Asia-Pacific | Europe | North America

Policy challenges and opportunities from a changing digital eco-system

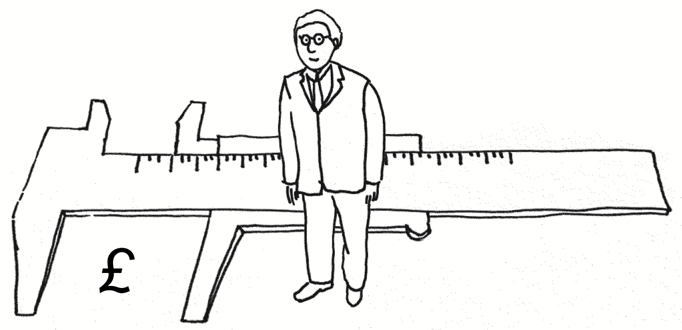
Presentation to ITU Regional Workshop for CIS, Moscow, 7-8 September, 2017

Sean Kennedy

About CEG

Who we are

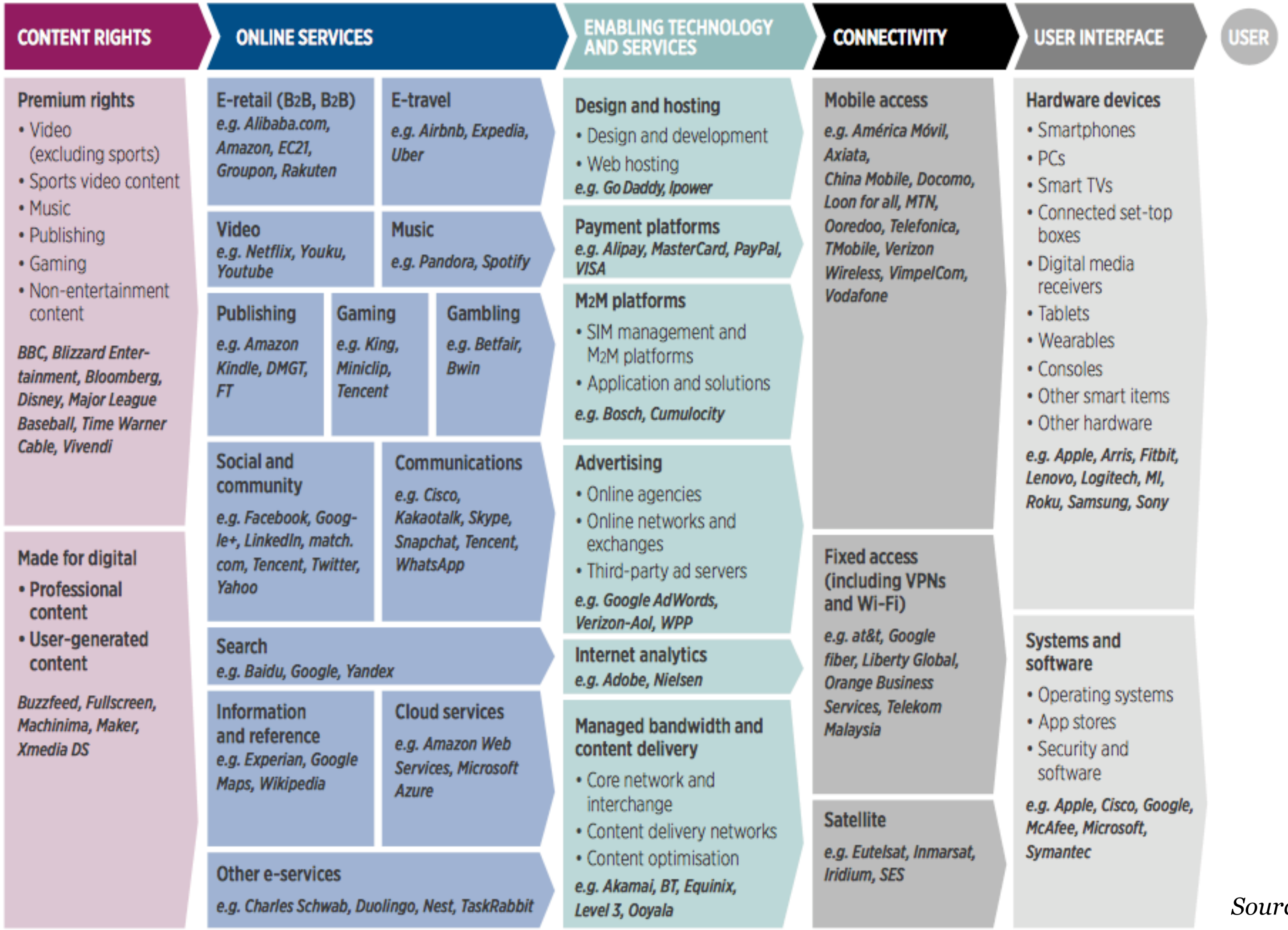
CEG is a leading global economic consultancy that provides expert economic and financial analysis in competition and regulatory cases, litigation and general commercial advice



