



ITU Council Working Group on International Internet-related Public Policy Issues  
(CWG-Internet) - Open [Consultation](#) on Public Policy considerations for OTTs

Submission by the [Alliance for Affordable Internet](#)<sup>1 2</sup>

August 18, 2017

## Introduction

“Over the top” (OTT) services refer to a wide range of media and content services and applications offered via IP networks. For our purposes this includes OTT (or value added) services offered by both telecommunications companies and non-telcos such as content platform companies. The Alliance for Affordable Internet is committed to policy and regulatory reforms that will make broadband affordable for all in low and middle income countries. In many of these countries, mobile broadband is currently the most feasible option to realize this goal. In this paper we will limit our discussion and recommendations on OTTs to the mobile broadband sector.

In 2016, A4AI conducted a large 8 country user survey of mobile data services (including OTTs) which covered Peru, Colombia, Kenya, Nigeria, Ghana, India, Bangladesh, and the Philippines. All the data, analysis, and publications are available [online](#). This project provided much needed empirical evidence to the discourse around mobile data services and OTTs globally. Using the results from this research we outline a set of policy recommendations that governments and their partners in similar contexts should consider.

## Main Research Findings

While OTTs (including messaging apps such as Whatsapp, social media platforms such as Facebook, and smartphone apps in general) are very popular globally, it's also important to understand the extent to which they are incorporated into mobile data plans offered by mobile

---

<sup>1</sup> This submission is based on analysis and recommendations outlined in Alliance for Affordable Internet (2016) “Policy Guidelines for Affordable Mobile Data Services.” Washington DC: Alliance for Affordable Internet. [Available Online](#).

<sup>2</sup> The [Alliance for Affordable Internet](#) (A4AI) is the world’s broadest technology sector coalition working to reduce the cost of internet access to enable universal, affordable access for all. Initiated by the Web Foundation in 2013, the Alliance is composed of 80+ member organisations from across the private, public, and not-for-profit sectors in both developed and developing countries. Working through a consultative, locally-driven and locally-led process in member countries throughout Africa, Asia, and Latin America, A4AI works to shape the policies and regulations needed to drive down prices and enable everyone, everywhere to afford to connect.

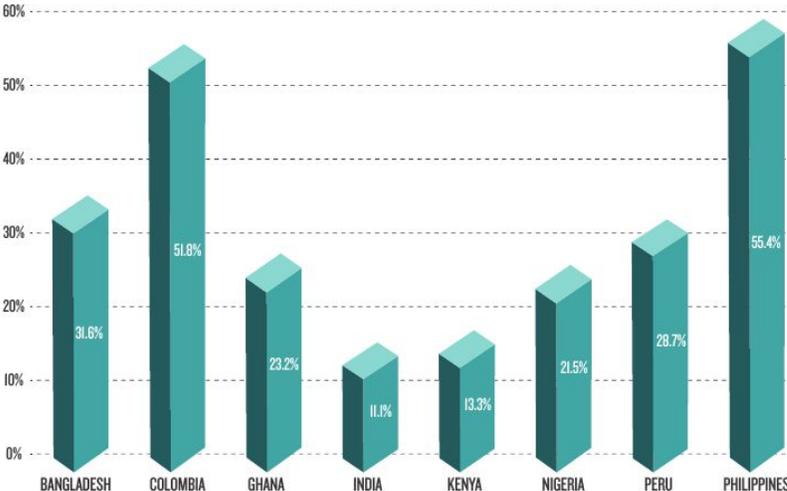
network operators (MNOs). To do this we reviewed all the plans offered by MNOs in the eight countries mentioned above using the following categories:

- 1. **Full-Cost Data Bundle:** The user pays the advertised price for their data (at the relevant prepaid or post-paid tier), which can be used to access any site. These are the standard data packages that MNOs offer.
- 2. **Service-Specific Data Bundle:** The user can purchase a data bundle that allows them to use specific apps and access certain sites for a certain period of time (e.g., social media packs, which offer data for use on specific social networking sites).
- 3. **Earned Data:** Instead of directly purchasing data, the user receives data in exchange for performing an action (e.g., completing a survey, watching an advertisement, or purchasing a specific service or handset from an operator). Typically, this data can be used to access any site or service.
- 4. **Zero-rated Data:** Services that make a specific set of content, websites, or applications available at no additional cost to the user. The data used to access the specified site or app does not count toward the user’s data usage. The most common example of this is Freebasics by Facebook.

OTT services are accessible via all the above plans. However, the two categories of plans that restrict users access to only OTTs are service specific plans and zero-rated plans. Both types offer the consumer cheaper (or free) access to certain OTT services. Together they accounted for 64% of all mobile data plans offered in the 8 countries included in the study.

The extent to which consumers used these types of plans varied by country depending on market conditions and other factors. For example, more than half of mobile phone Internet users in the Philippines reported using service-specific plans compared to 11% in India (see Figure 1 above).

