



OTT IMPLICATIONS AND EQUIVALENT TREATMENT

Same Service Same Rules (SSSR)

ITU-ASEAN Forum on Over-the-Top (OTT) Services
8-9 December 2015, Cambodia

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Advancing Asia

multinet

Pakistan

!dea

India

Dialog

Sri Lanka

robi

Bangladesh

Smart

Cambodia

m1

Singapore

celcom

Malaysia

XL axiata

Indonesia

eco

enabling connectivity

Revenue

RM **18.7** Billion

PATAMI

RM **2.3** Billion

Market Cap

RM **60.5** Billion

Subscribers

> **260** Million

Employees

25,000

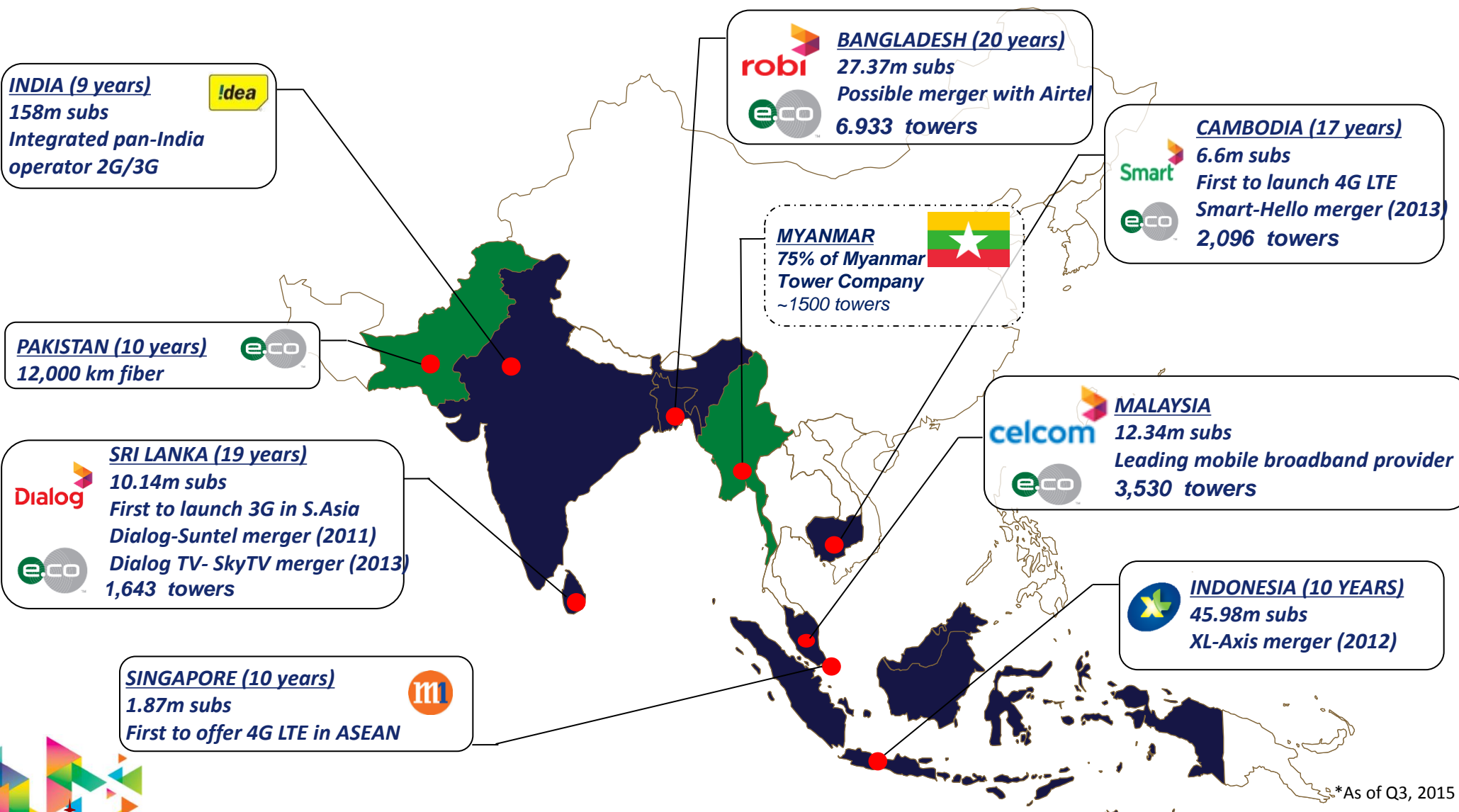
Countries

8

*FY2014

AXIATA'S GOAL: ADVANCING ASIA

One of Asia's largest telecommunications groups; a global brand visible in 8 countries across the region with over 260mil customers and 25,000 employees



