May 20, 2016

Ministry of Communication and Information Technology of the Republic of Indonesia
Jl. Medan Merdeka Barat No. 9, Jakarta Pusat, 10110
Indonesia

Agenda: **AIC Comments on Draft OTT Ministerial Regulation Under Public Consultation**

Dear Sir/Mdm,

The Asia Internet Coalition (AIC) appreciates the opportunity to submit our comments to the recently released draft ministerial regulation on the Provision of Application Services and/or Content Through the Internet (OTT) released on the Ministry of Communication and Information Technology's website on April 29, 2016.

The AIC is a policy voice of the digital industry in the Asia-Pacific comprising Apple, Facebook, Google, LinkedIn, Twitter and Yahoo!. Our aim is to ensure users can enjoy the maximum economic, social and cultural benefits from the online world in the years ahead, and that they can do so safely, securely and confidently.

The AIC shares the Indonesian government's vision for Indonesia to be a leading digital economy. In this regard, we support the draft OTT regulation's objectives to protect consumers and develop Indonesia's creative and digital industries. AIC however would like to highlight some provisions that we believe may impede Indonesia from fully realizing this potential.

The digital economy is and will be an important driver of growth for Indonesia. In 2014, the contribution of the ICT sector to overall GDP growth exceeded all other sectors, growing by 10 percent compared to 5 percent for the entire economy.

Internet-based services, in turn, are critical components of the digital economy. They facilitate e-commerce, helping individuals and businesses market and sell their goods and services to a wider customer base. They also include applications that deliver rich content and drive consumer demand for broadband Internet access, which in turn raises revenue for telecommunications (telco) providers.

The so-called "app economy" in Indonesia currently supports 22,000 jobs and is poised for tremendous growth given the size of the domestic market if not encumbered by burdensome regulatory obligations.[1] As Indonesia seeks to shift its economy up the value chain, the "app economy" is one avenue to do so relatively quickly, without the need for large capital investment in hard infrastructure like roads, power lines and factories.

[1] Indonesia: Road to the App Economy. *Progressive Policy Institute*. September 2015. http://goo.gl/dKt1jN

The Internet's ability to deliver such growth dividends depends on it remaining open and allowing information and services to flow freely and safely across borders. With the potential for Indonesia's digital economy in sight, it is critical for the Indonesian government to safeguard this, and put in place the right conditions in Indonesia to foster innovation and incentivize investment to grow its digital economy and industries.[2]

As Indonesia looks to export its digital services, Indonesia should also work toward regional integration goals under the ASEAN Economic Community (AEC) to create a single ICT market, and Indonesia's ambition to join the Trans Pacific Partnership (TPP) that commits parties to the free flow of data across borders.

In this regard, AIC stands ready to work with the Indonesian government and share the views of our industry and international best practices. After closely studying the draft regulation, AIC respectfully offer our comments below for consideration.

Sincerely,

Hans Vriens
Secretariat, Asia Internet Coalition

[2] The Impact of Internet Regulation on Investment. *Fifth Era*. January 2016. http://goo.gl/71g7zN

AIC Comments to the Draft Ministerial Regulation on the Provision of Application Services and/or Content Through the Internet

Article 1: Definition of OTT services

The current definition of OTT services can be read as covering everything that is available via the Internet and mobile networks, from the commonly understood OTT voice services and other media communication and content services to other services such as search engines, the sale and provision of applications, and e-commerce.

Given the broad scope of this definition, we will use the term "Internet-based services" rather than "OTTs" for the remainder of the comment letter.

As it is currently worded, the draft OTT regulation will impose a significant burden on all players, both large and small, foreign and domestic. This form of overarching regulation may (i) stifle innovation and progress in the Internet industry; (ii) potentially impede Indonesian businesses (from start-ups to individuals) from reaching global markets; and, (iii) in restricting online content and services (or OTT services), hurt revenue for local telecommunications (telco) providers that rely heavily on such services to drive demand for Internet services.

Recommendation: In light of the potential consequences elaborated above, AIC respectfully recommends that the regulation align with international standard definitions of OTT service, which commonly defines it as associated with online voice, other media communication and content services instead of any online services in general.

