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| VIEWS ON articles five through eight and appendix 1 OFTHE 2012 INTERNATIONAL TELECOMMUNICATION REGULATIONS |

**Introduction**

Pursuant to the Work Plan agreed to at the September meeting of the Expert Group on the International Telecommunication Regulations (EG-ITRs), Australia, Canada, and the United States are pleased to offer their views on Articles 5 through 8 and Appendix 1 of the 2012 ITRs. The provisions on charging and accounting rates, security and robustness of networks, and unsolicited bulk electronic communication, in our view, are neither applicable nor flexible in today’s communications environment. Any attempt to revise the 2012 ITRs to address existing economic conditions and emerging technologies and services will meet the same fate as the current provisions – because of the rapidly changing market and regulatory environment, detailed treaty provisions will perpetually be obsolete.

**Discussion**

In an earlier contribution to the EG-ITR meeting in September 2019, we highlighted one of the fundamental problems with the use of a treaty instrument to attempt to regulate a competitive and dynamic marketplace. Treaty provisions relating to telecommunications must be flexible enough to withstand constant changes in the market. Treaty provisions designed to address specific aspects of an evolving market will continually face obsolescence.

This fundamental tension can be seen in many provisions of the 2012 ITRs. For example, Article 8 and Appendix 1 on Charging and Accounting include several detailed provisions that govern the establishment of accounting rates between Member States, but the vast majority of traffic is no longer exchanged under such an accounting rate regime. As a result, Article 8 and Appendix 1 are largely irrelevant to the current international telecommunications environment. Trying to apply the accounting rate provisions or even to revise them to apply to current market-based arrangements would impede the flow of international telecommunication traffic and deter market and technological innovations that improve services and lower prices for consumers. In addition, over the years increased investment and competition led to added network capacity and lower price for exchanging international traffic than under the accounting rate regime.

The majority of the provisions of Article 5 on Safety of Life and Priority of Telecommunications are reflected in all instruments of the Union and do not add additional relevance/value here. Additionally, the provision on free emergency call is redundant considering that operators in a majority, if not all of the Member States, have a long tradition of providing such service.

The provision on Security and Robustness of Network in Article 6 in our opinion is of little practical use. We believe technical solutions to address network security and robustness would produce a more desirable outcome than the regulatory provision of the ITRs.

Similarly, we believe the provision in Unsolicited bulk electronic communications (e.g., SPAM) in Article 7 is neither effective nor applicable. Measures to counter spam are evolving too rapidly to be addressed in a stable document such as a treaty like the ITRs. Advances are made in this area continually and any attempt to address SPAM through the ITRs would be ineffective and would be outdated immediately. The most effective mechanisms for responding to SPAM are technological.

**Conclusion**

Treaty provisions that are general in nature are more likely to withstand changing market conditions and technological innovation. We believe that general provisions of the ITRs included in the ITU Constitution and Convention are more resilient and capable of enduring changing market and technological environment.[[1]](#footnote-1)

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1. See Expert Group to Review the ITRs (2007 – 2009), Information Document 5 on Relation between the ITRs and Constitution and Convention available at <https://www.itu.int/md/T05-ITR.EG-INF-0005/en>. [↑](#footnote-ref-1)