CEG in a nutshell

- Formed in 2007
- Offices in Europe, Asia-Pacific and North America, including in Brussels, London, Milan, Paris, Rotterdam and Düsseldorf
- CEG is ranked among the Global Top 21 economics consultancies according to Global Competition Review
- Our experts are consistently recommended in arbitration and/or competition experts guidelines
- Dedicated Telecoms and Media team

The changing digital ecosystem

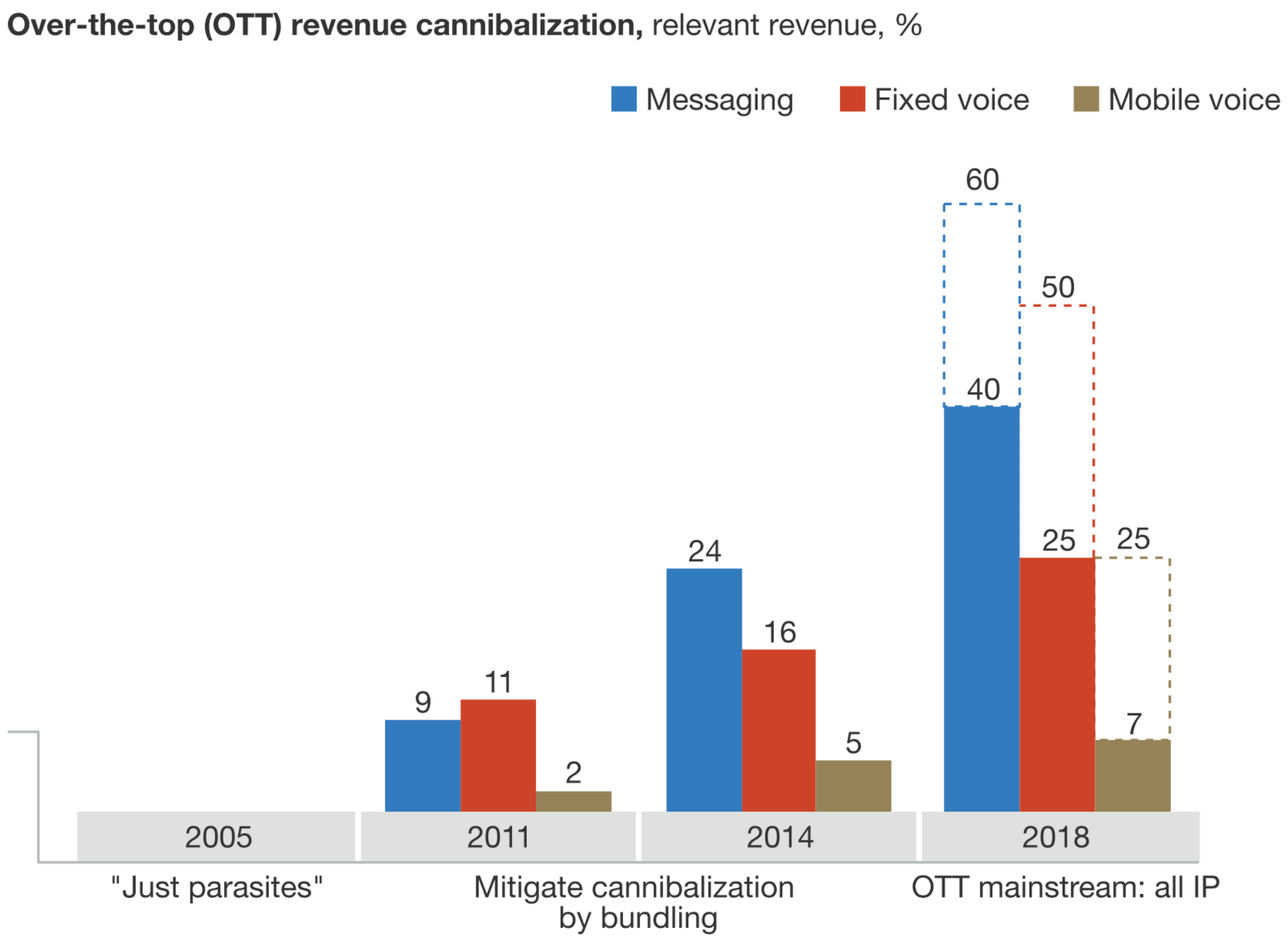


Emerging themes:

1. ***Greater interdependencies***
2. ***Deflationary impacts***
3. ***Greater market concentration – driven by high upfront costs & scale economies***
4. ***Abundance***

Source: AT Kearney

Cannibalisation : What OTTs can do to Telco markets



Source: McKinsey and Ovum

A new set of policy challenges and opportunities

ceg

Privacy *and* Data Protection

Net Neutrality: Zero-rating, Paid Prioritisation, Specialised Services

Level Playing field : same service – same rules

Digital Eco-system

Market Concentration *and* Merger Control

IoT *and* M2M

Competition *and* Big Data

Net-neutrality - introduction to concepts and definitions

- Net Neutrality (NN) - online traffic managed in a non-discriminatory fashion, with no charge to content providers for sending information to end users

- Europe - focus on ensuring transparency, allowing traffic management in specific cases, allowing for specialised services and introducing *ex-ante* rules on offers '*where end users' choice is materially reduced in practice*' (e.g. zero-rating)

- US/Canada - focus on fixed networks – where wholesale access is weak or non-existent meaning consumers face few alternative suppliers
  - In US, new FCC chairman has indicated that ex-ante rules to be scrapped with a move to a voluntary industry code and reliance on general antitrust

Zero-rating: Competition and economic issues

The economic benefits

- Free access for users
- Increasing usage
- Facilitating entry
- Promoting competition between ISPs

The potential concerns

- Vertical agreements that restrict competition
- Downstream : ISP foreclosure (due to exclusive 'must have' content)
- Upstream: Content application foreclosure
- *BUT will depend critically on level of competition/customer choice (e.g. US/Can vs EU)*

The competition analysis required

