere, have started contemplating and, in some cases, putting into effect policies that require third-party companies, i.e., content providers and transmitters over the Internet, to bear a greater portion of the expenses associated with the construction and upkeep of broadband network infrastructure owned by Internet service providers (ISPs).[1] While the political appeal of send party pays (SPP) proposals is undeniable - especially when many of the contributors are US technology companies and the recipients of the money are domestic telecommunications companies - the reality is that they cause harm to Internet users, fail to achieve equitable outcomes and cannot deliver the promised infrastructure windfall.

The Information Technology and Innovation Foundation (ITIF), a non-profit research and education institute focused on technology and public policy, highlights in its article that the send-party-pays (SPP) proposals vary from imposing additional fees on content providers to directly controlling prices in peering markets. In all cases, the policy is based on a misunderstanding of how the Internet traffic market works and who bears the costs that the policy would entail. Instead of getting better broadband networks at the expense of large US technology companies, SPP imposes unnecessary costs on edge service users and distorts prices that would otherwise coordinate the Internet market. [2]

At the same time, the European Commission is working to introduce the Sending Party Pays (SPP) regulation, a so-called network fee for the development and maintenance of telecommunications infrastructure. The regulation is expected to mandate payments from online content and application providers (CAPs).

As argued by the European Telecommunications Network Operators' Association (ETNO), which submitted the proposal in question, the share of online service providers in the cost of infrastructure construction is to be increased. According to ETNO, these are the entities responsible for Internet traffic, and thus should pay a larger share of the cost of so-called broadband infrastructure.

[1] Source: <https://itif.org/publications/2022/11/07/consumers-are-the-ones-who-end-up-paying-for-sending-party-pays-mandates/>

[2] ITIF article dated November 7, 2022. Source: <https://itif.org/publications/2022/11/07/consumers-are-the-ones-who-end-up-paying-for-sending-party-pays-mandates/>

During the initial stages of the COVID-19 outbreak, the European Commission and regulators in Europe urged streaming platforms, telecommunications companies, and consumers to collaborate and prevent network congestion, as there was a rise in traffic on operators' networks caused by increased online user activities such as video conferencing, gaming, and remote learning. In response, several tech giants (e.g., Netflix, YouTube, Amazon) took steps to voluntarily adjust the quality of their streaming services for a period, such as by lowering the bit rate by about 25 percent or setting the default quality to a standard resolution. Although the quality of streaming was lower, consumers reported no significant difference in the quality of their experience. In addition, despite the surge in demand, electricity consumption remained unchanged. This is a clear example that more bandwidth is not always necessary to benefit end users.[1]

Nevertheless, it should be made clear once again that the introduction of the Sending Party Pays (SPP) regulation, the so-called network fee for the development and maintenance of telecommunications infrastructure - under which companies considered to be tech giants would pay mandatory prices for the delivery of their services on the last leg of service delivery to consumers - would distort prices in the complex market for peering and transit services on the Internet, resulting in inefficient traffic management. The optimal price of peering (peer-to-peer traffic exchange between ISPs) varies widely and changes rapidly depending on network effects and price elasticity of demand. Therefore, re-regulating this issue is likely to result in higher prices for consumers and drive some players out of the market for certain Internet services altogether. Stating the opposite of the claims made by telecom network operators, broadband infrastructure is not solely a burden for edge companies because they are not only users of this infrastructure, but they also construct delivery networks and store content to optimize performance. And users both create and consume content, which ultimately gives value to online services.

[1] Source: European Commission, "Commission and European regulators calls on streaming services, operators and users to prevent network congestion," 2020; Available at: <https://digital-strategy.ec.europa.eu/en/news/commission-and-european-regulators-calls-streaming-services-operators-and-users-prevent-network>

Significantly, the implementation of send-party-network payments in South Korea in 2016, which is frequently cited as an example of such regulation, has led to less efficient traffic routing, increased prices, and lower-quality content. This is an ideal cautionary tale for current policymakers considering the introduction of data charges, as there is a probability bordering on certainty that proposals advocated in Europe are likely to yield similar results to those in South Korea, which may also explain why European regulators have rejected such proposals in the past.[1]

Taking the above into account, the Consumer Forum Foundation would like to stress its valid concerns about safeguarding consumer interests, given the present information, regarding the European Commission's announced intention to present a legislative initiative on communications infrastructure, in connection with calls by European telecommunications network operators for the said entities to pay a fee to support the costs of implementing network infrastructure.

