The Fair Share Debate:

Global perspectives on who should contribute to internet infrastructure

A report prepared by the IBA Communications Law Committee

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August 2025

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Acknowledgements

The IBA Communications Law Working Group on Fair Share is pleased to present this report. This report aims to provide sufficient coverage of the available information to enable an accurate understanding of the issues and the various positions and views around the fair share debate as currently exist, noting that it is an evolving area. It is intended that this report will be updated with new information as the debate continues around the world.

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Introduction

General overview

The debate on 'fair share' concerns the question of whether technology companies which provide internet services through telecoms networks should contribute to their financing. Telecom operators have generally and often repeatedly demanded that the major global platforms such as Google, Meta, Apple, Microsoft and Amazon be required to make a contribution. This debate has existed since at least 2012, during the International Telecommunication Union (ITU) conference in Dubai, when the European Telecommunications Network Operators' Association advocated for a 'sending party pays model' to address the growing level of internet traffic connected to operators' services.[1] Technology companies have always rejected this request, pointing out, among other matters, that it is precisely their services which stimulate and justify investments and the modernisation of telephone networks towards fibre and 5G. On the other hand, internet services themselves require significant investments in data centres, software and content.

During the debate very polarised positions have emerged: the largest telecoms operators are generally in favour of fair share; whereas technology companies, small telecoms companies (telcos), television service providers, consumers, civil society and the internet technical community are normally against it.

The issue of fair share should not be confused with that of the dominance of internet giants, on which the European Union (and various countries) have already legislated incisively, including in the EU with the Digital Markets Act, the Digital Services Act and the Data Act, recently adopted regulations that are already having their first effects. Likewise, tax equity, which is being addressed by countries in other forums, is a separate and distinct issue.

In the EU, the debate on fair share was notably kick started during 2023 by European Commissioner Thierry Breton, who took a very favourable position on the issue. However, this position was not welcomed by the majority of European national governments meeting at the Telecom Council in Léon in October 2023. The outcome of the debate was particularly influenced by the position of the Body of European Regulators for Electronic Communications (BEREC), the EU agency of national regulators, which in May 2023 adopted an extremely negative technical opinion on fair share, noting, inter alia, how the measure was fundamentally unjustified and likely to harm investments, competition and net neutrality.

Following the Léon Telecom Council it can be said that the dossier has realistically been set aside, although it continues to be mentioned in some official EU documents, such as the on Europe's digital infrastructure needs and Mario Draghi's report on the future of European competitiveness. Some national proposals have been filed in France and Italy, but without concrete results.

The new European Commission (EC), which came into office at the end of 2024, has not publicly pursued the fair share initiative. However, attention should be paid to a legislative proposal, called the Digital Networks Act, which aims to reform the EU telecom framework, including the European Electronic

1 General information can be found at Innoword, 'The Fair Share repository', *radiobruxelleslibera, Innocenzo Genna's blog on European telecom and Internet regulation and policies*, 11 April 2023, https://radiobruxelleslibera.com/2023/04/11/the-fair-share-repository accessed 18 June 2025.

Communications Code. Such a proposal, expected by the end of 2025, may be the latest opportunity to introduce a fair share mechanism into EU legislation in the next few years.

In other jurisdictions, the debate has unfolded to varying degrees. In Australia, for instance, fair share arguments have not advanced consistently or frequently, and as such have only received limited consideration by government. This is potentially due to Australia's strong level of competition in the telecoms sector and high level of public investment in national broadband infrastructure through the Australian government-owned NBN Co, which connects nearly all of Australia to the internet. In India, the US and Latin America the vivid debate has never resulted in concrete legislative proposals.

At the time of writing this report, the only country where a 'fair share-like' mechanism has been introduced is South Korea in 2016. However, the South Korean model consists of a regulated peering model (that is, fixing the price of peering between operators) rather than a contribution mechanism as envisaged by the European debate. Subsequently, in 2021, a so-called 'Netflix law' was introduced, requiring more investments by content providers to guarantee the stability and quality of streaming, but without imposing a mandated cost-sharing arrangement between telcos and OTTs (over-the-top providers).

Fair share models

Considering the debates and the practical examples that have so far emerged in various jurisdictions, at least three prevalent theoretical models of fair share mandatory contribution can be identified. These are:

- the interconnection model;
- the universal service contribution model; and
- the regulated peering model.

The interconnection model

According to this model, the mandatory contribution is the result of a negotiation between the operators that are involved in peering. The content provider which delivers traffic to a telco should pay the latter a termination fee, similar to that applied to traditional packet-switched telephone communications. In the event of disagreement in the negotiation, judicial recourse to a judge, arbitration court or regulator is possible.

Most proponents suggest limiting the mechanism to peering negotiations that only involve certain content providers, the so-called 'large traffic generators' to be designated in various ways.

In the EU context, such a mechanism would require a modification of the regulations on interconnection, and in particular of Article 61 of the European Electronic Communications Code. The existence of this regulatory basis constitutes a type of EU legal reserve on the matter, which in fact precludes the introduction of such legislation at a purely national level, at least until the EU provision is modified in a more permissive manner.

This mechanism has never been formally introduced through legislation and has therefore not found concrete application. However, it has been envisaged in various policy proposals (though not implemented), including:

- the various proposals on Telefonica's fair share;
- the EC's White Paper 'How to master Europe's digital infrastructure needs?';
- the Draghi Report on EU competitiveness; and
- the Italian amendments to the 2024 Competition Decree.

The universal service contribution model

This model provides that certain content providers, in particular, so-called 'large traffic generators', must pay a tax, the amount of which is proportional to, or dependent on, the amount of traffic relating to their services in the market over a given period of time. Unlike the interconnection model, in this case the mandatory contribution is collected by the state, and not by the telcos. Any use of such funds for investment in infrastructure or distribution to telco operators makes this mechanism similar to that of universal service financing.

The question of how to measure the traffic, and how to attribute it to a certain content provider, has not been clarified in detail.

Like the interconnection model, this mechanism has never been formally introduced through legislation and therefore has not found concrete application. However, it has been put forward in various policy proposals (though not implemented), including:

- the French proposal on a financial transaction tax (FTT), November 2022;
- the Polish proposal on an EU solidarity fund, May 2023; and
- the proposed amendment to the French *Projet de loi de finances* or Finance Bill 2025.

The regulated peering model

This model consists of fixing the price of peering between operators, therefore excluding negotiations between operators, including free settlement. This mechanism is reported to have been applied in 2016 in South Korea, limited to telco operators, but it has caused the price of bandwidth generally to increase across the market.

The European Union

Although the debate on 'fair share' has been promoted in the European Union, there have never been precise rules or proposals that can be considered as a clear EU approach on the subject. Even the European Commissioner Thierry Breton, who has been the most vocal supporter of the fair share principle, has never formalised a proposal on the matter. The EU's legislative interventions are limited to questions of principle and in no way can they be seen as binding legal bases.

EU legislation, soft legislation and reports

The European Declaration on Digital Rights and Principles for the Digital Decade (26 January 2022)

The joint Declaration adopted by the European Parliament, Council and Commission solemnly proclaims digital rights and principles for the digital decade, with the aim of putting people at the centre of digital transformation; protecting fundamental rights online; ensuring an inclusive and sustainable approach; and providing a framework for digital rights.

The Declaration contains a generic reference to a solidarity principle among market actors, which has been advocated by fair share supporters to justify their requests towards OTT and content providers. The claimed reference reads as follows:

> 'Chapter II: Solidarity and inclusion
>
> Everyone should have access to technology that aims at uniting, and not dividing, people. The digital transformation should contribute to a fair society and economy in the Union.
>
> We commit to: [...] developing adequate frameworks so that all market actors benefiting from the digital transformation assume their social responsibilities and make a fair and proportionate contribution to the costs of public goods, services and infrastructures, for the benefit of all Europeans.'

Being very generic in terms of its wording, it is doubtful whether this statement may serve as a solid legal basis for fair share legislation and, in fact, no concrete initiative has ever been adopted on the basis of it.

Decision (EU) 2022/2481 of the European Parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Programme 2030

Following the previous Declaration, the Digital Decade Policy Programme 2030 aims to guide the EU's digital transformation towards the start of the next decade. In this respect, concrete targets are set in four key areas: digital skills; digital infrastructures; business digitalisation; and digital public services. The decision establishing this programme contains a relevant recital (n 13) mirroring the same 'solidarity' principle established in the Declaration, according to which:

'[...] All market actors benefiting from the digital transformation should assume their social responsibilities and make a fair and proportionate contribution to the public goods, services and infrastructures, for the benefit of all citizens in the Union.'

According to the Declaration, the wording of the statement is very generic and therefore it may not serve as a solid legal basis for fair share legislation.

European Commission's public consultation on the future of the electronic communications sector and its infrastructure (23 February 2023)

The consultation formed part of the so-called 'connectivity package', and consisted of 62 questions divided into four chapters. Only one chapter (of 22 questions) specifically referred to the fair share debate, although the second chapter also contained some reference.

The consultation ran until 19 May 2023 and the results of the exploratory consultation were published in October 2023. The EC received 437 responses to the consultation and 164 position papers. Of these: 108 contributions were submitted by companies; 87 by business associations; 124 by citizens (114 by EU citizens and ten by non-EU citizens); 47 by non-governmental organisations (NGOs); 16 by research/academic institutions; 14 by consumer organisations; and five by trade unions. National and other public bodies also provided feedback.

The results of the consultation did not provide clear support for a prompt fair share legislative proposal. As a consequence, Commissioner Breton appeared to reconsider his initiative and, instead, announced that the EC was going to work on a strategic white paper focusing on the sustainability and competitiveness of the EU telecom market, together with some further legislative proposals to be considered in a future mandate.

The EC's White Paper on 'How to master Europe's digital infrastructure needs?' (21 February 2024)

The document intended to be a reflection paper aimed at gathering observations and comments as to the challenges the EU currently faces in regard to the rollout of future connectivity networks. It also presented possible scenarios to attract investments, foster innovation, increase security and achieve a true digital single market. Such scenarios were not just hypothetical exercises, they represented in fact the exact directions that the European Commission, under the vision of Commissioner Breton, intended to take. Criticism has been raised in regard to the fact that the causal link between reflections and proposed scenarios were not always sufficiently accurate.

The White Paper contains references to potential fair share legislation, although no specific proposal or scenario is clearly formulated. The following is stated on page 26 of the document:

> 'On the network side, it is to be recalled that – in contrast to voice traffic (which is billed according to the "calling party's network pays" principle) – IP interconnection currently appears to rely on transit and peering agreements usually based on a "bill-and-keep" approach where the Internet Service Provider (ISP) does not receive payments at the wholesale level for terminating traffic. According to the model generally attributed to the IP interconnection market, the ISP normally recovers its costs at the retail level by selling internet connectivity to its end-users, who generate internet traffic when retrieving data/content offered by CAPs. For supplementary paid peering and for transit, typically payment is made on the basis of the capacity provided at the point of interconnection. The main recent changes in the overall global architecture of the internet and of interconnection are caused and driven by the expansion of own backbone and delivery infrastructures by the CAPs. This has shifted the relation of interconnection in the form of transit and peering, with "on-net" exchange now predominating, with

> the CDNs' dedicated local storage servers (cache servers) collocated directly in the ISPs' networks. This leads to a very direct and cooperative interaction between CAPs and ISPs as they have to agree on technical and commercial conditions for transit and peering bilaterally (e.g. on the locations of traffic handover, the level of transit prices, on the question of settlement-free or paid peering or on quality and efficiency aspects).
>
> There are very few known cases of intervention (by a regulatory authority or by a court) into the contractual relationships between market actors, that generally functions well and so do the markets for transit and peering. There has been nonetheless a vivid debate on this topic. Moreover, it cannot be excluded that the number of cases in the future will increase. Should this be the case, subject to careful assessment, policy measures could be envisaged to ensure swift resolution of disputes. For example, the commercial negotiations and agreements could possibly be further facilitated by providing for a specific timeline and by considering the possibility for requests for dispute resolution mechanisms, in case commercial agreements could not be found within a reasonable period of time. In such case, NRAs or (in cases with a cross-border dimension) BEREC could be solicited, as they have the necessary technical knowledge, and important experience in dispute resolution and in assessing market functioning.'

Enrico Letta 'Much more than a market' (April 2024)

In response to a request from the European Council, Enrico Letta, the EU Rapporteur on the future of the Single Market and a former prime minister of Italy, delivered a report on the achievement of a single market in various sectors, which aimed to: (1) strengthen the European Single Market to address current global challenges; (2) introduce a 'fifth freedom' focused on research, innovation and education; (3) create a savings and investments union (SIU) to mobilise private capital; (4) promote integration in key sectors such as finance, energy and telecoms; (5) balance competitiveness, strategic autonomy and fair global conditions; and (6) place citizens at the centre, ensuring both freedom of movement and the 'freedom to stay'. The report emphasises the need to adapt the Single Market to new global dynamics while promoting solidarity and sustainability.

As regards the telecom chapter, the report does not explicitly address the fair share debate and proposed solutions. However, on page 58 it recommends a rethink in net neutrality practices.

Mario Draghi 'The future of European competitiveness – A competitiveness strategy for Europe' (9 September 2024)

On the request of the European Commission, former Italian Prime Minister Mario Draghi delivered a report on the competitiveness failures of the EU economy. While the telecom market is not the core of the report, a brief chapter dedicated to this sector reflects most of the positions already stated in the White Paper and the Letta report. Such acritical alignment of the Draghi report, in particular with the traditional positions of big telecom operators, has been criticised by various authors, according to which the analysis by Draghi of the telecom market should be corrected. Olivier Guersent, the Director-General of the Directorate General for Competition, publicly expressed his technical reservations towards the accuracy of the telecom chapter of the Draghi report, particularly with respect to the comparison between the EU and US telecom markets. His intervention, dated 27 June 2024, can be found on YouTube.

The Draghi report makes a specific reference to the fair share debate on page 75 of the Annex B whereby:

> '[...] Encourage the definition of commercial contractual agreements for terminating data traffic and infrastructure cost-sharing between internet service providers or telecom operators owning the infrastructure and very large online platforms (VLOPs) using it. The safeguard of mandatory final arbitration offers made by national competition authorities should be foreseen, in case of failed negotiations within a reasonable period.'

This statement is a clear echo of the hypothesis that is based on relying on the peering market to set up a compensation mechanism between telcos and OTT providers, a proposal that, as stated previously, has been rejected by various commentators and in particular by BEREC.

Conclusions of the Council on the White Paper (6 December 2024)

The Conclusions were led by the Hungarian presidency of the Council of the European Union (July-December 2024) intending to form a response to the various reflections and proposals contained in the Commission's White Paper. In general, the Council's Conclusions are quite critical and sceptical of the position of the EC, debunking most of its assessment as to the status of the electronic communications market, the need to radically review the current framework and the need to encourage the consolidation of the telecom sector. The fair share debate is discussed in paragraph 29 of the Conclusions according to which a potential intervention with respect to the internet protocol (IP) interconnection market is principally rejected:

> '*Notes* the proper functioning of the Internet Protocol (IP) interconnection market in the EU and *acknowledges* the experience of national regulatory authorities in handling dispute resolution matters. In case of future deficiencies of this market, *stresses* the importance of a comprehensive, thorough analysis and impact assessment as foundation for any mitigating initiatives, including a dispute resolution mechanism. Any potential measures should be in line with the open internet principles.'

In other words, the Council rejects the idea that the IP interconnection market may be regarded as the right place to solve the investment claims of telcos against OTT providers, while possible regulatory interventions are deemed possible only when there is evidence of a market failure. As a consequence, a prior competition assessment is considered necessary before any legislative proposal, while the consideration of financing of the networks by so-called '(large) traffic generators' is not taken into account.

Political interventions by EU institutions

Statement by European Commissioner for Competition Margrethe Vestager on the possibility for OTT providers to bear the network costs of the telcos (2 May 2022)

The following statement was reported by Reuters:

> 'Because we see that there are players who generate a lot of traffic that then enables their business but who have not been contributing actually to enable that traffic. They have not been contributing to enabling the investments in the rollout of connectivity [...] and we are in the process of getting a thorough understanding of how that could be enabled.'

It is not clear whether Vestager's initiative was seriously aimed at launching a debate on fair share, or whether she was only intending to expand the reflections on the state of the telecoms sector, while reducing the focus on merger policy and consolidation.

Intervention by EU Commissioner Breton (4 May 2022)

Interviewed by *Les Echos*, Commissioner Breton (former CEO of Orange) relaunched the debate mentioned by Vestager a few days earlier.

