

**ITU Council Working Group Internet
Open Consultation on Public Policy considerations for OTTs
GSMA Submission**

Consultation Response

The GSMA appreciates the opportunity to respond to the ITU's Internet CWG addressing *Public Policy Considerations for OTTs*. To date, mobile operators have connected 5 billion people around the world. Through the dynamic process of competition and massive investments, mobile operators continue to meet the needs of customers and address unmet needs. The GSMA represents the interests of mobile operators worldwide, uniting nearly 800 operators with almost 300 companies in the broader mobile ecosystem, including handset and device makers, software companies, equipment providers and Internet companies, as well as organisations throughout the mobile ecosystem. The GSMA and its members are committed to connecting everyone and everything to a better future through all of our programmes in partnership with our members.

As noted below, the GSMA does not believe the ITU (especially the ITU-T) is a suitable place for the development and creation of regulatory frameworks for Internet-based services. Solely from the perspective of overall capacity building, for example through the ITU-D, GSMA shares below certain public policy ideas and sources relevant to today's dynamic and converged digital ecosystem.

OTT Voice and Messaging Communications Applications

First, GSMA offers public policy views regarding a particular type of applications: Those in enabling equivalent OTT voice and messaging communications. The combination of mobile broadband access, smartphones and Internet technology has led to the emergence of a new breed of consumer mobile voice and messaging communication services provided by Internet-based companies, often referred to as over-the-top service providers (OTTs). These services are providing consumers with additional choices in how they communicate with each other. Independent consultancy Ovum estimates that in 2020 the volume of OTT messaging will be ten times larger than the global SMS volume.¹ Additionally, Mark Zuckerberg said in 2016 that activity on Facebook Messenger and WhatsApp combined is already three times the global SMS volume.²

OTT communications services typically are offered in competition with, and are perceived by end-users as direct substitutes to, the circuit-switched voice and SMS services provided by mobile operators, but they are not properly considered in the market analysis carried out by regulators. The growth in competition in equivalent communications services between different types of providers calls for same rules for same services and thus a move towards shared rules that are lighter touch than those applicable in less competitive environments.

An Approach for Regulatory Modernization

In light of the immense changes to the Internet ecosystem, a new regulatory approach is needed. In 2015, GSMA commissioned a report entitled "[A new regulatory framework for the digital ecosystem](#)" prepared by NERA Economic Consulting. While the views expressed therein are exclusively those of its authors, GSMA notes the value of the report's proposed three main principles to guide policymakers and regulators.

¹ <https://www.telecomasia.net/content/ott-messaging-will-be-10x-larger-sms-2020>

² <https://www.theverge.com/2016/4/12/11415198/facebook-messenger-whatsapp-number-messages-vs-sms-f8-2016>

First, a regulatory approach suited to the digital ecosystem should be functionality-based, rather than structure-based. Second, it should recognise that the dynamism of the digital ecosystem demands that regulation also be dynamic and flexible. Often, ex post enforcement of broadly defined regulatory structures will prove to be more flexible than prescriptive, ex ante regimes. Third, it should recognise that many of today's legacy regulatory structures are outdated, and instead take a bottom-up or 'clean-slate' approach by assessing both current and potential new regulations, and regulating only when it can be demonstrated that the benefits will exceed the costs.

A regulatory framework based on these principles will be inherently market- and technology-neutral, in that it will apply to all elements of the Internet ecosystem; cost-effective, in that it will achieve regulatory goals and objectives at the lowest possible cost; and flexible, in that it will allow markets and technologies to evolve while preserving and enhancing regulators' ability to achieve their functional objectives.

A new regulatory framework will differ slightly in different regions because it will need to take into account the Internet ecosystem players in that region and the competition in that market that may warrant removal of legacy telecommunications regulation. One global approach for OTT services will not fit all markets in all regions and all countries.

A new regulatory approach also needs to take into account the oncoming rollout of 5G network services. 5G is more than just a generational step; it represents a fundamental transformation of the role that mobile technology plays in society. As demand for continuous connectivity grows, 5G is an opportunity to create an agile, purpose-built network tailored to the different needs of citizens and the economy. Mobile operators see their role in the industry as extending beyond that of connectivity provider to encompass the provision of digital services directly to consumers and enterprises, and as an enabling platform that provides B2B and B2B2C services. In the lead up to (and during) the 5G era, operators will seek to compete strongly with Internet companies and other ecosystem players, to provide the services that customers want. This competition will be most intense for services that require global scale such as communications. In addition, operators will be well-positioned to leverage local assets and knowledge to deliver services that require a more localised approach. These will mostly be services targeted at enterprise customers, services for IoT, or those that require big data and artificial intelligence. To unlock these opportunities, operators will need to collaborate with the ecosystem to develop new technical solutions and commercial models. Of course, operator and OTT provider partnerships are subject to commercial agreement in the markets in which both providers operate so no model agreements are required.

Conclusion

The Internet economy is innovating and developing at such a pace that traditional telecoms regulation is no longer fit for purpose. In light of the immense changes to the Internet ecosystem, a new regulatory framework is needed. The ultimate goal of government intervention in the economy is to identify and remediate, when possible, shortcomings in competitive markets, and thereby enhance social and economic welfare. Regulatory policies and institutions designed for a bygone era when competition was less intense and markets were not so dynamic and interrelated—cannot achieve those objectives.

Today's regulatory policies are, in many cases, having the opposite of their intended effects by distorting markets and inhibiting competition and innovation. In this context, policymakers' efforts to understand and adapt to the new realities deserve encouragement and support. New policies that take into account the whole ecosystem from traditional telecommunications to OTTs are needed and we have laid out a three-pronged approach to that.

However, a single global regulation on a specific service is not the answer. Light touch regulation and a competitive marketplace are what is needed for the Internet ecosystem. The GSMA believes that the ITU, and specifically the ITU-T, is not a suitable place for the development and creation of OTT regulation. However, capacity building and the sharing of best practices are essential to allow for the digital economy to flourish, and the ITU can act as a resource for best practice and capacity building through the ITU-D. The ITU's [ICT Regulation Toolkit](http://www.ictregulationtoolkit.org/index) (<http://www.ictregulationtoolkit.org/index>) is one example where best practices and case studies were put together online in order to act as a portal and resource for developing policy frameworks in developing and underdeveloped countries.