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## Background and Key Policy Concerns for Korean “Network Use Fee” Proposals

The Korean National Assembly is considering several legislative bills that would require content providers (CPs), such as digital platforms and streaming services of a certain size, to pay Korean internet service providers (ISPs) a “network use fee” for access to Korean end users. The latest legislative proposals would set a dangerous precedent by imposing disruptive and unwarranted taxes on the delivery of online content, which would ultimately raise costs for end users and CPs, and disincentivize the innovation that has underpinned the growth and socio-economic benefits of the internet-driven economy in Korea and around the globe. These bills may also contravene Korea’s international trade commitments by giving ISPs disproportionate leverage and bargaining power over CPs’ access to telecommunication networks and by impeding the affected CPs’ ability to compete in the market and reach customers.

ITI and INCOMPAS strongly encourage the Korean government to reinforce its commitment to global best practices in interconnection (peering), 99.5% of which are established through mutual agreement without a written contract, and which have consistently supported network expansion and lower costs.<sup>1</sup> As consumer demand for content and applications drives revenue for telecom operators, ITI and INCOMPAS urge the Korean government to respect the current and successful system whereby CPs and ISPs work together on a voluntary and market-driven basis in their mutual self-interests and for the benefit of end users.

Korean policymakers should acknowledge the investments made from all players in the broad internet ecosystem and foster competition within each segment of the value chain. The Korean government should also encourage cooperation across different segments of the value chain through mutually beneficial partnerships to lower costs and enhance the quality of service for all internet users, rather than giving ISPs disproportionate and unjustified leverage to extract payments from CPs.

### Key policy concerns and considerations

- **Network use fees upend the open internet architecture by allowing ISPs to double charge for services for which end users have already paid.** End users pay ISPs for an internet connection with the expectation that it will allow them to reach all legal content available on the internet, without discrimination based on whether CPs have paid “network use fees” or not. CPs do not “push” traffic at ISP customers. Rather, the end users request that content enabled by CPs be delivered to them by their ISP. Similarly, CPs also do not “use” ISPs’ last-mile broadband networks; end users do, and they pay for that network usage. Mandating “network use fees” would therefore lead to ISPs double charging by assessing CPs for services for which end users have already paid.
- **Network use fees erect harmful barriers to consumer choice and competition as well as create market access barriers for CPs.** ISPs control the last mile of internet delivery to end users, and CPs have no alternative routes to reach these users. Today, you can create an online service and make it available to anyone around the world — that is the power and value of the open internet. However, if the proposed network use fees were introduced, CPs would have to negotiate permission from every single access provider to reach customers.
- **Network use fees set a concerning precedent for other markets.** Korean CPs may also be disadvantaged if other jurisdictions adopt similar regulations. For instance, if another

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<sup>1</sup> [https://www.oecd-ilibrary.org/science-and-technology/internet-traffic-exchange\\_5k918gpt130q-en](https://www.oecd-ilibrary.org/science-and-technology/internet-traffic-exchange_5k918gpt130q-en)



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government were to adopt a similar regulation, a Korean CP may be compelled to pay a foreign ISP when end users in that jurisdiction request the Korean provider's content. This could cause problems as Korean CPs expand into overseas markets.

- **This could potentially create a “race-to-the-bottom,”** internet fragmentation scenario where online platforms must pay ever-increasing fees to ensure market access around the world, which would be an especially damaging outcome for all CPs. The introduction of unwarranted and unprecedented costs may also discourage global CPs from making their applications and services available in Korea, to the detriment of Korean end users and competition.
- **Network use fees distort market incentives and give ISPs disproportionate leverage over CPs.** To compel CPs to pay “network use fees,” an ISP could be incentivized to leave traffic congestion on its network unaddressed or even to limit performance by design, effectively restricting end users from receiving the requested traffic from the CP. This congestion represents powerful leverage for an ISP to force the CP to pay network use fees, otherwise the ISP may have little incentive to remedy the congestion that limits opportunities for CPs to reach end users. ISPs may also be unwilling to accept co-investment and cost-saving measures offered by CPs that would increase service performance for end users, such as caching and peering, in order to receive maximum network use fees, which would raise the cost of the internet for everyone.
- **CPs are not “free riders” on the network. CPs invest massively in network infrastructure.** The network use fee proposals ignore the fact that major CPs also invest heavily in network infrastructure, such as submarine cables, data centers and caches, local peering, and other arrangements — often in partnership with telecom operators — that reduce the burden on local ISP networks and improve an end user's experience by reducing latency and improving quality. Research found that, between 2014 and 2018, CPs invested over USD 300 billion in internet infrastructure, or USD 75 billion per year.<sup>2</sup>
- **Despite increased internet traffic, broadband providers' cost of carrying traffic is not growing out of control. Such claims are not new and are not backed by data.** According to past research and ISPs' financial disclosures, the vast majority (90%) of ISP network costs are concentrated in access networks (the “last mile”) that provide the final connection to the end user. Through a combination of technological progress<sup>3</sup> and cooperation between ISPs and CPs (e.g., caching), traffic or usage related costs have not grown, are not expected to grow over time, and will remain a small portion of costs.
  - As early as 2008, a report<sup>4</sup> published by U.K.'s regulator Ofcom states: “in the access network, however, the costs are primarily driven by the number of lines provided, and not the amount of traffic carried. (An operator must provide a functioning line for each customer, irrespective of how much traffic that customer generates)”; “operators [...] are able to exploit significant economies of scale that help to limit the cost increases under most scenarios.”
  - In its response to the UK telecom regulator Ofcom's 2021 Consultation on Net Neutrality, telecom operator Sky stated: “*While in the UK there has been sustained*