Article 4: Permanent Establishment and Local Registration requirements

AIC is concerned about the requirement for foreign Internet-based service providers to acquire permanent establishment (BUT) status (i.e. Article 4(2)), and to register with the Indonesian Telecommunications Regulatory Authority (BRTI) prior to offering their services in Indonesia (i.e. Article 4(5)).

The requirement on BUT status for foreign Internet-based service providers is inconsistent with generally accepted international standards. It sets a bad precedent for fragmenting the Internet, potentially subjecting Internet services to a multitude of regulatory jurisdictions. This raises barriers to entry and stifles the flow of new and useful technologies across borders, and would ultimately hurt Indonesian consumers and Internet-based service companies, and Indonesia's digital economy aspirations.

Although the draft regulation also indicates that foreign Internet-based service companies can set up an Indonesian entity from which it can operate its services, this would require Indonesia setting out a proper business line that captures the activities of an Internet-based service, as well as, relevant rules regarding foreign investment (if any) into that particular business line.

Notwithstanding the above points, it is of paramount importance to note that Internet-based services are now accessible around the world, without those services having a legal presence in every country where consumers are located. This business model keeps prices low and enables consumers, including start-ups and MSMEs, to benefit and access the best and newest technologies that become available around the world. If Internet-based service companies were required to establish a legal presence in every country in which their services are accessible, **compliance with diverse local regulations would raise barriers to entry and costs, inevitably limiting options and raising prices for consumers.** This requirement in Indonesia could also **set a dangerous precedent for Indonesian Internet-based service companies looking to expand beyond Indonesia** if other countries follow suit.

Given the broad definition of "Internet Based Application Services" and "Internet Based Content Services" in Article 1(1)-(2), the regulation as drafted would apply to the entire universe of Internet apps made available to consumers in Indonesia, both foreign and local. As of July 2015, there were 1.6 million apps available to Android users and 1.5 million on Apple's App Store.[3]

Indeed, due to the critical role of the Internet in communications, many businesses are creating apps to communicate and provide services to their customers, including banks and financial services, education, childcare, and travel, to name a few. All of these apps fall under the broad definitions in the draft regulation, and would thus be subject to local establishment requirements.

If implemented, the regulation would render most foreign-owned Internet applications or online services illegal in Indonesia. This would place existing applications and Internet service providers in the difficult position of having to choose between 1) setting up locally in Indonesia (which may be cost-prohibitive for many companies); 2) no longer offering their services to users in Indonesia; or 3) offering their services in violation of Indonesian law. For many Internet-based service companies that are trying to get off the ground or expand, the cost of setting up locally in different countries would be cost-prohibitive, which would result in both stifling the growth of innovation and depriving Indonesian users of innovative and useful new Internet-based services.

Additionally, due to the exceedingly large number of apps that would need to register as BUTs and thereafter with the BRTI, if implemented, these requirements would **create an overwhelming administrative burden for Indonesian authorities and cause severe delays in processing and approvals**. This would also **hurt Indonesian Internet-based service companies in terms of extending the timeline and costs of bringing their services to market**.

Recommendation: AIC shares the Indonesian government's interests to protect consumers and ensure fair competition. However, AIC believes that a more tailored approach toward regulating the different types of Internet-based services would ensure these interests are met, while avoiding heavy regulatory burdens that stunt the growth of Indonesia's budding creative and digital economy. AIC would like to share some best practices from across the Asia Pacific region (see Annex) and the opportunity to discuss those in greater detail with the Ministry.

[3] Statistica

Articles 4 & 5: Taxes

The contribution of Internet-based service services to the economy goes far beyond tax revenue. First, there is a multiplier effect on the economy from Internet-based services. Internet-based services help to boost productivity and grow the customer base of traditional sectors of the economy, and when those sectors grow, they create more jobs. Internet-based services help create new industries that move economies up the value chain, and these also generate higher value-added jobs. Finally, Internet-based services deliver important services like communication and information (e.g. enabling local businesses to promote their product overseas which leads to increased exports, real time weather reports, grocery prices, financial literacy, and even pre-natal advice to mothers) that drive local commerce and improve human development indicators.