In principle, the Consumer Forum supports the goal of bridging the digital divide by investing in the development of network infrastructure, emphasizing the need for accessible, achievable and affordable broadband Internet connections. [2]

Nevertheless, the implementation of such objectives via the introduction of a probable network fee system, which may resemble the SPP system, presents several risks and challenges that necessitate thorough analysis and resolution. This is essential to prevent any undesirable outcomes, particularly with respect to maintaining the principles of net neutrality and fair competition in the EU's unified telecommunications market.[3] Regarding consumers, the potential risks and inconveniences associated with the establishment of measures such as the SPNP system could range from the potential distortion of competition in the telecommunications market, which could negatively impact product diversity, pricing, and performance, to the potential effect on net neutrality, and the latter could undermine consumers' current open and free access to the Internet

It must be recalled here that the European network should bring people together, not apart, and that Internet access should be a common universal right in Europe.

[1] ITIF article dated November 7, 2022. Source: <https://itif.org/publications/2022/11/07/consumers-are-the-ones-who-end-up-paying-for-sending-party-pays-mandates/>

[2] Source: <https://etno.eu/news/all-news/717-ceo-statement-2021.html>

[3] Source: <https://www.berec.europa.eu/en/document-categories/berec/reports/berec-report-on-ip-interconnection-practices-in-the-context-of-net-neutrality>

PROTECTION OF CONSUMER RIGHTS AND FREEDOMS (E.G., FREEDOM OF CHOICE, CREATION OF AWARENESS) IN THE CONTEXT OF THE RISK OF VIOLATING THE RIGHTS OF END USERS

It is also important to remember the rights of consumers - network users. Consumers across the EU must be able to access good-quality, affordable electronic communications services - including basic Internet access.[1] This is the so-called "universal services" principle.[2]

Under the EU's open Internet rules, consumers have the right to access and distribute any online content and services of their choice. A given ISP may not block any content, applications, or digital services, slow down the rate of their use or prevent access to them.[3]

In addition, EU data protection laws ensure that personal data is protected whenever it is collected - for example, when shopping online or applying for a bank loan.[4] The rules apply to both EU and non-EU companies and organizations (public and private) - such as Facebook or Amazon, which offer goods and services in the EU - whenever such companies and organizations ask individuals in the EU for personal data or reuse such data.[5]

[1] Source: https://youth.europa.eu/get-involved/your-rights-and-inclusion/your-rights-online_pl

[2] Legal regulations for the implementation of universal services in the European Union are contained in Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002, on universal service and users' rights relating to electronic communications networks and services, as amended by Directive 2009/136/EC. The conditions for providing universal service on the territory of the Republic of Poland are set forth in the Act of 16 July 2004, Telecommunications Law.

[3] EU rules governing access to the open Internet are contained in the EU Regulation establishing measures for access to the open Internet and the Directive on the accessibility of public sector bodies' websites and mobile applications.

[4] Source: https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG&toc=OJ:L:2016:119:TOC

[5] Source: https://europa.eu/youreurope/citizens/consumers/internet-telecoms/data-protection-online-privacy/index_pl.htm

Additionally, it is worth mentioning that there has been a surge in grievances about defective Internet access services under the "Digital Poland" program. These complaints pertain to issues such as substandard quality and recurrent service disruptions.[1]

Experts also point out errors in the provisions of Internet supply contracts with consumers, in which entrepreneurs limit their liability to, for example, 1/30th of the subscription fee, for each day that the service interruption lasted more than 12 hours. In addition, the operator's liability - as stipulated in the contracts - cannot exceed the value of the two-month subscription fee. According to the President of the Office of Competition and Consumer Protection, among others, such practices are illegal and unacceptable. It is worth noting that in the reverse situation, liability is not limited - if the consumer improperly performs the contract, the entrepreneur can claim compensation in full.[2]

Considering the above, as per the Consumer Forum Foundation, telecommunications operators should prioritize the implementation of solutions that ensure consumers are provided with Internet access services of the highest possible quality, free from all defects and faults. It is pertinent to note that consumers are often left uncompensated for such issues.

[1] Source: <https://bip.brpo.gov.pl/pl/content/rpo-szerokopasmowy-internet-polska-cyfrowa-skargi-mc>

[2] Source: <https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/prawo-telekomunikacyjne-17116702>

THE CONSUMER PAYS TWICE, OR A FEW WORDS ABOUT FEES ALREADY PAID

Consumers pay for Internet infrastructure and data capacity in the form of a monthly subscription.

Poles pay an average of PLN 51.5 per month for fixed-line Internet, and the main criteria for choosing a service are price and transmission speed, according to a study by the Office of Electronic Communications.

In addition, any consumer who chooses to use streaming platforms must pay an additional cost. On Netflix, depending on the selected plan, the subscription fee is between PLN 29.00 and PLN 60.00. Viaplay costs PLN 34.00 per month, Disney+ costs PLN 28.99, HBO Max costs PLN 19.99, Player costs between PLN 10.00 and PLN 40.00, Amazon Prime costs between PLN 10.99 and PLN 49.00 per year, Apple TV+ costs PLN 24.99.[1] Meanwhile, Ampere Analysis data revealed by NENT Group, owner of Viaplay, shows that Poland had more than 6 million subscriptions to streaming services by the end of 2021. They reached 29 percent of the population, and the average household paid for 1.5 services. The value of the streaming market in Poland was € 350 million.[2]

Furthermore, it is noteworthy that the current economic climate in Poland is exceptionally challenging due to the persistently high inflation rate, which has a far-reaching impact on virtually all sectors.[3] Hence, certain telecommunications companies have opted to revise their price lists.

