

ASIET INPUT TO ITU COUNCIL WORKING GROUP ABOUT THE INTERNET OPEN CONSULTATION ON OVER-THE-TOP SERVICES

INTRODUCTION

The Inter-American Association of telecommunications enterprises (ASIET) welcomes the opportunity to share the perspective of regional operators of telecommunications in response to the decision of the "Working Group of the Council on matters of Internet international public policy" to carry out a public consultation on "Internet public policy considerations".

If in the pre-convergent era, the network was directly financed by the marketing of services for which the network was originally designed and in the first convergent era with the unbundling of services on the same network, in the second convergence era, the logical des-aggregation between network and services has the consequence that the financing of infrastructures can't be sustained anymore only by the final electronic and multimedia communication services. The technological and competitive changes have **left obsolete the telecommunications regulatory frameworks**, which produces asymmetries that on the one hand generate **overregulation**, and by another, potentially a **lack of legal protection** for consumers. In this context, it is essential to reformulate the **public policies and regulatory and institutional frameworks** to maximize social welfare through expansion of the Digital Ecosystem, offering innovative and competitive services, the appropriate protection for consumers, national security and the strengthening of the infrastructure of connectivity.

The new actors like OTTs has changed radically the value chain in the Digital Ecosystem, they are practically in any link of the chain except in providing connectivity, OTTs and Telcos are important actors, they need one the other in order to improve the Digital Ecosystem. It is necessary to achieve a balance in their responsibilities on the infrastructure capacity.

A harmonious development is paramount, telecommunications networks are essential to Internet, the innovation is produced both in the networks as in the "cloud ",the sustainability of the digital ecosystem is essential, a Level Playing Field policy in order to avoid asymmetries In the market is essential.

RESPONSE TO THE QUESTIONS

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

OPPORTUNITIES.

The OTT are greatly responsible for the innovations that Internet has been reported, promoting the growth and appropriation of the Internet through the provision of innovative applications and services. However it should be noted that the role of the operators has not been less important because they are those who have built infrastructures that have supported and support Internet.

Towards the end of 2012, it is estimated that total investment of operators in the telecommunications sector in the Latinamerican region reached US \$26.789 million.

In the period from 2006 to 2012, the Latinamerican telecommunications sector invested approximately US \$159.568 million, at an average of US\$28,000 billion annually.

Do not you have data on investment by global operators in the Region (OTTs), although it is expected to be minimal and limited to local offices.

The OTT offer their services with equal opportunities for both rich and poor, in this way, they reduce barriers to entrepreneurs and promoting economic and social development, on the other hand can enjoy a global performance with a local presence without having to worry about infrastructure, unlinking the services layer from the transport layer, somehow they have become a breeding ground for innovation.

IMPLICATIONS

The provision of services and applications by the OTT is performed in a context of "walled garden", there is no interoperability between different applications with similar objectives (e.g.: WhatsApp vs Telegram), implies a rupture of the basic principle governing telecommunications and one of the founding pillars and "*raison d ' être*" of the ITU.

The information security, including data privacy of and the lawful communications interception , as well as the protection of the rights of users specially when the new models of business (Freemium) based in that the user is the "**good**" to sell. The business is on the users data which constitute the "raw material" for the Data Driven companies. The aspects set out here shall be subjects of review in order to issue the strictly necessary regulations that generate user confidence in the Digital Ecosystem as a whole.

The OTT, as global players that are, represent a challenge to the traditional form of governance (jurisdiction, sovereignty,...) given that normally offer services without physical presence in countries, the negative aspect of global scale, but without presence local. There is no global authority for regulation or governance that can act in this regard.

This global nature raises more and more concerns about restrictions on competition, jurisdictional aspects, regulatory and fiscal contribution obligations and employment to local economies.

More specifically, in some jurisdictions the unregulated OTT services can have a different tax treatment (i.e. free of taxes) compared to the regulated voice and video services, which may be a financial impact in these jurisdictions and can affect aspects such as programs to finance contact centres for emergency services, subsidizing the connectivity of people with less purchasing power and/or non-connected and much more. In addition, unregulated OTT services may not contribute and/or providing the emergency call service, video alerts for emergencies, interception and tracking of malicious communications, and so on. Also can be raised its relationship with the

financing of the funds for Universal Service insofar as these are a tool to connect to non-connected.

It is paramount that regulators take into consideration these issues as well as those that arise in the various sections of this inquiry, and in particular the need to promote healthy growth in the Digital ecosystem as a whole.

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

The Digital ecosystem, understood as:

- *The set of benefits and requirements of various kinds provided through and from telecommunications networks,*
- *The set of infrastructures and associated facilities that enable the provision of such services,*
- *As well as the interaction between service providers of different nature which constitute the extended value chain of Internet service,*

It is a new subject of analysis from which public policies should be designed.

OTT services and telecommunications services can become substitute¹ and, therefore they are competing in the same digital services marketplace, however OTT services do not have a specific regulation, while operators are subject to a special taxation regime and specific regulation. A **regulatory asymmetry**, that deserves to be discussed.