Letter from 54 Members of the European Parliament (MEPs) to EU Commissioners Vestager and Breton (12 July 2022), and joint reply (18 October 2022)

A large group of MEPs contested the initiative on fair share, also noting the risks in regard to net neutrality, and called for a public discussion and consultation. Reference is made to alleged negative precedents in the US, South Korea and Germany. The reply by Breton and Vestager is generic and confirmed that the net neutrality acquis will not be affected.

Statement by EU Commissioner Breton reiterating the imminent launch of a public consultation (14 September 2022)

A statement submitted on LinkedIn by EU Commissioner Breton begins with a reference to with European Commission President Ursula von der Leyen's State of the Union letter of intent referring to the metaverse. Commissioner Breton's reiterated the paradox of increasing volumes of data being carried via such infrastructure, on one hand, and decreasing revenues and appetite to invest to strengthen such infrastructure and make them resilient, on the other. While calling for a system where 'all market players benefiting from the digital transformation make a fair and proportionate contribution to public goods, services and infrastructures, for the benefit of all Europeans', Breton announced the launch of 'a comprehensive reflection and consultation on the vision and business model of the infrastructure that we need to carry the volumes of data and the instant and continuous interactions which will happen in the metaverses'.

Letter by 48 MEPs supporting the fair share initiative (15 September 2022), and reply by President von der Leyen (22 December 2022)

The original document is not publicly available. Von der Leyen's reply is reported to provide a broad reminder that initiatives should be based on a 'solid base of evidence' and that a 'consultation will be launched in early 2023'. Interestingly, the following remark by the president was reported:

> 'Increasing volumes of data on the infrastructures need to be met through adequate returns and appetite to invest, especially for mobile networks'.

BEREC's preliminary assessment of fair share (7 October 2022)

BEREC's document examined the proposals for mandatory payments from large OTT providers to telcos. The preliminary findings were very negative and dismissed most of the founding assumptions of the fair share doctrine. Its key findings are as follows:

- No evidence of free-riding – BEREC finds no empirical evidence that content and application providers (CAPs) are 'free-riding' on internet service provider (ISP) infrastructure. Both end-users and CAPs already contribute to the costs of internet connectivity through existing commercial arrangements.

- Traffic causation – Internet traffic is primarily generated by end-users who request content from CAPs. Consequently, demand is user-driven, and ISPs' customers already pay for access.
- Cost structure – The costs of upgrading network capacity to handle increased traffic volumes are relatively low compared to total network costs. Fixed access networks, in particular, are not highly sensitive to traffic volumes, with costs mainly covered by user subscriptions. Only mobile networks show some degree of traffic sensitivity.
- Mutual interdependence – CAPs and ISPs are mutually dependent. User demand for content drives broadband subscriptions, while broadband availability fuels demand for content. This interdependence underpins the current internet ecosystem.
- Competitive market – The IP interconnection market is competitive, and disputes are typically resolved without regulatory intervention. There is no indication that network costs are not already fully covered within the current value chain.
- Risks of sending party network pays (SPNP) model – Implementing the SPNP model could allow ISPs to exploit their termination monopoly, potentially harming the internet ecosystem and risking net neutrality. It could also distort competition, disadvantaging smaller ISPs and CAPs.
- Need for justification – Any intervention to mandate payments from CAPs to ISPs requires strong legal and economic justification. BEREC finds the current arguments insufficient to warrant such a change.

BEREC concluded that the proposals for mandatory payments from large OTT providers to telcos were not justified by current market conditions or cost structures. The internet ecosystem has proved adaptable, and there was no evidence of free-riding. BEREC warns that implementing such payment mechanisms could harm competition, net neutrality and the broader internet ecosystem.

European Parliamentary question about threat to net neutrality and new fees for online services (22 November 2022)

Parliamentary question P-003784/2022 by German MEP Tiemo Wölken (Socialists and Democrats), with answer from Commissioner Breton on 16 December 2022.

The MEP appears worried, among other things, about the impact of a direct contribution mechanism on net neutrality: '[...] how can the internet still pass for neutral if not all online service providers are treated equally?' Reference is also made to the BEREC's preliminary findings and to the need to enlarge the public debate.

Breton's written answer denied that a direct contribution mechanism was already explicitly being studied and confirmed that net neutrality had to be respected.

Brief by the European Parliamentary Research Service (3 April 2023)

This is a summary of the fair share debate by the European Parliamentary Research Service, mentioning inter alia the 2023 Sandvine Global Internet Phenomena Report, which stated that six US content providers are thought to generate 48 per cent of global internet traffic.

European Parliament mentions fair share in its annual competition report

A paragraph (n 44) in the report calls for the establishment of a 'policy framework where large traffic generators contribute fairly to the adequate funding of telecom networks', echoing the incumbent's proposal on fair share. However, an amendment to the paragraph tabled by the Socialists and Democrats group was then adopted, introducing a reference to net neutrality. Consequently, the final wording reads as follows:

> 'Is of the opinion that the economic sustainability of telecom networks is essential to achieving the 2030 Digital Compass connectivity targets and high-performance connectivity for all citizens within the EU without jeopardising competition rules; urges the Commission to address and mitigate persistent asymmetries in bargaining power as set out by the European Declaration on Digital Rights and Principles for the Digital Decade; 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'.

The annual competition report is not legally-binding but serves the Parliament in providing input/guidance on EU policies.

European Commissioner Breton's post on LinkedIn (10 October 2023)

Breton published a post titled 'A "Digital Networks Act" to redefine the DNA of our telecoms regulation'. Essentially, the Commissioner has begun to abandon the idea of fair share, presumably because the results of the EU consultation are inconsistent, while the vast majority of EU governments appear reluctant or are even against it. Therefore, no legislative proposal could be tabled by the end of the year. Instead, the EC intended to prepare a white paper (to be adopted in in first quarter of 2024) to serve as a strategic background for a future, potential reform of the EU telecom framework. Such a reform, called the 'Digital Network Act', should be considered as an option by the next EC in 2025. During the Ministerial meeting in Léon (23–24 October 2023) various Member States expressed their doubt about the need to reform the legislative telecom framework, while others asked to be involved in future discussions.

Breton also mentioned that the EC would have convened a roundtable with financial investors to discuss how to attract more investments to the sector.

For information about the fair share slowdown and the new scenario after Léon, see an article from *Politico*[2] (27 October 2023).

BEREC public consultation on its draft Report on IP Interconnection (6 June 2024)

BEREC published its draft Report and invited stakeholders to submit their feedback and contributions. Among its main conclusions, BEREC determined that the IP-IC ecosystem was still steered by functioning market dynamics and cooperative behaviour of market players, and therefore does not currently necessitate regulatory intervention.

2 Mathieu Pollet, 'EU finally answers telecom industry's call for help' (POLITICO, 27 October 2025) https://www.politico.eu/article/telecom-industry-cry-for-help-fall-eu-ears/ accessed 31 July 2025

Henna Virkkunen, Executive Vice-President for Tech Sovereignty, Security and Democracy, written responses to MEP questions ahead of the confirmation hearing (September 2024)

Candidate Executive Vice-President Virkkunen expressed the following:

> ‘There is a growing number of actors in the network economy and a lively debate. This debate should not be simply reduced to discussion on network fees. It should be about how different actors contribute to a vibrant and innovative communication ecosystem, based on a fair level playing field. There have been interesting proposals including the approach suggested in Draghi’s report and in the White Paper on Europe’s digital infrastructure needs. Also, the public consultation that followed the publication of the White Paper has resulted in a very rich number of contributions, which I will study attentively, and I will engage with all the stakeholders. My guiding principles in making any proposal would be to safeguard the interests of EU citizens and to promote competitiveness and investments.’

During the confirmation hearing the commissions designated did not make any reference to fair share.

Position of EU Member States (governments and authorities)

Presentation by Frode Sørensen, Norwegian Communications Authority (Nkom) (19 May 2022)

An intervention occurred at the ISPs’ meeting RIPE 84 by Frode Sørensen, Chair of NKOM, the Norwegian regulatory authority. The Norwegian authority rejected the fair share doctrine by recalling how the internet works, stating that ‘end-users request the content and pay for the transfer of the content.’

According to Sørensen, the fair share is a case of déjà vu, harking back to the ITU debate about SPNP.

Letter from seven Member States to the European Commission (19 July 2022)

A group of seven countries (Denmark, Estonia, Finland, Germany, Holland, Ireland and Sweden) suggested a careful approach on the issue of fair share and asked for the widest public consultation to be conducted even before a proposal is put foward. The presence of Germany among the signatories is very significant, as it indicates a potential departure from the position of Deutsche Telekom (DT), of which the German government is an important shareholder.

Common position by Spain, France and Italy (2 August 2022)

The document (which is not public) supports the fair share proposal. However, it looks that the Italian support for the common position was not adequately discussed and agreed within the Italian government, since the Minister of Economy and Finance (Giancarlo Giorgetti reported by[3] *Milano Finanza*, 4 August 2022) immediately and publicly repudiated the initiative of the Minister for Technology Innovation and Digital Transition (Vittorio Colao) who joined the French-Spanish position.

3 Manuel Follis, ‘Il Mise contro il documento sulle big tech europee’ (Milano Finanza) https://www.milanofinanza.it/news/il-mise-contro-il-documento-sulle-big-tech-europee-2572488 accessed 31 July 2025

Informal position of the German government (29 November 2022)

Following a parliamentary question, the German government took a first, preliminary position on the fair share debate, saying that there is no clear need for such a contribution:

> 'The federal government assumes that sufficient financial resources are available for the network expansion in Germany. The main contribution to gigabit expansion in Germany is self-sufficient. According to information from the industry, around €50bn will be available in the coming years for fibre optic expansion alone. In areas where network expansion is not economical, state support measures that are in line with competition come into play.'

Letter from six Member States asking for more clarity on the fair share debate (2 December 2022)

Letter reported by Reuters. Austria, Estonia, Finland, Ireland, the Netherlands and Germany were reported to have written to the EC requiring more clarity and transparency about the fair share initiative.

Statement by the Dutch government (27 February 2023)

The Dutch government took a negative approach to the fair share initiative, considering that it would jeopardise the internet ecosystem. This position was based on the findings of the Oxera study commissioned by the Dutch government.

Statement by the German government (2 March 2023)

Stefan Schnorr, the Secretary of State at the German Federal Ministry for Digital Affairs and Transport (*Bundesministerium* für *Digitales und Verkehr* (BMDV)) made a statement opposing the notion of fair share contributions from Big Tech, stating notably that there is no market failure (in Germany, and probably not in the EU), that the South Korean system has threatened media pluralism there, and that the European Commission's consultation is 'quite tendentious'.

German-Dutch paper referring to 'facts-based analyses' (27 March 2023)

In a joint German-Dutch declaration regarding cooperation in various fields, the two countries provided a reminder that any initiative on the fair share subject should be based on 'evidence-based' analysis:

> 'Our countries will also further cooperate on the digital economy. In particular, we will work together on EU connectivity to ensure an evidence-based discussion on the issue of network fees, focusing on a clear, fact-based problem definition first before any instruments can be considered. We also call on the Commission to develop secure and open EU cloud certification schemes fit for the international context, without creating trade barriers and considerable adverse impact on European SMEs. Our countries underlined the importance of public values and digitalisation, as well as finding solutions to create a safe and inclusive digital society.'

Position of the Austrian government (8 April 2023)

The Austrian government was reported to have taken a negative stand regarding the fair share initiative. Apparently, the rejection was justified by the fear that OTT providers could pass the additional costs on to customers through fair share, therefore increasing prices. Risks to net neutrality were also envisaged.

Policy brief by the German Monopolies Commission (3 May 2023)

The German Monopolies Commission did not find any evidence that OTT providers are placing an excessive burden on the capacities of network operators, legitimising an additional cost contribution to network expansion.

Non-paper by the Danish government (4 May 2023)

Denmark has commented on the EC's public consultation on the future of the electronic communications sector and its infrastructure. With regard to the section on fair share, it is stated that:

> 'Denmark is sceptical in principle of measures intended to make large OTTs or other digital players contribute to the cost of the deployment of networks, and strongly opposes any form of mandatory contributions, including taxes or funds based on the traffic that end-users request from CAPs or other digital players. Denmark is of the opinion that the solution to ensuring the necessary investments in rollout of networks lies in effective competition policy, including the specific regulation in the EECC, along with programs like CEF Digital [Connecting Europe Facility]'.

Interview with the Belgian regulator (17 May 2023)

The Belgian telecom regulator publicly denied the existence of an investment gap in the Belgian market.

Preliminary assessment by the Belgian regulator (26 May 2023)

The Belgian Institute for Postal Services and Telecommunications (BIPT) released its 'Draft communication regarding the request to impose mandatory contributions by internet platforms to telecom operators for the use of their networks in Belgium.' Although clarifying that the study 'is not a definitive position of BIPT', the Belgian regulator 'believes that today the need for mandatory payments from Internet platforms to network operators is not sufficiently demonstrated in Belgium.' Furthermore, BPIT recognised the symbiotic relationship between ISPs and CAPs and their 'mutual economic dependency'.

Dutch Position paper accompanying the consultation response 'The future of the electronic communications sector and its infrastructure' (2 June 2023)

The Dutch government challenged the fundamental claims of the fair share doctrine.

Majority of EU countries reported to be against a fair share regulatory intervention

According to Reuters, at the 2 June TTE (Transport, Telecommunications and Energy Council) meeting, telecoms ministers from 18 EU countries 'either rejected the Fair Share proposal or demanded further assessments to investigate evidence the need of the proposal.' Ministers cited the lack of analysis of the effects of a network levy, the absence of an investment shortfall and the risk of detrimental effects on consumers. At the same time, Reuters reports that ten countries supported fair share. Reuters did not disclose the full list of positions. Nonetheless, the configuration of Member States' positions were reported as the following:

- Member States opposing fair share – Austria, Belgium, Czech Republic, Denmark, Finland, Germany, Ireland, Lithuania, Malta and the Netherlands;

- Member States supporting fair share – France, Greece, Hungary, Spain and Cyprus. Italy was mistakenly mentioned as being in favour of fair share; and
- the position of Poland, Portugal and Romania is less clear, given contrasting opinions reported by Reuters.

Letter by Italian Undersecretary to European Commissioner Breton about fair share (4 August 2023)

Italian Undersecretary to the Presidency of the Council of Ministers for Technological Innovation, Alessio Butti, wrote to Commissioner Breton asking to slow down any legislative initiative on fair share and instead to undertake further analyses. The letter was widely encouraged and its content was somehow anticipated in a public speech held at a telecoms conference in Italy on 15 June 2023, as well as in an interview for *Euractiv* published on 25 July 2023. On 6 October 2023 a brief reply was sent back by the EC's Director-General of Directorate General for Communications Networks, Content and Technology (DG Connect) Roberto Viola. Both official communications have not been made public; however, leaked documents can be found online.

At the Ministerial meeting in Léon on 23–24 October 2023, Italy, which was represented by Undersecretary Butti and Industry Minister Adolfo Urso, was reported to have confirmed a neutral position on fair share, while asking for more analyses to be carried out. Nevertheless, following the meeting, Minister Urso communicated a note to the press in which he disclosed a more favourable approach to fair share.

Reply from the French government to a query filed by a member of the French National Assembly (Assemblée Nationale) (19 September 2023)

The French government appeared to approve in principle the idea of a fair share intervention, while noting that there was still no EU direction on the subject. It cited a certain number of points on which France would be unable to compromise: (1) the compatibility of a possible system with the tax framework negotiated by the OECD, according to which international commitments have been made; (2) the maintenance of the regulation on the open internet; and (3) the maintenance of the contribution of content providers to cultural creation.

Communication by the BIPT Council on fair share (13 November 2023)

The Belgian regulator carried out an analysis regarding the request to impose mandatory contributions on operators by internet platforms for the use of their networks (fair share) and it concluded that 'the need for mandatory payments from internet platforms to network operators is not sufficiently demonstrated'.

Legislative proposals or initiatives by EU Member States

Poland's position on an EU solidarity fund (16 May 2023)

The Polish government sent a non-paper on fair share to Council members proposing a new European solidarity broadband fund, funded by levies from content providers that benefit from the rollout of gigabit networks. The news had been anticipated by Politico Pro on 9 May 2023 quoting Poland's digital minister Janusz Cieszyński as saying: 'I think that what we are proposing is sort of middle ground', opposing a solution that would be a 'profit transfer'. The fund could be a 'win-win' for everyone, he added. The document has not been made public. Remarkably, the non-paper was informally withdrawn by the Polish government a few weeks later.