Second, imposing taxes on apps could be a significant barrier to entry, while the expected tax revenue may not be as large as imagined. According to a 2015 study by the Boston Consulting Group (BCG), of the 103 billion apps downloaded by users in 2013, 90 percent were free to download. Over half of paid apps earn less than US$500 per month for the companies and individual(s) that developed them. A common developer strategy is to focus first on growing the app's user base to attract potential investors/buyers, so there is often no revenue to speak of for many of the world's most commonly downloaded apps.

Recommendation: Applying traditional methods of taxation on digital services, such as requiring permanent establishment, undercuts the Internet and how it has been successful as a medium for innovation and economic growth. The ubiquity of the Internet has lowered barriers to entry for a range of businesses and spurred the development of whole new digital industries. The application of traditional regulatory and tax regimes would undermine this and hurt Indonesia's growing digital economy. This regulation may also violate Indonesia's existing ASEAN trade obligations and provisions of the Trans-Pacific Partnership (TPP), which Indonesia seeks to enter.

Indonesia is not the only country grappling with this question and a piecemeal approach to tax policy would not resolve the issue given the borderless nature of the Internet. In this regard, AIC recommends that Indonesia look to multilateral efforts underway at the OECD on international tax reform to produce interoperable global rules. The approach that Indonesia is proposing is not in line with BEPS.

In the meantime, AIC respectfully recommends that the Ministry consider taking a more flexible and tailored approach toward regulating and taxing Internet-based service services. Given the potential for Indonesia's Internet-based service industry and its importance to President Joko Widodo's goal to move the economy up the value chain, introducing heavy regulatory burdens now could derail its potential. A flexible approach would grow the overall economic pie in the longer term and incentivise investment in Indonesia. AIC welcomes the opportunity to discuss best practices from around the world on how this could be achieved in Indonesia.

Article 5: Use Indonesian IP Number and Data Storage Requirements

Article 5(e) requires Internet-based service providers to use Indonesian IP numbers and "place part of servers in data centers in the territory of the Republic of Indonesia". AIC is concerned about this requirement, even as we note that the provision is unclear in terms of which part of servers is intended.

Internet-based service companies currently do not have servers built in every country in which they offer their services. Indeed, most major applications and services provide global service from a small number of data centers in order to maximise data security, ensure reliability, and keep costs low.

Forcing every application and Internet service company in the world to use local servers in order to be available in Indonesia would result in 1) many global Internet applications and services no longer being available in Indonesia and 2) a significant increase in the cost of services that remain available in Indonesia, harming Indonesia consumers and businesses.

Indonesian Internet-based service companies similarly currently have the option to store and process data anywhere in the world that meets their technical needs in a way that minimises costs. If they would be required to "place part of servers" in Indonesia, **this would raise costs and potentially limit their access to the best technologies and platforms in the world**. A burdensome regulatory environment is a constraint on innovation and may result in Indonesian technology entrepreneurs moving overseas.

Given the high costs of building servers wherever consumers are, the precedent set in this regulation could also harm Indonesian Internet-based service companies looking to expand beyond Indonesia, should other countries follow this requirement to locate data locally.

To support the above, research by Fifth Era shows that 67% of investors are uncomfortable investing in Internet businesses that are legally obligated to store user data on servers located in the same country where users are located and/or build their own data centers locally in each country of operation. This concern is especially prevalent in Indonesia (82%). This provision could cause substantial damage to the local start-up community, which depends heavily on investment.

Lastly, strictly from a legal perspective, AIC believes that requiring any and all Internet-based service providers to place a server in Indonesia is inconsistent with current prevailing Indonesian laws whereby, conceptually, a local data center is necessary only for electronic systems operators of public service providers.

Recommendation: AIC asks that the Ministry consider removing the requirement altogether given its harmful impact to Indonesian consumers and Internet-based service companies, and the broader digital economy as elaborated above. AIC respectfully requests that the Ministry clarify what it means to place "part of servers in data centers" in Indonesia.

Article 5: Requirement to use National Payment Gateway

In regard to Article 5(d), AIC is not aware of a "National Payment Gateway" in use in Indonesia. It is also unclear under this particular article if this refers to any National Payment Gateway or a certain specific National Payment Gateway. As the creation of such a system would have implications for our businesses, AIC respectfully requests to learn more about such plans and to have the opportunity to contribute to the discussion. A single (or limited number of) gateway system in theory could compromise security and potentially set Indonesia up for a single (or a limited number of) point of failure.