*As of Q3, 2015

Challenges due to OTTs

INCREASING NUMBERS OF OTT PLAYERS OPERATING THROUGHOUT THE VALUE CHAIN



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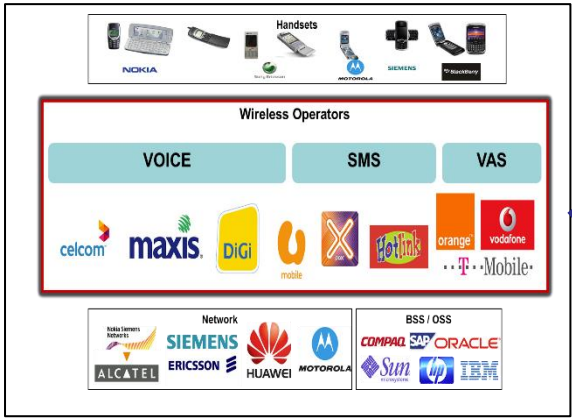
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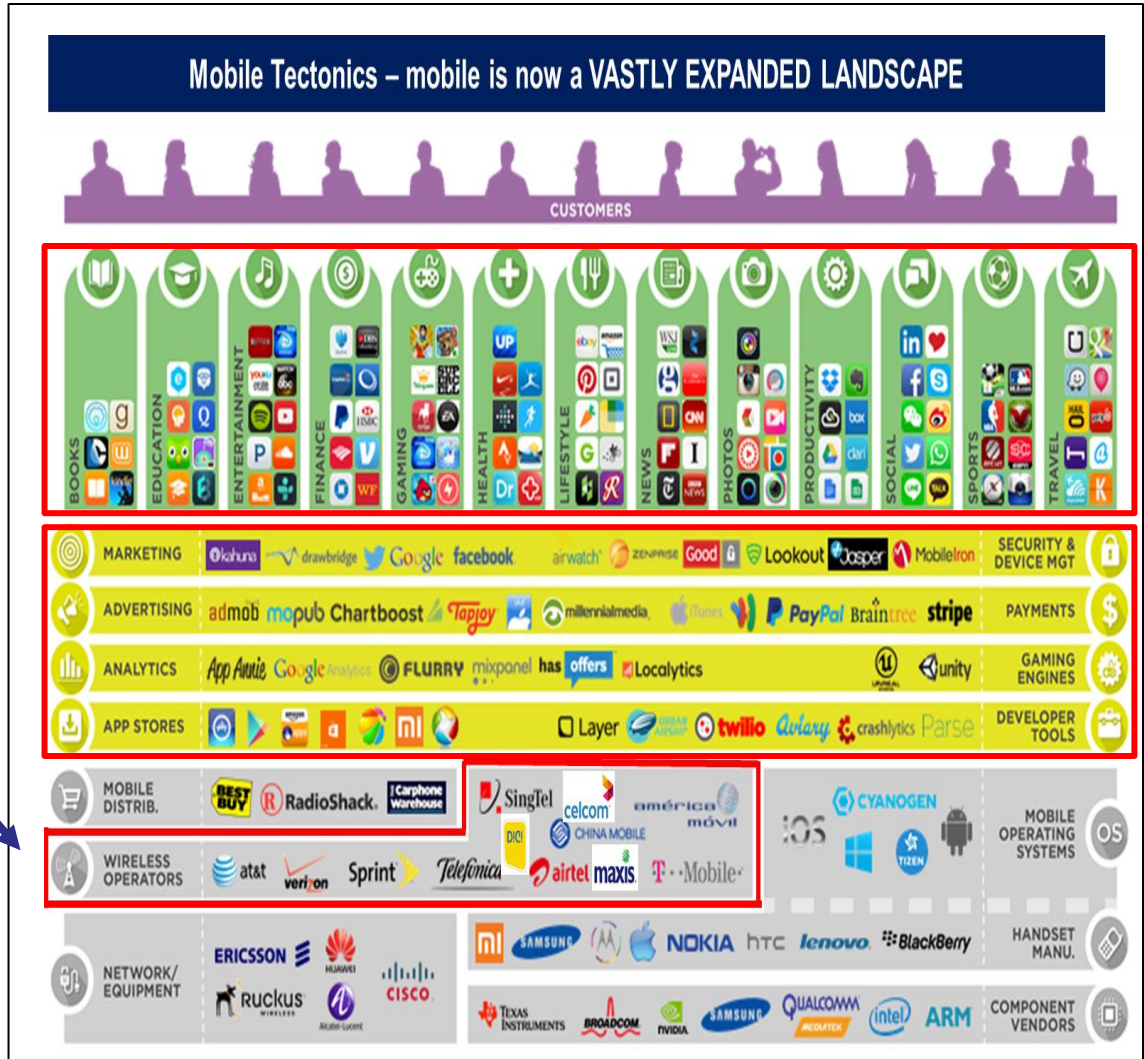
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Source: Literature; 1 IM: Instant Messaging; VOIP: Voice over IP