This is due to an obsolete regulation based on certain definitions and principles adopted several years ago (basically anchored on the way that voice services were provided in the PSTN) and do not fit into this new IP world (where several services are provided by different platforms). As a result of this outdated concept, a specific and strict regulation still being applied to telecommunications operators based on their qualification as "old type" service providers (ECS - Electronic Communications Services). On the contrary, in the case of the OTT, they are subject to the sector cross rules, more weak, based on its qualification as ISS (Information Society Services) providers.

Consequently, is essential to finish such regulatory asymmetry and design some new playing rules that are unique, simple and fair for all the actors operating in the sector that means "Same services, same rules".

In general terms, the increase of alternatives offering for consumers consequence of the convergence should result in lower regulatory charges for Electronic Communication Services (ECS) Operators with infrastructure. The regulation should focus on the protection of the consumer, in particular on the use of their personal information and complaint mechanisms; competition; and public safety, irrespective of the way in which services are provided. The definition of relevant

¹ In a strict sense they are not really substitutes, but they are alternative and can arrive to replace them.

markets for the purposes of the regulation must be done under the solutions to meet needs of consumers, and not by technology or providers

The regulation must resolve properly the jurisdictional aspects of the electronic communication services provided from outside of the national level, in such a way that they comply with reasonable regulation, protection and security mechanisms that could correspond. For this, it is preferable to evaluate supranational mechanisms of coordination and regulation. Without detriment to that, in the absence of such mechanisms, national regulators should establish a reasonable framework of regulatory equivalence.

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

The global reach of applications and services provided by OTTs implies an impact both on security as a whole and on consumer's safety in particular and their privacy.

It is important to create a global awareness on the need of privacy and cybersecurity as an inherent part of the global and open nature of the Internet, providing the necessary tools to ensure the consumers protection when faced threats from third parties, through the application/use of encrypted communications, https secure connections by default, terms and conditions for applications developers, etc.

In its role of global players, the OTT are not subject to local regulations allowing them to control what is included or not in the terms and conditions of the contract, without any liability, with the possibility of changing them without few alternatives of claiming for the clients. It is necessary to work in transparent rules at global level in order to defence the interests of consumers and avoid these situations of helplessness.

The issue of lawful interception and access to the data by the authorities through a legally defined process needs to be treated in more detail. This issue is complicated in some cases precisely by the global nature of some OTTs which supposes an ambiguous situation regarding to what extent are subject to local regulations and practices with respect to the terms and conditions. It is necessary to work on regulatory harmonization at regional and global level regarding privacy and the treatment of cross-border data flows

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

All players in the Digital Ecosystem, including OTTs and network operators, are contributing to global efforts to achieve the objectives of Sustainable Development Goals (SDG), however to ensure the sustainability of the Digital Ecosystem and its future growth, it is necessary to

encourage investment in networks and services, this can happen, as above we have already pointed out, removing the legacy regulation which applies to traditional operators and setting new rules that promote the investments in infrastructure and content alike.

It is not appropriate to apply traditional services regulatory models to all players in this new scenario, but public policy should take into account the increased competition generated by the new digital value chain, consequently the responsible policy makers should focus on a reduction of traditional regulation towards a light touch regulation that will apply to all players

The concept of “equality of conditions” or “regulatory equality”, known as "Level Playing Field (LPF)", means "that same service has the same rules the same protection", refers to the fact that the OTTs provide similar services to the offered by telecommunications companies, but they are not subject to the same rules and have less restrictive obligations, so do not compete on equal terms. This is particularly significant in a number of regulatory issues, such as those affecting the rights of the consumer, safety and data protection, lawful interception, tax treatment, etc.

Taking into account the above said, it is important to analyse and properly understand the Digital Ecosystem in a broad context, to review public policies and the existing regulations in a way that they are consistent with the objective of maximizing the creation of value in the long term, in a sustainable manner, thus contributing to economic development and the opportunities for progress of the citizens

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

There is no doubt that the irruption of the OTTs in the Digital Ecosystem has given rise to strong growth in the demand for broadband access, both in fixed and mobile services, which in turn has encouraged investment in infrastructures and telecommunications networks.

Associations between telecommunications operators and online service providers (OTTs) are already occurring and it is expected that this will increase, obviously it will benefit consumers.

However for this new market environment to develop in a healthy way, sustainable and beneficial to society is essential that Governments provide some rules of the game balanced for all, in this market will be the dynamics of the competition who determine better to the players if compete, cooperate or "coopeting".

ABOUT ASIET: The Interamerican Association of telecommunications Companies (ASIET) was born in 1982 with the name of AHCIEET and it is comprised of public and private companies from the telecommunications sector operating in the countries of the American continent. We work for the development of telecommunications and the Information Society in our region through the public-

private dialogue promoting the growth of the industry and favouring the exchange of knowledge and best practices, ensuring for the common interests of our partners and the industry.