



17 May 2023

Re: Access Now calls on the European Commission to protect Open Internet policies and to boost telecoms' investments in infrastructure ("fair share consultation")

Dear Commissioner Thierry Breton,

Access Now congratulates the European Union and Commission for its work and leadership across the past decade in protecting the Open Internet and developing rules for competition in the telecoms market. We urge the European Commission to protect these advancements and create incentives for investments in infrastructure that fully align with Net Neutrality and competition. To do so, we request an open, multi-stakeholder dialogue on infrastructure investment and the rejection of a fair share proposal or other sending-party-pays measures.

The Open Internet Regulation guarantees the principle of Net Neutrality in the European Union which allows anyone to innovate online without barriers. It ensures that internet access providers give access to all sites, content, and applications at the same speed, under the same conditions, without blocking or giving preference to any content.

In places and countries where Net Neutrality is not guaranteed, internet users do not always enjoy complete access to the internet or may even live under [internet shutdowns](#). Prior to the adoption of the Open Internet Regulation, telecom operators in Europe were launching so-called zero-rating programmes. In doing so, they were picking and choosing which services and online platform internet users could have differential access to, while raising the price of full internet access packages. In adopting the Open Internet Regulation, the European Union took important steps to protect freedom of expression, innovation, and competition online.

With the continued growth in internet usage across the Union, investment in the infrastructure is critical. This issue is at the core of the European Commission's ongoing consultation on the future of the connectivity sector and its infrastructure. However, the consultation only allows telecom operators to meaningfully contribute to the survey. Data and information sought through this consultation are almost exclusively in the hands of telecom operators, giving them an advantage over other economic actors and internet users who cannot reflect on their experience online. We call on the European Commission to open a dialogue for consumer groups, NGOs, and online companies on the effects and impacts that new policies on infrastructure investment would have.

As a result of the heightened demand for faster and better access to the internet, telecom providers generate more value and profits. In November 2022, Telefónica reported a growth in revenue year on year of 11.2% and [presented](#) "solid results marked by accelerating revenue growth". Deutsche Telekom saw a 6.1% increase of its revenue in 2022, [exceeding](#) its own target. Similarly, Orange [recorded](#) a 0.6% growth, Telecom Italia [reported](#) a year on year revenue growth of 0.3% and Vodafone [communicated](#) a 2022 total revenue increase of 4.0%. Despite the increasing inflation and a difficult economic situation, all major EU telecom operators saw growth in their revenue across the past years. The current connectivity needs have allowed telecom operators to make important profit margins. This will only increase in the future with 5G/6G, demand for connected urban and mobility initiatives, and more.

These record revenues, in turn, should lead to a stronger incentive to invest in enhanced network capacity, for which telecom operators also receive public funding and support.

Yet, telecom operators are asking online platforms to pay a fee to contribute to infrastructure investment. If telecoms operators were authorised to charge a fee for content delivery, they would effectively be remunerated twice for providing the same service: once by the platform so that content is available online and a second time by internet users paying to access content. In this scenario, online platforms could also seek to influence telecom operators for faster or premium delivery of their content online.

This is not the first time that a request for such a fee by telecom operators is made but in the few cases it was implemented, it led to a downgrade of internet quality for users and a barrier to competition. South Korea introduced such a fee, also known as a "sending party pays" measure, in 2016. Since then the country has been [constantly patching](#) its rules as "services providers left the country to avoid being subject to the regulations, internet users experienced degraded online experience due to larger latencies, and the country saw increased costs for companies and consumers."

The European Union was right in protecting Net Neutrality and promoting competition online and must continue on this path.

We call on the European Commission to open a multistakeholder dialogue on infrastructure investment while closing the door to disastrous fair share proposals or other sending-party-pays measures.

We look forward to exchanging with you and your team to promote competition, investment, and people's rights online.

Best regards,

Estelle Massé, *on behalf of Access Now.*