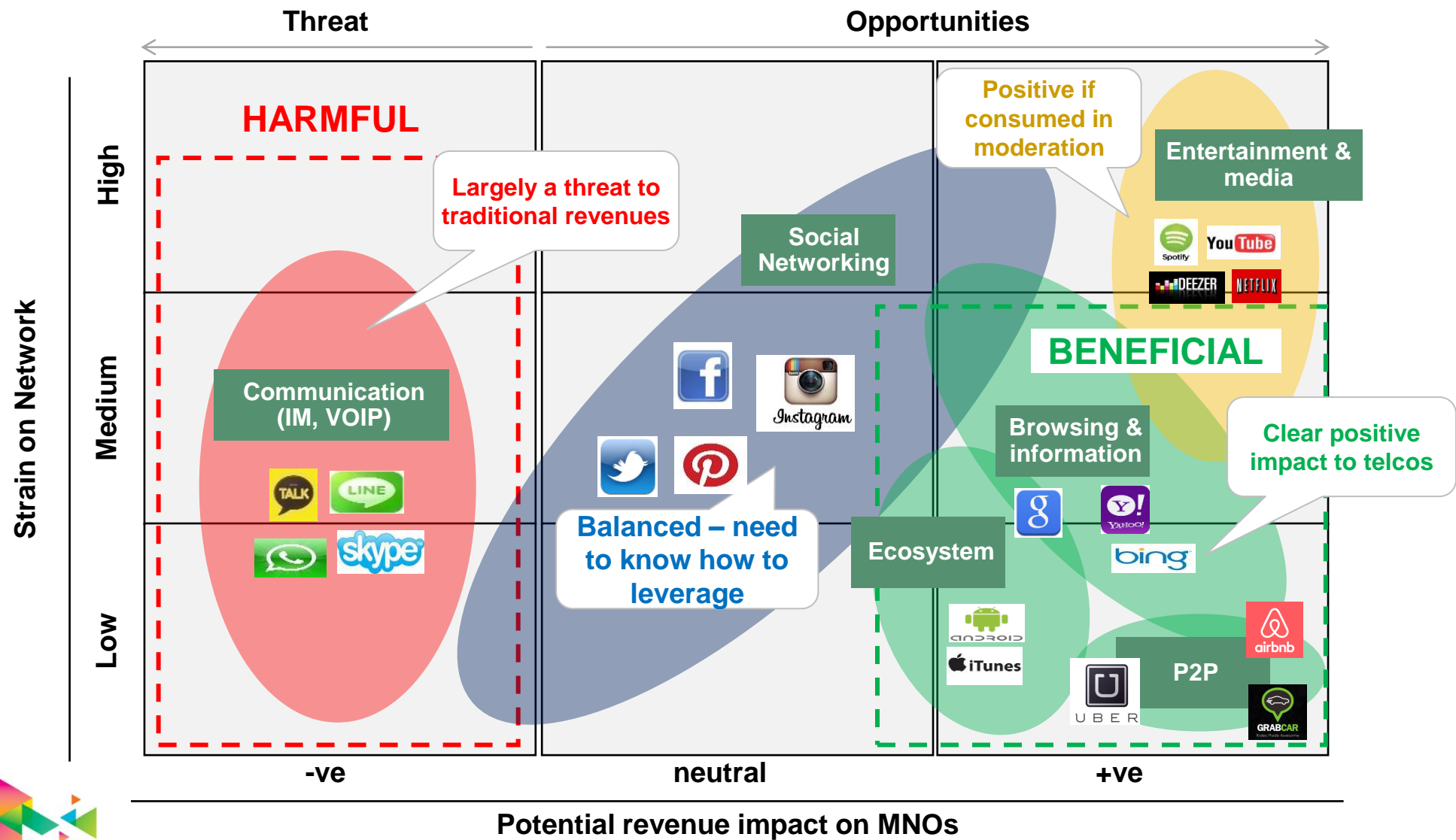
The bigger pie of the industry



Continued Presence



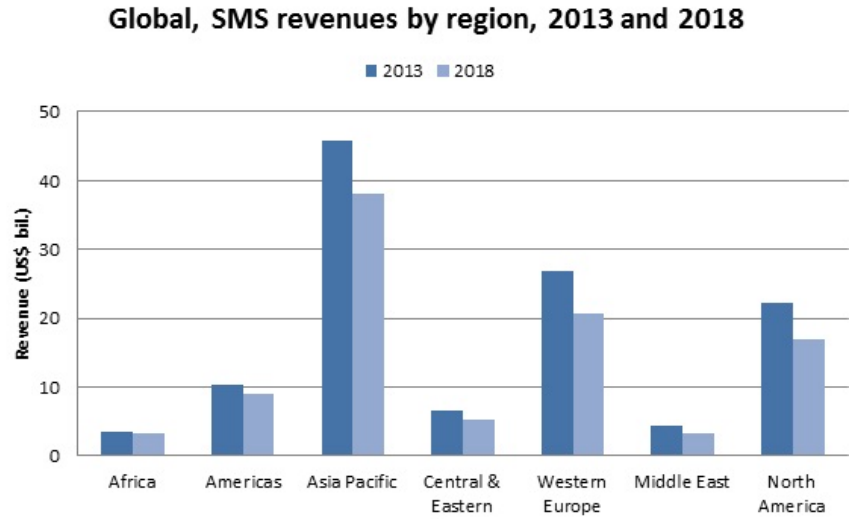
OTT SERVICES CREATE DIFFERENT IMPACT TO OPERATORS, YIELDING THREATS AND OPPORTUNITIES



THE THREAT IS MATERIALISING AND ITS IMPACT PUTS INVESTMENT AT RISK

Revenue from traditional voice and SMS services is static / falling. OTT substitution effect will affect future ability reinvest into network and innovative services

