

Regulating OTT services

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Agenda

- What are OTT services? DL
- How do they differ from traditional network-based telecommunications services? DL
- What impact are they having on traditional service providers? DL
- Where should they be regulated? DL
- How are they regulated now? PB
- How will the policy debate play out in practice? PB

What are OTT services?

- Services which are independent of the network from which they are accessed and portable across networks (and devices)
- Examples of such services:
 - Social networking
 - Communications services e.g. VoIP, instant messaging, email
 - Search-based services
 - On-line publishing – music, books, video content
- Many of the main suppliers are global e.g. Google, Apple, Facebook, Microsoft, Netflix
- Global supply means
 - Services can scale quickly if there is end-use demand
 - Services can be moved from one jurisdiction to another to escape onerous national regulation

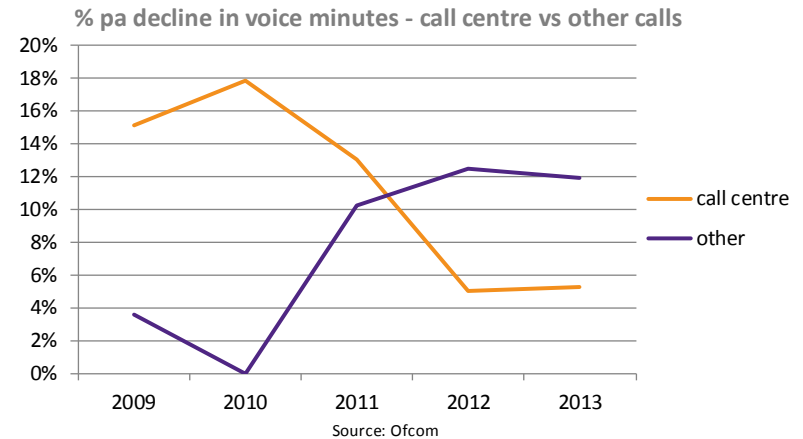


How do they differ from traditional network services?

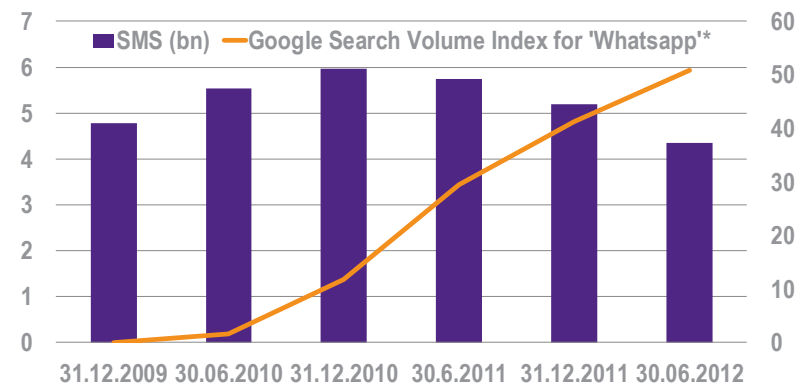
OTT communications services	Traditional network-based communication services
Global supply and scale	National supply and scale
Often free	Charge per subscription or per use
Few or no contractual conditions	Often significant customer lock-in through contracts
Real-time communications often limited to closed user groups	Global reach through international standards eg E164 numbering
Rapid innovation in functionality	Stable functionality over time

What impact are they having on traditional network services?

- Rapid uptake of OTT services in the last five years
- Very positive effect on demand for broadband access – fixed and mobile
- But starting to hurt traditional communication services
 - e-transactions replacing tele-business
 - email replacing phone calls
 - Instant messaging replacing SMS
- National network operators argue that:
 - OTT service providers remain virtually unregulated
 - There is a need for a level regulatory playing field to allow OTT and traditional service providers to compete on equal terms



SMS Volume in the Netherlands (bn)



Source: Plum Consulting, OPTA, Google

*Used average search volume index over each period

What is the public policy case for ex-ante regulation of OTT services?

- To promote competition between market players?
- For consumer protection?
- To enable universal service provision?
- To ensure equitable taxation?
- To preserve safety of life through access to emergency services?
- To protect national security?

Public policy priorities for regulating OTT services - 1

- To **promote competition** :

- Fast moving innovative market
- Ex-post better than ex-ante regulation here e.g. Google and the EU's directed search case

- Better to lift ex-ante regulation on traditional network services rather than impose regulation on OTT services

- To **protect consumers**

- Extensive existing horizontal regulation constrains OTT service providers (at least in theory)
- National network services and global OTT services are often different and require different levels of consumer protection e.g. OTT services often free and provided with no contractual obligations
- Global nature of OTT services makes effective compliance challenging

- The case for additional sector specific regulation here is weak

Public policy priorities for regulating OTT services - 2

- To require **universal service contributions** from OTT service providers
 - Governments decide policy on how to subsidise supply of narrowband and broadband services in high cost areas
 - Government taxation the efficient way to fund such subsidies
 - Increasingly this is the approach for rural broadband roll-out
 - National telecommunications operators with access networks can pay the required subsidy by increasing access charges for all - OTT service providers cannot
- Hard to make a public policy case for universal service contributions from OTT service providers
- To ensure **equitable taxation** of OTT service providers
 - Major tax avoidance by main OTT service providers
 - Strong political (and economic?) arguments for tax reform
- But this is a multi-sector problem of globalisation which may require a (near) globalised multi-sector solution

Public policy priorities for regulating OTT services - 3

- To require VoIP services to **provide emergency calls access**
 - Regulators recently required **enhanced** VoIP service providers to provide emergency call access e.g. FCC, Ofcom. But VoIP service providers have not complied
 - VoIP services now portable across a wide range of devices and access networks e.g. mobile and fixed broadband, public and private Wi-Fi
 - So VoIP service often cannot deliver necessary caller location information
- Is such regulation now sustainable?
- To regulate for **national security**
 - Enabling security services to monitor the activities of terrorist organisations using OTT personal communication services is of rapidly growing importance
 - But so too is the need for privacy eg encryption - *Tim Cook to Barack Obama, February 2015*
 - How can we reach an effective global solution to these conflicting needs
- A high but very challenging priority for regulating OTT service providers

“We still live in a world where all people are not treated equally. Too many people do not feel free to practice their religion or express their opinion or love who they choose. If those of us in positions of responsibility fail to do everything in our power to protect the right of privacy we risk something far more valuable than money. We risk our way of life”