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| **STUDY GROUP 3** |
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| **CONTRIBUTION** |
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| **Title:** | Response to TD 20Rev2 (PLEN/3) – Report of the RGM on OTTs (23 – 24 February 2017) |
| **Purpose:** | Proposal |
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| **Keywords:** | OTTs; Recommendation |
| **Abstract:** | This contribution affirms the position of the United States that an OTT Recommendation is not necessary. Should work nonetheless proceed on the draft Recommendation in TD 20Rev2 (PLEN/3), this contribution also provides redline edits to TD 20Rev2 (PLEN/3) Attachment 1, revised base text of draft recommendation on OTTs.  |

**Discussion.** As the United States and others have explained, the draft Recommendation in TD 20Rev2 (PLEN/3) is unnecessary. Over the Top (OTT) offerings provide consumers additional choices for how they can communicate, and frequently at a significantly reduced - or no - cost as compared to traditional international voice telecommunications.

Importantly, OTT offerings stimulate demand for broadband services, thereby increasing revenues for traditional telecommunications operators – both wired and wireless - for these services. As markets transition to these new offerings, telecommunications operators are able to revise their business models to maintain revenues (broadband replaces traditional voice); and innovation and investment are encouraged, which result in increased revenues for governments in the form of fees and taxes. These benefits to consumers, operators, and governments demonstrate why no new OTT Recommendation is needed. Indeed, constructing a definition of OTT in an ITU-T Recommendation alone would be near-impossible: Member States define OTT differently under their sovereign authorities and no single “worldwide” characterization, see Article 17 of the Constitution, exists or could be created.

The OTT Rapporteur Group has not completed any studies necessary to justify this potential Recommendation. The draft economic study, in TD 22 (PLEN/3), still requires further review, yet demonstrates that OTTs are beneficial and can thrive in an encouraging environment, and does not indicate any need for a Recommendation or additional regulations. Further, the draft report was sent to the Rapporteur Group for review and revision but that group never discussed the draft or the edits it received nor has Study Group 3. Neither, as required by the terms of reference of the Rapporteur Group, has there been coordination with the BDT, which is nearing the completion of its own report on OTTs, to understand what work already has been completed and what additional work, if any, might be appropriate. At a minimum, the stability of the draft Recommendation requires elimination of [square brackets], consensus, and completion of all necessary coordination.

In addition, as shown in the attached edits, the draft in TD 20Rev2 (PLEN/3) addresses national policy matters (e.g., tax policy) and not the economic impact of relevant OTTs on international telecommunication services, which is the limit of the mandate of Study Group 3 as reflected in Question 9/3. Likewise, the proposed draft addresses matters that are outside the mandate of Study Group 3, as well as the ITU itself, specifically personal data protection and cross border data flows. Finally, the draft in TD 20Rev2 (PLEN/3) addresses high-level policy considerations and does not address “technical, operating and tariff questions and adopting Recommendations on them with a view to standardizing telecommunications on a worldwide basis” as required by Article 17 of the Constitution.

**Proposal.** For all of these reasons, the draft Recommendation in TD 20Rev2 (PLEN/3) should receive no further consideration by Q9/3. The Rapporteur Group should instead focus on the study for which it was created – the economic impact (including positive impacts) of voice and messaging OTT offerings on international telecommunication services. Nonetheless if Q9/3 directs the Rapporteur Group to continue to review this document, attached are additional suggested edits (in Annex 1 to this contribution) to Attachment 1 of TD 20Rev2 (PLEN/3).

The United States requests that this contribution be made available publicly without restriction.

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**ANNEX 1**

**DRAFT RECOMMENDATION on OTT**

1. **Introduction**

With the increase of global mobile and fixed broadband penetration, the growth of accesses with high-speed broadband connections, as well as the rapid adoption of connected devices, consumers have been provided with access to a wide variety of over-the-top (OTT), some of which may supplement traditional, international [voice and messaging services] provided by telecommunications operators, adding features that would not otherwise be delivered. The changes underway in the industry are supplementing existing services and are a natural evolution of existing technologies.

These OTT have the potential to benefit the entire international telecommunication services ecosystem, whilst they have been strengthening ubiquitous connectivity and providing social and economic benefits to consumers worldwide and the global economy. At the same time, the potential economic impact on the traditional model of the international telecommunications industry and on telecom operators is being increasingly analysed.