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<sup>2</sup> <https://www.analysismason.com/consulting-redirect/reports/online-service-providers-internet-infrastructure-dec2018/>

<sup>3</sup> For instance, optical technology progress now allows networks to fit X Tbps of traffic over a single fiber. One optic (the connectors) can accommodate 400Gbps now where 10Gbps was the trend 10 years ago. Content providers contribute massively to this cost reduction by working with equipment vendors, which telecom operators can also benefit from.

<sup>4</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0012/40323/analysyshqvs.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0012/40323/analysyshqvs.pdf)



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*growth in internet traffic and ISPs continue to invest in more network capacity to meet this growth, these costs still represent a relatively small proportion of the overall ISP cost stack for delivering internet access services and subsequently end users' internet access bills (which remain relatively low and affordable for most). Further, the largest internet companies (and their content distribution network, CDN, partners) also bear the costs of implementing and operating networking solutions with ISPs to cache content closer to end users.*<sup>5</sup>

- **Pending legislation mandating network use fees is targeted at U.S. companies and contravenes Korea's international trade commitments under the World Trade Organization (WTO) General Agreement on Trade in Services (GATS) and Korea-United States Free Trade Agreement (KORUS).** Korean lawmakers have explicitly identified U.S. CPs as their targets for bills pending in the National Assembly. **By unfairly imposing costs and requirements on foreign CPs, the proposals are in tension with Korea's commitments under the WTO GATS and KORUS.**
  - Korea has full market access commitments in telecommunications/computer-related services under both KORUS and WTO GATS. The proposed network fees essentially impose an additional tariff on U.S. CPs and the data they send on a cross-border basis, which would affect the ability of U.S. CPs to provide their services in the Korean market.
  - Korea also has full commitments under KORUS and WTO GATS for national treatment and most favored nation treatment. It is clear from the bills' legislative history that the bills are targeting U.S. CPs for the purposes of imposing costs and requirements that will not apply equally to all "like" CPs, including those from third countries.
  - Under KORUS Article 14.2, Korea is required to ensure that U.S. service suppliers have access to and use of any public telecommunications network or service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions. In addition to the fact that mandatory contracts and payments between ISPs and CPs are not consistent with international practice, it is not "reasonable" for the proposed bills to further restrict the options for U.S. CPs to access the Korean network, particularly given the service reliability obligations already imposed by the 2020 amendment to the Telecommunications Business Act.
- **The fees will further isolate Korea's global connectivity and harm Korean consumers and digital exports.** Consumers will have poorer quality service at higher prices, content and application providers will be impeded from delivering services to Korean end users, and Korean companies will face new barriers reaching a global market. Particularly at a time in which Korea is trying to expand its digital exports of online services and content, this legislation would likely make it more difficult and expensive for Korean companies to send their traffic abroad. Korea has limited international connectivity both in terms of interconnections to global ISPs and the number of submarine cables. Introducing these new requirements would impede Korea's ambitions to become a hub or contact point for international network connections and the associated foreign direct investment and job growth. Global content delivery networks and CPs already consider Korea to be the one of the most expensive countries to send traffic and, as a result, charge higher fees to all online services which need to interconnect into and out of Korea.

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<sup>5</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0033/229578/sky.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0033/229578/sky.pdf)