Articles 5 & 8: Customer Service Requirements

Article 5(g) would require Internet-based service providers to provide information on the use of their services in Bahasa Indonesia. Article 8, in addition, would require Internet-based service providers to set up contact centers in Indonesia and a 24-hour response time to consumer inquiries/complaints.

Recommendation: AIC respectfully recommends that the Ministry consider a more flexible approach that would allow online service providers to tailor user-friendly consumer feedback channels without prescribing the requirements by regulation. The exact nature of customer service requirements could be discussed with Internet-based service companies to determine what would be the most appropriate and proportionate, given the type of service and number of users. In addition, setting up a contact center in Indonesia may be considered burdensome and may not be necessary. The more established Internet-based service companies would usually have a contact center set up covering multiple jurisdictions globally (which could also include Indonesia). New Internet-based service companies would consider this requirement very costly to their business, hence, further restricting them from operating in Indonesia.

Articles 5 & 9: Data Retention and Lawful Intercept Requirements

Article 9 requires Internet-based service providers to retain data on transactions and traffic for at least three months. Article 5(f) separately provides for the lawful interception of data by law enforcement for the purpose of criminal investigations.

AIC members take seriously their responsibility to maintain the safety and security of the users of their products. They recognize that there are many situations where it is in the interests of people using their service that law enforcement agencies carry out an investigation into suspected criminal activity. Most large, global online service companies, including AIC members, already have developed and implemented proven voluntary processes for disclosing account records in accordance with terms of service and applicable laws. These processes work efficiently on a global scale, and are being used by governments around world. The Indonesian government should start to make use of these processes.

It is also worth noting that, as with local data storage and content compliance proposals, this is a complicated area for global companies. Assertions of jurisdiction often create conflicting legal obligations for companies who are subject to legal obligations elsewhere, often criminalising the

provision of content or lawful interception outside of the main country of incorporation. This conflict of laws creates an increasingly chaotic legal environment for providers, restricting the free flow of information and leaving private companies to decide whose laws to violate. Many of our members recognize that the legal framework governing cross-border requests needs to be significantly improved, and are eager to work with the Indonesian government and other relevant stakeholders on these important issues. We would urge that at the least a 'conflict of law' provision is included in this article.

Additionally, many AIC members only process and retain information that they require for their own business purposes. This means that some of, if not all, the data that could be required under "transaction record and traffic" in this article is not always processed, let alone retained. Adding an additional burden of data retention on providers will have the same impact as requiring local data storage, with the likely negative effect on local users.

Finally, AIC members take incredibly seriously their responsibility to protect an individuals' data privacy. A fine balance will need to be struck between protecting individuals' data privacy and the security of that data on the one hand, and the interest of law enforcement on the other. AIC is of the view that, in this regard, Articles 9 and 5(f) are too broadly worded.

Offshore Internet-based service providers cannot easily guarantee access for interception. Those Internet-based service providers are subject to laws of their home country and some countries prohibit Internet-based service providers from enabling access to their users' data unless various requirements are met. This type of process would typically need to involve the law enforcement agency of the offshore Internet-based service's home country as the authority overseeing offshore Internet-based service's conduct. Further, in considering this article, it needs to be taken into account by the Indonesian government that the authority for Indonesian law enforcement agencies to intercept communications only applies to interception carried out by telco providers (on their network) by order of the Attorney General or Head of Indonesian Police. As the current prevailing laws does not support the ability to intercept Internet-based services, there is a possibility that this article will be unenforceable.

Recommendation: AIC welcomes the opportunity to discuss our companies' guidelines in greater detail with the Ministry, and respectfully suggests that the obligation to retain data be only when notified by a valid court order.

Article 6: Content Compliance Requirements

AIC is concerned about Article 5(c) and Article 6 requiring Internet-based service companies to actively censor and filter content in accordance with Indonesian laws.

AIC acknowledges the Indonesian government's intent to protect consumers and ensure national harmony. However, we would point out that the requirement herein would be **exceedingly difficult for the majority of Internet-based service companies to implement on a technical basis, and for the Indonesian government to enforce, and would undermine the ability of the Indonesian people to**

effectively communicate globally. This is especially as we consider the sheer number of regulatory jurisdictions worldwide and Internet-based service services available over the global Internet.