- In considering the risk of content application foreclosure the following factors appear relevant
  - Extent of customer data capacity constraints
  - Number of Content Applications target customers falling under the offer
  - Can other Content Applications join offer?
  - Explicit agreement between ISP and Content Application?

1. General competition rules may take time and be difficult to apply (i.e. need for an explicit agreement)
2. Careful ex-ante 'case-by-case' review needed
3. Are NRAs skilled to decide on complex competition issues ex-ante? Risk of over-zealous action
4. Reverse Foreclosure risk for ISP market to compete with CAPs?

Zero-rating – Some themes from recent European regulatory assessments

ceg

Multi-factors	NRA assessments/Commercial offers	Key take-outs for regulatory compliance
The goals of the Regulation	• Hungary, Austria and Sweden: Regulator intervened to stop offers that extended beyond a customers data cap. • Three & Virgin (UK) offer within data cap	• Offers should be throttled once customer monthly cap used
The market position of ISPs & Content App providers	• Impact of multi-homing (BIPT – Belgium) • Facebook/Whatsapp don't have control over network (BIPT-Belgium)	• Ensure data allowance sufficient to allow customers to use competing apps (zero and non-zero rated) • Offers apps that are not owned by ISP
Effects on consumer & business customer end-user rights	• Drei (Austria) increased data limits to address regulator concerns • Proximus (Belgium) used customer survey to choose services and increased bundle caps • Messaging service allowed as data usage low (Ofcom – UK)	• Offer relatively high data allowance caps – show that most customers not hitting cap • Use customer surveys to choose zero-rating services • Allow customers to choose zero-rating service from a range • Offer services that have low data usage
Effects on Content App Provider end-user rights	• Three/Virgin (UK) and Telenor (Norway) offers allow other content applications to join. • Netherlands case - T-Mobile "*was not discriminating because any music streaming service could participate without charge.*"	• Allow other app providers to join
Scale of the practice and presence of alternatives	• Music streaming service allowed as temporary offer (Ofcom – UK)	• Smaller ISPs/Content App providers unlikely to cause issues • Time-limited offers ok

