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# **OTT Services – International Treaty Developments**

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## Introduction

- Convergence
- Challenges by OTT providers:
  - No presence in jurisdiction of end user and
  - is jurisdiction of network operator carrying OTT traffic
- OTT issue was one of the key topics at the recent ITU Conference on WCIT in Dubai 2012

*“The internet has developed well without regulatory intervention, through stakeholders’ coordination in the free market. Its ability to evolve over time and self-adapt has been key to its growth and success.”*

*- Body of European Regulators for Electronic Communications (BEREC) Response to ETNO November 2012*

## ITRs and their importance

- ITU three treaty level instruments: Constitution (C), Convention (CV), Administrative Regulations (Radio Regulations and ITRs)
- Treaty – level provisions for international networks and services
- Establish general principles and strategic policy for operation of international telecoms
- Facilitate global interconnection and interoperability
- Underpin development and technical interoperation
- Promote efficiency, usefulness and availability of international telecommunication services

**In 1988, very few liberalized markets and operators mainly state owned monopolies**

## Structure of ITRs

The ITRs treaty consists of: Preamble, 10 Articles, 3 Appendices, 8 Resolutions, 3 Recommendations, and 1 Opinion

Preamble

Article 1. Purpose and Scope of the Regulations

Article 2. Definitions

Article 3. International Network

Article 4. International Telecommunication Services

Article 5. Safety of Life and Priority Telecommunications

Article 6. Charging and Accounting

Article 7. Suspension of Services

Article 8. Dissemination of Information

Article 9. Special Arrangements

Article 10. Final Provisions

APPENDIX 1 General Provisions Concerning Accounting

APPENDIX 2 Additional Provisions Relating to Maritime Telecommunications

APPENDIX 3 Service and Privilege Telecommunications

## Structure of ITRs

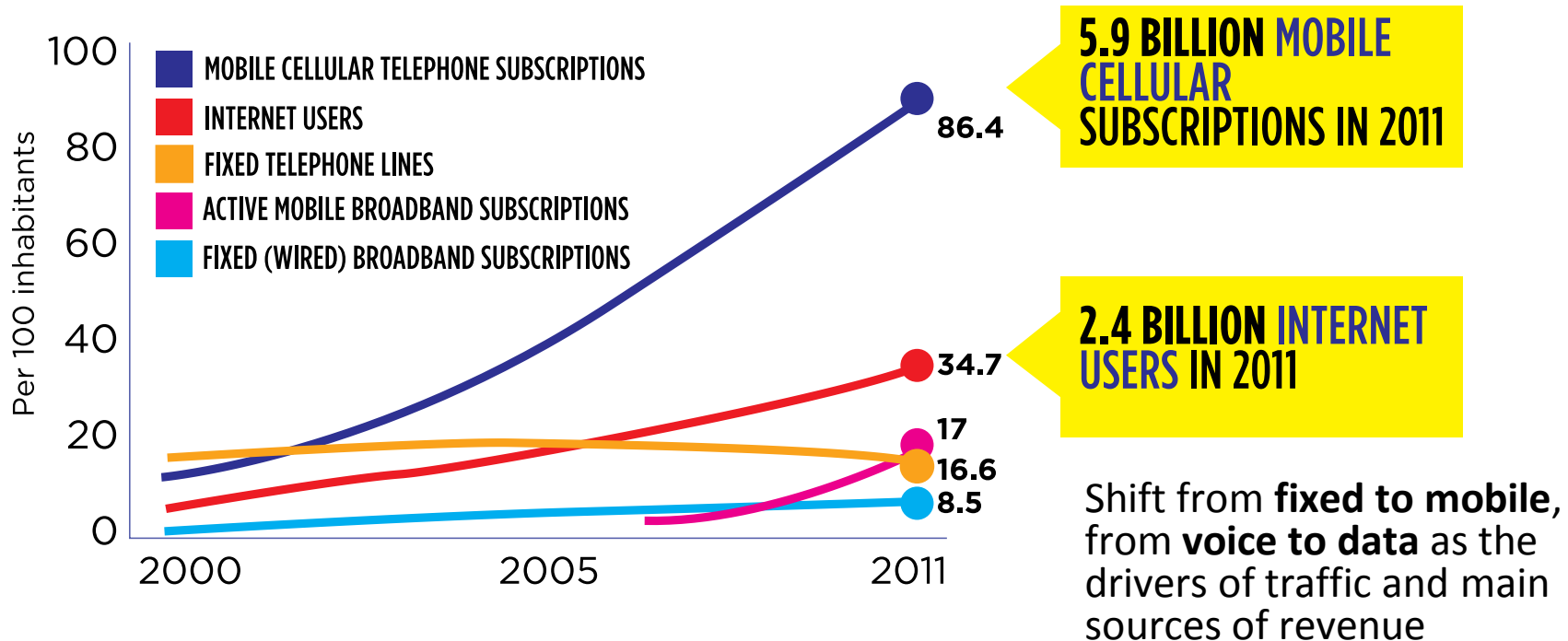
### **Article 6. Charging and Accounting:**