“Global annual SMS revenues will fall to around US\$97 Bn in 2018, down from US\$120 Bn in 2013... annual Asia Pacific SMS revenues to drop from US\$45.8 Bn in 2013, to US\$38 Bn in 2018” – Telecoms.com, 13 November 2013

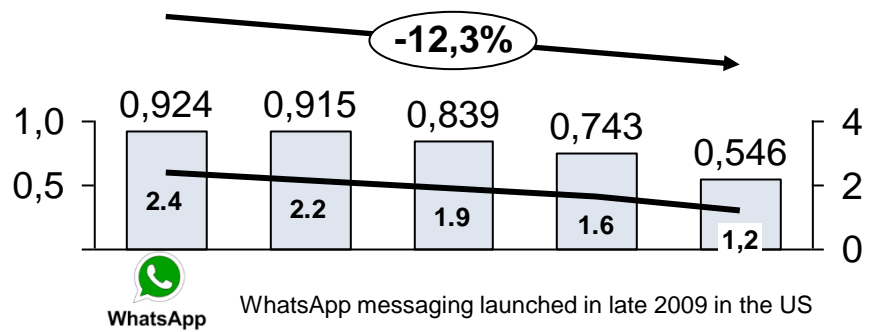


Source: Informa Telecoms & Media

WhatsApp free voice calls: “The new service, could help wipe hundreds of billions of dollars from the revenues of mobile carriers in the next five years, say analysts”. - The Financial Times, 24 Feb 2014

