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REPORT ON DUTCH WCIT-12 PREPARATION

Background

There was some discussion in Geneva (see WCIT-12 briefing at the time of WSIS week) on the question how national delegations can involve stakeholders from the Internet community in their preparations (even if they are not sector members of ITU). In the Netherlands we have held two workshops in which representatives from all stakeholders including from the broad Internet field were involved. Beforehand we had given them a brief on the preparations and the relevant ITU documents. This document reports on those consultations

Report

During April and May 2012 the Dutch Ministry of Economic Affairs, Agriculture and Innovation, responsible for preparation of the Dutch position on the ITR review during WCIT-12 in Dubai, consulted technical and business experts and stakeholders in a series of meetings. The main conclusions are represented in this summary report.

The ITR review is "managed" by the Council Working Group on ITR's, and is building on the preparation that has been taking place over recent years, now with one more official meeting planned to take place in Geneva, 20 to 22 June 2012. In the years leading up to where we are today it has become clear that the ITRs will remain in place – even if some countries in earlier stages of the discussions were of the opinion that they were no longer necessary. So the focus is on getting the best possible result out of the meeting in Dubai, in December 3-14 this year.

Whereas the ITRs have been recognized to have had an important role in rolling out international telephony (across borders), more recently they are seen to hardly affect the current operators, as they do their business on the basis of contracts throughout the world, sometimes end-to-end, sometimes using international carriers to deliver connectivity to countries/telecom providers with whom the originating operator has no (not yet a) contract.

It was generally seen that the aim should be at long term, stabilizing impact rather than short term impact, and on strategic level rather than operational. And as countries are "deciding" around the

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table, it was seen as "only natural" that these measures are kept up by countries, rather than being binding to industry players, directly.

It was noted by some of the participants that it seems that some countries want to apply the "telecom logic" (of "originator" and "termination", for instance) to Internet connections. And whereas it is well understood that some governments look to the ITRs as a means to ensure telecommunication networks can generate income for their country, it was noted that this may lead to new regulations and "definitions of terms" that might cause *unintended side effects*.

The overall call resulting from the discussion was to:

1. Keep agreements on high level principles (as currently proposed by EU, US, ATP, …), in line with the CEPT recommendations;

2. Where needed in order to make the high level principles operational , to carry out an ex ante impact analysis (for instance as done by the European Commission accompanying policy decisions with substantial legal and/or financial impact) and/or set up working groups preferably within the structure of the existing ITU-T Study Groups that bring together the knowledge of the people that are affected to deliver their advice before new specific regulations are put in place to ensure that:

   a. no unintended side effects take place that hinder the proper functioning of the networks;

   b. intended side effects are properly "scaled" on their impact.

In this, the legal opinion that "Nothing in these regulations shall be interpreted as modifying the rights and obligations of Member States under any other treaties to which they are parties", as expressed by the ITU legal advisor in his Council Working Group "WCIT12 contribution 89" (dd: 5 April 2012), in a way already expresses the requirement to explore whether such effects would take place, for instance causing a conflict with WTO agreements.

And it goes further than that – it is also about preventing practical implementation issues to arise that may have little to potentially huge impact.

Unintended side effects

One of the biggest issues with the International Telecom Regulations is that they are/have been targeted at specific telecommunications business models and services (traditional telephony), and when taken in a broader sense, up to the level of "communication networks" could affect the Internet business models and services, as well – even when it is not the intent. With the convergence of media, it becomes clear that the underlying business models and services change. Now: as the underlying technologies are different, too – even if the ITRs would be set up to be "technology independent", they may well affect the ways networks are currently deployed, and constrain the way in which they evolve, in ways that are not always clear from the outset.