[1] Source: <https://www.benchmark.pl/aktualnosci/netflix-cena-w-2023-roku-ile-kosztuje-netflix-pakiety.html>

[2] Source: <https://businessinsider.com.pl/technologie/nowe-technologie/platformy-streamingowe-nabieraja-w-polsce-wiatru-w-zagle-na-czym-zarabiaja/qrpbw7w>

[3] Source: <https://businessinsider.com.pl/twoje-pieniadze/internet-wkrotce-podrozeje-zaczyna-sie-od-wzrostu-cen-u-wlascieli-infrastruktury/mbly1pf>

What else is causing Internet and telecommunications price increases in 2023?

The escalation in prices was driven by a combination of factors such as the prevailing global economic, commercial, and political environment, along with high inflation rates. So they are affected by rising energy prices, but also by rising wages, including the minimum wage, as well as the cost of doing business and maintaining telecommunications infrastructure. Therefore, these costs will be attempted by Internet companies to pass on to individual customers, i.e. their subscribers.[1]

As of 2022, consumers had to pay several percent more for wired Internet services, and economic experts have forecasted a potential surge in prices again this year. This is due to infrastructure owners raising costs. Prices to retail telcos are being raised by open infrastructure operators.[2] Nevertheless, implementing price hikes is not a straightforward process; the operator must obtain regulatory permission from the Office of Electronic Communications to alter their pricing scheme Approval has already been given to Fiberhost, which has revised bids in the 10 percent range. Thus, more companies can expect to go along with Fiberhost's wave, and the Office of Electronic Communications will also approve their increases.[3] It is noteworthy to mention that Orange Polska commenced incorporating inflation clauses in its agreements with new customers last year, enabling the company to increase prices if the inflation rate surpasses 3% in 2022. T-Mobile Poland uses similar provisions.[4]

[1] Source: <https://subiektywnieofinansach.pl/klauzule-waloryzacyjne-wchodza-do-gry-multimedia-vectra/>

[2] Source: <https://businessinsider.com.pl/twoje-pieniadze/internet-wkrotce-podrozeje-zaczyna-sie-od-wzrostu-cen-u-wlascieli-infrastruktury/mbly1pf>

[3] Source: <https://businessinsider.com.pl/twoje-pieniadze/internet-wkrotce-podrozeje-zaczyna-sie-od-wzrostu-cen-u-wlascieli-infrastruktury/mbly1pf>

[4] Source: <https://www.benchmark.pl/aktualnosci/orange-play-t-mobile-podwyzki-inflacyjne.html>

2. THE CONSUMER FORUM DEFENDS THE CONSUMER INTEREST

QUALITY - THE RISK OF DETERIORATION OF SERVICES PROVIDED TO CONSUMERS

One of the principal benefits of the Internet is the capability to distribute data storage and processing across the network. As users, when we interact with an online service, we typically do not communicate with a single server but instead interact with a network of servers, all of which collaborate to operate the service. This includes the use of content delivery networks (known as CDNs), which store a copy of popular content on dedicated servers (known as caches), closer to users. The cache provides benefits for end users, including improved service quality due to reduced latency and increased resilience. For Internet Service Providers (ISPs), it results in lower costs and improved throughput since they can avoid expensive transit connections.

The European policymakers could draw valuable lessons from the case of South Korea regarding the quality of services offered to consumers.

On the one hand, it is a story about how interference in voluntary negotiations between networks can have a negative impact on both the economics of the network and its efficiency. This is because we have seen service providers leave the country to avoid being subject to regulations, deterioration in the quality of Internet use due to increased delays, and increased costs for companies and consumers. On the other hand, it is a call to attention that a few of the basic principles on which the Internet is based must remain intact. What makes the Internet a globally accessible infrastructure must be preserved, and critical rules protecting its users, such as the Open Internet Regulation, must not be diluted for the commercial interests of a few.

PRICE – RISK OF COST INCREASES ON THE PART OF CONSUMERS

Regarding the cost implications of implementing the Sending Party Pays (SPP) regulation, also known as the network fee for the development and maintenance of telecommunications infrastructure, which would require large technology companies to pay obligatory fees for the provision of their services to consumers, it is crucial to note that this measure could cause a significant distortion in the prices of peering and transit services on the Internet market, leading to ineffective traffic management.[1]

The optimal price of peering varies widely and changes rapidly depending on network effects and the price elasticity of demand. Its regulation is likely to raise prices for consumers, while completely removing some from the market for certain online services.

