

BREKO position paper on the involvement of big tech companies in network deployment (“Fair Share”)

1. Introduction

Over the last years, data traffic increased significantly, especially within fixed networks. Social networks, IPTV and video streaming contributed strongly to this development. Additionally, the economical, societal and political expectations regarding European connectivity have increased as well. Fibre networks are an essential infrastructure regarding issues like digital participation for people in all regions, the increasing significance of sustainability, resilience and cyber security, both on the European and the national level.

Performant fibre networks are the basis for a digital life, today and tomorrow. In the digital ecosystem, network operators and big tech companies like Amazon, Google, Meta and Netflix are symbiotically connected and depend on each other. As for every ecosystem, a fair balance and burden sharing is essential for its success.

In this context, Deutsche Telekom, Orange, Vodafone and Telefónica (big telcos) are demanding that big tech companies contribute to the costs of network deployment (“Fair Share”). These demands are based on the *Declaration on European Digital Rights and Principles* that asks for “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”.

Detailing their idea of a concrete implementation, big telcos advocate for negotiation mandates by the EU so that big tech companies and network operators negotiate the payments individually. In case the parties cannot agree on a deal, arbitration mechanisms would be put in place.

The German Broadband Association BREKO, which is representing the majority of alternative telecommunications companies in Germany, advocates for a constructive and open debate which includes alternative network operators as the drivers of fibre deployment in Germany and many other European countries. When assessing the current ecosystem between telecommunication companies and big tech companies, the significant changes in data traffic, balance and allocation of traffic, structure of the OTT market and the dominance of single players must be considered, followed by appropriate measures. At the same time, the consequences for a fair competition must be assessed.

2. “Fair Share” in the digital ecosystem

Under the right conditions – above all ensuring fair competition – a “Fair Share” mechanism on the EU level could be advantageous. In the following paragraphs, the context of this proposal will be examined.

In the larger context of European and national digital policy, we see that today’s **political, economic and societal expectations, demands and targets** are much more ambitious than they used to be ten years ago. Citizens and companies are responsible for a rising demand for performant internet connections due to a massive increase in the use of data intensive services and the growing networking of society. Politics, on the other hand, set ambitious targets: The EU asks for a fixed gigabit connection in every household until 2030, while the German federal government sets up the target of 50 per cent fibre connections until 2025 and 100 per cent fibre connections until 2030. Fibre networks are the most sustainable internet access technology and therefore indispensable not only for the digital, but also for the ecological transformation of Europe.

In light of external threats and wars and a growing linkage of relevant areas of society, the issue of “network resilience” is also growing in relevance. Regional, decentralised networks of alternative network operators play a crucial role for the resilience of networks and cyber security. The deployment of these networks, however, requires high investments of alternative network operators. To reach these targets and expectations, massive efforts by the telecommunications sector and especially by companies deploying fibre are necessary. Additional earmarked funds for economically viable fibre deployment could increase the current deployment momentum even further.

Currently there is no “Level Playing Field” between telcos and big tech companies. Telcos act in a regulated market, often with strong competition. Even alternative network operators are subject to regulation. They guarantee all-encompassing data traffic that is consistent with net neutrality rules. In contrast, big tech companies often are large players and act as gatekeepers. This was also established by the EU Commission and addressed in legislative acts like the Digital Markets Act (DMA) and Digital Services Act (DSA). Big tech companies feed the lion’s share of data traffic into the networks of operators¹. Due to their position, they can determine how, in which quality and on which routes data traffic is going through networks.

Last but not least, it is especially big tech companies that benefit from a reliable digital infrastructure. An accelerated and efficient deployment of fibre networks would allow more users than before to use data intensive services like streaming and gaming. Besides network operators, big tech companies themselves would benefit strongly from this. A symbiotic digital ecosystem can only be successful when a fair balance between the actors is guaranteed.

¹ cf. Cisco-Study: 2022 Video traffic will be responsible for 82 per cent of worldwide internet traffic.
https://www.cisco.com/c/dam/m/en_us/solutions/service-provider/vni-forecast-highlights/pdf/Global_Device_Growth_Traffic_Profiles.pdf.