Fortunately, many large, global Internet-based service companies, including AIC members, already have developed and implemented proven voluntary "notice and takedown" processes to allow consumers, organizations and governments to "flag" illegal content and request its removal. These processes work efficiently on a global scale, and are being used by countless individuals, organizations and governments around the clock. The Indonesian government can similarly avail itself of these processes.

Insofar as government content restriction orders are deemed necessary, such orders should be:

- specific, clear, unambiguous, and consistent with human rights principles;
- issued by an independent body that is explicitly authorized to adjudicate on censorship — namely, a judge or other independent authority;
- directed to the *creator* of content — not intermediaries — except in exceptional circumstance such as when the creator cannot be contacted after repeated efforts;
- subject to due process (including the right of appeal); and
- subject to clear rules providing for transparency.

A credit card is also already required in order to download Internet-based service services in the form of apps on both the Apple and Android platforms, even if those apps are free to download. This provides a significant degree of parental control over what content is made available to children and young adults.

Notwithstanding the above, we appreciate that this article serves to implement the content prohibition rules already provided under the ITE Law. However, certain content prohibited under this article seems to inconsistently exceed what has already been prohibited under the ITE Law.

The substance of these types of prohibited content on the Internet is often dictated by context. As an example, some news articles may contain content that is violent, depicts gambling, narcotics, etc. but there could be fundamental grounds to keep those news articles up for the benefit of public interest, such that they refrain from those activities which may be prohibited under Indonesian laws.

Recommendation: AIC respectfully recommends that the Ministry consider instead a multi-pronged approach to protect Indonesian consumers:

- Content prohibited under Article 6 to be modified to be consistent with what has been regulated under the ITE Law and Indonesian government to use well-established "notice and takedown" processes set up by Internet-based service companies to seek the removal of content it adjudicated to be illegal. AIC members welcome the opportunity to meet with the Indonesian authorities to elaborate on these processes and our individual companies' community guidelines.

- Indonesian government to develop campaigns to educate and empower Indonesian consumers about how they can control their Internet experience so that it is suitable for themselves and their families. AIC members welcome the opportunity to share best practices from around the world on how this has been done effectively.

- As it is impossible to filter the global Internet, the Indonesian government to develop campaigns to reinforce positive counter-messages and -narratives on the values it seeks to uphold. On the issue of violent extremism online, AIC members welcome the opportunity to work with the Indonesian authorities and civil society to develop appropriate campaigns.

Article 7: Cooperation with Telecommunications (Telco) Providers Requirement

AIC is concerned about the requirement for Internet-based service providers that offer similar functions to telco services to cooperate with telco providers or be subsumed under them, as outlined in Article 7.

This requirement **provides unfair advantage to local telco providers and contradicts the regulation's intent to ensure fair business competition and legal certainty**. As Internet-based services are constantly innovating their business models, this requirement to partner with telco providers would also **stifle innovation, including for the local Internet-based service industry**, at a time when Indonesia is looking to grow its creative economy and digital industry.

While not directly stated, this requirement could **open the door for telco providers to extract revenue sharing arrangements from Internet-based services resulting in the unfair practice of "double billing"**. In this set-up, telco providers would receive payment from Internet-based services for use of their network when users are also paying for data traffic through their subscription plans. This could **harm consumers in the long-run if Internet-based services will have to adjust their business models and recoup these costs from users**.

AIC acknowledges the regulation's intent to protect the interests of telco providers. In this regard, we would like to suggest that **the relationship between telco providers and Internet-based service providers be viewed as symbiotic** rather than zero sum. Internet-based services provide a vast array of content and services on the Internet that drive demand for more Internet access, in turn motivating consumers to purchase more fixed line or mobile data from telco providers. This results in more revenues for telco providers with no need to tether Internet-based services in partnerships with the former that could ultimately hurt consumers.

We also urge the Indonesian government to uphold Indonesia's freedom of contracting principle and not dictate how Internet-based service providers shall cooperate with telco providers and formalize that cooperation in a contract (which the draft regulation seems to require).