It is worth mentioning that the regulation implemented in South Korea with party-network-pay dispatch has resulted in less efficient traffic flows, higher prices, and lower quality content. This is a cautionary tale for decision-makers considering the option of sending batches. Therefore, extending universal service fees to edge services is an inappropriate way to offset the rising costs of US subsidy programs and will ultimately significantly raise Internet prices for consumers. Policymakers should, instead, reduce USF spending, especially on rural broadband networks.

[1] Source: <https://www.euractiv.com/section/digital/news/eu-institutions-agree-on-governance-framework-for-the-digital-transition/>

NEUTRALITY – UNDERMINING THE PRINCIPLE OF NET NEUTRALITY

Any regulation must not undermine the value of a technology-neutral, universal network that is simple and adaptable.

As a network model, the Internet is designed as a general-purpose network, which means it is not optimized for voice, specific usage patterns or special traffic characteristics. In this paradigm, the network remains impartial towards the content of each data packet, and instead, transmits the packets on a "best-effort" basis, without any guarantees of quality or connectivity. New innovations are emerging because this approach allows innovators to design and implement their ideas without permission, knowing the advantages and disadvantages of the network. That's why the Internet has been able to gradually facilitate new applications, such as voice communication, gaming, and video streaming, without fundamental changes in the design of the underlying networks. The fact that many small and medium-sized enterprises (SMEs) can potentially serve customers around the world demonstrates the importance of this key feature to the success of the Internet.

Net neutrality (otherwise known as open Internet) is one of the demands for the operation of the global network. It means that all electronic transmissions passing through the network should be treated equally, without discrimination (as far as possible - technically this is difficult to achieve, and different tariff plans apply), regardless of the type of content sent, the application or service used to send the message, the devices from which it was sent, or the address of the sender or recipient. In a nutshell, it relies on the fact that network users can use different websites at the same time, and providers do not discriminate traffic from or to any portal.

In this context, it is worth mentioning the ruling of the Court of Justice of the European Union, which held that preferential billing of Internet packages, i.e. allowing access to certain services despite the exhaustion of the limit, is a favoritism to certain service providers - violates the net neutrality (ruling in the joined cases C-807/18 and C-39/19). The ruling confirms the understanding of the principle of "net neutrality" presented by the European Commission and BEREC, an EU body that brings together counterparts of the President of the Office of Electronic Communications from across the EU. Net neutrality under EU law is precisely that no one can be discriminated against, such as by favoring certain applications and restricting access to others by slowing down connections.[1]

An insightful commentary comes from Konstantinos Komaitis, an expert in formulating and examining Internet policies to ensure that the internet remains open and global. Komaitis highlights that considering the potential unintended consequences that the introduction of Sending Party Pays (SPP) regulation, a so-called network fee for the development and maintenance of telecommunications infrastructure, could have on the Internet in Europe, the European Commission would at least ensure transparency in the process. Unfortunately, this did not happen. Until recently, the online community had been under the assumption that the Commission's proposal would address the so-called "Sending-Party-Network-Pays" (SPNP) model. Most contributions and analyses have been based on this idea.[2]

Recently, in response to a letter drafted by 29 experts, the European Commission seems to have changed its stance. The Commission now suggests that the contribution of a "fair share" "can be implemented using different methods apart from the Party Pays mechanism in the sending network, and thus should not be conflated with it." However, there is no more information on what exactly this means. Similarly, the European Commission does not seem to be considering all concerns about how network fees could ultimately undermine net neutrality, despite legitimate questions about the impact such rules will have on the ability of telecom operators to discriminate against content reaching consumers.

According to the expert's prediction, if Europe goes ahead with its plans and "allows the imposition of a mandatory fee, telecom companies will take over the right to block or restrict the content of those providers who prove disobedient." This is contrary to net neutrality.

[1] Source: <https://www.prawo.pl/biznes/zasada-neutralnosci-internetu-naruszona-przez-preferencyjne,503198.html>

[2] Source: <https://verfassungsblog.de/internet-collapse-europe/>

COMPETITIVENESS – NEGATIVE IMPACT ON THE DIVERSITY OF SERVICES PROVIDED AND PRODUCTS OFFERED

Whether peering and transit are substitutable products of interconnection cannot be decided in general, but only on a case-by-case basis. The issue of substitutability depends on the customer and the network structure of the interconnection partner. In any case, the following rule applies: Competitive relationships in peering and transit are intertwined. The peering (sub)market functions as a competitive market if ISPs have a choice between different transit service providers, so the transit (sub)market is competitive. In general, a peering connection is only a partial substitute for a transit connection with respect to the availability criterion, since peering only provides connectivity between two specific network providers (and their customers), not connectivity to the entire Internet. Replacing transit completely with peering can only be accomplished by transitioning to a Layer 1 provider, which requires significant investments and a considerable amount of time. Regarding the quality of the connection to a particular network provider, peering can be considered a replacement for transit rather than the other way around because transit typically cannot match the quality level of a direct connection (peering)

Considering the points mentioned above, it is crucial to emphasize that the implementation of a usage fee system would lead to a distortion of competition, which could adversely affect the price-quality ratio of services and the range of options available to consumers.