For instance, a rule in line with "nobody should be allowed to spoof" that is also extended to IP networks ("all communication networks"), while certainly applicable in some cases (see e.g. BCP381 for a technical and SAC042 for less technical explanation), could in other cases possibly lead to factual discrediting of ways of connecting that are common practice, today. Other examples related to Calling Line Identification (CLI) requirements include:

- TOR type technology is the most obvious example. Tor (short for The onion router) is a system intended to enable online anonymity. Tor client software routes Internet traffic through a worldwide volunteer network of servers in order to conceal a user's location or usage from anyone conducting network surveillance or traffic analysis.
- Another example is Source address obfuscation (i.e.: "made unreadable") when Network Address Translation boxes (NATs) are used, in particular with carrier grade NATs that are used in IPv4 to IPv4 context as a means to grow networks even when new public IPv4 addresses are no longer available, and in IPv4 to IPv6 context when IPv6 only nodes need to connect to IPv4 only nodes;

- One could argue that the "legality" of virtual private networks (VPNs), which are used by many enterprises and governments operating their own networks, could be affected by specific requirements on CLI "clarity", as in the public space only the VPN is identified, rather than the nodes within the VPN;

- On IP level, maintaining and recording the mapping information is possible, but delivering the mapping information in real-time to the terminating node or network (as happens when CLI is implemented on existing telephony services) is currently not possible.

In order to prevent unintended effects from new regulations, and in particular when such regulations are implemented on the basis of international treaties ("from the top"), the correct working cannot rely on "the test of the market place" which does apply to bottom-up developments emerging in industry (as solutions that are sub-optimal to the market would just "disappear" due to lack of customers).

It is therefore seen by the participants as important that a mechanism is built in to assess the technology and business model impact of specific proposed regulations before they become "regulation". This mechanism should be able to rely on information from stakeholders and experts in the markets (i.e. "multi-stakeholder approach").

Intended side-effects

Obviously, there will be "side effects" that are "intended", too. The call is for making these "side effects" explicit as "objective" which will allow pursuing this specific objective in the most optimal way from the perspective of communication users around the world.

One of those objectives may be something like "subsidize creation and/or improvement of communication networks in developing countries". If this objective is widely supported, it may be best to express that, explicitly; including in what way this would be facilitated, rather than doing that implicitly by changing, for instance, some of the ITRs that affect pricing for roaming or termination.

Up and beyond making such objectives explicit when they are to be pursuit, it continues to be possible for countries to establish, for instance, their own termination rates, as "national matters are left to national governments". Whether an explicit mention of such a matter in the ITRs is still necessary, up and beyond this recognition, should be taken into account.

Cybersecurity and spam

With regards to Cybersecurity and SPAM it was remarked that the definition needs to stay very high level, and should be truly technology independent. In this spirit, mentioning issues like botnets and malware (btw: not defined any further) should be prevented, with a focus solely about "uninvited messages that affect the network capacity" (in line with the EC definition). When looking at the proposal for a Cybersecurity and SPAM regulation, it was therefore proposed to keep it simple. For example with regards to Cybersecurity:

"Member States should encourage operating agencies to take measures to further the security, safety, continuity, sustainability and robustness of their infrastructure (networks and systems)."

With regards to SPAM specific action is pursuit. In the spirit of the above, a text for a SPAM resolution should be kept as simple and technology independent as possible, for example:

'Member States are encouraged to adopt national legislation to act against SPAM, and to cooperate to act against SPAM, including exchange of information with regards to the implementation and impact of national actions to counter SPAM."

For both subjects it should be clear that the aim is joint action, in which national governments remain responsible for the execution within their own jurisdictions and are encouraged to seek cooperation with other countries and market parties.

Concluding summary remarks

In particular the realization that ITRs are to help and not to harm. Due to convergence of the internet and telecommunications markets the effects on technical operations may not be obvious, it is important to ensure a solid review of impact of new regulations on technical and business operations before establishing those, in order to prevent unintended, possibly harmful consequences.

The model of the ex-ante impact studies as carried out by the European Commission for any of its policy proposals that is expected to have substantial financial or regulatory impact can help. This will require involving experts and stakeholders from both the telecommunication and Internet community, for the benefit of furthering global communications for all.

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