Consideration of that potential economic impact of OTTs should include an understanding of the fundamental differences between traditional telecommunications services and OTTs, including *inter* *alia*, provision of network connectivity, level of regulatory exposure, ease of market entry, competitive environment, level of substitutability between OTTs and traditional telecom services and interconnection to public switched telephone networks.

In particular, determination of competitive scenarios involving OTT and traditional telecommunications services should consider the complexity of their symbiotic interrelationship. In some cases, they may deliver similar functionalities, in other areas they may be supplementary, whereas in other aspects, OTT provide different functionalities than traditional telecom services typically deliver.

1. **Scope**

This Recommendation addresses the need for promoting competition, consumer protection, dynamic innovation, sustainable investment and infrastructure development, accessibility and affordability of public international telecommunication services to the largest part of their population in relation to the global growth of relevant OTTs. It also recognizes the need to consider fundamental technical differences between OTTs and public international telecommunication services.

1. **Definitions**

Because the definition of OTT is a matter of national sovereignty and varies between Member States, no attempt to define the term is made or inferred in this Recommendation.

1. **Abbreviations and Acronyms**

OTT Over the Top

1. **Creating an enabling environment to encourage competition, innovation and investment in the digital economy**
	1. Member States are encouraged, in coordination with all relevant stakeholders, including service providers, to consider measures to promote competition, encourage innovation and investment in the international telecommunications ecosystem.
	2. To promote competition, innovation and investment in a highly dynamic and fast-moving industry, Member States should assess the economic, policy and consumer welfare impacts of OTT in areas in which they have jurisdiction, including the regulatory framework and existing economic incentives.
	3. Member States are encouraged to consider enabling policies and/or regulatory frameworks to foster competition between and among international network operators and providers of relevant OTTs and other measures, for example deregulation of traditional telecommunication networks and services, where appropriate. Member States should also consider enabling policies and/or regulatory frameworks that permit commercial partnerships between and among international network operators and providers of relevant OTTs.
	4. An important element of competition policy is the identification and definition of relevant markets, and in this context, Member States should consider the fundamental differences between traditional telecommunications services and relevant OTTs, including technological differences and differences among discrete geographic markets, the cross-border and global nature of relevant OTTs, as well as low barriers to entry for OTTs, amongst other factors.
2. **Relationship between [relevant] OTT and network operators**
	1. In the new communications ecosystem, connectivity, and services, while no longer tethered together, all remain critically interdependent. Given that network operators and relevant OTTs may be part of the same ecosystem, Members States should be encouraged to consider the important inter-dependencies between them, including how consumer demand for OTTs can lead to an increase in demand for data from telecommunication service providers as well as a decrease in demand for traditional services.
	2. Member States should encourage cooperation as far as practical between providers of relevant OTTs and network operators, with a view to fostering innovative, sustainable and viable business models.

**6.3** Member States should continue to stimulate entrepreneurship and innovation in the development of telecommunication infrastructures, especially the development of high capacity networks, considering the disruptive power and the social and economic impact of increasing access to broadband connections.

1. **Fostering innovation and investment**
	1. Member States should continue to foster entrepreneurship and innovation in relevant OTTs which are of benefit to users, and encourage sustainable infrastructure investments.
	2. In the spirit of service availability and affordability, Member States should foster enabling legal and regulatory environments, and develop policies that are fair, transparent, stable, predictable and non-discriminatory; and that promote competition, foster continued technological and service innovation and encourage private sector investment incentives, that will enable the continuing growth and adoption of relevant OTTs.
	3. Member States and Sector Members should consider participating and contributing to private sector-led global standardization efforts to ensure secure and affordable services and applications for consumers.
	4. More generally, Member States are encouraged to consider not only the opportunities that relevant OTTs provide to increase data network revenues, but also the wider benefits OTTs can provide to society as a whole . Member States should foster access to and growth of these offerings through, *inter alia*, support for innovation, demand stimulation, industry collaboration and public-private partnerships.
2. **Consumer protection and International Collaboration**
	1. Due to the ever-increasing volumes of data being exchanged globally , including through relevant OTTs, as well as over international traditional telecommunication services, Member States and regulators may take appropriate measures to encourage all market participants to maintain the security of international telecommunications networks carrying such data and thus help protect consumers of relevant OTTs.
	2. Given the global nature of many relevant OTTs, collaboration across multiple Member States and Sector Members should be strongly encouraged.

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