Amendment to the French Projet de loi de finances pour 2025, No 324 (13 October 2024)

A proposal from the French opposition party (RN) envisaged the creation of an infrastructure fund financed by taxes levied on the largest traffic generators (€12,000 per gigabyte). The amendment was not adopted.

Amendments to the Italian competition and taxation decrees (October-December 2024)

Various fair share amendments have been tabled, but have been rejected by the government.

Case law in the EU

In the absence of specific legislation on fair share, the issue of a possible contribution by some so-called 'users' of telecom networks has been left to negotiations between operators. Since the European IP interconnection market is highly competitive, operators have usually resolved the issue through commercial means.

IP interconnection normally takes place by peering, which means that two networks exchange traffic directly between each other without going through a third. Peering can be physically implemented through connecting two networks with a cable/fibre.

A peering agreement can be: (1) settlement-free, when there is broad balance of the exchange of traffic between networks. In such a case, the two operators simply share the costs of the cable/fibre connections, (2) paid peering, when operators peer for economic efficiency reasons but the gains are not divided evenly due to traffic asymmetry between the two networks. Networks bargain over peering deals and settlement fees can be part of the negotiated solution.

Although the prevailing practice in the market is settlement-free, there are some exceptions. Some of the largest European telecom operators have sometimes increased peering costs towards smaller ISPs, causing the latter to divert the traffic through transit routes. Few of these confrontations have resulted in legal and antitrust disputes. The very rare legal cases between telcos and content providers, although evoked in the context of the debate on fair share, appear to be mere contractual litigations rather than regulatory disputes.

TIM's depeering controversy (2012)

In 2012, Telecom Italia (now TIM) initiated one of the most significant controversies in the Italian internet interconnection sector, known as the *TIM depeering* case. The event had a significant impact on the ecosystem of internet exchange points (IXPs) and peering dynamics in Italy.

In June 2012, Telecom Italia notified its peers of its decision to abandon all public peering local area networks (LANs) of Italian IXPs (such as MIX, NaMeX, TOP-IX), discontinuing public peerings and proposing 'paid peering' agreements instead. Telecom Italia stated that it would maintain peerings only with operators considered 'peers', that is, with balanced traffic volumes and a significant customer base. For all others, peering would only be possible for a fee, with prices ranging between EUR 3 and EUR 5 per Mbps, higher than the market price of IP transit (EUR 2 to EUR 3 per Mbps). Disconnections began from July 2012, causing the disappearance of tens of Gbps of traffic from Italian IXPs. Many operators and content providers suddenly found themselves unable to reach TIM customers directly without purchasing transit or paying for the new peering. Telecom Italia justified the choice as a need to align itself with the practices of other Global Tier 1s, to protect its margins on the sale of transport (copper and fibre) and to avoid the risk of regulatory intervention, having historically been more open to peering than other European incumbents. Although there was a debate about the related legal and competition compliance of such a move, no legal disputes arose.

Cogent/Orange litigation (2012)

The dispute between Cogent Communications (a US ISP) and Orange (France Télécom) involved peering agreements and allegations of anti-competitive practices, which became a case emblematic of the tensions between network operators and content providers.

Cogent and Orange were in disagreement about long-term peering fees. Cogent, a transit operator transporting inter alia the video traffic from Megaupload, claimed that France Telecom's intention to charge a fee for offering additional interconnection capacity above a maximum traffic ratio would 'compromise the peering system'. The French antitrust decision obliged Cogent to pay a contribution to Orange, while observing that the peering policies of the latter were not particularly clear and potentially discriminatory. The case was finally settled by the French courts in 2017.

T-Mobile rerouting (2019)

In 2019 T-Mobile decided to drastically reduce its capacity at the IXP AMS-IX and rerouted all the traffic related to its fixed and mobile consumers via Germany with the result that all players peering at the AMS-IX had to renegotiate their peering agreements with T-Mobile, in order to reach these customers. Smaller players did not do this and therefore could no longer reach T-Mobile's customers. Internet traffic disruptions increased rapidly, and as a result of strong reactions from the public and businesses, and considering potential regulatory intervention, T-Mobile gave up and restored the previous connectivity at AMS-IX.

Litigation Init7/Swisscom in Switzerland (2024)

The dispute between Init7, an independent Swiss provider, and Swisscom, the main national operator, concerned peering and comma needed before and after in particular the economic conditions of this connection. Init7 contested Swisscom's request for payments for peering, arguing that, for reasons related to competition and network neutrality, the interconnection should be free of charge ('zero-settlement peering').

After a long process of litigation that began in 2013, on 19 December 2024, the Swiss Communications Commission, ComCom, issued an order obliging Swisscom to ensure interconnection with Init7 on the basis of zero-settlement peering.

Controversy between Deutsches Forschungsnetz and Deutsche Telekom (2021)

During the Covid-19 pandemic, the Deutsches Forschungsnetz (German Research Network or DFN) was confronted with increasing data traffic due to increased working from home and overloaded transfer points. Because of congestion, DFN offered direct peering to Deutsche Telekom, which the company refused. After weighing up the different risks and options, DFN decided to purchase a paid global upstream service from Deutsche Telekom to address the connectivity issues. DFN was, however, able to agree on fee-free interconnection with other German ISPs.

This case has been frequently cited as an example of net neutrality issues and potential abuse of a dominant position by Deutsche Telekom, which allegedly requested payment for a peering service that, according to the prevailing practice between peer operators, should be free or at least cost-neutral. The episode is part of a broader context of criticism directed at Deutsche Telekom for its management of interconnections and for its alleged tendency to subordinate the expansion of peering capacities in regard to payment by other operators, with negative consequences for the quality of service perceived by end users.[4]

Decision of the District Court of Cologne (Germany) of 14 May 2024 – Deutsche Telekom v Meta

Meta (owner of Facebook) was ordered to pay Deutsche Telekom about EUR 20m (US$21.7m) for 'data transport services', because a German court (Cologne) ruled that a contract between the companies must be honoured. The court did not consider Meta's counterclaim that Deutsche Telekom (DT) was possibly abusing its market power by charging excessive fees.

Meta did not agree with an increase in peering fees decided by DT while continuing to use the telecoms services of the telecom incumbent. According to the court, Meta should have disconnected from DT and eventually routed its traffic via transit. Since Meta did not do so, the court considered, as a simple matter of contractual law, that they should pay for these services at the price indicated by DT.

The case has given rise to a possible justification for a future fair share regulation. However, the fact that the court ruled in favour of DT shows that ordinary rules are sufficient to deal with such situations and no special regime is required. Instead, a 'fair share regulation' may be considered necessary only in cases where peering players are not able to negotiate agreements due to market failures, including significant power imbalances, according to which litigation cannot help. However, this was not the situation in this case.

Meta claimed that the prices set by DT were 'excessive', arguing that such prices were far above other paid-for peering relationships or the fees charged by DT or other network operators for general data transit on the entire internet.

The court dismissed Meta's arguments, also with respect to a possible abuse of dominant position by DT. The judges had probably considered the large market position of Meta as well as the fact that its traffic could have been delivered via transit to other carriers and therefore there was a potential commercial alternative.

Meta has also been arguing that peering relationships should be free. However, while free peering is a long-established practice, there is no rule preventing peering parties from charging their counterparts for such services.

The implementation of the outcome of the case will tell us more about the significance of this litigation in regard to the current fair share debate. It will be interesting to see whether and how Meta and DT revise their peering policies in light of the ruling.

Main positions of stakeholders in the EU

Since 2022, that is, as the debate on fair share has experienced renewed interest within the EU, there have been numerous consultations, announcements and statements, both at EU and national level, which have enabled the main stakeholders' positions on this issue to be mapped. It has therefore been possible to understand the positions of almost all the subjects operating within the complex digital ecosystem such as:

4 See also the section 'Netzzusammenschaltung im Internet' in the German Wikipedia Deutsche Telekom entry.

OTTs (including streaming content providers); telecommunications operators and internet access providers, including mobile virtual network operators (MVNOs); infrastructure operators, understood as pure suppliers of access infrastructure (wholesale-only) and as tower companies; information and television broadcasting operators; and consumers, the internet technical community and civil society.

The positions of the stakeholders can be summarised, broadly speaking, as follows:

- there is a unanimous position against the establishment of a mandatory contribution by the OTTs. This opposition is normally supported by consumers, the technical internet community and civil society, also on the basis of motivations which evoke the issue of network neutrality;
- there is a differentiated position within the telco sector regarding the need for a mandatory contribution, which can be summarised as:
  - against a majority in favour of the contribution, a significant part of the telco sector has instead expressed neutrality, perplexity or opposition. Some telcos have also expressed reservations about the appropriateness of the fair share model to resolve the difficulties faced by the telco sector and instead stigmatised the downward tariff dynamics;
  - among the telcos in favour of the mandatory contribution, there are divergent positions on whether it should be an interconnection fee (which would require a modification of EU and national rules on interconnection) or a contribution to a specialised fund (with a mechanism similar to that of the universal service); and
  - among the telcos in favour of the mandatory contribution, there is no agreement on the criteria for identifying the beneficiaries, whether they should be purely infrastructure operators or operators that also provide retail services.
- the television sector is normally against the establishment of a voluntary contribution, but with some significant exceptions.

The main statements and positions on the fair share subject are listed below:

Telefonica's and Netflix's video on streaming deal (24 May 2018)

Both CEOs congratulated themselves for reaching a deal on video streaming, one that must have been successful and profitable for both parties. Ironically, according to Telefonica's CEO 'this is the beginning of a great friendship'.

First statement of ETNO (now Connect Europe) on the fair contribution issue (25 November 2021)

ETNO (now Connect Europe) and the Global System for Mobile Communications Association (GSMA) supported proposals by EU legislators to introduce the Digital Services Act and Digital Markets Act and called for a higher degree of proportionality in the regulation of intermediaries lower in the internet stack, including in respect of internet access providers.

Open letter by the CEOs of four international telcos on fair share (14 February 2022)

A statement was issued by the CEOs of DT, Telefonica, Orange and Vodafone who complain about the asymmetry of earnings and bargaining power between them and the large OTT companies and, in doing so, acknowledge the issues underlying the fair share doctrine.

Presentation by a Swiss telco rebutting the SPNP model (19 May 2022)

Presentation made at the 84 RIPE meeting.

Declaration by TIM's CEO Pietro Labriola regarding the asymmetry with OTT providers (6 June 2022)

Labriola complains, in addition to the asymmetry with the OTTs, that in Italy there are 'too many operators compared to the potential demand', with the consequence that telecom prices are among the lowest in Europe.

Letter from 34 civil society organisations to commissioners Vestager and Breton (8 June 2022)

The various associations challenged the fair share doctrine, in particular the SPNP model, from a historical and technical point of view, while also pointing out the risks for net neutrality.

Statement of the Association of Commercial Television in Europe (ACT) (8 July 2022)

The commercial broadcaster association disputed the theory of fair share with reasons that appear substantially similar to those put foward by Google, Amazon, Facebook, Apple and Microsoft:

> 'ACT members are already investing significantly in content delivery networks, directly or via partners, to ensure a smooth delivery of their content. Furthermore, our sector supports ISPs by allowing Europeans to derive value from the premium broadband connections they purchase from the telecoms companies to watch our content.'

Statement of the European Digital SME Alliance (8 July 2022)

The association supports the fair share initiative; however, it points out that such contributions (from Big Tech or others) should translate into more affordable conditions for small- and medium-sized enterprises (SMEs) to use the networks, which are a key element of a thriving digital ecosystem.

The post on Telefonica's official blog: towards pro-investment market structures in the telecom sector (12 July 2022)

The blog post advocates for more domestic consolidation and less competition.

Joint statement by various national and European telecoms associations in favour of fair share (18 July 2022)

A joint statement in favour of the fair share initiative was issued by the Association of Mobile Operators in Romania (Asociația Operatorilor Mobili din România or AOMR) (Romania), the Association of Mobile

Network Operators (Asociací Provozovatelů Mobilních Sítí or APMS) (Czech Republic), the Employers Association of the Telecommunication Operators or AssoTelecomunicazioni (Italy), the Alliance of the Technology Industry (ATI) (Bulgaria), the Spanish Association for Digitalisation or DigitalES (Spain), Connect Europe (the European telecommunications network operators' association, formerly known as ETNO), the French Telecom Federation or Fédération Française des Télécoms (France), GSMA Europe (EU) and Internetoffensive Österreich (Austria), a body that represents stakeholders in the field of information and communication technologies.

Position paper by MVNO Europe (30 August 2022)

A position paper was published by MVNO Europe stressing the lack of evidence supporting the fair share doctrine and the risk that such additional resources may be used by big telcos for anti-competitive reasons rather than for investments.

Statement by the European Competitive Telecommunications Association (ECTA) (14 September 2022)

The association, representing alternative telco operators, does not take a precise position regarding the fair share doctrine, while advocating the need to uphold competition and open internet principles within the EU.

Position paper by BEUC (19 September 2022)

The European consumer association is against the fair share initiative, as far as it consists of the re-proposal of a 'sending party pays' model, which could jeopardise competition and net neutrality.

Statement by 17 telecom CEOs at FT-ETNO conference (26 September 2022)

A decelaration was issued supporting the fair share initiative signed by the following operators: Swisscom, A1 Telekom Austria, United Group, Bouygues, Proximus, Telenor, Fastweb, KPN, Altice France and Portugal, Orange Group, Deutsche Telekom, BT, Telia, TIM, Telefónica and Vodafone.

Statement by GSMA Europe on the global network investment demands faced by mobile operators (29 May 2024)

The statement says that 'All segments of the internet ecosystem should have the opportunity to make fair returns in a competitive marketplace.'

Fair share proposal by Fédération Française des Télécoms (FFT) (4 November 2022)

The French telco association proposes a SPNP model based on a gigabyte tariff at EU level, which the national authorities would have the possibility of adapting in order to take into account the differences in investments and the particularities of each Member State. Parties would then be obliged to conclude a private law contract, including compensation for the costs invested in the networks concerned.

Statement by AOTA against fair share (17 November 2022)

The French association of small telcos, AOTA (Association des Opérateurs Télécoms Alternatifs), disputes the fair share doctrine as it could be detrimental for net neutrality and competition.

Paper by European Digital Rights (EDRi) and Epicentre.works against fair share (30 November 2022)

Joint paper by EDRi and Epicenter.works rebutting, with facts and arguments, the traditional positions of the traditional telco industry regarding fair share.

Letter from Epicentre.works and other digital rights associations against SPNP (14 December 2022)

A joint letter was sent by Epicentre.works and other digital rights association to the EC.

Letter from Euro-IX (3 January 2023)

The European association of IXPs outlines in a letter to the EC the potential risks of the SPNP and fair share models for the internet ecosystem as well as for the IP interconnection commercial markets. Vestager and Breton sent a reply on 6 March 2023.

Paper by TIM 'Fair Share vuol dire Fair Play' (13 January 2023)

A paper by TIM recalls the traditional arguments pro-fair share. Remarkably, on page 4 it is stated that:

> 'In fact, based on net neutrality regulations, telecommunications operators cannot [...] refuse to "carry" the traffic volumes generated by one specific subject'.

The authors disagree, since net neutrality rules do not imply such obligations.

AMETIC requests an open dialogue on a network tax (13 February 2023)

Spanish digital trade association (AMETIC) officially published its position paper on network tax and remove distributed it to the Spanish media.

Statement by the ETNO entitled 'What the World Cup meant for broadband networks' (13 March 2023)

A statement was issued by the ETNO (now Connect Europe) about the growth and costs of traffic during the World Cup and a rebuttal[5] was published by Rudolf van der Berg.

Telefonica's blog: South Korea as a pioneering model of fair contribution to network financing (8 March 2023)

Telefonica supports the South Korean model, but without explaining why it would be a good practice for the EU and how to address the challenges in regard to re-routing practices.

5 Rudolf van der Berg on X (13 March 2023) https://x.com/internetthought/status/1635220024419049472 accessed 6 August 2025.

Statement on X (formerly Twitter) by the ETNO about which companies should be subject to a network fee (3 April 2023)

According to the ETNO (now Connect Europe), the #faircontribution proposal should only address the five to six companies generating roughly half of global internet traffic. Other actors, such as local cloud providers, broadcasters or local cloud providers and content delivery networks (CDNs), should not be affected.

Joint statement by NGOs, consumers, telecoms and rightsholders (26 April 2023)

A very broad coalition of stakeholders has come together to publicly warn against introducing 'network fees'.

Peter van Burgel: Why big telco doesn't need to be subsidized by big tech (13 July 2023)

The CEO of AMS-IX, the IXP in Amsterdam, rejects the network fees initiative.