ACCESSIBILITY – UNDERMINING OPEN AND FREE ACCESS TO THE INTERNET

The Consumer Federation's report titled "Digital Exclusion during the Pandemic: Access and Use of the Internet and Computers in Selected Social Groups" ("Wykluczenie cyfrowe podczas pandemii. Dostęp oraz korzystanie z Internetu i komputera w wybranych grupach społecznych") reveals that approximately 4.51 million Poles aged 16-74, which accounts for 15.5% of this demographic, have never used the internet. Even more people (4.78 million) have never used a computer. Lockdown, as well as other constraints on social and economic life caused by the pandemic, have deepened digital exclusion. The situation for senior citizens has worsened the most, as well as for students, rural residents and the disabled. Regarding digital exclusion across the European Union, only six countries, namely Portugal, Greece, Romania, Croatia, Bulgaria, and Italy, have a worse situation compared to Poland. Lithuania has the same level of digital exclusion, while 19 countries, including most countries in our region, have a better situation. Poland's score (15 percent of those who never use the Internet) is well below the EU countries' average of 9 percent.[1]

[1] Consumer Federation report on digital exclusion. Source: <https://glos.pl/70-tys-uczniow-nie-posiada-w-domu-komputera-a-ponad-1-mln-musi-wspoldzielic-sprzet-raport-federacji-konsumentow>

Households with the lowest monthly income (less than PLN 2,500 net) are the most vulnerable to exclusion. They dominate among all households without access to information and information and communications technologies (ICT). The problem of not having or not using a computer affects more people in Poland than the problem of not having access, or not using the Internet. This conclusion can be linked to the fact that in Poland the desktop computer is not the most popular tool for using the Internet. 73 percent of Internet users use mobile devices, most often smartphones, to do so. Among the most frequently cited reasons for not having Internet access at home are the excessive cost of equipment (21.6 percent) and the excessive cost of access (14.7 percent).[1]

It can be concluded that the implementation of the Sending Party Pays (SPP) regulation, which is the network fee for developing and maintaining telecommunications infrastructure, will lead to an increase in charges for consumers. This increase will worsen the already challenging situation for many consumers who may not have the opportunity to join the network or use services. Some may even have to give up their existing access to services.

[1] Consumer Federation report on digital exclusion. Source: <https://glos.pl/70-tys-uczniow-nie-posiada-w-domu-komputera-a-ponad-1-mln-musi-wspoldzielic-sprzet-raport-federacji-konsumentow>

3. WE SHOULD LEARN FROM THE PAST

THE FIRST INITIATIVE ON THE INTRODUCTION OF A NETWORK TAX IN 2009 (AND THE FOLLOW-UP IN 2012)

The concept of cost sharing among telecommunications operators originated from the revenue accounting system used in traditional voice analog telephone networks. Under this traditional telecommunications regime, governments negotiated rates through the UN's International Telecommunications Union (ITU). Before the Internet, most telecommunications operators were public monopolies. It made sense for governments to set conditions on interconnections. Circuit-switched technology has enabled easy identification of origin and destination, facilitating cost sharing based on rates set by the ITU.

The Internet has disproved this equation. Voice traffic has moved online to messaging apps. To recoup lost funds, some governments, and incumbent telecommunications companies, initially in developing countries, have pushed for the development of an Internet-based cost-sharing model. Their argument was simple: data-hungry Internet video streaming and sharing companies were consuming a disproportionate share of Internet traffic and should pay extra for it.

The policy was wrong then and is wrong today.

It is noteworthy that the proposal for the introduction of solutions like the Sending Party Pays (SPP) regulation, which involves a network fee for the development and maintenance of telecommunications infrastructure, was already raised in 2012. At that time, major European telecom operators advocated for the implementation of the SPP system, but it faced significant opposition and was ultimately abandoned. However, after more than 10 years, we are back to similar assumptions that have already been rejected once. Now, as in 2012, several institutions, experts and industry associations have many legitimate concerns and list the risks that may result from the introduction of SPP.

According to the ETNO (European Telecommunications Network Operators' Association), which made the proposal, the share of online service providers in the cost of building the infrastructure is expected to increase. According to ETNO, they are the ones responsible for Internet traffic, and thus should pay a larger share of broadband infrastructure costs.

According to the Consumer Forum, regulations should keep up with or stay ahead of digital advances, but these regulations must be based on sound analysis and regulatory impact assessment, otherwise regulations will become overregulation, which will ultimately negatively precisely affect the interests of consumers.

EFFECTS OF SIMILAR REGULATIONS IN SOUTH KOREA

The regulation implemented in South Korea, corresponding to the Sending Party Pays (SPP) regulation, the so-called network fee for the development and maintenance of telecommunications infrastructure launched in 2016, provides practical examples of unfortunately bad effects.