- Set rules for charging and payment mechanisms on bi lateral or multi lateral basis
- Sought to achieve balance of payments

### **Article 9. Special Arrangements**

- ground breaking
- allowed private organisations to conclude “special arrangements” on bilateral commercial terms

## Changes in telecoms markets since 1988...



- The international telecom environment has changed greatly in technology and policy. It continues to evolve rapidly
- Increased use of IP-enabled infrastructure and applications mean opportunities and challenges for the ICT sector
- As technology evolves, governments are evaluating their policy and regulatory approaches to ensure an enabling environment

Source: ITU

## WCIT

- **Evolutionary process... over 170 States and 2000 delegates in Dubai 3<sup>rd</sup> to 14<sup>th</sup> December...**
  - Shift from network focus regulation (interconnection) to end to end approach (customer “expectation”/interoperability/QoS)
- **New Articles:**
  - Modifications to ITRs need consensus
  - In case of Opposition, No Adoption
- **General guidelines for the revision of ITRs, set out in Res. 171, PP-10:**
  - Consistency with the purposes of the ITU Constitution (and convention)
  - In line with the scope and purpose of the ITRs



## The ETNO Proposal

- Key ETNO proposals are:
  - Art. 2

### Definitions

For the purpose of these Regulations, the following definitions shall apply. These terms and definitions do not, however, necessarily apply for other purposes.

**2.11 IP interconnection: IP interconnection refers to technical and business solutions and rules to ensure the delivery of IP traffic through different networks.**

**2.12 End to end quality of service delivery and best effort delivery:**

- **End to end quality of service delivery refers to the delivery of PDU (Packet Data Unit) with predefined end-to-end performance objectives.**
- **Best-effort delivery refers delivery to of a PDU without predefined performance targets**

# The ETNO Proposal

- Art. 3

## International Networks

3.1. **Members States** shall ensure that ~~Administrations\*~~ **Operating Agencies** cooperate in the establishment, operation and maintenance of the international network to provide satisfactory quality of service. **Member States shall facilitate the development of international IP interconnections providing both best effort delivery and end to end quality of service delivery.**

3.2. ~~Administrations\*~~ **Operating Agencies** shall endeavour to provide sufficient telecommunications facilities to meet requirements of and demand for international telecommunication services. **For this purpose, and to ensure an adequate return on investment in high bandwidth infrastructures, operating agencies shall negotiate commercial agreements to achieve a sustainable system of fair compensation for telecommunications services and, where appropriate, respecting the principle of sending party network pays.**

# The ETNO Proposal

- Art. 4

## International Telecommunication Services

**4.4. Operating Agencies shall cooperate in the development of international IP interconnections providing both, best effort delivery and end to end quality of service delivery. Best effort delivery should continue to form the basis of international IP traffic exchange. Nothing shall preclude commercial agreements with differentiated quality of service delivery to develop.”**