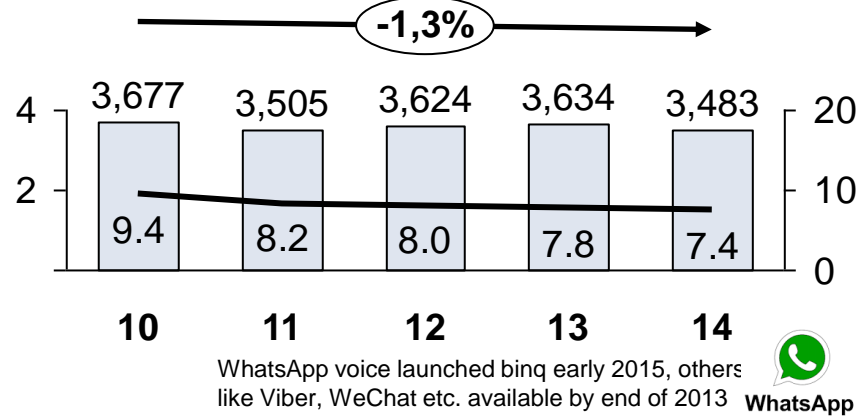
MY: TOTAL SMS INDUSTRY REVENUES & ARPU (only Celcom, DiGi, Maxis)

Total Net Revenues in bn. US\$, Monthly SMS ARPU per Sub in US\$ — Avg. ARPU (line), Revenues (bars)



MY: TOTAL VOICE INDUSTRY REVENUES & ARPU (only Celcom, DiGi, Maxis)

Total Net Revenues in bn. US\$, Monthly Voice ARPU per Sub in US\$ — Avg. ARPU (line), Revenues (bars)



Same Service Same Rules (SSSR)

OTT PROVIDERS AND MNOs SHOULD BE TREATED SIMILARLY

Same regulations regardless of difference in technology or business model adopted, especially services that are functionally or economically substitutable

	MNOs	vs	OTTs
Business model	<ul style="list-style-type: none"> Regulated, licenced, high-CAPEX, long-term and nationally-based Focus on connectivity / services, Customer data for user enrichment 		<ul style="list-style-type: none"> Unregulated, global and "seasonal" Mostly centred around use of consumer data (service not 'free')
Licensing	<ul style="list-style-type: none"> Multiple licenses with >200 including obligations on rollout, interconnection and CSR 		<ul style="list-style-type: none"> Usually no license needed; exposed to minimal obligations
Taxation	<ul style="list-style-type: none"> Sector-specific fees e.g. spectrum, USO, licence and general corporate taxes 		<ul style="list-style-type: none"> No sector-specific taxes, freedom to structure business primarily for tax planning
Privacy & Security	<ul style="list-style-type: none"> Horizontal laws; sector obligations Rules on data localisation, retention, disaster recovery and LI 		<ul style="list-style-type: none"> Uncertain enforcement Minimal restrictions on data location, retention and LI
Consumer Protection	<ul style="list-style-type: none"> Customer-centric obligations e.g. transparency, contract info, QoS, SMP 		<ul style="list-style-type: none"> No specific enforcement outside major countries