Under Korean regulations, peering fees are regulated based on the volume of traffic sent to ISP customers when they request content. Content providers of a certain size must also meet minimum thresholds for server capacity, uninterrupted connections, and traffic re-routing notifications. The current proposals under consideration go beyond this and would impose charges on edge companies based on metrics like the number of customers served. It is suggested (and probably intended) that large US content providers will bear most of the burden of this policy. Korea's policy framework has led to higher costs with lower quality Internet services. Since the fees effectively penalize high traffic volumes, ISPs are discouraged from situating themselves downstream from popular content platforms or passing on these extra costs to content providers. Given the chance, major foreign content providers are more frequently opting to connect directly with individual Korean ISPs to avoid the fees that ISPs incur when exchanging traffic, or they simply limit the domestic availability of content and compel the Korean ISPs to import the content into the country."^[1]

The impediments indicated above significantly disrupt the market and reduce the efficiency of traffic flow. They have also made South Korea's network topography less resilient. A recent report by the Organization for Economic Cooperation and Development (OECD) indicates that South Korea had the highest average delays (which were trending upwards) in the OECD by 2020.

[1] ITIF article dated 7 November 2022. Source: <https://itif.org/publications/2022/11/07/consumers-are-the-ones-who-end-up-paying-for-sending-party-pays-mandates/>

A report by WIK-Consult commissioned by Germany to assess competition in the transit and peering markets summarizes the overall effects of South Korea's regime, indicating that "market observers report a decline in the diversity of online content and expect rising end-user prices for content, as well as lower investment in network infrastructure. Quality for end users is declining." [1]

Far from increasing the quality of the network and consumer experience, then, for South Korea's SPNP policy has made it worse. The effects are cascading and do not involve a direct decline in quality or experience, as transit expenses are decreasing throughout Asia because of competition and technological advancements. At the same time, the additional costs imposed by interconnection fees in Korea are stifling innovation and inflating Korean transit prices. In addition, South Korea must also devote significant resources to enforcing its price regulations.

Regulatory uncertainty and the possibility of lawsuits make South Korea less attractive to potential international collaborators. Thus, the best example of SPP policy in the real world has led to a waste of resources without benefit to consumers. South Korea's legal regulation equivalent to Sending Party Pays (SPP) is clearly a policy failure.

[1] IP interconnection on the Internet: a European perspective for 2022. Źródło:
https://www.bundesnetzagentur.de/EN/Areas/Telecommunications/Companies/Digitisation/Peering/download.pdf?__blob=publicationFile&v=1

IS IT WORTH EXPERIMENTING AT THE EXPENSE OF EUROPEAN CONSUMERS?

Despite South Korea's unsuccessful experience, a proposition for an SPP mandate is anticipated to be considered later this year by the European Union. In the past, there have been scattered proposals for SPP in Europe. In 2012, ETNO (European Telecommunications Network Operators), a telecom lobbying group in the European Union, advocated for a system similar to South Korea's SPP, where charges would be levied based on the volume of traffic transmitted over the operator's network. In other words, the cost of the broadband service covers the amount of traffic used by the operator's customers. BEREC (Body of European Regulators for Electronic Communications), the electronic communication regulator, opposed the proposals, apprehending that such a system would give too much control over traffic to providers, and as a result, no such system was implemented.

BEREC recently reiterated that a system of "direct compensation" for broadband providers from content providers is not justified. However, history seems to be repeating itself, as recent implementation orders have been imposed on European ISPs, leading to grievances from providers who assert that they cannot comply with these orders without "delving deeper into the pockets" of content companies. It is argued that almost everyone already has broadband, so revenue can be expected to stagnate. In the meantime, providers will bear the cost of necessary upgrades in line with advancing applications, green connectivity mandates, and the continued push for widespread deployment of gigabit speeds.

However, Europe could lower broadband costs, allowing for greater consolidation of ISPs and greater economies of scale. It could and should support broadband deployment in underserved areas through public subsidies, as the United States has done. The Information Technology and Innovation Foundation (ITIF) contends that there is no valid rationale for requiring an augmentation in network capacity up to gigabit speeds. However, it goes on to argue that a handful of companies are responsible for most of the traffic, so they should make a fair contribution to maintaining and upgrading the Internet infrastructure. In fact, customers of EU ISPs are responsible for most of the traffic. Taking it to an extreme, if people were to stop watching videos, including video calls, there would be significantly less traffic. Despite this rationale, the arguments for introducing SPP are not significantly different from those proposed and rejected in 2012. In practice, if the notion gains support, it will most likely be due to the unpopularity of Big Tech, particularly GAFA (Google, Apple, Facebook, and Amazon), which makes them an effortless target for fees, rather than a fundamental shift in economic conditions. Especially in the European context, the enticement to levy charges on prominent foreign content providers to fund national finances is politically appealing. However, beyond that, it lacks logical or scientific substantiation, and most significantly from the Consumer Forum's viewpoint, it is detrimental to consumers by restricting their options, not honoring their rights and liberties, and ultimately having an adverse impact on their current state.