ETNO and KTOA statement about network fees in South Korea (31 August 2023)

The ETNO (now Connect Europe), the association representing Europe's leading telecom operators, and the KTOA, the association representing telco operators in South Korea, published a joint statement on the internet ecosystem aiming at clarifying similarities and differences between the EU and South Korean markets as well as their views on 'fair contributions' and 'sending party network pays', respectively.

*European telecoms groups ask Brussels to make Big Tech pay more for networks (*Benton Institute for Broadband & Society, *2 October 2023)*

In sight of the Léon ministerial council, the telcos supporting the fair share initiative (mainly reunited through the GSMA and ETNO (now Connect Europe) associations) issued a new communication which was reported by the *Financial Times*. See the press release from the GSMA website.[6]

The CCIAA and other associations issue joint statement relating to the EC's White Paper (16 May 2024)

The joint statement on 'Preliminary Concerns Regarding European Commission's White Paper on Europe's Digital Infrastructure Needs' intends to provide a warning about the parts of the EC's White Paper that may revive the possibility of a fair share rule. Reference is made to the possibility of introducing 'dispute resolution mechanisms' for the IP interconnection market which, according to the CCIAA, in practice, could result in the introduction of network usage fees through the backdoor.

6 GSMA, 'A call for Fair Share legislation - Europe must act to protect its digital future' (GSMA, 6 October 2023) https://www.gsma.com/about-us/regions/europe/news/a-call-for-fair-share-legislation/ accessed 31 July 2025

Telefónica's blog (Gonzalo López-Barajas): The Digital Networks Act as a solution to the Internet imbalance (11 October 2024)

The author assumes that the patterns of internet traffic have changed since the foundation of the internet and, therefore, a fair share contribution is needed to compensate traffic imbalances.

Open letter by Civil Society organisations (29 October 2024)

The letter, addressed to EU Commissioner-designate for Tech Sovereignty, Security and Democracy at the European Commission, Henna Virkkunen, expresses opposition to dispute resolution in regard to the interconnection market. The group strongly opposes the dispute resolution mechanism proposed for the interconnection market, as outlined in the EC's White Paper. This mechanism is viewed as detrimental to end users and the global internet, as it would likely lead to increased costs, diminish service quality and distort competition in favour of large telco operators.

Paper by Vodafone: A framework for responsible use of networks (28 February 2025)

The study highlights the urgent need for a new approach to managing Europe's digital infrastructure amid surging data demand and an ongoing investment gap. The report frames the issue as a 'tragedy of the commons', where telco networks are treated as an infinite resource, leading to inefficiencies, waste and risks of network degradation. Vodafone argues that content providers have little incentive to optimise their services for efficient network use, while network operators face regulatory and economic barriers to expanding and managing capacity.

Studies

Since 2022, that is, since the debate on fair share has experienced renewed attention in Europe, there have been numerous studies and reports on the fair share subject. Since most of the studies are promoted and financed by stakeholders engaged in the fair share debate, their outcomes should be approached with caution.

Frontier: Estimating OTT traffic-related costs on European telecommunications networks (31 March 2022)

Study funded by DT, Orange, Telefonica and Vodafone. Starting from the (controversial) assumption that the internet is a 'two-sided market' allowing telco operators to charge both users and content providers, the study calculates the costs associated with traffic 'sensitive' elements of fixed and mobile telecom networks across Europe, which are annually quantified to be between EUR 2 and EUR 6bn for fixed networks and EUR 13 and EUR 22bn for mobile networks.

AXON: Europe's internet ecosystem: socio-economic benefits of a fairer balance between tech giants and telecom operators (May 2022)

This is a study funded by the ETNO (now Connect Europe). The big telcos ask for a regulatory intervention entitling them to recover from major global OTTs the network costs caused by the growth of their internet traffic. A direct compensation mechanism, in some way affecting transit and peering markets, and involving a dispute resolution tool, is considered the best option.

There is implicit reference to the mechanism provided in the Australian Copyright Directive. The study claims that:

> '[...] most of the data traffic growth over the last decade has been driven by a small number of leading Over-The-Top (OTT) providers, with little or no economic contribution to the development of national telecom networks, who now account for over 55 per cent of all network traffic'.

Kearney: The Internet Value Chain 2022 (15 May 2022)

A study commissioned by GSMA Europe, the mobile operators' lobby. It describes the development of the value chain in the internet market over five years (2015–2020). It notes, inter alia, that the share values of telcos have remained essentially flat, while those of OTTs are much more dynamic. Consequently, telcos' returns on capital have been quite low while, by contrast, some global OTTs have been much more successful. In the digital sector, telcos appear to be faced with a process of marginalisation, also in light of new transport virtualisation technologies, even in the network segment, where they still continue to keep an essential role only in the transportation/final access up to the user (in practice, they are still strong as ISP rather than telcos).

WIK Consult on the competitive conditions on transit and peering markets: implications for European digital sovereignty (February 2022, published in May 2022)

A study commissioned by the German Federal Network Agency (Bundesnetzagentur or BNetzA). The study analyses the functioning of the peering and interconnection markets in a technical and objective way, providing an indirect debunking of most fair share theses claimed by big telcos, especially with the regard to the claim that there might be a competition problem in IP interconnection markets. WIK also acknowledges the marginalisation process of telcos in the connectivity sector, in which they are increasingly relegated to the role of ISP; however, they control the bottleneck towards the end customer.

Communications Chambers: An internet traffic tax would harm Europe's digital transformation (July 2022)

The study funded by the CCIA challenges the fair share narrative. In particular it debunks most of Axon's calculations and assumptions with respect to data growth, the impact on investments and the South Korean case:

> 'The cost estimates cited in the Axon report are flawed as a basis for assessing traffic related costs since they are not based on an assessment of incremental traffic costs. The incremental costs of internet traffic are negligible for fixed broadband access, low and declining for mobile access and low in transit markets where content and application providers invest in network capacity e.g., in subsea fibre optic cables. The predominant IP model is settlement free peering'.

The WIK study is often quoted. The paper concludes that there is no sound basis for imposing a network fee on OTT providers, a measure which would harm rather than promote investment by reducing innovation and use in relation to content and applications and would harm achievements in regard to the European Commission's digital transformation vision for 2030.

Analysys Mason: Netflix's Open Connect program and codec optimisation helped ISPs save over USD1 billion globally in 2021 (July 2022)

This study, funded by Netflix, examines the benefits of Netflix's Open Connect coding system in the UK and South Korean markets, finding:

> 'the marginal costs of delivering Netflix content represent around 0.5% of total network costs, despite Netflix usage representing about 15 per cent of peak usage in the UK'.

The study also clarifies telco network costs by providing a distinction between sensitive and insensitive costs for OTT traffic which does not correspond to that of Axon and Frontier Economics. It should be noted that in South Korea, Netflix is currently engaged in a legal dispute on the subject of fair share.

Analysys Mason on IP interconnection on the internet: a European perspective for 2022 (22 September 2022)

This is a report funded by AWS, Google and Microsoft. The study challenges the foundation of the fair share thesis, that is, the idea of regulated 'network usage fees' replacing commercially negotiated internet interconnection. It points out, inter alia, that the increase in internet traffic has a marginal impact on investments in the network, and that internet companies have made significant investments and innovations to improve the delivery of content on the internet. This includes the development of CDNs and public clouds to deliver content and services to the whole range of customers, including end users and businesses of all sizes.

ECIPE on Sender-Pays: Sender-Pays: Rethinking incentives for infrastructure investments (30 September 2022)

The European Centre for International Political Economy (ECIPE)'s paper makes the argument that the ETNO (now Connect Europe) proposal is bad for EU industrial policy.

Plum Consulting: A symbiotic ecosystem – how Google contributes to the telecom sector (3 October 2022)

This report funded by Google, while challenging the fair share doctrine, stresses the symbiotic and complementary relationships within the digital sector.

Plum Consulting: How the Internet works (and is paid for) (3 October 2022)

This study, funded by Google, challenges the fair share doctrine and explores in detail how the modern internet actually works to deliver content to end users. It provides analysis of how data moves around the internet, how the internet is coordinated and governed, and the key features of today's internet. It also includes analysis of the economics of the internet and how its infrastructure is paid for.

Analysys Mason: The impact of tech companies' network investment on the economics of broadband ISPs (7 October 2022)

Report funded by Incompas, a US tech lobby. While describing how content and applications providers have invested significantly to deploy the global network infrastructure of today's internet (from data centres to submarine fibre, etc), the report examines the implications of mandating that CAPs pay ISPs network usage fees linked to traffic flows between their networks in order to reach ISPs' end-users. It concludes that such a mandate would be harmful to end users and the global internet ecosystem.

François Jeanjean (Orange): fair cost sharing in telecommunication industry, a virtuous circle (21 November 2022)

This is a study by an Orange economist, stating that when the content provider charges consumers for content, cost sharing triggers a virtuous circle that incentivises the content provider to reduce its traffic, which lowers prices for the end consumer and therefore increases not only the consumer surplus but also the profits of the ISP as well as those of the content provider.

Oxera: Proposals for a levy on online content application providers to fund network operators (30 January 2023)

This is a report commissioned by the Dutch government. The report challenges both direct and indirect network fee proposals, with the former considered more negatively than the latter. It concludes that such a policy cannot robustly be shown to increase economic efficiency, and would potentially involve substantial transaction and set-up costs.

Jullien/Bouvard (TSE) on fair cost sharing: big tech v telcos (March 2023)

The study describes a cost-sharing mechanism according to which a content provider contributes to covering the costs incurred by a network operator when delivering content to consumers. The authors believe that the cost sharing should not only boost the content provider's incentives to moderate traffic, but also affect the price composition for consumers buying access and content.

Communications Chambers/Robert Kenny: Securing investment to achieve the Digital Decade infrastructure targets (March 2023)

Among this study's findings is that there is no funding gap for infrastructure, as plenty of private and public financing is available.

Baranes/Vuong: Economic contribution to the debate on cost sharing policy (13 March 2023)

A study in favour of the fair share initiative, noting:

> 'because the telecommunication operators have to bear the full costs of delivering content to end-users, their business is strongly affected due to the sharp increase in traffic generation'.

On X (formerly Twitter), Konstantinos Komaitis observed:

> 'It is already evident from the abstract only that the authors conveniently fail to engage in considerations of how the Internet actually works'.

Augusto Preta/ITMedia Consulting: The fair share doctrine, does it make sense? (18 April 2023)

While observing that there is no clear evidence of an investment gap for connectivity from now until 2030, the author, an experienced economist, concludes that a regulated 'fair' contribution scheme will have negative effects on the entire ecosystem, with no positive effects, apart from a few big telcos who might benefit.

Analysys Mason on full-fibre networks in Europe: state of play and future evolution (3 May 2023)

The study, commissioned by Meta, challenges the 'telecom crisis' argument and outlines that very fast connections are already available for most Europeans and that the current network investment trend will provide telecom operators with a continuous stream of revenue over several decades.

WIK-Consult: Investing and funding needs for the Digital Decade connectivity targets (12 July 2023)

This study, commissioned by the EC, was produced simply to describe the financial needs to achieve the European connectivity targets. However, its results have been disputed, because according to the EC the study would have proved there was a 'gap' or shortfall of €174bn in investments in Europe. Contrary to that, it has been ascertained that the €174bn figure only describes the financial need for investments, without indicating that such financial resources are missing.

Monitor Deloitte: Future of Electronic Communications Networks in Europe (9 October 2023)

The study, commissioned by the ETNO (now Connect Europe), highlights the key technology trends and investment requirements that will drive digital transformation, while reiterating the argument that there is an investment 'gap' (referred to as a 'deficit' in this context).

OECD: working party on communication infrastructure and services policy (draft publication in June 2024)

The OECD's document sounds implicitly hostile to the fair share doctrine, by observing that the internet ecosystem is complex and may be financed in various ways:

> 'The diversity and hence complexity of the financial landscape around connectivity infrastructure and services has constantly increased. While, for a large part of the 20th century, single entities in OECD countries had a monopoly in infrastructure and services, the liberalisation of markets has not only led to different players with a range of different business models, but also to different levels of infrastructure and service provision. This, in turn, corresponds to multiple different ways to finance communication infrastructure and structure its ownership'.

Australia

While there have been calls from some of Australia's telecoms network operators for some form of regulatory intervention to require contributions from major streaming platforms and cloud services towards funding the cost of supplying telecoms services to consumers, neither the Australian government nor any Australian regulator has supported reforms to address fair share concerns.

Background: telecoms infrastructure and services in Australia

Australia's publicly owned telecoms services provider, then known as Telecom Australia, was privatised from the late 1990s until approximately 2011, and since that time the Australian telecoms market has gradually opened up to competition.

Telecoms infrastructure: fixed line and mobile

Following a rollout of more than four years over the late 2010s and early 2020s, Australia's fixed-line telecoms infrastructure that is used for retail telecoms services (both voice and data) is provided by the Australian government-owned nbn Co Ltd (NBN Co). NBN Co provides coverage through a combination of cable, fixed wireless and satellite infrastructure. It is a 'wholesale only' provider, meaning it supplies retailers and does not directly supply services to consumers.

There are three mobile network owners (MNOs) with networks that service almost all Australians, namely Telstra (formerly Telecom Australia), Optus (owned by Singtel) and TPG/Vodafone.

Retail providers

NBN Co provides 'layer 3' fixed-line services to retail service providers, which those providers use to supply consumers, under a regulatory regime established by Australia's Competition and Consumer Act 2010 (CCA). In addition, each of the three MNOs provide (to a greater or lesser extent) services to other providers to allow them to resell mobile services. Mobile services are not subject to a regulatory access regime and therefore the three MNOs have a level of discretion as to the reseller services they offer and pricing. Telstra has the network with the highest level of coverage but it does not provide any other service provider with full access to its services.

Retail providers

Telstra, Optus and TPG/Vodafone are the primary retail service providers for both fixed-line and mobile services in Australia, although the service provider market is crowded, with many service providers serving the retail market.

Regulators

There are two primary regulators for the telecoms sector: the Australian Competition and Consumer Commission (ACCC) regulates the sector from an antitrust and consumer protection perspective; and the

Australian Communications and Media Authority (ACMA) also regulates telecoms consumer protection, including being the regulator responsible for enforcement of the universal service obligations.

Key consumer protections: universal service obligations

A key and longstanding consumer protection is the voice Universal Service Obligation (USO), which guarantees all Australians access to standard fixed-line telephone services (in homes and payphones). The USO is funded through a telecoms industry levy (TIL) on carriers which have eligible revenue of at least AUD25m, with the amount of the levy determined through revenue assessment. In 2018 the USO was modernised and extended from the provision of voice services to the provision of access to fixed-line broadband services to all Australian homes and businesses. This new broadband access regime is known as the Universal Service Guarantee (USG). The USG and USO are delivered by Telstra.

The government has also implemented what amounts to an infrastructure provider USO regime, the Statutory Infrastructure Provider (SIP) regime. Regulatory obligations are imposed on SIPs to connect premises to broadband services that meet certain speeds, among other obligations. NBN Co is the default SIP nationally, although in some cases (eg, new housing developments), a different SIP may be appointed.

Net neutrality sparks debate on fair share

In Australia, what little debate there has been on fair share has been interwoven with discussions on net neutrality. However, regulating in regard to net neutrality is another concept for which there has been little support, primarily because both the Australian government and the ACCC appear satisfied that retail service providers abide by the principles of neutrality in providing access to all content and apps, without (other than by providing zero-rated access, in some cases, during the early phase of availability of streaming services) favouring or blocking any particular services or apps.

Historically, prior to the wide availability of streaming services, most Australian retail service providers offered capped data plans, which became costly as streaming services increased in popularity. To counter this, initially, some ISPs would offer zero-rating models, according to which downloading or streaming certain content would not count towards the data cap.

For example, when Netflix first arrived in Australia in 2015, it entered an unmetered streaming arrangement with one of the then largest retail service providers. However, there were complaints that this resulted in slowing broadband speeds for all users of that service. It also sparked the initial interest in the net neutrality debate and whether streaming service providers should pay for the use of infrastructure at the time, with the most vocal telecoms sector supporter being Optus.