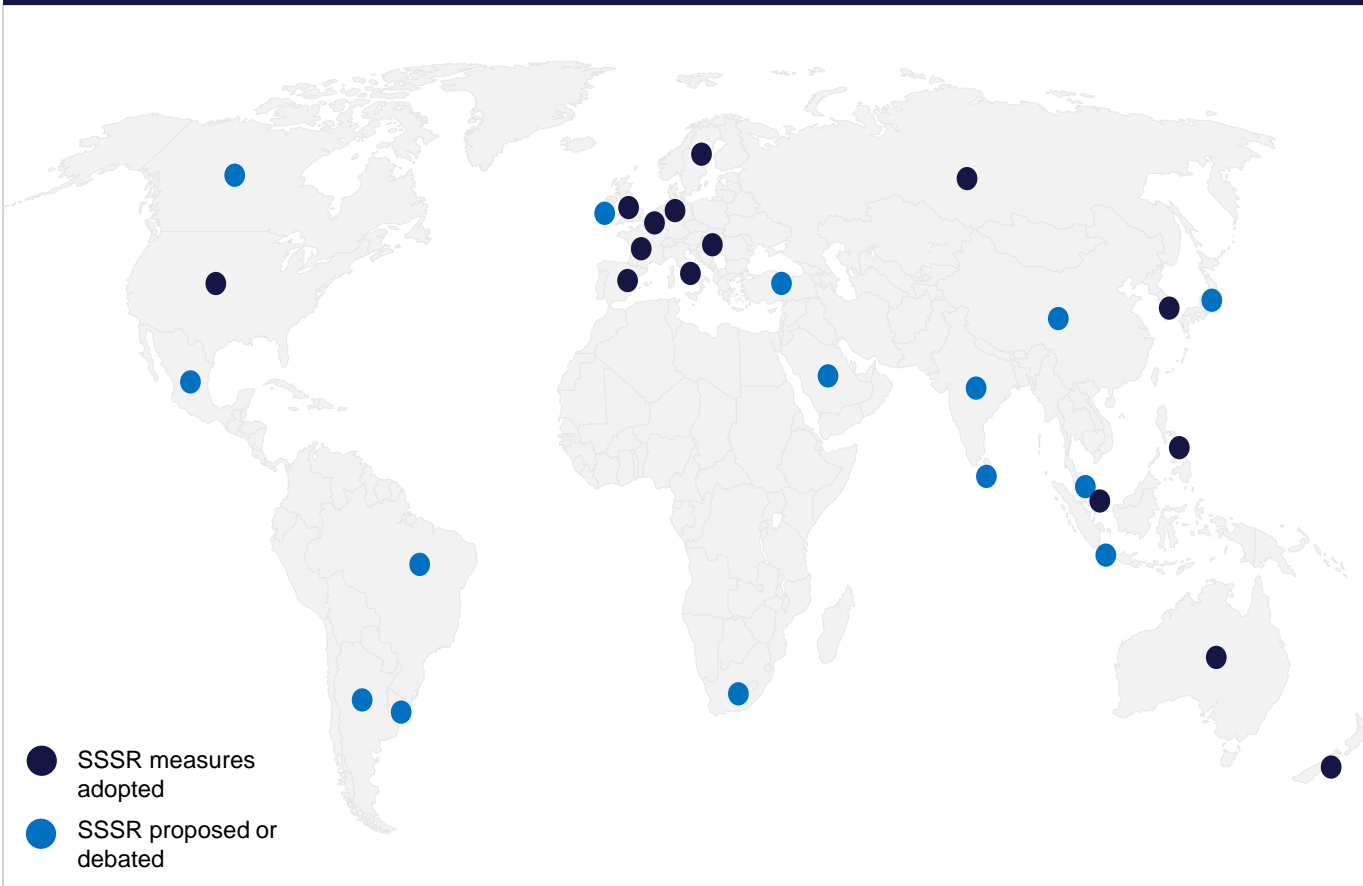
- ### Meet High Quality Regulatory Principles?
- 1. Long-term interest of consumers**
allows regulators to balance a range of competing aims e.g. affordability, service quality, service choice and safety
 - 2. Non-discrimination and technology neutral**
ensures rival services compete on the merits of the value that they offer consumers, rather than on the basis of some unfair advantage
 - 3. Innovation**
ensure competitive incentives remain to promote genuine innovation that creates additional value for consumers.
 - 4. Proportionality**
ensure that regulation is intended to address identifiable specific risk of harm.
 - 5. Responsiveness**
ensure regulatory frameworks evolves to reflect technological, economic etc. changes



THERE ARE INCREASING TRENDS BY POLICY MAKERS TO CAPTURE OTTs AND NON-TRADITIONAL PROVIDERS UNDER REVISED / NEW NATIONAL LAWS AND REGULATIONS



Examples of Revised OTT Treatment via SSSR rules*



General	<ul style="list-style-type: none"> EU: Digital Single Market reform ('16) MY, AU: Discussions on regulating Uber PH: Regulatory Framework for Uber ('15) MX: Establishing OTT regulations
Licensing	<ul style="list-style-type: none"> ID: Proposed OTT licensing; e-coms law IN: Proposed regulation of Internet-based domestic calling apps MY: OTT part of CMA 1998 review
Taxation	<ul style="list-style-type: none"> UK: Diverted Profits Tax ('14) AU: Sharing Economy & Tax Guidance ('15) OECD/G20: BEPS ('15/16) KR: To introduce "Google Tax" ('16) IT: To introduce "digital tax" ('16) NZ, AU: GST on online goods ('16)
Priv.; Cons. Prot.	<ul style="list-style-type: none"> EU: GDPR under market reforms ('16) IN: Proposed LI framework FI: Information Society Code ('14) incl. OTT privacy, security & cons. protection BE: Claim Skype is a telecoms operator DE: Claim Gmail is a telecoms service EU, RU, DE: Antitrust claims

Addressing this will:

1. Meet long-term interest of consumers, promote digital innovation and ensure MNOs will be able to reinvest into the network.
2. Ensure international OTTs with relaxed rules will not impair the development of local OTTs
3. Ensure government to a certain extend will continue to have control on content, application services and customer data

OECD'S BASED EROSION AND PROFIT SHIFTING (BEPS) GAINING TRACTION

G20 Meeting in Nov 2015 endorsed measures; implementation early 2016-2020 supported by IMF, UN and the World Bank; interested non-G20 countries can join.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Policy Brief

- 15 final outputs in Oct 2015, since 2013
- Closing gaps in international tax rules that allow MNCs to legally but artificially shift profits to low or no-tax jurisdictions.
- Developed equal footing measures, with extensive engagement by developing countries and regional tax organisations.
- Designing an inclusive framework for monitoring and implementation support

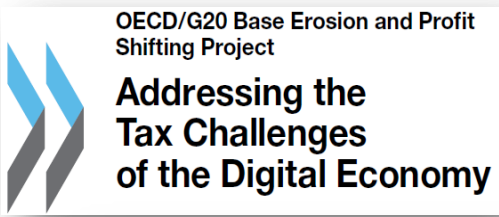
The importance

- **USD100-240Bn (or 4-10% of global revenues) of lost taxes annually from global corporates** shifting their profits to lower tax regimes e.g. Ireland, Luxemburg, Netherlands, etc.
- **Reduces national tax revenues and harms public**
- **Domestic companies face an uneven playing field**

The impact

- **Improving coherence:** model rules to eliminate exploitation; best practices identified
- **Tightening substance:** upgraded transfer pricing rules; modified definition of “permanent establishment” to better reflect business realities and avoid widespread circumvention
- **Ensuring more transparency / certainty:** mandatory disclosure rules; reporting templates; dispute mechanisms reinforced; G2G exchange information; monitoring tools

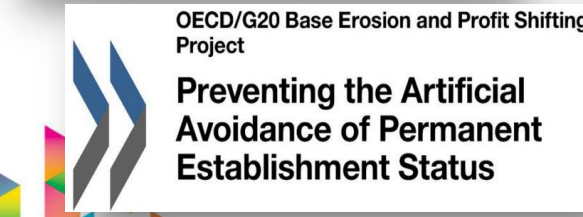
Examples of Final Outputs



OECD/G20 Base Erosion and Profit Shifting Project

Addressing the Tax Challenges of the Digital Economy

- *Rules and mechanisms developed to collect tax based on country where consumer is located e.g. VAT / GST on cross-border transactions,*
- *Technical options to deal with the broader tax challenges e.g. nexus and data discussed / analysed.*
- *Initially proposed methods to test for fully dematerialised digital activities and significant digital presence*



OECD/G20 Base Erosion and Profit Shifting Project

Preventing the Artificial Avoidance of Permanent Establishment Status

- *Agreed permanent establishment (PE) definition changes to address techniques used to avoid the tax nexus, incl. via commissionaire arrangements and artificial fragmentation of biz activities.*
- *Changes proposed for inclusion in the multilateral instrument that will implement the results of the work on treaty issues mandated*

OPTIONS TO ADOPT A EVOLVED REGULATORY FRAMEWORK

Imposition of equivalent regulatory treatment available with a mix of Option 1 “Extend” and Option 2 “Change / Relax regulation for MNOs”

1 Extending the current level of regulation through horizontal regulation and rules

Competition law: consideration of market reviews taking into account competitive impact of OTT providers

Taxation on revenues and profits: based on any national market activity

Data protection and privacy: depending on whether laws are already present and have kept up with best practice

Consumer protection: possible incorporation of transparency controls

National security obligations: considerations on any services with the potential to be used to engage in criminal or terrorist activity

Potential Implementation and Enforcement

Options based on practicability and effectiveness of enforcement

1. Voluntary compliance systems
2. Local subsidiary or payment route enforcement
3. Registration-based licensing systems
4. White-list for advertisers and app-stores
5. Black-listing non-compliant providers

Different approaches applicable or viable for different types of OTT providers e.g. internet majors, niche providers, illegal providers.