It should be stressed once again that network fees will hurt consumers and pose a direct threat to net neutrality. The cost of user fees will be passed on to consumers via a more expensive Internet. Hence, rekindling the past discussion may prove beneficial, but any justifications must be supported by robust technical and consumer protection arguments.

4. PREDICTING THE FUTURE FROM A CRYSTAL BALL

1. OBLIGATION TO PROVIDE DETAILED SCENARIOS (INCLUDING PROPOSALS, BENEFITS)
2. OBLIGATION TO CONDUCT A COMPREHENSIVE IMPACT ASSESSMENT
3. OBLIGATION TO ORGANIZE PUBLIC CONSULTATIONS

The Consumer Forum believes that measures such as the proposed Sending Party Pays (SPP) regulation, which involves the network fee for the development and maintenance of telecommunications infrastructure, should only be introduced after detailed scenarios are developed, considering the comprehensive impact assessments, public consultations, and after analyzing the regulations in a fair and transparent manner for the benefit of consumers. And what is most important is to evaluate both the positive and negative effects that these measures may have on consumers.

It is essential that the European Commission **prepare a road map** for all stakeholders, i.e. civil society, business associations and consumers, who will be affected by this regulation. The roadmap should include all possible scenarios, proposals, and benefits, along with a **comprehensive impact assessment** to predict and analyze possible both positive and negative impacts.

Furthermore, all interested parties, including civil society, business associations, and consumer groups, should have the chance to provide feedback through public consultations."

THE OBLIGATION TO INTRODUCE REGULATIONS THAT ARE FAIRLY ANALYZED AND TRANSPARENT TO THE CONSUMER

The most important element of this study is to **pay attention to the aspect of education and building consumer awareness**. The Consumers Forum Foundation emphasizes that all regulations and communications directed towards consumers should strive towards simplifying and standardizing information. The EU legislature must prioritize consumer welfare when formulating new regulations, which includes systematic consumer education, as well as ensuring that any regulations designed and implemented are organized, simplified, and transparent. Indeed, consumer welfare is a value that should also be paramount for the EU legislator.

NEEDED CONSUMER EDUCATION IN THE CONTEXT OF UNDERSTANDING THE PROCESSES TAKING PLACE, RAISING AWARENESS AND BROADENING THE ABILITY TO USE THE OFFERS AND PRODUCTS AVAILABLE ONLINE

It is important to note that **any new proposals or regulatory drafts must comprehensively address the relevant issue**, with the primary objective of ensuring consumer welfare. Crucial aspects that necessitate particular attention include unimpeded network access, non-discrimination against any specific consumer groups, the standard of services provided to consumers, and market competitiveness, which inherently governs the market.

5. POSITION OF THE CONSUMER FORUM

The Consumer Forum Foundation, representing the interests, rights, and freedoms of consumers in Poland, expresses some legitimate concerns, based on publicly available information, regarding the potential violation of consumer interests resulting from the presented legislative initiative on communications infrastructure in relation to the calls made by European telecommunications network operators for the so-called "FAANG" (which refers to the shares of four prominent US technology companies: Meta, Amazon, Apple, Netflix, and Google) to pay a fee to support the costs of implementing network infrastructure, which includes the proposed implementation of the Sending Party Pays (SPP) regulation, also known as the network fee for the development and maintenance of telecommunications infrastructure.

It is essential that the European Commission prepare a road map for all stakeholders, i.e. civil society, business associations and consumers, who will be affected by this regulation. The roadmap should include all possible scenarios, proposals, and benefits, along with a comprehensive impact assessment to predict and analyze possible both positive and negative impacts.

Furthermore, all interested parties, including civil society, business associations, and consumer groups, should have the chance to provide feedback through public consultations."

RECOMMENDATIONS

Since 2016, European telecom operators have been mandated to uphold net neutrality, which requires that all internet data traffic be treated equally. In addition, data packets are transmitted independently, as quickly as possible and within available resources according to the best-effort principle. If the telecommunications industry were to now charge network fees to streaming services and other content providers for this traffic, data would no longer be treated equally. The net neutrality principles could be undermined indirectly.

A look at South Korea, on the other hand, shows what the consequences of user fees can be - it is the only country in the world that has introduced such network fees. Following its implementation, it has been observed that content providers are withdrawing from the market, leading to a reduction in consumer choice, and in some cases, limited quality of streaming.