3. Conditions for a „Fair Share”

Besides the question “if” a cost sharing mechanism should be implemented, it should also be asked “how” this could work in practice. For BREKO, it is evident that all next steps require specific conditions in order to maintain an equal market balance, a fair balance between all participants and an efficient implementation.

3.1. Avoiding competitive distortion

First and foremost, a **distortion of competition in the telecommunications market must be avoided**. In the past, the EU Commission has been advocating strongly for a “Level Playing Field” where all market actors have the same rights and chances – it’s imperative that this persists.

To guarantee fair competition, big telecommunications companies must not take advantage of their stronger negotiation power compared to alternative network operators by making individual deals with big tech companies. A sole focus on negotiation mandates – as it is currently demanded by big telcos – would not be sufficient to avoid a distortion of competition. We already see **significant differences in negotiating power** on the national telecommunications markets today. In Germany, this can be seen in the market for mobile networks. The negotiation mandates which were given to the mobile network operators by the national regulatory authority (Bundesnetzagentur) in the context of spectrum auctions did not lead to a functioning competition but weakened the market instead. In order to effectively avoid a competitive distortion in the “fair share” issue, a *real* equal treatment of all actors is necessary.

“Fair Share” payments must **benefit all companies deploying fibre**. Instead of negotiated solutions that would lead for an imbalanced market and disadvantages for alternative network operators, BREKO asks for a solution that makes sure all companies that invest in fibre networks are involved equally and proportionally. A one-sided preferential treatment for big telcos must be avoided. Instead, a model where big tech companies pay into an infrastructure fund could lead to a more equal distribution.

3.2. Earmarking payments

It is especially important to use payments for the deployment of fibre to the buildings and homes (FTTB/H) because this is the only future-proof technology to contribute to the EU’s and Germany’s digital and sustainable targets. Current market data shows that fixed networks maintain their crucial role for households, especially for submitting lots of traffic, in comparison to mobile networks. In 2021, over 98 per cent of data traffic per customer in Germany was processed over fixed networks².

² BREKO Market Study 2022; online: <https://www.brekoverband.de/en/schwerpunkte/breko-marktanalyse/>.

3.3. Preserving net neutrality

Actors that oppose the financial contribution of big tech companies often bring forward the argument of **net neutrality**. For BREKO there is no doubt: A "Fair Share" mechanism must not affect net neutrality and the EU's Open Internet Guidelines. Net neutrality is one of the core principles of a free internet and must be protected. This is why we ask for an unbiased analysis of the market and why we support the ongoing market evaluation by the European Commission. Net neutrality must not be a bogus argument to block a fair share of big tech companies and to hinder debates. The principle of net neutrality was implemented to protect citizens and not to release big tech companies from the responsibility for possible imbalances in the relation to network operators. At the same time, we see the risk that the negotiation mandates which are preferred by big telcos could jeopardize net neutrality. Individual negotiations between the largest network operators and big tech companies involve the risk that the financing of network deployment is linked to further conditions like a preferred transit of certain traffic.

4. Conclusion

With their demands to include big tech companies in network deployment, the four largest European telecommunications companies started off lively discussions at the European level. BREKO, the German Broadband Association, is not a driving force behind these demands, but sees the potential for "fair share" contributions to have a positive impact on fibre deployment given increasing traffic, current market dynamics and political and societal expectations for connectivity, sustainability and resilience. At the same time, the balance between big tech companies and network operators could be restored for a more equal digital ecosystem.

It is crucial that the implementation by the European Commission takes place in a way that ensures fair competition in the telecommunications markets unconditionally. Payments must benefit all companies deploying fibre and preserve net neutrality. Negotiated solutions, as they are proposed by big telcos, would lead to competitive distortions and have to be rejected. A one-sided preferential treatment for a few telecommunications companies must be avoided.

We advocate for an open debate that takes into consideration the current market dynamics and finds a fair solution while including all relevant stakeholders. We welcome the public consultation that the EU Commission is intending to launch in the first half of 2023.