Figure 1- Proportion of Mobile Phone Internet users that have used a service-specific plan, by country (Source - A4AI, 2016)



## **Policy and Regulatory Recommendations**

As OTTs expand in popularity and are increasingly included as part of mobile data plans, governments are faced with the decision of whether or how to intervene. There is no simple answer to this – it would be impossible to develop a ‘one-size-fits-all’ solution that can be applied to different and diverse countries.

Instead, we recommend the following steps:

- i. On a preliminary basis, policymakers (particularly those in low and middle income countries where broadband Internet access is still limited) should evaluate strategies to foster connectivity at the national level and try to identify the most sustainable option(s). Thus, countries should consider the extent to which OTT services are compatible with their unique legal and socio-economic context, considering in particular the best ways to promote competition and innovation in ICT markets and protecting freedom of expression and media diversity, while also advancing broader connectivity goals.**
- ii. Policy guidelines for OTT services, like the set recommended below, should first ensure that these services are aligned with national broadband goals.**
- iii. Where a country is considering intervention, the regulator should carefully assess the best approach. In many cases, ex post regulation (i.e., intervene only if and when there is evidence of harm) will suffice. However, this depends on pre-existing levels of competition in the MNO markets, as well as the capacity and resources of the regulator. While these steps are explained in more detail below, It is important to keep in mind that these are no more than guidelines. The real deliberation and decision-making around mobile data services must ultimately be based on national context and involve a meaningful dialogue between the government, MNOs and other private sector entities, local civil society, and citizens.**

### **Policy Guidelines for OTT services**

- 1. Public consultation must be a requirement in determining the best policy and regulatory approach to OTT services. As with all public policy formulation, it is important to understand what citizens want and need. For example, in India, the regulator sought comments on OTT and other services in that country. With regard to public consultations, it is also important that:**
  - a. Regulators take steps to facilitate the participation of those who are not yet online, especially where the majority of the population is offline.**
  - b. Regulators encourage greater participation by citizens and civil society organisations (CSOs) in these discussions. CSOs are sometimes missing from these debates, in part because they often lack the capacity to contribute effectively to technical discussions. Governments and MNOs should work with CSOs to address this gap.**



**not to intervene with regard to OTTs services (whether those offered by MNOs or content providers), we suggest the following:**

- a. Regulators should take an ex-post approach where market conditions allow it, i.e. intervene only if and when there is evidence of harm to the consumer or market failure. This is based on our research which found no evidence of consumer harm or negative impacts on the market with regard to offerings of service-specific and zero-rated plans in the selected eight countries.<sup>3</sup> Note that while an ex-post approach will be sufficient in most cases, this recommendation is based on current evidence presented here. Governments should carry out ongoing assessments of mobile data services and market competition as they evolve. If the evidence changes then a different approach may be warranted.**
  - b. Regardless of whether or not the regulator intervenes, we recommend the following guidelines for OTT services:**
    - i. Where MNOs and content providers jointly agree to provide OTT services (via service-specific, zero-rated plans, or otherwise) such agreements must be done on a non-exclusive basis. Non-exclusivity should also apply to agreements between MNOs and government agencies offering OTT services. There should be a way for the regulator to validate the non-exclusive nature of such agreements.**
    - ii. Where OTT services are provided by a vertically integrated operator, the regulator should examine the situation for potential anti-competitive effects. This can occur, for example, when the MNO has a financial interest in the firm producing the content offered as part of the service specific plan (or other type of data plan).**
    - iii. Content providers (and MNOs where they offer OTT services) should ensure that consumers are fully aware of the conditions of all OTT services (e.g., promotional materials for zero-rated services should state the difference between limited versus unlimited access to all content on the Internet). Regulators should ensure that consumers have all the information they need to make informed decisions about how to use OTT services and their limitations.**
- 2. Regulators should be able to verify data use charges for all OTT services. This would require working with MNOs to ensure more accurate billing systems, and improving consumer awareness about the difference in use between, for example, 50MB and 500MB of data (something that is not necessarily intuitive to grasp).**

---

<sup>3</sup> For further details on this research see Alliance for Affordable Internet (2016) “Policy Guidelines for Affordable Mobile Data Services.” Washington DC: Alliance for Affordable Internet. [Available Online](#).

- a. In addition, regulators should ensure that consumers are provided with the right tools by content providers and MNOs to track their own data use. A [survey in Ghana](#) carried out by the [A4AI-Ghana Coalition](#) in 2015 found that 72% of respondents had problems understanding how their mobile data costs were determined. Solutions include more frequent (daily/weekly) updates on data usage charges, or a USSD (Unstructured Supplementary Service Data) message after each use. Where these are already available, the MNO should endeavour to make these features more accessible to the user. In Kenya, for example, Safaricom’s “My Data Manager” allows users to control browsing costs when their service-specific bundles have been exhausted; similar programmes are seldom observed elsewhere.
3. The analysis of consumer data from the use of OTTs by content providers, MNOs, and their partners should be subject to consumer data protection laws (where applicable). The use of OTTs provide content providers (and in some cases MNOs) with data on consumer online behaviour and preferences. While this can allow content providers and MNOs to tailor services and products for the benefit of their subscribers, it is also important to ensure that the use of such data adheres to data protection laws or related rules, where relevant.