Key policy and regulatory take-outs

- Regulators likely to face significant implementation challenges (regulations to force operators to charge end-users for some services previously offered without charge)

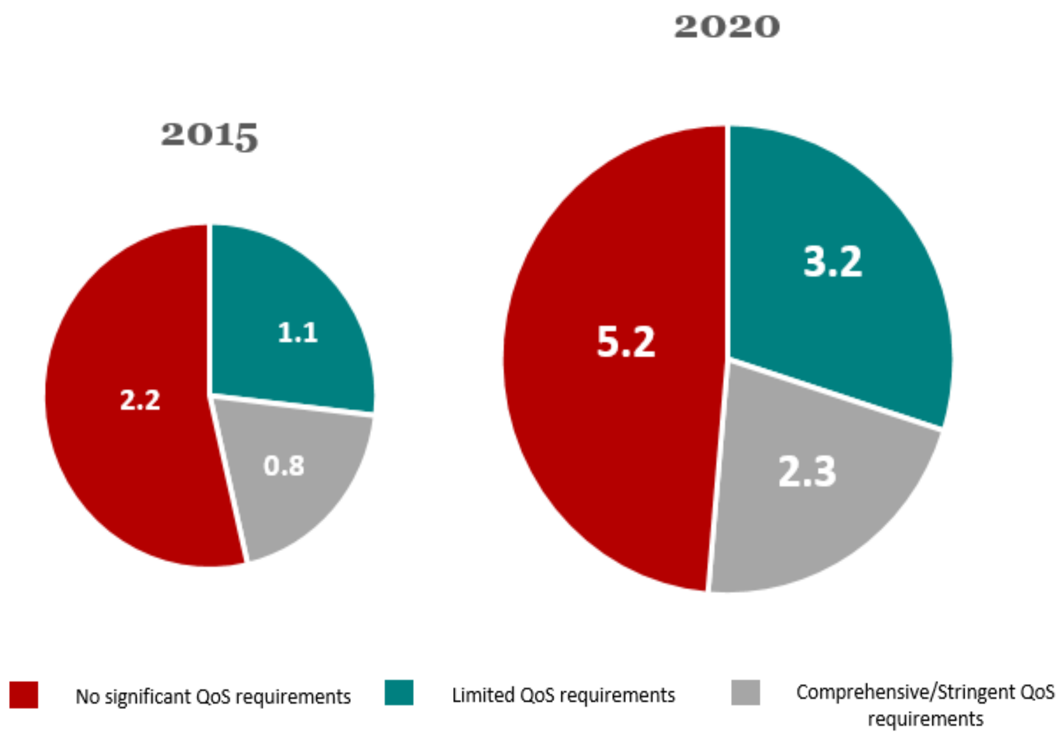
- Regulators required to apply competition principles to assess the legality or otherwise of certain services (many NRAs not equipped to do this)

- Courts likely to play a major role in setting precedent for new and existing offers

- 5G : Who pays? Are there opportunities for new funding models between OTT and MNOs across both sides of the market
  - Minimum QoS rather than strict Net Neutrality restrictions?

Regulatory issues for Machine2Machine communications and Internet of Things

Number of M2M Devices (billions)



Source : Machina (2015)

Global SIM

- Regulation preventing the use of a Global Sim in some countries

Data Localisation

- Rules that restrict the ability to provide cross-border services using centralised systems

Legacy consumer regulations

- Mis-application of legacy consumer regulations

Net Neutrality

- Rules potentially impacting on the ability of MNOs to offer specialised services (differentiated by QoS)

Level playing field : A new European Communications Code

ECC – Proposed new service category – Interpersonal Communications Service (ICS)

Number based ICS

- Access to emergency services
- Transparency
- Consumer Protection
  - Portability
  - End-user contracts
  - Transparency (eg. on QoS)

Number independent ICS

- OTT services brought within code
- No requirement to be interoperable
- Less regulated

Proposals appears to be more housekeeping rather than major reforms

Thank You

Sean Kennedy
Director, CEG

+44 7507 840 739
skennedy@ceg-europe.com