Regarding Option 3, in terms of erecting barriers to entry, requiring Internet-based service providers to be licensed as telecom operators is unnecessarily burdensome. Indonesia has telecom rules and

regulations that already provide for which services fall under the scope of telecom regulations and are therefore regulated by and subject to their licensing regime. These rules should continue to apply even without this option. Furthermore, we respectfully submit that as it is worded, Option 3 of Article 7.2 opens up the possibility that the definition of what constitutes a telecommunication service will become subject to interpretation, such that an Internet-based service provider may suddenly find itself classified as a telecom operator. This would be a major disincentive for potential Internet-based service providers to contest the market in Indonesia.

This regulation appears to apply to hundreds of thousands, if not millions, of Internet-based service providers (i.e. anyone in Indonesia or overseas who provides online services or content). Requiring all these providers to become telecommunication service providers would be very impractical.

Recommendation: AIC respectfully recommends that Option 1 be adopted. Options 2 and 3 would be extremely problematic for the industry. Notwithstanding the fact that some Internet-based services may have a business case for partnering with local telco providers, this requirement should not be levelled on all Internet-based services, limiting the space for innovation and harming the interests of end-users.

The requirement under Article 7.3 risks divulging confidential information as Indonesian law does not have a requirement for government authorities to abide by a certain confidentiality standard to protect confidential information. This would be a disincentive to investment and AIC recommends this article to be removed.

Article 7.4 is practically unenforceable. Internet-based service providers can cooperate with telco providers in infinite ways. Dictating contents of that agreement between Internet-based service providers and telco providers would restrict the way these parties cooperate with each other. This article also undermines Indonesia's long standing freedom of contracting principle. Furthermore, this requirement would violate the principle of net neutrality. AIC recommends that this article be removed.

<u>Article 10: Compensation and Intermediary Liabilities</u>

AIC is concerned about the extremely broad language on liability and compensation contained in Article 10. A more clearly articulated provision would be necessary for compliance and enforcement. Strong intermediary liability protections, including for user-generated content, are essential to maintain the dynamism and openness of the global Internet, resulting in tremendous economic growth and innovation around the world. Any effort to erode intermediary liability protections should be understood to erode incentives to invest in Internet technologies, slowing innovation and job creation.

In this context, in principle, the definition of "losses" needs to be clearly defined. An Internet-based service company's liability would also need to be defined within the bounds of "intent to cause losses" or to be consistent with Indonesia's tort rules, "unlawful acts that causes losses" and acceptable risk as contained within the terms of use agreement signed by users.

In terms of Internet-based service services that serve as e-commerce intermediaries, such as online marketplaces and app stores, AIC is of the view that it is important to make a distinction between liabilities and responsibilities applied to intermediaries and those applied to users who utilise these platforms to buy and sell goods and services.

These intermediaries facilitate e-commerce, including helping MSMEs market their goods to a larger customer base, at low cost. The reputable ones will mostly already have proactive measures and clear policies to prohibit the sale of fake goods and other offending items on their stores, including robust filters to remove such items when detected. Applying excessive liabilities to intermediaries would inevitably raise their costs and this would naturally pass on to their users. A prescriptive regulatory approach would **make many intermediaries less effective because technology and circumvention change so rapidly.**

Recommendation: Reparations for losses suffered by users of Internet-based service services are already provided in the prevailing tort rules under Indonesian law, in particular Article 1365 of the Indonesian Civil Code. It is recommended to remove Article 10 entirely and it may be worthwhile for the Indonesian government to consider protecting intermediaries from specific liabilities as acknowledged in various jurisdictions worldwide.

AIC respectfully requests an opportunity to better understand the Ministry's intent behind this provision and to contribute to its development. Our member companies also stand ready to elaborate on our internal policies on consumer protection and how they have worked in practice, often in partnership with law enforcement authorities, around the world.

Article 11: Suspension of Services

AIC is concerned with Article 11(3) which would give the BRTI authority to suspend services in cases related to charging, compliance with regulations, and/or service. Many Internet-based services provide critical tools for communication which people depend on to stay in touch with their family, friends and communities. Suspension of such services may result in cutting off urgent or critical communications, such as in cases of natural disasters or terrorist attacks. Any system to order even temporary suspension of services should be consistent with Indonesia's international human rights commitments and must ensure that any restrictions on freedom of expression meet the international standards of legality, necessity, and proportionality. Namely, such a system should rely on independent authority, should follow due process, should be open to appeal, and should be transparent. In addition, consistent with international norms, no single judge, mayor, police official, regulator, or other legal authority shall have the power to compel telecommunications providers or others to block, suspend, or otherwise disrupt public access to any Internet application, service or provider.

