
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.**

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/>

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>

2. 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

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.

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

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.

3. 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.

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