## Response of BEREC

- BEREC concerned about ETNO's SPNP and Quality of Service (QoS) proposals as:
  - Reference in a (high-level) international treaty runs real risk of shifting balance of negotiating leverage between market participants;
  - Inducing potential abuse of market power by telecoms carriers in relation to terminating traffic;
  - Could result in shifts in market power thus increasing need for regulatory oversight;
  - ETNO advocating an "interconnection philosophy" based on transmission services being provided across Internet along a defined path between endpoints;
  - Risk unraveling benefits of connection-less by the Internet;
  - BEREC wanted to protect continued development of open, dynamic and global platform which evolved over time (without regulatory intervention); and
  - Thus, European regulators rejected the ETNO proposal.

## Outcome of WCIT

The 2012 revision has meant that there are new articles and appendices as follows:

Preamble

Article 1: Purpose and scope of the Regulations

Article 2: Definitions

Article 3: International network

Article 4: International telecommunication services

Article 5: Safety of life and priority of telecommunications

Article 5A: Safety and robustness of network

Article 5B: Unsolicited bulk electronic communications

Article 6: Charging and accounting

Article 7: Suspension of services

Article 8: Dissemination of information

Article 8A: Energy efficiency/E-waste

Article 8B: Accessibility

Article 9: Special arrangements

Article 10: Final provisions

Appendix 1: General provisions concerning accounting

Appendix 2: Additional provisions relating to maritime telecommunications

Some provisions of the old Appendix 3 on service telecommunications were moved to

Article 6

## Outcome of WCIT

- A number of important resolutions were also passed to:
  - improve broadband connectivity to landlocked developing countries and small island states;
  - harmonise a global emergency number;
  - foster greater internet growth;
  - enable periodic review of the ITRs; and
  - facilitate international traffic termination and exchange

## Outcome of WCIT – who is bound?

- 89 Member states chose to sign the treaty text – will enact ITR treaty text into domestic laws and regulations:
  - Others expressed certain formal reservations;
  - Confused position between countries that will be bound by new treaty which enters into force in Jan 2015 and those bound by 1988 treaty; and
  - Between 2012 signatory and non-signatory, 1988 treaty prevails; and
- All Resolutions entered into force on 15 December 2012.

## Outcome of WCIT – resolutions

- Article 6 was extensively revised. Article 6.1 provides:  
*“Subject to applicable national law, the terms and conditions for international telecommunication service arrangements may be established through **commercial agreements or through accounting-rate principles** established pursuant to national regulation.” (Emphasis added).*
- Article 6.1.1 provides that:  
*“Member States shall endeavour **to encourage investments in international telecommunication networks and promote competitive wholesale pricing** for traffic carried on such telecommunication networks.” (Emphasis added).*
- Article 6.2 deals with Accounting rates to commercial arrangements
- **New Resolution (Plen/5) on International telecommunication service traffic termination and exchange** (relegated by compromise at WCIT to a resolution rather than as provisions in Article 6)



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## Further Regulatory Initiatives

- Some Member States pressing ahead seeking regulatory intervention within ITU framework
- China Unicom raised OTT issue in Study Group 13 (ITU-T SG13: Failure networks –
  - Cloud computing;
  - mobile; and
  - Next generation networks
- China Unicom is seeking to have Big Data applications of operators becomes part of the work of SG 13
- OTT regulation issue is likely to raise at events as ITU Plenipotentiary conference in late 2014, WSIS in May 2013 and World Telecommunications Policy Forum + World Telecommunications Development Conference in April 2014

## Commercial arrangements

- Not all fixed network operators agree regulation OTTs is necessary:
  - At ITU World 2012, regulators called upon to relax “attitude” towards collaboration between operators; and
  - Main challenge operators faced from OTTs best dealt by commercial negotiation;
- No support given for regulatory intervention or imposition of sending party pays principle for internet services;
- OTT seen as a challenge but also an opportunity; and
- Operators and OTT providers have commercial imperative to monetise through commercial arrangements under threat of interventions
  - E.g., France calls for Skype to be regulated under telecommunication regulation; and
  - General anti-trust/competition law oversight.

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