

Interdependence between telecoms infrastructure and digital services

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Carolina Limbatto



Should content and application providers (CAPs) generating high traffic volumes on telecoms operators' networks contribute to the costs to deploy or upgrade such networks?

The debate: Telcos view

- Considering current growing internet traffic and data volumes Telcos claim that their investment is not sustainable in the future.
- GSMA: “To secure LATAM’s digital future, it is crucial to create favorable conditions for private investment and equitable network usage”

CAPs view

- No evidence of market distortion and no urgency for intervention
- CAPs invest in the network (CDNs, submarine cables) and there are multiples free peering agreements, a network fee may discourage such investment
- Traffic growth rate is decreasing

What are we talking about?

Network fees/”fair share”: a contribution for network use imposed on high traffic generators

Two approaches:

- Direct compensation to telecom operators
- Increased base for the USF or other funds

Status today



Internet ecosystem is complex, it has different stakeholders contributing to the service as we know it (submarine cables, CDNs, IXP, content providers, ISP, cloud providers, mobile operators).



Most of the agreement between parties are not regulated



European Union

Oct. 2022

BEREC

No evidence that direct compensation is justified given the current state of the market

“ETNO members’ proposal could present various risks for the internet ecosystem.”

“increasing traffic volumes do not directly lead to significant incrementally costs, when compared to total network costs”.

February 2023



Consultation on specific mechanisms for a contribution by CAPs and LTGs

June 2023



“calls for the establishment of a **policy framework where large traffic generators contribute fairly to the adequate funding of telecom networks** without prejudice to net neutrality”

October 2023



No specific action announced following the consultation

European Union

February 2024



European Commission white paper **How to master Europe's digital infrastructure needs?**

A comprehensive overview of the current technical and economic challenges facing European connectivity infrastructure. Included a transit and peering dispute settlement mechanism.

ETNO

In favour of a dispute settlement mechanism "to ensure that large CAPs adequately remunerate valuable IP data transport services provided by network operators"

356 stakeholders responded

CCIA

"no justification for regulatory intervention in cloud or IP interconnection"

Germany: DT v. Meta

- The German regional court of Cologne (LG Köln) ruled that Meta must pay outstanding interconnection fees to Deutsche Telekom based on their existing contract.
- The court decided primarily on the basis of contract law.
- However, it does not seem to have much relevance for the relationship between network operators and content providers that do not have a specific contract on IP transit services.



Korea: direct contribution

IF



over 1 million daily users

AND



more than 1% of total traffic generated in the country



CAPs must guarantee service stability negotiating enough capacity with telecom operators.

In Korea 3 players concentrate around 80% of total internet traffic.

Korea: not everyone onboard



Some operators like Meta, Apple, Amazon and Disney reached agreements with Korean ISPs.



Twitch left the country alleging high costs.



ORDEM E PROGRESSO

Brazil 2023 first consultation

Anatel consulted whether it should regulate highly demanding users of telecoms networks:

- new business models, competition, market failures and regulatory needs in the digital economy;
- special regulatory treatment for VAS and application providers, including alternatives for network usage fees; and
- potential regulatory measures targeting specific user profiles.

Brazil 2024 consultation

Anatel consulted on potential imbalances between telecoms operators and online platforms. In particular regarding:

- consumer protection rules;
- competition;
- network investments; and
- transparency requirements.



United States: proposal

- A bill put forward in the US Senate in Nov. 2023 proposes a significant reform of the Universal Service Fund (USF).
 - If approved, FCC could request contribution from CAPs. Bill expires end of 2024.
- ⚠ The US Fifth Circuit Court of Appeals ruled the FCC's method for funding the USF unconstitutional, and it will likely be taken to the Supreme Court.

US: NTIA comment to EU consultation

- The NTIA criticised direct payments from CAPs to telecoms operators.
- The NTIA supported publicly accountable funding mechanisms that can better ensure that resources are devoted to key policy objectives.
- NTIA urged caution should the EU consider any new funding mechanisms that could disrupt the current Internet ecosystem.



Into economics: arguments for a network contribution

- Fees to propose an efficient network use (prices as indicators)
- Sustainability of telco investment
- Connectivity as a two-sided market
- There are market failures in the connectivity access

Network fees and unpredicted impacts

- Could payment from content creators be against net neutrality?
- What about telco's zero-rated plans?
- What effect can this have over small ISPs and/or local content and CDN investment?
- Are we talking about fixed or mobile traffic? Or both?

We have more questions than answers

- If the compensation is done, what could be the impact in end users?
- What is the risk of not having such compensation?
- Do we need specific regulation on this?
- Who would intervene if parties cannot reach an agreement?

Thank you

carolina.limbato@cullen-international.com

Cullen reading list

- <https://www.cullen-international.com/client/site/documents/RRGTGO20240001>
- <https://www.cullen-international.com/client/site/documents/FLTEBR20230002>
- <https://www.cullen-international.com/client/site/documents/FLTEBR2024000>
- <https://www.cullen-international.com/client/site/documents/FLGTKR20230001>
- <https://www.cullen-international.com/client/site/documents/FLGTKR20230002>
- https://www.cullen-international.com/client/site/documents/B5TEEU20240006_7a4de17a-8953-4c6f-8f96-9f3cbfb7ea21
- <https://www.cullen-international.com/client/site/documents/FLTEEP20220025>
- <https://www.cullen-international.com/client/site/documents/FLTEEP20220037>
- <https://www.cullen-international.com/client/site/documents/FLTEEP20230023>
- <https://www.cullen-international.com/client/site/documents/FLTEEP20230009>
- <https://www.cullen-international.com/client/site/documents/FLTEEP20230035>
- <https://www.cullen-international.com/client/site/documents/TRTEEU20240094>