Article 13: Sanctions

Article 13(1) provides for subjecting Internet-based service providers to "bandwidth management" if found in breach of specified sections of the regulation but does not offer details on what this entails. AIC respectfully seeks the opportunity to clarify this point.

ANNEX

Asia Pacific case studies

- **India:** In August, 2014, India's telecommunications regulator rejected telco-led regulatory proposals for OTT services that included requirements for revenue-sharing agreements with telecommunications companies, and application of tax and pricing models based on traditional telecommunications services. Instead, the Telecom Regulatory Authority of India (TRAI) highlighted the significant economic contributions made by OTT services in incentivizing consumers to purchase fixed and mobile data packages, noting that one third of the Indian telecommunications industry's incremental revenue is being driven by increased data service use incentivized by OTTs services.[4]

- **South Korea:** South Korean mobile network operators also rejected regulatory solutions focused on charging Internet-based voice and text services for service use. Instead, they turned to more creative regulatory models to incentivize consumers to buy data subscription plans and drive up operator revenues. In 2010, SK Telecom and KT Corporation began allowing customers to access OTT voice services by subscribing to more expensive flat-rate mobile service plans. Then a subsequent policy proposal in July 2013 focused on further incentivizing consumer data purchases by implementing data caps on "heavy service users" and restricting high-demand traffic at peak times. In December 2013, the Ministry of Science, ICT, and Future Planning prohibited mobile operators from "self-regulating" traffic including OTT data services. In June 2014, the ministry announced a new policy including a complete opening of mobile networks to OTT voice services and the elimination of all access constraints. It instead implemented consumer usage restrictions, or data caps, based on different data subscription levels.' In December 2014, the Ministry of Science, ICT, and Future Planning announced that it plans to apply the "principle of … minimum, and self-regulation" with regard to emerging media including OTT data services in an effort to promote the development of the smart media industry.[5]

- **Singapore:** In February 2014, the Information Development Authority (IDA) issued statements prohibiting operators from blocking or charging consumers for access to OTT services. The authority also prohibited telecommunication operators from discriminating between or compromising the quality of service standards provided to different OTT services, requiring all OTT services to be provided with the same quality standards. The authority said that mobile consumers must be given access to all legitimate Internet content and applications and stated that Internet service providers are not permitted to block or impose restrictions on such access. IDA emphasized the need for "policies and regulatory measures that balance the need to promote innovation and competition in the Internet space, ensure non-discriminatory access to the Internet, and ensure protection of consumer interest."[6]

- **Australia:** The Australian Communications and Media Authority noted in a 2014 white paper that OTT voice and messaging apps are driving large increases in data consumption—contributing to a $4 billion increase in revenues for wireless telecommunications operators between 2008 and

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[4] Mankotia, A. (August 19, 2014). TRAI rejects telcos' proposal to charge fee on popular services like WhatsApp, Viber and Skype. *The Economic Times* [ii] Dr. Jayakar, K. and Dr. Park, E. (March 31, 2014). Emerging frameworks for regulation of Over-the-Top services on mobile networks: An international comparison. Pennsylvania State University and University of New Haven

[5] http://www.msip.go.kr/web/msipContents/contentsView.do?cateId=mssw311&artId=1228358

[6] Yu, E. (February 28, 2014). Singapore mobile users must be given access to OTT services. *ZDnet*

2013.[7] The Australian Competition Consumer Commission (ACCC) has stated that allowing Internet Service Providers (ISPs) to discriminate in the service quality and data speeds provided to different OTT services is anti-competitive and promised that any move by operators to hinder or "throttle" OTT service providers would be aggressively investigated.[8]

[7] Australian Communications and Media Authority. (November, 2014). Six Emerging Trends in Media and Communications

[8] Hutchinson, J (February 12, 2013). ACCC takes aim at internet slowdowns. *Australian Financial Review*