The question of whether fees should be directly imposed on streaming service providers arose again in June 2019 when NBN Co conducted a review of the pricing that it would charge to retail service providers, and consulted over 50 such providers on whether there should be additional charges imposed on video streaming traffic.[7] This was generally interpreted as NBN Co reinforcing its support for a proposal to impose higher rates on customers and was dubbed the 'Netflix tax'. The concern among most industry

7 nbn, 'NBN Co Consults with the Telcos to Bring New NBN Benefits to More Australians', media release, 20 June 2019, https://www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-co-consults-with-telcos-to-bring-new-nbn-benefits-to-more-australians accessed 19 June 2025.

stakeholders was that the suggestion threatened net neutrality. NBN Co moved away from the proposal when only two of the retail service providers indicated support.[8]

Ongoing lack of support for a fair share regime

In the context of this complex regulatory regime, and in circumstances where the government has met the costs of ensuring that all Australians have access to high-speed fixed-line services, there has been little appetite from either the Australian government or the key regulators, the ACCC and the ACMA, to support the imposition of a regulatory fair share regime.

This issue was publicly canvassed most recently in late 2023, when the government announced a public consultation on potential reforms to the regulation of the delivery and funding of universal telecoms services, particularly in the more remote and less populated areas of Australia, given the relatively high costs of providing and supporting those services and the likely limited revenue from the provision of those services, as these areas are sparsely populated.

While the question of fair use was not directly addressed in the consultation paper, in its March 2024 submission, TPG/Vodafone argued that if the Australian government continued to require the USO to be funded by the TIL, as it currently is, over-the-top (OTT) service providers, as well as the large digital platforms, should contribute to the TIL, on the basis that, as a fundamental part of the digital ecosystem, they cannot operate without telecoms infrastructure, particularly given the revenues they generate. TPG/Vodafone also contended that Australia is lagging behind other jurisdictions, with reference to the debates being had in the US, EU and South Korea.[9]

No other telecoms network operators, or the Australian telecoms sector industry body, Communications Alliance, made a submission to the consultation which referenced the fair share debate.

In responding to the feedback received from stakeholders, the Australian government did not mention any possibility of regulatory action being taken with regard to fair share. The government appears to remain firmly of the view (which is also the view of the streaming service providers) that telecoms infrastructure providers should recover the value of their investments – and make their profits – from the charges that they impose on consumers for the use of their services.

Positions of Australia's top telecoms providers

While there is limited Australian government or regulator support, some of Australia's largest telecoms providers on occasion voice support for adopting an approach similar to the fair share concept being discussed in Europe.

As indicated, it appears likely that TPG/Vodafone would be supportive of the implementation of fair share regulation. In addition to TPG/Vodafone's submission to the USO consultation, in August 2023, Optus and TPG/Vodafone both publicly commented in one of Australia's leading business newspapers, the *Australian Financial Review*, that the costs of infrastructure (presumably referring primarily to their

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8 nbn, RMID0821 Pricing Review Consultation Paper 2, September 2019, https://www.nbnco.com.au/content/dam/nbnco2/2019/documents/media-centre/pricing-review-2019-consultation-paper-2.pdf accessed 31 July 2025.

9 TPG Telecom, public submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, *Better delivery of universal services: Discussion Pape*, March 2024 https://www.infrastructure.gov.au/sites/default/files/documents/bdus2024-tpg-telecom.pdf p8, accessed 19 June 2025.

own mobile infrastructure, but also their enterprise infrastructure, as their complaints extended to cloud services) were becoming unsustainable and hinted that fair share rules similar to those being discussed in the EU should be adopted in Australia. Both bemoaned the fact that traffic over their networks was increasing exponentially and yet their revenues were declining. The continuation of such circumstances, it was argued, would mean that infrastructure providers would simply cease investing. On the other hand, at that time, Telstra indicated a preference for a different approach, namely the implementation of commercial agreements with individual companies, although the extent of the support was lukewarm at best.

Optus pursued its arguments further in its submission to the Senate Economics References Committee Inquiry into the influence of international digital platforms in September 2023, which considered the nature and extent of international digital platforms operated by large overseas-based multinational technology companies and their power and influence over markets and public debate. Its submission outlined the exponential growth in traffic, the strains placed on telecoms networks and the capital investment required to meet the demand. Optus referred to the actions of the UK, Spain, France and Switzerland where governments have implemented digital taxes or levies, and the fact that Australia is lagging behind. Optus drew attention to the fact that fair share could be achieved either by way of a levy charged directly by telecoms providers, negotiating commercial agreements or a digital levy on streamers' revenue.[10]

The Senate tabled its report on the influence of international digital platforms in November 2023, only briefly referencing Optus's submission on fair share,[11] and did not feature the proposals in its recommendations. Again, this indicates that there is little political support for fair share regulation in Australia.

Other contexts: News Media Bargaining Code

Despite the muted debate on fair share, the Australian government has demonstrated a willingness to regulate to require large digital platforms to pay their fair share in other areas.

In 2021, Australia implemented its world-first News Media Bargaining Code (NMB Code), providing an incentive for large digital platforms to pay Australian media companies for the creation of news content as an alternative to being forced into a mandatory arbitration regime to determine the amounts that would be payable. The NMBC Code applies to designated digital platforms, requiring them to (among other things) negotiate with Australian news media businesses to pay those businesses for relevant news content made available on their services. The NMBC Code contains an arbitration process that may be triggered by the media business in the event payment negotiations fail.

No platforms or services have been designated to date. Nevertheless, the NMB Code is considered to have been a success as it resulted in bringing both Google and Meta to the table, with over 30 agreements being entered into between those platforms and Australian news businesses, which had terms of between three and five years.

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10 Optus, submission to the Senate Economics References Committee's Inquiry into the Influence of International Digital Platforms, *Fair Share Contribution Submission*, September 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Digitalplatforms/Submissions pp2-3, accessed 19 June 2025.

11 Parliament of Australia, Senate Economics References Committee's Report on its Inquiry into the Influence of International Digital Platforms, (2023) https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/RB000119/toc_pdf/Influenceofinternationaldigitalplatforms.pdf pp51-52, accessed 19 June 2025.

Although considered a success, the NMB Code is seen by the Australian government as having served its purpose, with a new regulatory framework now required. In that context, the government has announced its intention to potentially adopt a new news bargaining incentive. While a consultation has not progressed at the time of writing (June 2025), the proposal is that this incentive will include a new tax, together with an offset mechanism. Regulated platforms that choose to enter or renew commercial agreements with news publishers to contribute to the costs of producing news journalism will not be required to pay the new tax – essentially such agreements will offset the tax. Regulated platforms will be the larger digital platforms operating significant social media or search services, irrespective of whether they carry news.

Conclusion

While some in the telecoms industry have called for fair share, the Australian government has no appetite for the implementation of such a regime. Given Australia's strong level of competition in the telecoms sector, with three MNOs and many providers of enterprise infrastructure, as well as the very significant public investment in the NBN Co infrastructure that now connects over 97 per cent of Australians, it does not seem likely that this position will change in the near future.

India

The issue concerns whether LTGs such as streaming platforms and big tech companies should pay a fair share of revenue to telecom service providers (TSPs), who bear the substantial costs of maintaining and upgrading telecom network infrastructure. TSPs contend that LTGs consume significant bandwidth without contributing to the underlying costs, whereas critics argue that imposing such payments could undermine net neutrality principles and restrict open internet access.

In India, the debate is ongoing, with the government yet to adopt a definitive position on implementing a fair revenue-sharing framework between TSPs and LTGs. Nevertheless, the matter has been examined in consultation papers issued by regulatory authorities, and the industry has articulated its views through formal responses and coverage in reputed news sources.

Apart from the core issue of revenue-sharing in this report, there is also an ongoing debate on whether OTT platforms that facilitate communication – such as voice calls, video calls or instant messaging – over the internet should be brought under the same licensing framework as TSPs.

Relevant legislation

Before scrutinising the issue of revenue-sharing between TSPs and LTGs, it is appropriate first to consider the role of the telecoms regulator and the prevailing legal framework governing the sector in India.

The legislation

The telecoms sector has historically been regulated under a triad of legislation – namely, the Indian Telegraph Act 1885, the Indian Wireless Telegraphy Act 1933 and the Telegraph Wires (Unlawful Possession) Act 1950.

India is currently in a transitional phase with respect to its telecom legislation. The Indian Telecommunications Act 2023 was enacted on 24 December 2023 and is being implemented in a phased manner. Once all of the provisions of the Telecom Act are implemented, it will effectively replace the Telegraph Act, the Wireless Telegraphy Act and the Telegraph Wires Act.

The regulator

The Telecom Regulatory Authority of India (TRAI) was established by an Act of Parliament, called the Telecom Regulatory Authority of India Act 1997, to regulate telecom services, including the fixation/revision of tariffs for telecom services. TRAI has the authority to issue recommendations (either *suo moto* or on a request from the central government) on a range of matters, including on measures: (1) 'to facilitate competition and promote efficiency in the operation of telecommunication services'; and (2) 'for the development of telecommunication technology and any other matter relatable to telecommunication industry in general'.[12]

12 S 11(1)(a), Telecom Regulatory Authority of India Act 1997.

TRAI consultation papers

On 7 July 2023, the TRAI issued a consultation paper on regulatory mechanism for over-the-top (OTT) communication services, and selective banning of OTT services ('CP 2023').[13] CP 2023 offers comprehensive insight into the potential regulation of India's OTT-based services, including revenue sharing, by drawing upon global regulatory developments. It invited stakeholder comments on both the classification and regulation of such services, as well as the feasibility and potential framework for implementing a revenue-sharing mechanism.

Analysing the trails

It is relevant to note that prior to current discussions, the issue of content and application providers (CAPs), which includes OTT services, contributing to telecom infrastructure had already been debated within the broader discourse on net neutrality. For the purpose of this report, three key developments are noteworthy:

- In 2015, the TRAI released a consultation paper on OTT services, which laid the initial foundation for the ongoing fair share debate.[14] The paper presented arguments both for and against the principle of net neutrality. In supporting net neutrality, it was argued that allowing TSPs to implement differential tariffs could result in discriminatory practices against certain types of content or political viewpoints. It was further observed that such practices could disadvantage new entrants and undermine the openness of the internet. On the opposing side, it was argued that the growing volume of data traffic would eventually compel TSPs to increase access costs for consumers, potentially leaving users worse off. The paper also raised the view that CAPs, which generate revenue through advertising and other business models, should contribute to the cost of infrastructure by compensating TSPs. The consultation paper invited stakeholder comments on several aspects of net neutrality, including how a balanced environment for growth could be created – particularly with respect to incentivising TSPs to invest in network infrastructure – and who should bear the costs of such upgradation.
- In 2016, the TRAI issued the Prohibition of Discriminatory Tariffs for Data Services Regulations 2016, which bans TSPs from offering or charging discriminatory tariffs for data services based on the content accessed or transmitted over the internet, thereby formally reinforcing the principles of net neutrality in India.
- In 2017, the Department of Telecommunications (DoT) released a Regulatory Framework on Net Neutrality, affirming the government's commitment to net neutrality. This included amendments to licensing conditions to mandate non-discriminatory treatment of content, while carving out appropriate exclusions and exceptions.

In summary, the government has adopted a consistent approach of prohibiting any differential treatment by TSPs towards CAPs (including OTT service providers) and end users. Briefly, TSPs are to function purely as conduits for internet access, without exerting control over the type of content that may be accessed at either end of the spectrum.

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13 TRAI, *Consultation Paper on regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services*, 7 July 2023, https://www.trai.gov.in/sites/default/files/2024-09/CP_07072023.pdf accessed 1 May 2025.

14 TRAI, *Consultation Paper on Regulatory Framework for Over-The-Top (OTT) services*, 27 March 2015 https://www.trai.gov.in/sites/default/files/2024-09/OTT-CP-27032015.pdf accessed 1 May 2025.

Current trends

Shifting trends

CP 2023 highlighted the rapid consumer shift from voice and SMS to data-based OTT applications and reported a significant rise in the internet subscriber base. It noted that data services have become the principal source of revenue for TSPs. CP 2023 cites reports issued by the International Telecommunication Union's Telecommunication Development Sector (ITU-D), which states that the demand for OTT applications drives internet connectivity services, which in turn increases traffic and revenue for TSPs and simultaneously contributes to substitution effects which reduce traditional telecom revenues.

Definition and classification

CP 2023 renews TRAI's consultation on regulating OTT communication services, given their rapid growth and functional overlap with licensed telecom services. It draws from domestic and international frameworks to inform future regulatory action. CP 2023 splits OTT into two segments, OTT services and OTT communication services. It calls for comments on the definition and classification of each segment from the relevant stakeholders.

Reference to BEREC

A particularly important dimension of CP 2023 is its engagement with international regulatory perspectives, notably from the Body of European Regulators for Electronic Communications (BEREC). The paper refers to BEREC's 'Preliminary assessment of the underlying assumptions of payments from large CAPs to ISPs', which examines the fair share debate triggered by proposals from members of the ETNO (now Connect Europe) in 2021–2022.

BEREC's findings, as cited in CP 2023, are firmly critical of the SPNP model, concluding that there is 'no evidence' to support claims of free-riding by CAPs. It emphasised that internet users – who are ISP customers – already bear the cost of network access, therefore invalidating the argument that CAPs benefit without contributing. BEREC also highlighted that introducing such a payment obligation could risk the openness, neutrality and innovation-driven nature of the internet ecosystem, and may allow ISPs to exploit termination monopolies, which would require careful regulatory scrutiny if not outright oversight.

In essence, CP 2023 reflects TRAI's attempt to revisit the regulatory balance between TSPs and OTTs, drawing from international experiences and contextualising them within India's digital landscape. While no final determination has yet been made, the consultation opens the door to structured stakeholder engagement on the economic and policy implications of implementing a fair share regime.

Several stakeholders submitted their responses to CP 2023, and these responses are in the public domain. Some key submissions are outlined below, providing insight into the industry perspectives on the issue of revenue-sharing between TSPs and OTT players:

- Reliance Jio Infocomm Ltd (RJIL), in its submission to TRAI,[15] argued that both OTT communication and other OTT services should contribute fairly to telecom infrastructure costs. It suggested using measurable criteria, such as traffic volume, turnover or user base to assess this contribution. RJIL emphasised that sustaining the quality of the service and net neutrality requires continuous investment by TSPs, which is only viable if content providers share network costs through a fair contribution framework.
- Vodafone Idea Ltd recommended that a policy framework be established to mandate fair share contributions from large OTT players to TSPs for telecom network investments.[16] It proposed two models: option one, a regulated fair share charge prescribed by government; and option two, commercial negotiations between TSPs and OTTs, with a contingency of regulation if consensus fails.
- On the other hand, Indian start-ups strongly opposed the proposed fair share framework,[17] arguing it would grant TSPs undue power to favour certain platforms, leading to discrimination, entry barriers and an unlevel playing field. They criticised the lack of clarity in defining 'large traffic generators' and determining 'fair contribution', warning of arbitrary implementation. The submission called for preserving an open internet and cautioned that extending telecom-style licensing to internet services would impose heavy compliance burdens, harming innovation and disproportionately impacting smaller players while favouring large multinational corporations.

The government's position

As mentioned, the debate on fair share of revenue has yet to be concluded. However, a few reported comments from news sources should be noted.

During the Indian Mobile Congress, 2024, Manish Sinha, a Member of the Department of Telecommunications, Government of India, reportedly said that the issue of fair share arises because of the 'insufficiency of revenue from the growth of data (consumption) itself'. He further commented that if there was a burst of revenue then telecoms operators would forget about the revenue generated by OTT platforms, especially through advertising.[18]

During the FICCI Frames (an annual convention and business platform for the media and entertainment sector, hosted by the Federation of Indian Chambers of Commerce and Industry) 2024 panel discussion entitled 'Media, Telecom and Bandwidth: Navigating the Crossroads of Regulation and Consumer Welfare' held on 5 March, Sanjiv Shankar, Joint Secretary at the Ministry of Information and Broadcasting, stated that there is currently no pressing need or relevance for implementing a cost-sharing framework in India.[19] He noted that major telecom players such as Jio

15 RJIL submission to TRAI, 1 September 2023 https://www.trai.gov.in/sites/default/files/2024-11/Reliance_Jio_Infocomm_04092023.pdf accessed 1 May 2025.

16 Vodafone Idea Ltd recommendation to TRAI, 1 September 2023 https://www.trai.gov.in/sites/default/files/2024-11/Vodafone_Idea_04092023.pdf accessed 1 May 2025.

17 Yuthika Bhargava, '128 Indian startups write to TRAI, protest telcos' demand to make OTT apps pay network usage fees' (The Print, 27 September 2023) https://theprint.in/india/governance/128-indian-startups-write-to-trai-protest-telcos-demand-to-make-ott-apps-pay-network-usage-fees/1779679/ accessed 31 July 2025.

