Communications Alliance Ltd contribution to the ITU CWG-Internet: Online Open Consultation Public Policy considerations for OTTs

Summary

The Communications Alliance believes it is important for all stakeholders to have their views heard on internet issues and therefore welcomes the opportunity to contribute to the ITU Council Working Group on Internet's open consultation on OTT services.

OTT services are increasing in popularity and, in Australia, access to this content is supported by the communication industry's continued investment in infrastructure including 4G (and soon 5G) mobile networks and the rollout of the Australian national broadband network. The Communications Alliance supports competitive neutrality between traditional network operators and service providers and new OTT providers. We support a level playing field for regulation, but regulation should not be at the expense of innovation of investment in new services or products. We consider that there are opportunities for existing regulation to be amended or replaced with self-regulatory mechanisms such as industry codes.

The Communications Alliance appreciates the important role the ITU plays in allocating global radio spectrum and satellite orbs, developing the technical standards that ensure networks and technologies seamlessly connect, and improving access to ICTs to underserved communities worldwide. We do not support the ITU's work program expanding to include internet issues beyond its mandate, and we believe that the ITU is not the appropriate place for the development of OTT regulation.

1. What are the opportunities and implications associated with OTT?

OTT communications are those delivered by an application that is run over-the-top of another carriage service, and can be accessed using any compatible internet access device. Common examples of OTT services are mobile phone or computer apps that provide messaging (e.g. Facebook Messenger, iMessage), voice call services (e.g. Skype, Facetime), and video or audio services not provided by the phone or internet provider (e.g. Netflix, YouTube channels and Spotify).

Research from the ACMA released in late in 2015[1] showed the increasing popularity and take up of OTT services. For example, in any given week in the six months to June 2015, 53% of adult Australians (approx. 9.62 million people) watched professional online video content (such as YouTube, Netflix and iTunes), 34% watched online television or online professionally- produced video content (such as catch-up TV, other free online video content, video content via a subscription service, or pay-per-view content), 11% watched Netflix, 28% accessed a VoIP service and 65% used social networking.

Access to this content is supported by the communication industry's continued investment in infrastructure including 4G (and soon 5G) mobile networks and the rollout of the Australian national broadband network (nbn).

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[1] Australians are going over the top (2015) ACMA
http://www.acma.gov.au/theACMA/Library/researchacma/Research-reports/australians-are-going-over-the-top

The opportunities and implications for CSPs in relation to OTTs are largely dependent on the ability of CSPs to take advantage of increased revenues resulting from consumers using feature-rich smartphones to offset declines in voice and SMS based traffic. We believe SMS will remain relevant as a method of bridging the gap between OTT services on smartphones and consumers who don't use those services.[2]

The telecommunications value chain has fundamentally changed with the entry and ongoing impact of OTT players in the market, and the value chain will likely continue to evolve at a rapid pace (also spurred on by the development and roll-out of 5G and the Internet of Things). Although VOIP and OTT services are not necessarily a direct substitute for fixed line voice services and SMS, government, industry, regulators and consumers need to acknowledge that substitution is taking place and the increasingly important role these services will play in the market in coming years.

2. What are the policy and regulatory matters associated with OTT?

We support a level playing field for regulation to ensure that all service providers are treated equally in the same market and that any regulation is applied proportionately when considered with its costs. However, regulation should never be at the expense of innovation or investment in new services or products. Rather, the increase in competition and choice for consumers should enable a lessening of the regulatory burden across fixed and wireless platforms.
Relevant issues include:

•   Consumer safeguards: We believe that the introduction of OTT players paves the way for a less prescriptive and more flexible regime that can better and more rapidly adapt to the evolving market.
•   Privacy, security, intellectual property rights and data portability: Regulatory frameworks must adapt to the market by recognising new competitors and being competitively neutral. Like services should be regulated alike, to provide fairness and clarity for competing industry participants and to avoid the regulatory gaming and economic distortions that arise if similar services delivered via different technologies are regulated differently.

As noted, regulation must create or maintain a level playing field. This is not always the case, but it is essential to avoid creating commercial disincentives or an anti-competitive environment.

3. How do the OTT players and other stakeholders offering app services contribute in aspects related to security, safety and privacy of the consumer?

CSPs are not responsible for, nor able to control viewing habits, copyright infringement (other than via website blocking), and/or redistribution of content. However, CSPs do have responsibility for providing interception capability for calls made over their own network. This includes decrypting calls made on their own network. However, CSPs do not have the capability or resources to decrypt calls made using OTT applications e.g. Skype, WhatsApp, where the CSP has no information regarding the encryption key.

For OTT developers, many would rely on their development platforms to provide the security, safety and privacy aspects. For smaller developers, these aspects may not necessarily be a focus.

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[2] ITU Council Working Group Internet, Open Consultation on Public Policy considerations for OTTs
GSMA Submission (August 2017)

4. What approaches might be considered regarding OTT to help the creation of environment in which all stakeholders are able to prosper and thrive?

We should support competitive neutrality between 'traditional' network operators/service providers and new OTT providers. For example, where new OTT players are creating effective competition in a sector, then historic sector-specific regulations based on regulating a monopoly or uncompetitive sector should be removed.

Where regulations are retained for other policy reasons e.g. consumer protection, regulation should be applied in a non-discriminatory manner to all players in the market. In this scenario, a national regulator is best placed to ensure consistent application of regulation Australia- wide and also avoids the creation of (more) overlapping, duplicated or inconsistent State- based consumer protection legislation. The national competition regulator is also best placed to manage conflicts between competition and consumer protection rules.

5. How can OTT players and operators best cooperate at local and international level? Are there model partnership agreements that could be developed?"

We believe that the current regulatory environment has not kept pace with change and, in particular, with the entry of OTT players into the telecommunications market. There is considerable opportunity for regulation to be amended or replaced with self-regulatory mechanisms such as industry codes. Treating all industry participants equally would encourage network operators to innovate and enable them to compete on a level playing field with OTT operators.

In some jurisdictions, partnerships between network operators and OTT providers are a source of competitive differentiation, however the 'model' may take many forms and depend on the nature of the carrier and OTT service provider involved. We recommend the ITU and regulatory bodies leave such partnerships to commercial agreements between network operators and OTTs. Under no circumstances do we see any need for a model partnership agreement to be developed by the ITU.