As such, it is crucial for all parties, including regulators, to prioritize providing benefits to users, rather than attempting to impose taxes and limit the value derived from external sources outside of the EU. Unlimited access to all legal Internet resources should be a common, universal right in Europe. Our responsibility is to promote the competitiveness of Europe's digital economy, rather than restricting foreign investors from investing in Europe.[1]

Just as 10 years ago, we still do not find a sensible justification for the new regulation in the network market. Although the specifics of the project proposal are not publicly disclosed, the general perception of SPP is unfavorable, and it is our belief that it will only serve as yet another manifestation of excessive regulation. The consequences of the new fee will be detrimental not only to companies in the digital single market, but also to consumers themselves - it will result in higher costs, a deterioration in the quality of online services. In addition, it will hinder the growth of innovative industries in the EU economy. In short, such a regulation is not needed.

[1] <https://www.euractiv.com/section/digital/news/seven-eu-countries-warn-the-commission-against-hasty-decisions-on-fair-share/>

Considering the above, the European Commission should meticulously scrutinize the topics addressed in this document, including the potential adverse impacts of the measures not only on the Internet but also on the telecommunications markets, before presenting any legislative proposals. It is essential to consult a wider range of stakeholders before making any decisions that could substantially undermine the stability and sustainability of the European industry.

It is hoped that the Commission's upcoming public consultation will provide all interested parties with an opportunity to share their views on telecom operators' demands for a "fair share" of payments.

POSTULATES

- 1. The Consumers Forum Foundation opposes the telecom industry's suggestion to introduce network fees for content providers, as such fees would jeopardize the fundamental principles of net neutrality, market competition, and the Internet economy, and it would place an excessive financial burden on network users, i.e., the consumers.**
- 2. A mechanism that introduces supplementary fees could lead to a significant increase in consumer spending, a reduction in the number of digital services available to them, and a deterioration in the quality of services. Instead, the EU legislature should take a holistic approach, which in this case means that market forces should be allowed to continue to operate freely.**
- 3. Furthermore, the Consumer Forum Foundation asserts that the consumers would unequivocally bear the costs associated with such fees being transferred to them, resulting in an inferior quality of Internet usage.**
- 4. The Consumers Forum Foundation cannot endorse a regulation that does not prioritize the consumers' interests, disregards their rights and freedoms, and solely serves the interests of the telecommunications industry and their representative entities.**
- 5. In conclusion, the Consumers Forum Foundation demands that the European Commission launches public consultations regarding the current proposals. All interested groups, such as civil society, business, and consumer associations, must have the opportunity to comment.**

SUMMARY

The introduction of solutions like the Sending Party Pays (SPP) regulation, the so-called network fee for the development and maintenance of telecommunications infrastructure at this stage (taking into account publicly available information) guarantees a future only for telecommunications service providers but does not guarantee the protection of consumer rights. Hence, the Consumers Forum Foundation, being an advocate of consumers' interests, rights, and freedoms, raises valid concerns about potential violations of consumers' interests and sincerely expects that this stance would aid in a wider debate, the formulation of comprehensive scenarios and regulatory impact evaluations, and public consultations, ensuring that the discussion on network fees or SPP would encompass the necessary consumer perspective and consider the wider interests of consumers.

In conclusion, we would also like to draw attention to the fact that we have recently received disturbing information coming from the Ministry of Digitization in Poland about potential proposals related to the European Union Solidarity Broadband Fund in the context of financing telecommunications operators in place of the network fee proposed so far.

At the stage of reporting such proposals, the Consumer Forum expresses its opposition, because first of all, no details of the proposal in question with regard to the situation of consumers and the protection of their rights have been provided, and, moreover, the preliminary information itself indicates that this does not solve the fundamental problem discussed in the body of this paper.



President
of the Consumers Forum



Lawyer and communications expert
at the Consumer Forum



Power of consumers

Dialogue, determination,
decisions.



ABOUT US

We are an independent organisation, a powerful, active and objective voice of consumers in the public debate. We wish to have a constructive dialogue with decision-makers, corporations and entrepreneurs, providing for the consumer well-being.

We do not deal with individual cases of consumer rights breaches. We act for the benefit of consumer groups.

GOALS

1. Promoting right attitudes towards consumers.
2. Initiating and signalling vital issues in the public debate, proposing appropriate legislative solutions.
3. Raising awareness and disseminating knowledge of consumer rights and opportunities.
4. Research into and monitoring of selected product categories and a level of consumer awareness.

PHILOSOPHY

We are building a community of people for whom consumer choices make a difference. We are also striving for the highest standards in the fight for the consumer on the market.

On the one hand, the consumer world is a world of infoglut, the so-called fake news, and consequently disinformation. This means a loss of trust in the media and the government.

On the other hand, it is a world with great opportunities for the development of products and services, a world of new technological challenges and dynamic changes. It is also a great need for dialogue, clear and credible communication, transparency and effective leadership. It is an increasing openness to new initiatives and actions aimed at jointly shaping the rules of the free market and setting the best standards in the fight for the consumer.

We want to meet consumers' needs and, through a dialogue with organisations and decision-makers, look after their interests.

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