18 *The Economic Times*, 'OTT fair-share debate due to insufficient revenue from data consumption: DoT official', 18 October 2024 https://telecom.economictimes.indiatimes.com/news/policy/ott-fair-share-debate-due-to-insufficient-revenue-from-data-consumption-dot-official/114350075 accessed 31 July 2025.

19 Medianama, '"No urgency for fair share in India": Sanjiv Shankar, Ministry of Information & Broadcasting Joint Secretary', 7 March 2024 https://www.medianama.com/2024/03/223-no-urgency-fair-share-mib-joint-secretary accessed 1May 2025.

and Bharti Airtel remain profitable, and the fair share demands raised by TSPs do not currently warrant regulatory intervention. Shankar further clarified that even reported financial losses by telecom companies stem from legacy issues rather than operational inefficiencies. Looking ahead, he opined that any future cost-sharing arrangement should be market-driven, rather than relying on audit-based mechanisms, which he described as cumbersome and prone to litigation.

Stakeholders' position

The White Paper by the Cellular Operators Association of India

The Cellular Operators Association of India (COAI), in its White Paper entitled 'Addressing Rising Data Traffic and Associated Infrastructure Costs in Indian Telecom',[20] stressed the inevitability of a fair share mechanism, especially as data-heavy applications driven by 5G, 5G+ and future 6G technologies continue to grow. It argued that entities benefiting from the app economy must contribute equitably to network infrastructure. COAI rejected the suggestion that TSPs should increase consumer tariffs to recover these costs as 'laughable', asserting that this view still acknowledges the significant and unsustainable financial burden on TSPs. The White Paper reiterated that TSPs in India are committed to a consumer-centric approach, seeking B2B contributions from LTGs rather than passing the burden onto end users, in line with the government's vision of affordable digital access for all.

The COAI paper proposes five possible solutions to address the growing infrastructure costs in the telecom sector due to rising data consumption, particularly from LTGs. It highlights 'Model 5' as the most suitable and balanced approach. This model states that only the top four-to-five LTGs responsible for the majority of excess data traffic should bear a proportionate share of the incremental infrastructure costs. The model suggests calculating this contribution from a recent reference point, such as 2019, when the traffic gap between baseline telecom and LTG-driven usage was minimal. By doing so, it ensures fairness, protects net neutrality, avoids burdening end consumers or smaller digital players, and supports the sustainable development of India's digital infrastructure.

Joint letter to uphold net neutrality

In October 2023, 24 organisations made a submission to TRAI through a joint open letter.[21] In the letter, they strongly opposed the imposition of network usage fees on internet-based communication services. They also warned that such a move would undermine the very foundations of the open internet; forcing platforms to enter into individualised, bilateral contracts with telecom providers replicated the outdated telephone-era networking model. The letter cautioned that this would lead to the fragmentation or splintering of the internet, threatening its competitive structure, accessibility and the diversity of choices currently available to users.

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20 COAI White Paper, *Addressing Rising Data Traffic and Associated Infrastructure Costs in Indian Telecom*, 2024 https://beta.medianama.com/wp-content/uploads/2024/01/COAI-White-Paper-on-Addressing-Rising-Data-Traffic-and-Infra-costs-in-Indian-Telecom.pdf accessed 1 May 2025.

21 Access Now, 'Open letter: no discriminatory fees or licensing; TRAI must uphold net neutrality', 23 October 2023 https://www.accessnow.org/press-release/open-letter-trai-india-net-neutrality accessed 1 May 2025.

The submission also recalled TRAI's own 2017 endorsement of net neutrality, which emphasised non-discriminatory access to online content and services. It argued that shifting from the current model, where users pay their ISPs, to a model requiring content providers to compensate TSPs would not only distort this balance, but would also create barriers for smaller players. It concluded that the 'free-riding' narrative is flawed, as TSPs are already compensated by their own customers, who pay directly for internet access.

Select Latin American countries

Introduction

The fair share debate, in the context of the digital ecosystem, relates to discussions about whether large online content and service providers should contribute financially to the development, maintenance and expansion of telecoms infrastructure. This debate has gained prominence globally as the demand for internet bandwidth continues to surge, driven primarily by the services offered by these large platforms. Telecoms operators argue that these platforms, which generate the majority of internet traffic, should bear a more equitable portion of the costs associated with upgrading and maintaining the networks on which their businesses heavily rely. This section of the report aims to provide a summary of the fair share debate and the relevant regulatory landscape in Argentina, Brazil, Colombia, Mexico and Peru. It will outline the current state of discussions, identify any existing or proposed legal frameworks related to this concept and summarise the positions of key stakeholders within each of these Latin American nations.

The debate surrounding the concept of fair share has witnessed a significant escalation in recent months, not only in Latin America, but also across Europe. This surge in discussion is largely driven by demands from major telecoms companies (big telcos) that large technology companies (Big Tech) should assume a greater portion of the financial burden associated with investments in telecoms infrastructure. The fundamental argument by the carriers is that the services provided by these big tech companies, particularly those involving 'heavy' content, such as large data transfers, high-resolution videos and real-time streaming, are the primary generators of traffic on internet networks, thereby necessitating increasingly significant investments to adequately support this ever-growing demand. This escalating debate highlights the tension between infrastructure providers and content providers over the financial responsibilities in maintaining and expanding the digital ecosystem.

Supporting the claims made by telecoms operators regarding the source of high network demand, a recent report by the GSMA indicated that in Latin America, a significant 70 per cent of all mobile traffic originates from just three major online platforms: Meta (Facebook, Instagram, WhatsApp), Alphabet (Google, YouTube) and TikTok. This statistic provides compelling empirical evidence for the argument that a relatively small number of dominant online service providers are responsible for a substantial majority of the data traffic that traverses mobile networks in the region, including Colombia. This data-related point is often used by telecom operators to emphasise the need for LTGs to contribute more directly to the costs of maintaining and upgrading the infrastructure which enables their services to reach consumers.

Colombia

Overview of the fair share debate

On 10 December 2024, the Communications Regulatory Commission (Comisión de Regulación de Comunicaciones or CRC) released the executive summary of its annual OTT study, conducted since 2018. The study analyses consumption patterns of OTT services and their interaction with traditional telecom services through surveys of companies and individuals. While the full results of the 2024 study will be available in the first quarter of 2025, this document provides a summary of the following key findings that reflect the current landscape of OTT service consumption in Colombia:

- residential video platforms – 31.6 per cent of individuals access these services;
- mobile telephony – while many users make phone calls through their service providers, a significant proportion also use apps, such as WhatsApp and Facebook Messenger, to make video calls;
- audio consumption – over 90 per cent of individuals do not subscribe to audio streaming services, although 28 per cent own mobile phones capable of playing music; and
- streaming services – while 38 per cent of companies reported paying for streaming services, a higher proportion (45 per cent) still subscribe to traditional pay TV services.

These trends highlight relevant challenges, such as evolving user preferences, increased network traffic and the need for additional investments from stakeholders in the digital ecosystem. Addressing these issues requires comprehensive data to identify potential challenges and determine whether public policy or regulatory measures are necessary to ensure adequate, continuous, high-quality services.

In Colombia, the CRC, in partnership with the Ministry of Information and Communications Technologies, conducted a public consultation with sector stakeholders as part of the 2024 OTT services study.

Public consultation is a mechanism which enables citizens and interest groups in Colombia to participate in government decision-making processes. Rooted in the 1991 Constitution of Colombia and governed by laws, such as Law 489 of 1998 and Law 1757 of 2015, it embodies the principles of participatory democracy and the democratisation of public administration, establishing that state entities must implement mechanisms that facilitate the involvement of citizens and their organisations in public management. Furthermore, these entities must explicitly outline in their plans how participation in matters within their jurisdiction will be encouraged and promoted.

In this case, the public consultation on OTT services aims to enhance the understanding of the products and services provided by digital OTT service providers and telecommunications network and service providers (TNSPs). It also aims to complement existing information on the interactions between these agents in Colombia.

The consultation addresses several topics, including:

- definitions and differentiation of OTT services compared to TNSP services;
- economic and operational relationships between OTT services and TNSPs;
- internet traffic trends and their impact on network infrastructure and consumer choice;
- regulatory considerations for interactions between TNSP and OTT services;
- the role of digital platforms in online sales and telecoms services;
- support for local content and regulatory conditions for digital platforms (ie, advertisement, time slots);
- controls for disinformation and the impact on the freedom of expression; and
- adaptation and investment in communications infrastructure for emerging technologies in Colombia.

At recent conferences, the former vice-minister of connectivity made increasingly specific statements asserting that a fair share obligation should be implemented in Colombia.[22] There have also been informal remarks suggesting the government may expand the interpretation of the legal powers granted to the CRC – and even to the Ministry of ICT – to include other participants in the digital ecosystem, such as app and content providers. However, neither types of entity have issued any official comments on the matter.

Despite the above, no official comments or statements have been made regarding the public consultation or its results.

Regulatory landscape

Telecoms law

Law 1341 of 2009, amended by Law 1978 of 2019, aims to: (1) establish the general framework for the formulation of public policies governing the information and communications technologies (ICT) sector; (2) define the general structure of the ICT sector, with an emphasis on telecoms networks and services; (3) regulate competition within the telecoms networks and services sector; (4) protect users of telecoms services, including free-to-air television and radio broadcasting services; (5) promote coverage, service quality, investment in the sector, and the development of telecoms networks and services; (6) ensure the efficient use of telecoms networks and the radioelectric spectrum; and (7) grant the state powers to plan, manage, administer, regulate, supervise and monitor telecoms services, thereby facilitating broad public access to the information society throughout the national territory.

Although Law 1341 of 2009 is presented as applicable to the entire ICT sector, in practice, Congress limited its scope to regulating telecoms networks and services. These activities represent just one category of ICT services. Consequently, the functions assigned to the CRC and the Ministry of ICT were limited to telecoms networks and services, postal services, free-to-air television and radio broadcasting. These powers do not extend to other ICT-related services, such as those offered by OTT service providers or subscription video on demand (SVoD) platforms. Therefore, the CRC and the Ministry of ICT currently lack the legal authority to regulate or impose a fair share obligation on these services, as they do not possess the legal powers necessary to do so.

Key stakeholders and positions

Telecoms operators

In Colombia, TSNPs, both individually and through industry associations, are strongly advocating for the implementation of fair share policies. They argue that LTGs, particularly internet and OTT companies, should contribute a greater portion to the investments required for maintaining and expanding telecoms infrastructure. Their core argument is that the services offered by these online platforms are the primary drivers behind the exponential growth in network traffic, necessitating continuous and substantial investments in network upgrades and capacity enhancements.[23] This stance is motivated by the increasing

22 Sharon Duran, 'Is Colombia facing a legal reform of ICTs?', *dlp News*, 10 June 2024 https://dplnews.com/colombia-esta-ante-una-reforma-legal-de-las-tic/ accessed 22 April 2025.

23 Bnamericas, 'Colombia launches consultation on OTTs, focusing on fair share and infra investments', 13 December 2024 https://www.bnamericas.com/en/news/colombia-launches-consultation-on-otts-focusing-on-fair-share-and-infra-investments accessed 22 April 2025.

financial pressures on telecom operators to keep pace with the ever-rising data demands, while ensuring the quality and coverage of their networks.

Big Tech companies

Major technology companies operating in Colombia maintain that they already make significant contributions to the digital ecosystem through substantial investments in critical infrastructure components, such as submarine cables, data centres and CDNs.[24] These investments, they argue, are essential for supporting internet traffic and enhancing the overall user experience. Furthermore, these companies contend that their services play a vital role in driving internet adoption and use among consumers, which in turn directly benefits telecoms operators by increasing the demand for data and internet service packages, therefore establishing a mutually beneficial, or symbiotic, relationship between the two services.[25] This perspective suggests that additional mandatory contributions, as proposed under the fair share concept, are unnecessary and potentially detrimental.

CRC

The CRC is actively seeking information through a public consultation to understand the impact of OTT services on networks and inform future policy decisions regarding the digital ecosystem.[26]

Peru

Overview of the fair share debate

The fair share debate appears less prominent in Peru compared to Brazil. The Peruvian telecoms regulator, the Supervisory Agency for Private Investment in Telecommunications (Organismo Supervisor de la Inversión Privada en Telecomunicaciones or OSIPTEL), held a public consultation about OTTs in September 2024. Similar to Colombia's CRC and Brazil's National Telecommunications Agency (Agência Nacional de Telecomunicações or Anatel) consultations, this signifies a move from the regulator towards understanding OTT services and possible future regulations.

Major technology companies operating in Peru are part of the Alliance for an Open Internet (Alianza por una Internet Abierta or AIA), which opposes fair share regulations.[27]

Carlos Slim, the honorary chairman of América Móvil (Claro in Peru), has advocated for platforms, such as YouTube and Netflix, to compensate telecom operators for network use.[28]

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24 *Ibid.*

25 *Ibid.*

26 *Ibid.*

27 Bnamericas, 'Big techs create LatAm lobby group to oppose "fair share" push', 19 February 2025 https://www.bnamericas.com/en/features/big-techs-create-latam-lobby-group-to-oppose-fair-share-push accessed 22 April 2025.

28 *Ibid.*

Regulatory landscape

Telecoms law

Peru has a comprehensive legal framework set out in the Consolidated Text of the Telecommunications Law (Texto Único Ordenado de la Ley de Telecomunicaciones), but it does not specifically address fair share or mandate contributions from online platforms.[29]

Law 29022 aims to expand telecoms infrastructure, particularly in rural areas, by promoting private investment and streamlining the relevant processes.[30] Law 29904 promotes broadband internet access and the construction of a national fibre optic backbone network.[31]

Key stakeholders and positions

Big Tech companies

Bic Tech opposes fair share regulations through the AIA, emphasising their existing investments and the potential negative impact on innovation and consumer costs.[32]

TSNPs

Peru's TSNPs support the principle that large online platforms should contribute financially to network infrastructure maintenance and expansion.[33] They also advocate for a fair share strategy in Latin America, including Peru, to address the financial sustainability of telecom operators due to increasing traffic.[34]

OSIPTEL

Peru's telecoms regulator OSPITEL is actively exploring fair share through a public consultation on OTT services.

Brazil

Overview of the fair share debate

Brazil has emerged as a central hub in regard to the fair share debate in Latin America, exhibiting a high level of discussion and has taken concrete steps, which includes Anatel holding a public consultation on the matter in early 2023.[35] This proactive engagement by the Brazilian regulatory body signifies the

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29 OSIPTEL, telecoms legislation, https://www.osiptel.gob.pe/archivos/legislacion-en-telecomunicaciones accessed 22 April 2025.

30 *Ibid.*

31 *Ibid.*

32 Bnamericas, 'Big techs create LatAm lobby group to oppose "fair share" push', 19 February 2025 https://www.bnamericas.com/en/features/big-techs-create-latam-lobby-group-to-oppose-fair-share-push accessed 22 April 2025

33 *Ibid.*

34 Telecom Review, 'Latin America Advocates for Fair Share in Telecommunications', 11 June 2024 https://www.telecomreviewamericas.com/articles/reports-and-coverage/latin-america-advocates-for-fair-share-in-telecommunications accessed 22 April 2025.

35 Fernando Borjón and Geusseppe González, '"Fair Connectivity" in Latin America', *Intermedia: The Journal of the International Institute of Communications*, December 2023, Vol 51 Issue 4, https://iicintermedia.org/vol-51-issue-4/fair-connectivity-in-latin-america accessed 22 April 2025.

importance and attention given to the question of whether large online platforms should contribute to the costs of telecoms infrastructure.

The debate in Brazil gained significant traction in 2022 and further intensified following the exploratory public consultation initiated by the EC in February 2023.[36] This timeline suggests that international discussions and regulatory trends, particularly those in the EU, have played a notable role in shaping and influencing the debate in Brazil, highlighting the interconnectedness of policy considerations in the digital realm across different regions.

Brazil's telecoms operators' association, Conexis, has been a particularly vocal advocate of fair share. Conexis has asserted that telecoms operators in Brazil have made substantially larger investments in the digital ecosystem over the past two decades compared to major technology companies. They have also emphasised the need for unbiased discussion to determine how the costs of network infrastructure should be shared among all beneficiaries, particularly those who generate the most traffic.[37] This strong stance by the telecom sector underlines their belief that a more balanced financial contribution from large online platforms is necessary for the sustainability and continued development of Brazil's digital infrastructure.

The theme of fair share has been a prominent and recurring topic of discussion at major telecoms industry events in Brazil, such as Futurecom and Painel Telebrasil.[38] The fact that this issue has been central to these important gatherings indicates the high level of concern and engagement among various stakeholders within Brazil's digital ecosystem, including operators, regulators and technology providers. The prominence of fair share at these events signals its significance as a key policy and business consideration for the future of connectivity in the country.