2 Relaxing the current level of regulation i.e. sector-specific regulatory frameworks and rules

Licence and Spectrum fees: modification of definition of relevant revenue and applicability of OTT licensing

Universal service obligations: reconsideration of USOs and their effectiveness

Quality of service regulation: roll back for communications services and applied consistently if substitutable

Emergency call service obligations: with possible location information requirements for a limited period

Constructive Engagement

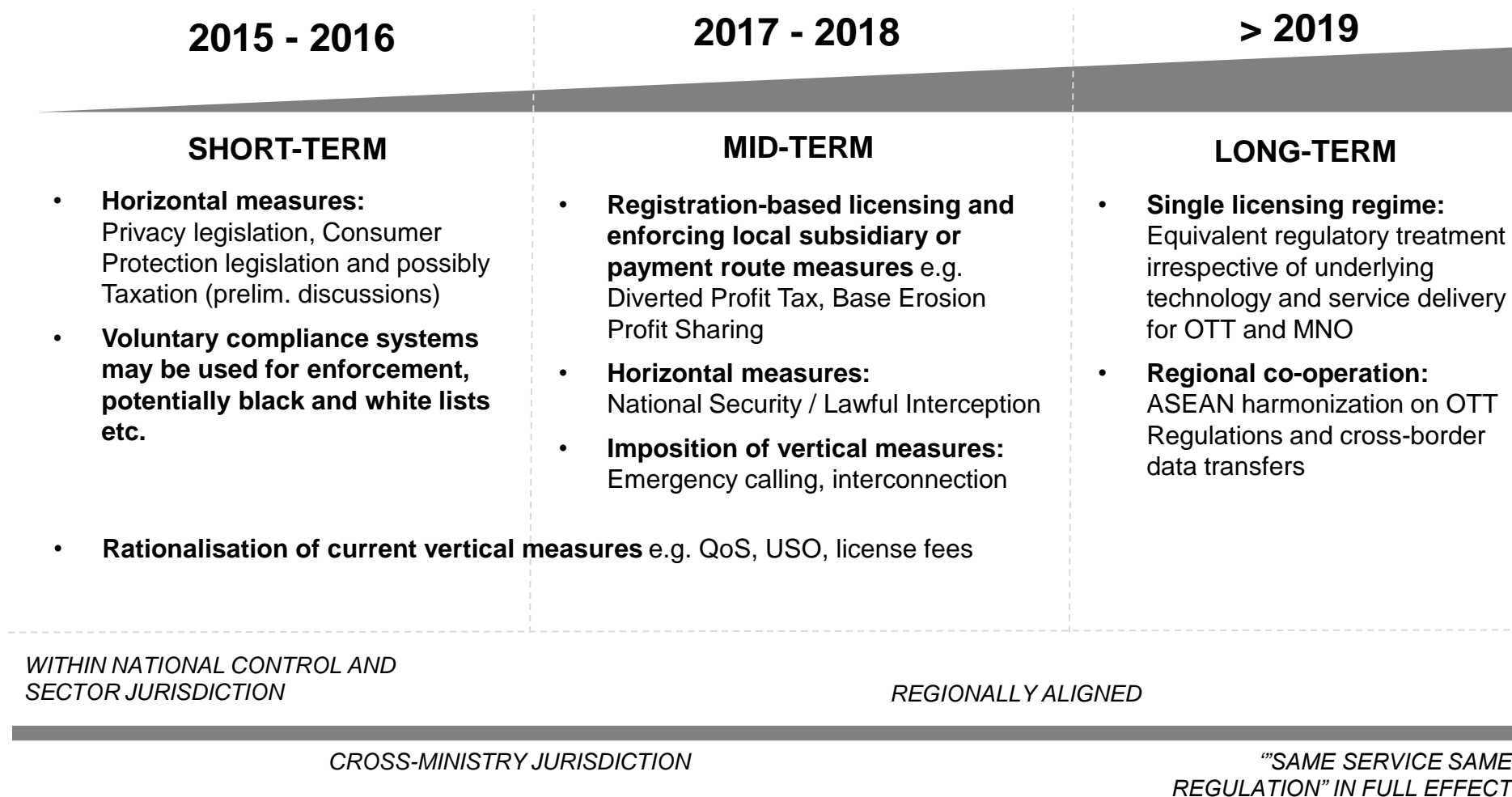
International Best Practice

Regional Co-operation

Staged Approach

REGULATING OTTs WILL BE MULTI-PRONGED AND RATHER COMPLEX

A forward-looking phased approach while promoting self-governance, gradual rationalization of rules and pro-investment policies



THANK YOU

