Singapore

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AVIA Submission to the EU consultation on "The future of the electronic communications sector and its infrastructure"

The Asia Video Industry Association (AVIA) would like to express its appreciation for the opportunity to contribute to discussion within the EU of proposals to alter the way investments in connectivity are financed. AVIA is the trade association for the video industry and ecosystem in Asia Pacific. Its aim is to support a vibrant video industry for the benefit of all stakeholders. Our membership consists of a combination of local, regional, and multi-national companies, many of which are substantial cross-border investors. They create and distribute video content to meet rapidly expanding consumer demands and invest in Asia's communications and creative industries. Members include multi-platform content providers, technology platforms and satellite operators.

As our members are active participants and investors in the Korean online curated content marketplace, we believe that our views may be useful to the Commission in light of South Korea's status as the only government that has attempted to legislatively mandate payment of prescribed fees from content provider networks to telecom providers. to ensure network stability. We understand that it is suggested in Europe that a system of "network fees" should be implemented whereby content providers make payments to fund the activities of internet service providers/large telecom companies.

Before turning to the Korean experience, we would like to offer our views on the situation in the European Union (and elsewhere):

a) The existing system of internet peering, transit, co-location and settlement governed by private contracts has worked very well indeed, and consumers are deriving major benefits from smooth operations and high-quality delivery of content in response to their requests. Pricing for interconnection and services in this system – particularly for major players – is determined by commercial negotiations between willing service providers on both sides, and this market composed of many negotiations plays an important role in the functioning of the Internet.

b) To help manage efficient and high quality delivery of their services, content providers have made a huge contribution to the financing and efficient operation of this infrastructure, by working with telecom providers and 3rd party CDN operators in addition to investing in content delivery networks and related infrastructure so that operators can achieve their goal of delivering high-quality, high-bandwidth service to their customers. Content delivery networks (CDNs) establish points of presence (PoPs)

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that get data closer to end users before it is transferred to an telecom provider's network, thereby reducing the overall burden on broadband networks. Likewise, caching allows the most commonly accessed data to stay within a telecom provider's network locally rather than having to be sent afresh, perhaps from across an ocean, every time it is requested. These pieces of Internet infrastructure have helped decongest networks and substantially improve end-users' experience of connectivity; they are largely paid for by content providers seeking to make sure their customers' demand for rapid access to high-quality content is met. However, many of the best-known CDNs (e.g. Akamai, AWS, Microsoft) are traffic aggregators which serve large swathes of the economy <u>in addition to</u> large video providers. If regulated payment of network fees were to be required from these aggregators, in addition to their commercially negotiated arrangements with telecom providers, such fees would almost certainly be passed on to the businesses who are their other customers. Such cost increases would negatively affect many European businesses.

c) Consumers are drawing great benefits from this system and are already paying a broadband service fee for access to a network. It is individual consumers who are demanding through their clicks and taps the delivery of ever-larger quantities of high-quality video content to their screens and devices. These consumer benefits will be put at risk by the proposed "network fees." Consumers would bear the burden of multiple and duplicative fees for the same services delivered over the internet. And – because of the distorted incentives for content management – they are likely to suffer notable degradation in the quality and speed of their video consumption.

d) We do not believe any market failure has occurred in Europe (or elsewhere, generally) that warrants interfering with this system of negotiated contracts. If the EU perceives a need to provide additional financing to build out fiber networks to better serve rural areas, public subsidies are the better, more straightforward financing tool, which would not carry the substantial risks of unintended consequences that would be created by the "network fee" proposals.

e) We would urge the EU to pay close attention to the potential competition concerns inherent in measures that would reinforce the market power of the largest, dominant telecom operators. Smaller alternative operators and MVNOs would be unlikely to derive significant benefits from a network fee, which would thereby perpetuate the market dominance of traditional telecom operators and disincentivize other players from investing in infrastructure or content distribution and curtails innovation.

f) In Europe, as elsewhere, market flows of legally-authorized content are accompanied by very large flows of illegal pirated content. Pirate content is the true "free rider" on internet infrastructure, as providers of pirated content do not fund content creation, pay taxes, partner with telecom providers and 3rd party CDN providers or invest in delivery infrastructure. Pirate content creates bandwidth headaches for network operators, does not contribute to the European creative economy (or the broader economy either) and does great harm to all parts of the audiovisual ecosystem. Proposals for payment of "network fees" would further skew the content marketplace, as such fees would not be paid by pirate services. At the same time, the pirate services are responsible for saturation of some networks at peak hours and have a distinctly deleterious effect on network quality. (These effects are not theoretical; they are very large. One recent study concluded that illegal flows of copyrighted material take up 24% of global bandwidth.[1])

g) At the same time, providers of legal audiovisual content operate in a highly competitive and regulated market, with stringent obligations under the Audiovisual Media Services Directive. If they were required to make payments for "network fees", there would be less funding available for production of original content, and potentially for CDN infrastructure, and could potentially skew the commercial arrangements in place amongst the various players involved in the network architecture. (Reductions in CDN investments could produce the paradoxical undesired effect of worsening network quality.)

Turning to the South Korean precedent for a policy intervention of this type, we believe that example provides a number of good reasons for Europe to avoid "network fees." In both places, there is a superficial political attractiveness in considering whether to mandate content providers to pay fees to support domestic networks, but the policy actually functions to the detriment of domestic consumers.

a. The Korean policy was introduced by a highly-lobbied legislative change pushed by large telecom network operators, rather than an evidence-based analysis of markets or likely impacts. It was not accompanied by any regulatory impact analysis, nor even a transparent exposition of who would pay the proposed fees and what would be the impact on the market for content flows or on consumers. This is not the model the EU should seek to emulate.
b. In fact, Korean consumers appear worse off because of the change. For instance, while other neighboring markets are enjoying improved overall transmission quality, particularly for high-data 4K content, Koreans are seeing a reduction in quality. A WIK-Consult report commissioned by Germany to assess competition in transit and peering markets sums up the overall effects of South Korea's regime: "Market observers report a decline in diversity of online content and expect rising prices for end users for content, as well as lower network infrastructure investments. Quality for end users is declining."[2]
c. At the same time, there have been major unintended consequences to the Korean policy change. Korean content companies are incentivized to

[1] Piracy statistics for 2023 . DataProt. Available at: https://dataprot.net/statistics/piracy-statistics/

[2] Neumann et al., "Competitive conditions on transit and peering markets," Bundesnetzagentur, https://www.bundesnetzagentur.de/EN/Areas/Telecommunications/Companies/Digitisation/Peering/download.html

inefficiently move traffic overseas, to avoid the fees. Disagreements about the volume of traffic flows and the prices owed for them are now common and increasingly the subject of bureaucratic and legal disputes, tying up resources and negatively impacting Korea's reputation as an attractive market for business.

d. At the same time, Korean piracy flows have not been affected, as the pirate operators have not paid any "network fees." In Korea, as elsewhere, they are well and truly the free riders on network investment and development.