Anatel's public consultation on fair share, conducted in early 2023, was framed within the broader context of an 'internet gatekeeping revision' and, notably, included an updated outline of the rules governing network neutrality.[39] This framing suggests that the debate in Brazil is not solely focused on the financial aspects of infrastructure contributions, but is also intricately linked to fundamental principles of internet governance, such as net neutrality, raising concerns about potential implications and trade-offs between these different regulatory objectives.

In response to the growing number of fair share proposals in Brazil, major technology companies operating within the country formed a local chapter of the AIA in December 2023.[40] This initiative mirrors similar alliances established in other Latin American countries and demonstrates strong, organised opposition by Brazil's technology sector to any regulatory measures that would mandate financial contributions to telecoms infrastructure. This collective action emphasises the unified stance of major online platforms against the fair share concept and their commitment to advocating for an open and unrestricted internet.

36 *Ibid.*

37 Bnamericas, 'Telcos vs big techs: How fair is the "fair share" debate?', 4 October 2023, https://www.bnamericas.com/en/features/telcos-vs-big-techs-how-fair-is-the-fair-share-debate accessed 22 April 2025.

38 *Ibid.*

39 Fernando Borjón and Geusseppe González, '"Fair Connectivity" in Latin America', *Intermedia: The Journal of the International Institute of Communications*, December 2023, Vol 51 Issue 4, https://iicintermedia.org/vol-51-issue-4/fair-connectivity-in-latin-america accessed 22 April 2025.

40 Bnamericas, 'Big techs create LatAm lobby group to oppose "fair share" push', 19 February 2025 https://www.bnamericas.com/en/features/big-techs-create-latam-lobby-group-to-oppose-fair-share-push accessed 22 April 2025.

Regulatory landscape

As previously mentioned, the Brazilian telecoms authority, Anatel, has taken a significant step in exploring the fair share debate by conducting a public consultation on the topic in early 2023.[41] This formal consultation process indicates that the regulatory body in Brazil is examining the potential for implementing policies which would require LTGs to contribute to the costs of network infrastructure.

Following Anatel's public consultation, the developments and potential regulatory measures related to fair share in Brazil were being closely monitored throughout 2024. There was an expectation among stakeholders regarding potential regulatory outcomes in the near future. However, the EC's confirmation that no fair share measures would be introduced in 2024 may have influenced Brazil's timeline or approach, potentially leading to a more cautious or delayed response by the regulators.

The debate in Brazil has also highlighted concerns that an inadequately informed or poorly designed position on fair share could potentially have detrimental effects on crucial aspects of the digital ecosystem, including the principle of net neutrality, the achievement of broader connectivity goals, efforts to promote digital inclusion among the population and the overall level of future investment in the telecoms sector.[42] These concerns underline the need for Brazilian regulators to consider the wide-ranging implications carefully and the potential risks associated with implementing fair share regulations.

Despite the active discussions and the public consultation conducted by Anatel, the provided research snippets do not detail any specific existing laws or concrete legislative proposals in Brazil which currently mandate financial contributions from large online platforms towards the costs of telecoms infrastructure. The debate is ongoing, but no specific regulatory framework appears to have been enacted according to the information available.

Brazil has an established legal framework for internet governance, known as the Brazilian Civil Rights Framework for the Internet (Marco Civil da Internet, Federal Law No 12.965/2014), which was enacted in 2014.[43] This law establishes fundamental principles for the use of the internet in Brazil, including the crucial principle of network neutrality. Any future regulations related to fair share in Brazil would likely need careful consideration and would potentially need to be aligned with the existing provisions and principles outlined in the Marco Civil da Internet.

Key stakeholders and positions

TSNPs

Brazil's TSNPs strongly support fair share, arguing that Big Tech should contribute to infrastructure financing, due to the substantial amount of traffic that they generate.[44] They argue that large technology companies, which generate substantial traffic on their networks should be mandated to contribute to

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41 Fernando Borjón and Geusseppe González, '"Fair Connectivity" in Latin America', *Intermedia: The Journal of the International Institute of Communications*, December 2023, Vol 51 Issue 4, https://iicintermedia.org/vol-51-issue-4/fair-connectivity-in-latin-america accessed 22 April 2025.

42 *Ibid.*

43 Marco Civil de la Internet, Law No. 12,965, of 23 April 2014, https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/l12965.htm accessed 22 April 2025.

44 Convergencia Latina, 'The discussion on fair share reaches Latin America', 25 June 2024 https://www.convergencialatina.com/Section-Analysis/358154-3-9-The_discussion_on_Fair_Share_reaches_Latin_America accessed 22 April 2025.

the financing of telecoms infrastructure. However, some TSNPs have also raised concerns that fair share discussions exclude smaller ISPs, and that costs could be passed on to consumers.[45]

Big Tech companies

Big Tech opposes fair share, asserting they already invest significantly in infrastructure and that such charges would harm the digital economy and consumers.

Anatel

Brazil's telecoms regulator is exploring fair share through public consultation, seeking a structured discussion on impacts and cost distribution.[46]

The Brazilian Chamber of the Digital Economy (camara-e.net)

The Brazilian Chamber of the Digital Economy strongly opposes fair share, calling it a 'socialisation of profits', which could increase costs for consumers.[47]

Mexico

Overview of the fair share debate

In Mexico's current fair share debate the Digital Transformation and Telecommunications Agency (La Agencia de Transformación Digital y Telecomunicaciones or ATDT) is proposing regulations which would require large digital platforms to contribute to a solidarity fund for enhancing telecoms network coverage, particularly in underserved areas.[48] This proposal suggests that platforms, such as Netflix, Amazon, Google and YouTube should allocate a percentage of their revenues to the fund, managed by the ATDT, to support infrastructure development.[49]

This initiative by the ATDT is driven by the argument that these major platforms significantly contribute to internet traffic and should, therefore, help finance the infrastructure that supports their services. José Antonio Peña Merino, head of the ATDT, has emphasised the necessity of this regulation to ensure these platforms contribute to the maintenance and expansion of telecoms infrastructure. This stance aligns with the views of industry leaders, including Carlos Slim, who has noted that these platforms currently benefit from the infrastructure without contributing to its costs.

The proposed ATDT regulations stipulate that the collected funds would be managed by the agency and directed towards improving the social coverage of telecoms networks, rather than being directly distributed to telecoms operators. This approach has raised concerns among some experts regarding the fund's

45 *Ibid.*

46 *Ibid.*

47 *Ibid.*

48 Diego Valverde, 'Mexico Wants Digital Platforms to Fund Telecom Infrastructure', *Mexico Business News*, 14 February 2025 https://mexicobusiness.news/tech/news/mexico-wants-digital-platforms-fund-telecom-infrastructure accessed 31 July 2025.

49 Diego Valverde, 'Mexico's Telecom Reforms to Reshape Markets: Tech Week', *Mexico Business News*, 21 February 2025 https://mexicobusiness.news/tech/news/mexicos-telecom-reforms-reshape-markets-tech-week accessed 31 July 2025.

effectiveness and the transparency of its administration. The proposal also outlines potential sanctions, including blocking access to platforms which do not comply with the contribution requirements.

Carlos Slim, a prominent figure in the Mexican telecoms industry, has publicly supported the idea of online platforms, such as YouTube compensating telecoms operators for their use of the networks. This endorsement from a key player indicates the growing support for the fair share concept within Mexico.

However, major technology companies in Mexico have joined the AIA, opposing fair share regulations or network fees.[50] This indicates a unified resistance from the tech sector in Mexico to any measures that would mandate financial contributions towards telecoms infrastructure.

Regulatory landscape

Mexico's telecoms sector underwent a significant reform in 2013, establishing the Federal Telecommunications Institute (Instituto Federal de Telecomunicaciones or IFT) as an autonomous regulatory body.[51] However, recent constitutional reforms have led to the dissolution of the IFT and the creation of a new entity, the ATDT, which now has authority over telecoms policy.[52]

The ATDT has proposed regulations requiring large digital platforms to contribute a percentage of their revenue to a 'solidarity fund' for enhancing telecoms network coverage, particularly in underserved areas. This proposal is part of a draft of secondary laws for the telecoms sector.

Article 5 of the Federal Telecommunications and Broadcasting Law outlines that the installation, operation and maintenance of telecoms infrastructure are under federal jurisdiction, with financial responsibility placed primarily on concessionaires. Articles 147 and 149 facilitate infrastructure deployment by granting concessionaires access to state-owned assets under regulated conditions. The ATDT's proposal introduces a new funding mechanism involving contributions from online platforms.

Key stakeholders and positions

Carlos Slim

Slim supports the fair share principle, advocating for large online platforms to contribute to the costs of telecoms infrastructure due to the substantial amount of traffic they generate.[53] He has stated that a fair share contribution from online platforms is essential for the continued growth of connectivity in Mexico.[54]

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50 Bnamericas, 'Big techs create LatAm lobby group to oppose "fair share" push', 19 February 2025 https://www.bnamericas.com/en/features/big-techs-create-latam-lobby-group-to-oppose-fair-share-push accessed 22 April 2025.

51 Nader, Hayaux and Goebel, 'Telecoms and Media: Mexico', 15 June 2023 https://www.nhg.mx/wp-content/uploads/2023/07/2023-Telecoms-and-Media-Mexico.pdf accessed 22 April 2025.

52 Diego Valverde, 'Mexico Wants Digital Platforms to Fund Telecom Infrastructure', *Mexico Business News*, 14 February 2025 https://mexicobusiness.news/tech/news/mexico-wants-digital-platforms-fund-telecom-infrastructure accessed 31 July 2025.

53 Bnamericas, 'Big techs create LatAm lobby group to oppose "fair share" push', 19 February 2025 https://www.bnamericas.com/en/features/big-techs-create-latam-lobby-group-to-oppose-fair-share-push accessed 22 April 2025.

54 Telecom Review, 'América Móvil: Fair Share is Essential to Ensure Connectivity Growth', 11 June 2024 https://www.telecomreviewamericas.com/articles/telecom-operators/america-movil-fair-share-is-essential-to-ensure-connectivity-growth accessed 22 April 2025.

Big Tech companies

Big Tech opposes fair share regulations through the AIA, arguing they already invest significantly in digital infrastructure and that mandatory contributions could harm innovation and increase consumer costs.[55]

ATDT

The ATDT has proposed regulations for large digital platforms to contribute to a solidarity fund for telecoms infrastructure development, particularly in underserved areas.

TSNPs

Mexico's TSNPs advocate for a fair share strategy in Mexico to address the financial sustainability challenges faced by telecoms operators due to increasing data traffic.

Argentina

Overview of the fair share debate

The fair share debate in Argentina has gained some traction, particularly following the EC's exploratory public consultation in early 2023.[56] However, the debate is less prominent than in other countries like Brazil and Colombia.

Argentina has a notable fixed internet penetration gap between urban and rural areas, suggesting that discussions around the digital ecosystem might focus more on addressing connectivity challenges and the digital divide.[57]

Major technology companies operating in Argentina have joined the AIA to oppose fair share regulations or network fees. This indicates a unified stance against such measures by Big Tech in Argentina.

While there is no specific official government proposal for fair share contributions from online platforms, the controller of the National Entity of Communications (Ente Nacional de Comunicaciones or ENACOM) has expressed openness to exploring payment mechanisms to support the telecoms sector.[58]

Regulatory landscape

The regulatory framework for telecoms in Argentina is primarily established by the Argentina Digital Law No 27,078 (ADL), which aims to promote universal access to ICT and ensure fair competition. ENACOM is the autonomous regulatory body responsible for enforcing the ADL.

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55 *Ibid.*

56 Fernando Borjón and Geusseppe González, '"Fair Connectivity" in Latin America', *Intermedia: The Journal of the International Institute of Communications*, December 2023, Vol 51 Issue 4, https://iicintermedia.org/vol-51-issue-4/fair-connectivity-in-latin-america accessed 22 April 2025.

57 *Ibid.*

58 Baker McKenzie, 'Argentina: ENACOM approves the National Critical Communications Infrastructure Plan', 14 April 2025 https://insightplus.bakermckenzie.com/bm/technology-media-telecommunications_1/argentina-enacom-approves-the-national-critical-communications-infrastructure-plan accessed 22 April 2025.

While Law No 27,078 protects net neutrality, practices such as zero rating are common among mobile providers.[59]

Key stakeholders and positions

Big Tech companies

Big Tech is opposed to fair share regulations through their participation in the AIA, arguing against mandatory contributions to telecommunications infrastructure.

TSNPs

Argentina's TSNPs advocate for the implementation of fair share policies.[60] They have also highlighted the regulatory asymmetry wherein traditional telecoms companies face different regulations compared to online platforms like WhatsApp.[61] However, some have expressed opposition to network usage fees, raising concerns about potential negative impacts on their businesses.[62]

ENACOM

While the controller has expressed openness to supporting the telecoms sector financially, there is no official stance from the regulator on mandatory fair share contributions from online platforms.

Comparative analysis and conclusion

The fair share debate exhibits varying levels of activity and regulatory engagement across the five Latin American countries examined in this report. Brazil and Colombia appear to be at the forefront of this discussion, with Brazil having conducted a public consultation and Colombia having recently launched one, indicating a proactive approach by their regulatory authorities to exploring potential policy interventions. In Peru, the authorities have also conducted a public consultation, despite public debate being less conspicuous. In contrast, the debate seems less prominent in Argentina, although the issue is certainly on the radar of key stakeholders. Mexico has seen a concrete proposal put forward by its regulatory agency, the ATDT, to mandate contributions from large online platforms, signalling a more direct approach compared to the other nations.

A consistent trend across the region is the strong advocacy by telecoms operators for large online platforms to contribute more to the costs of network infrastructure, primarily driven by the increasing demand for bandwidth generated by these platforms' services. Conversely, major technology companies have formed a regional alliance, the AIA, to vehemently oppose any mandatory contributions, emphasising their existing

59 Freedom House, 'Freedom on the Net 2024 Country Report: Argentina', 2024, https://freedomhouse.org/country/argentina/freedom-net/2024 accessed 22 April 2025.

60 Vaughan O'Grady, 'GSMA Latin America calls for fairer sharing of comms development costs', *Developing Telecoms*, 20 February 2024 https://developingtelecoms.com/telecom-business/telecom-investment-mergers/16244-gsma-latin-america-calls-for-fairer-sharing-of-comms-development-costs.html accessed 22 April 2025.

61 Bnamericas, 'Bridging the digital divide: Argentina's national telecom plan', 20 March 2025 https://www.bnamericas.com/en/features/bridging-the-digital-divide-argentinas-national-telecom-plan accessed 22 April 2025.

62 *Ibid.*

investments in the digital ecosystem and raising concerns about potential negative impacts on innovation, competition and consumer costs.

Looking ahead, the fair share debate in these countries is likely to continue evolving, influenced by ongoing discussions in the EU and other regions, the outcomes of current regulatory consultations (like the one in Colombia) and the persistent lobbying efforts from both the telecoms and tech sectors. The specific regulatory paths each country might take are likely to depend on a complex interplay of economic, political and technological factors, as well as the relative influence of the various stakeholders involved. For now, the landscape is characterised by active debate and examination in some nations, while others appear to be observing developments before taking more concrete action.

Summary table

Country	Level of fair share debate	Public consultation on fair share	Specific fair share proposals
Argentina	Low	No	No
Brazil	High	Yes (2023)	No
Colombia	High	Yes (2024)	No
Mexico	Medium	No	Yes (ATDT proposal)
Peru	Medium	Yes (2024)	No

Table 1: the status of the fair share debate and related regulatory actions in selected Latin American countries.

South Korea

Background: telecoms business in South Korea

Over the past four decades, South Korea has transformed its telecoms sector from a state-run monopoly into one of the world's most advanced and high-speed networks. In the 1960s and '70s, telecoms services were operated directly by the government. As domestic demand for services increased, the government saw the need to establish a dedicated public corporation. In December 1981, the Ministry of Posts and Telecommunications (now the Ministry of Science and ICT) separated off its telecoms operations to create the Korea Telecom Corporation, which became responsible for the vast majority of domestic telecoms services until the mid-1990s.

In line with global trends towards market liberalisation, the South Korean government announced a privatisation policy in 1987. Beginning in 1993, it gradually divested its shares in Korea Telecom Corporation through public offerings. By 2002, the company was fully privatised and rebranded as KT Corporation.

KT and its key competitors, SK Telecom and LG Uplus, can all trace their origins to Korea Telecom Corporation. SK Telecom became an independent operator in 1994 after the government transferred the management rights of its mobile business, Korea Mobile Telecommunications, to SK Group. LG Uplus originated from the Data Communications Corporation, a joint venture established in 1982 between Korea Telecom Corporation and private sector investors.

