

Výbor nezávislého ICT průmyslu z.s. (VNICTP's; EN: Independent ICT Industry Committee z.s.) position on the participation of large technology companies in the cost of network expansion ("Fair Share")

1. Initial situation

In recent years, the debate on the so-called Fair Share contribution to the development of European high-speed networks has been re-emerging at European level. This is mainly represented by the statements of the EC Internal Market Commissioner Thierry Breton, or the political agreement on the upcoming Digital Decade policy agenda.

This discussion is framed by the increase in annual data consumption on electronic communications networks, mainly due to social networking, Internet TV and other streaming video. At the same time, it mentions the increased demands and expectations for pan-European connectivity. Legislatively and politically, these requirements are framed by the text of the *European Declaration on Digital Rights and Principles for the Digital Decade*, which calls for 'creating the appropriate framework conditions for all market participants [...] to contribute fairly and adequately to the cost of public [...] infrastructures'. The European Commission has already launched a public consultation on this subject, where the issue of possible cost sharing is mentioned.

These arguments were primarily supported during 2022 by the incumbent operators association ETNO¹. The intention is a direct financial transfer from major content generators towards telecom operators to support the construction of high-speed networks.

In this context, the Committee of the Independent ICT Industry advocates that the above-mentioned debate should be conducted in a transparent and constructive manner, based on evidence and facts, and that alternative, regional and local network operators, who are often the driving force in the deployment of fibre optic and other types of high-speed networks not only in the Czech Republic but also in many European countries, should be involved (even the ETNO Association itself acknowledges that in the case of investments in FTTH, the investments of alternative operators are higher than those of its members).

2. "Fair share" in the digital ecosystem

We do not reject the idea of a 'fair share' a priori if it can be shown that there is indeed a situation in the market for which such a solution is the best possible. At this time, however, we feel very strongly about the many threats and problems that its introduction would cause. There are a number of

¹ Europe's Digital Decade plans, gigabit networks roll-out and the fair contribution debate, available from: <https://etno.eu/news/all-news/8-news/738-europe-s-digital-decade-plans-gigabit-networks-roll-out-and-the-fair-contribution-debate.html>

studies that warn of a number of negative impacts of the proposed solution (e.g. ECIPE 2022²) with potentially fatal impacts on the further development of internet services in the EU and possibly on the EU's overall digital competitiveness. A number of associations of local and smaller operators in the EU have also expressed very negative views, such as the French alternative operators' association AOTA, which we take very seriously and which the European Commission should take into account responsibly.

To date, we have not seen any comprehensive study examining the market/ecosystem between telecommunications companies and large technology companies identifying the need to choose a fair share transfer solution with possible quantification of the positive and negative impacts of the chosen solution or versions thereof. Such an analysis would need to take into account trends in terms of data volumes, the balance and distribution of online traffic, the dynamics and structure of the OTT market and the market power of individual players, together with a similar analysis of the telecoms provider market, along with an analysis of the level of investment, profitability and dividend payments, in order to identify any imbalances and take appropriate action against them. At the same time, the effects on competition in the telecoms market, not only in aggregate for the EU as a whole, but especially for individual Member States, should be taken into account as a matter of priority. The EU telecoms market is predominantly local and competition takes place primarily at the level of Member States or specific locations within them.

3. VNICTP fair share conditions

The question of whether OTT participation in the cost of network build-out and investment in the roll-out of fibre and other high-speed technologies should be in the form of a 'fair share' should be subject to analysis and should be based on facts and a clearly defined market failure. Without this, it is very difficult to determine what the eventual remedy should look like. From ETNO's statement, we see the idea of direct transfers from digital companies. While we are not convinced of the necessity of such transfers and reiterate the risks associated with transfers, if they were to occur, this would only be possible if the risk of distortion of competition was thoroughly eliminated and a level playing field for smaller operators was secured. It is clear to the VNICTP that further steps in the area of "fair share" can only be taken if they are coupled with clear conditions to maintain market balance, ensure a fair playing field for all participants and effective implementation without increasing bureaucracy and regulatory burden.

The VNICTP advocates first and foremost the **prevention of distortions of competition in the telecommunications market**. The European Commission has always, and especially since the liberalisation of telecommunications markets, advocated a "level playing field" in which all market participants have equal rights and opportunities - this must be preserved at all costs. For example, a

² See Makiyama, Hosuk-Lee: Sender-Pays: Rethinking incentives for infrastructure investments, available from: <https://ecipe.org/blog/rethinking-incentives-infrastructure-investments/>

mere bargaining obligation for large technology companies - as demanded by Europe's largest network operators - would in no way be sufficient to prevent distortions of competition. Already today we see significant **differences in** many areas (e.g. the media market) in terms of **bargaining positions** in national telecoms markets. In order to effectively prevent distortions of competition in the area of 'fair share', a *truly* equal treatment of all participants is necessary. "The 'fair share' would have to **benefit equally all companies deploying fibre and other types of high-speed technologies in line with technology neutrality**."

The VNICTP advocates that if a relevant market is found to be failing, the European Commission should introduce measures that interfere as little as possible with the principle of the functioning of the market as a whole, with the least potential to restrict competition and the development of that market. According to the appropriateness of the measures, the VNICTP prefers the following solutions in order of preference:

I. Organisational and technical measures

As the most appropriate solution, we prefer solutions leading to the improvement of existing mechanisms responding to technical problems caused by traffic imbalances. This would include, for example, an obligation to benchmark the placement of CDN equipment in the operator's network, even for smaller players, which would be applied to large digital platforms (e.g. entities designated as very large platforms and very large search engines under the Digital Services Act). This should minimise transport costs and maximise the end operator's control over how its customers consume the content they want. Alternatively, given the rising cost of energy, we consider it appropriate for digital content providers to share the cost of operating such facilities.

II. Financial measures for the development of underdeveloped areas

If the European Commission decides on some type of regulation in the form of a contribution to infrastructure construction (or a tax on non-European entities), we prefer funding in a form similar to current subsidy titles (primarily for backbone or backhaul networks). Funding under public control, with clear rules of disbursement and clear rules of use (e.g. only for fibre networks in rural areas) will ensure that all market players, regardless of size, will have equal access to funds.

Net Neutrality Protection

Opponents of "fair share" financial participation by large technology companies in the construction of telecommunications networks often argue that such regulation would violate **net neutrality**. For the VNICTP, one thing is clear: "fair share" regulation must not undermine **net neutrality** and EU

guidelines for an open internet. Net neutrality is one of the fundamental principles of a free internet that must be preserved. We therefore call once again for an unbiased market analysis and the identification of a clear failure and appropriate corrective measures, if any, that would constitute proportionate regulation with respect to the principle of net neutrality.

4. Conclusion

Large telecoms companies' demands for large technology companies to share the cost of their networks are sparking intense debate at EU level. The VNICTP sees the potential of 'fair share' financial contributions that could have a positive impact on VHCN deployment in view of growing traffic, current market dynamics and political and social expectations regarding connectivity, sustainability and resilience. However, alongside these potential benefits, we also see very serious threats and it is therefore essential that the European Commission reacts to ensure fair competition in the telecoms market without fail. The solution must be suitable for all participants in the Internet market and for society as a whole, while preserving the network. At the same time, the rules must be set only after the European Commission or national regulators have carried out a market analysis as envisaged by the applicable legal standards and the European regulatory framework for electronic communications.

If "fair share" regulation is to be truly fair, it must be based on a transparent process that does not exclude any players in the market.

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