South Korea's telecoms infrastructure ranks among the fastest and most pervasive in the world. This is the result of decades of coordinated public–private investment, robust regulatory oversight and sustained competition among the country's three major network operators: KT, SK Telecom (via its wireline subsidiary, SK Broadband) and LG Uplus.

These operators also serve as mobile network owners (MNOs), each maintaining its own end-to-end telecoms infrastructure, encompassing both fixed-line and mobile networks. In addition to infrastructure ownership, they act as the primary retail service providers, offering both fixed and mobile services directly to consumers.

Regulatory framework

Established in 2008, the Korea Communications Commission (KCC) serves as South Korea's regulatory authority for broadcasting and telecoms under the Telecommunications Business Act (TBA). Its mandate includes promoting fair competition, protecting consumer rights and advancing public interest, while also enforcing net neutrality principles. The KCC's regulatory powers extend to licensing, spectrum allocation via auctions, the supervision of interconnection agreements and audits of network traffic management practices. In cases of non-compliance, the Commission is authorised to impose administrative sanctions, including warnings, corrective orders and monetary fines.

Emergence of net neutrality and the fair share debate

South Korea's telecoms sector has evolved through large-scale public investment, rapid privatisation and aggressive market liberalisation, resulting in near-universal broadband and nationwide 5G coverage. However, the sharp increase in data traffic driven by global content platforms has reignited a contentious debate over who should bear the cost of network expansion and maintenance.

Platforms such as Netflix, YouTube (Google), Meta (Facebook/Instagram) and Twitch account for a disproportionately large share of downstream traffic, while contributing only through peering or transit arrangements at overseas origin points. Domestic network operators argue that the resulting investment burden falls almost entirely on South Korean carriers and ultimately on consumers through rising subscription fees. In contrast, content providers (CPs) caution that additional fees for network use could fragment the internet and discourage innovation.

This fair share debate lies at the intersection of net neutrality, telecoms regulation, digital industrial policy and consumer protection, and raises fundamental policy questions. The debate centres on whether infrastructure costs should be recovered from those who generate the most traffic, or whether end-users and domestic CPs should continue to bear the burden in order to retain a unified, low-barrier internet.

Regulatory environment in South Korea

In response to the global discussions on net neutrality, the KCC issued non-binding Net Neutrality Guidelines in 2012, outlining the core principles of net neutrality. The guidelines include principles such as the prohibition of unreasonable discrimination and the blocking of lawful data traffic, while permitting reasonable traffic management practices. However, as they are not laws or legally binding rules, they do not have formal legal enforceability.

With the commercialisation of 5G in 2018, attention turned to the growing potential for differentiated traffic management technologies, particularly network slicing, which renewed concerns around compliance with net neutrality principles.[63] In light of these developments, the KCC revised the guidelines in 2021 to introduce the concept of 'specialised services'. These services refer to dedicated network slices, designed to ensure low latency or high reliability for specific use cases, such as industrial internet of things (IoT) and telemedicine. The revision sought to distinguish more clearly between services subject to net neutrality rules, such as general internet access services, and those exempt from such rules, such as specialised services.

Specialised services are differentiated from internet access services based on their scope, function and purpose. Specifically, a specialised service must meet all of the following criteria: (1) it does not provide general connectivity to the public internet; (2) it is limited to a specific application or use; and (3) it ensures a defined level of transmission quality by using segregated network resources or applying separate traffic management technologies.[64]

These services are exempt from strict neutrality obligations, thereby allowing carriers to offer differentiated quality-of-service (QoS) tiers for premium pricing. The 2021 revision aims to strike a

63 Korea Information and Communications Policy Institute, Background and Key Contents of the Net Neutrality Guidelines Revision, 2021.

64 *Ibid.*

balance between maintaining an open and non-discriminatory internet and promoting innovation through service differentiation.

Debates over fair share

Amid the rapid surge in internet traffic driven by global technology companies, calls for fair compensation through network usage fees have intensified. In 2023, data on the average daily internet traffic in South Korea showed that the top five content providers, including Google, Netflix and Meta, accounted for over 46.6 per cent of total downstream traffic.[65] This concentration of traffic has led to growing demands that these dominant platforms should contribute proportionately to the costs of network usage.

The fair share debate was notably brought to the forefront by a high-profile dispute between SK Broadband and Netflix in 2019. SK Broadband formally requested that Netflix pay network usage fees commensurate with the volume of traffic it generated. Netflix declined, invoking established settlement-free peering practices and the lack of regulatory obligations. Following extended negotiations and significant public attention, the two parties reached a confidential paid-peering agreement in November 2020. This agreement has since served as a de facto precedent for similar negotiations between CPs and ISPs in South Korea.

Opposition to a fair share regime

Domestic CPs, such as Naver and Kakao, have traditionally paid network usage fees to South Korean ISPs for traffic generated within the country. In contrast, foreign CPs are not subject to the same obligations, which ISPs argue constitutes unfair 'free riding' compared to domestic providers. In response, legislative discussions have emerged in the National Assembly to address the perceived imbalance. Notably, during the 22nd National Assembly, lawmakers introduced the so-called 'Network Free-Riding Prevention Act', a proposed amendment to the TBA. The Bill seeks to require large-scale service providers, both domestic and international, to enter into network usage agreements with domestic infrastructure operators and to pay fair compensation for their use of Korean networks.[66]

However, the proposal has also faced strong opposition. Critics argue that mandating network usage fees for foreign CPs could undermine the global competitiveness of domestic CPs, particularly when expanding abroad. Foreign CPs contend that since they already pay access fees to the domestic telecom providers, additional charges for peering in South Korea amount to double billing. As a result, the Bill remains subject to prolonged legislative review.

Since that time, various debates and legal cases have emerged concerning net neutrality. In 2023, the KTOA and the ETNO (now Connect Europe) issued a joint statement urging the adoption of policies to prevent network free riding by global tech platforms and to ensure more equitable distribution of infrastructure investment.[67]

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65 Digital Times, 'United States abolishes net neutrality policy ... Domestic network fee legislation gains momentum', 5 January 2025 https://www.dt.co.kr/contents.html?article_no=2025010502109931029002 accessed 20 June 2025.

66 Digital Daily, 'The government acknowledges the paid nature of network usage fees... Is it considering mediation of the conflict?' https://m.ddaily.co.kr/page/view/2024110716084489300 Last accessed 8 July 2025 (Korean).

67 Seoul Daily, 'Korea-Europe Telecommunications Operators Association: "Big Tech should share the network usage fees."', 31 August 2023 https://www.sedaily.com/NewsView/29TMDRFATD Last accessed 8 July 2025 (Korean).

The debate intensified in February 2024, when global streaming platform Twitch officially announced its withdrawal from the South Korean market. This move reignited the debate over network usage fees and the fair share issue. Twitch CEO Dan Clancy stated that the cost of operating in South Korea had become unsustainable, citing network fees that were up to ten times higher than in other countries. He specifically pointed to South Korea's sender pays model, under which traffic-generating platforms are required to cover network usage costs, as a major factor contributing to the financial burden. Prior to the announcement, Twitch had already implemented cost-cutting measures, such as limiting video quality to 720p in Korea, but these efforts were insufficient to offset the underlying structural costs. The company's exit highlighted growing concerns over potential disadvantages faced by foreign content providers and instigated renewed scrutiny of South Korea's network fee regime, especially its implications for global digital service providers operating in high-traffic environments.

Conclusion

While there is growing support for a fair share regime, it continues to face strong opposition, and legislative efforts to institutionalise such a framework have yet to succeed. The future direction of telecoms policy remains uncertain.

South Korea's fair share debate encapsulates a broader global challenge: how to balance sustainable network investment with the preservation of an open, innovation-friendly internet. Domestic ISPs advocate for clear, cost-based peering arrangements to support long-term infrastructure development, whereas global content platforms caution that such measures risk causing regulatory fragmentation and could undermine the integrity of the global internet ecosystem. Nevertheless, recent legislative proposals in the National Assembly and evolving guidelines from the KCC suggest that concrete policy measures could be forthcoming. South Korea's experience may offer useful insights for other advanced broadband markets facing similar challenges.

United States

On 24 May 2021, Brendan Carr, who was then the commissioner of the Federal Communications Commission (FCC) and member of the Federal–State Joint Board on Universal Service, started the debate with an op-ed on *Newsweek* requiring Big Tech to contribute to the funding of the Universal Service Fund (USF).[68] The Fund is currently funded by operators – and passed on to customers – of traditional telephone services.[69]

Since January 2025, Brendan Carr has served as the Chair of the FCC.[70]

The FCC report on the future of the Universal Service Fund

On 13 December 2021, the FCC opened proceedings for a report about the future of the USF.[71] The proceeding received a total of 271 filings. The report was published on 14 August 2022.[72]

Paragraphs 98–111 of the report assess the idea of a broader base of entities contributing to the USF, including 'edge providers' (ie, streaming video providers, digital advertising firms and cloud services companies), rather than relying solely on end users or consumers and enterprises that have historically paid the line item fees passed on by providers to fund the USF.

The report concludes that the FCC 'has never analyzed its authority to regulate edge providers, which broadly defined, encompass a wide variety of different entities that provide internet content, applications, and services', that 'In any future effort, the Commission should consider the weight of the record, and the concerns raised in the record about any change in the contribution base affecting the cost paid by consumers for broadband service, as well as the long-term viability of any reforms to the contributions base'.

The report adds: 'A wide variety of commenters called for legislation to expand the Commission's authority so it could assess contributions on the broadest range of service revenues, including from digital advertising and other online edge services that benefit from broadband networks', in the meantime, others 'suggested that Congress fund the USF through the regular Congressional appropriations process'.

The rapporteurs add: 'A Congressional mandate would clarify the Commission's authority [...] absent congressional action to provide the Commission mandatory authority to assess edge providers, in order to exercise our permissive authority, the Commission would need to make a finding that these services meet the statutory definition of "telecommunications" and demonstrate that the public interest supports requiring contributions' and recommend 'Congress provide the Commission with the legislative tools needed to make changes to the contributions methodology and base in order to reduce the financial burden on consumers, to provide additional certainty for entities that will be required to make contributions.'

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68 FCC, Universal Service https://www.fcc.gov/general/universal-service accessed 20 June 2025.

69 Brendan Carr, 'Ending Big Tech's Free Ride', *Newsweek* opinion piece, 24 May 2021 https://www.newsweek.com/ending-big-techs-free-ride-opinion-1593696; FCC, 'Carr Calls for Ending Big Tech's Free Ride on the Internet', 24 May 2021 https://www.fcc.gov/document/carr-calls-ending-big-techs-free-ride-internet accessed 20 June 2025.

70 Covington Global Policy Watch, 'Trump Signals Continued Focus on "Big Tech" in Naming Brendan Carr as FCC Chair', 19 November 2024 https://www.globalpolicywatch.com/2024/11/trump-signals-continued-focus-on-big-tech-in-naming-brendan-carr-as-fcc-chair accessed 20 June 2025.

71 FCC, Proceeding Detail, 'Report on the Future of the Universal Service Fund', docket No. 21-476, 13 December 2021 https://www.fcc.gov/ecfs/search/docket-detail/21-476 accessed 20 June 2025.

72 Federal Communications Commission, *FCC Reports to Congress on Future of the Universal Service Fund* (15 August 2022) https://www.fcc.gov/edocs/search-results?t=quick&dockets=21-476 accessed 20 June 2025.

The current fair share proposal(s)

On 15 November 2023, Senators Mark Kelly, Markwayne Mullin and Mike Crapo filed a federal bill to introduce a contribution to the USF by content providers.[73]

The bill mandates that the FCC reforms the USF by expanding the contribution base so that broadband providers and edge providers[74] contribute on an equitable and non-discriminatory basis to the specific, predictable and sufficient mechanisms established by the Commission to preserve and advance universal service to promote affordable and accessible broadband services.

The imposition of such a levy has an exception (floor) for: (a) an edge provider that (1) transmits less than three per cent of the estimated quantity of broadband data that was transmitted in the United States during the most recent year, as determined by the Commission and (2) earned less than $5bn in revenue in the US during the most recent year; or (b) an edge provider or broadband provider or class of edge providers or broadband providers where the revenue of the provider is such that the level of contribution by the provider to the preservation and advancement of universal service would be *de minimis*.

The collected fund shall contribute to a new mechanism as part of the high-cost programme of the USF that will provide specific, predictable and sufficient support for expenses incurred by a broadband provider that is an eligible telecoms carrier in providing supported services to the extent that such expenses are not otherwise recovered from revenues earned from the assessment of just, reasonable and affordable rates on end users in high-cost areas or from other universal service support mechanisms.

Only one eligible telecoms carrier for any area should receive support from the mechanism.[75]

The Lowering Broadband Costs for Consumers Act of 2023 received the support of USTelecom.[76]

Another two bills have been filed before the Senate that relate to the same issue, but they only call on the FCC to perform studies and put foward proposals on fair share regulation.[77] A review from March 2024 is available from the Congressional Research Service.[78]

The US government position on possible fair share initiatives abroad

On 21 February 2025, President Trump issued a Memorandum on 'Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties'.[79]

According to the Memorandum, it is mandatory that the US government:

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73 S 3321, Lowering Broadband Costs for Consumers Act of 2023.

74 Edge providers are defined as 'a provider of online content or services, including (A) a digital advertising service; (B) a search engine; (C) a social media platform; (D) a streaming service; (E) an app store; (F) a cloud computing service; (G) an over-the-top messaging service or any other service that enables texting; (H) a videoconferencing service; (I) a video gaming service; and (J) an e-commerce platform'. See here for more detail: https://www.congress.gov/118/bills/s3321/BILLS-118s3321is.pdf Last accessed 8 July 2025.

75 S 3321, Lowering Broadband Costs for Consumers Act of 2023 https://www.congress.gov/bill/118th-congress/senate-bill/3321 accessed 20 June 2025.

76 USTelecom, 'Statement on Introduction of Lowering Broadband Costs for Consumers Act of 2023', 15 November 2023 https://www.ustelecom.org/statement-on-introduction-of-lowering-broadband-costs-for-consumers-act-of-2023 accessed 20 June 2025.

77 S 856 Fair Contributions Act https://www.congress.gov/bill/118th-congress/senate-bill/856/text; S 975 Reforming Broadband Connectivity Act of 2023 https://www.congress.gov/bill/118th-congress/senate-bill/975 accessed 20 June 2025.

78 CRS, 'The Future of the Universal Service Fund and Related Broadband Programs', 1 March 2024 https://www.congress.gov/crs_external_products/R/PDF/R47621/R47621.4.pdf accessed 20 June 2025.

79 The White House, 'Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties', 21 February 2025 https://www.whitehouse.gov/presidential-actions/2025/02/defending-american-companies-and-innovators-from-overseas-extortion-and-unfair-fines-and-penalties accessed 20 June 2025.

> ‘where a foreign government, through its tax or regulatory structure, imposes a fine, penalty, tax, or other burden that is discriminatory, disproportionate, or designed to transfer significant funds or intellectual property from American companies to the foreign government or the foreign government’s favored domestic entities, my Administration will act, imposing tariffs and taking such other responsive actions necessary to mitigate the harm to the United States and to repair any resulting imbalance.’

Even if this wording seems not to refer to a non-discriminatory and proportionate way of collecting money from companies, the remaining text exemplifies this in broad terms.

It also specifically requires the Secretary of the Treasury, the Secretary of Commerce and the United States Trade Representative to: (1) ‘jointly identify trade and other regulatory practices by other countries, including, without limitation, those described in section 2 of this memorandum, that discriminate against, disproportionately affect, or otherwise undermine the global competitiveness or intended operation of United States companies, in the digital economy and more generally, and recommend to me appropriate actions to counter such practices under applicable authorities’; and (2) ‘determine whether any foreign country subjects United States citizens or companies, including, without limitation, in the digital economy, to discriminatory or extraterritorial taxes, or has any tax measure in place that otherwise undermines the global competitiveness of United States companies, is inconsistent with any tax treaty of the United States, or is otherwise actionable under section 891 of title 26, United States Code, or other tax-related legal authority’.

It seems likely that such a policy approach would affect initiatives aimed at imposing a financial burden on US tech and digital services giants, including in regard to the fair share debate.

In the same stream of positions, the Office of the United States Trade Representative in its 2025 National Trade Estimate Report on foreign trade barriers reiterates the US position against the fair share initiative under the paragraph ‘Network Usage Fees’ in the chapter regarding the EU.

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