

COMMENTS ON THE WCIT-ITRs DISCUSSIONS

by VON Europe, September 2012

PRELIMINARY REMARKS

As governments and regulatory authorities prepare for the World Conference on International Telecommunications (WCIT) of the International Telecommunication Union (ITU) in Dubai from 3 until 14 December 2012 to discuss the International Telecommunications Regulations (ITRs), the Voice on the Net Coalition Europe ('VON') would like to provide some guiding principles, which we believe should be kept in mind during these negotiations.

When appropriate, we will demonstrate that these guiding principles have already been highlighted by the Body of European Regulators for Electronic Communications (BEREC) in the course of its various in-depth analyses, conducted over the past 18 months, as regards the dynamics of the Internet market, and more notably issues such as differentiation practices, Quality of Service (QoS) and IP Interconnection.

VON understands that some of the discussions leading to the WCIT may sometimes be perceived as lacking nuance or being deemed excessively alarmist. But we also consider that **fundamental issues have been raised by certain stakeholders – either governments or third parties representing certain vested interest – that run the risk of substantially affecting the Internet's ecosystem, of which VON's members are an integral part. Further, several proposals on the table would extend international multilateral treaties to online communications, adding additional heavy layers of bureaucracy and related costs, notably technical changes, national adaptations including content and law enforcement aspects, etc. all of which would be both burdensome and generally undesirable.**

VON would also like to point out that the aim of this paper is not to address the issue of Internet governance models and the merits and demerits of ITU's involvement in the latter, as we believe that other voices are better placed to give their views on these legitimate concerns.¹ We do however consider that a transparent, multi-stakeholder approach accessible to everyone is the only appropriate manner to discuss Internet governance if society as a whole wants to ensure the current

¹ See CDT. (2012). *ITU Move to Expand Powers Threatens the Internet: Civil Society Should Have Voice in ITU Internet Debate*. Available at, https://www.cdt.org/files/pdfs/CDT-ITU_WCIT12_background.pdf.

‘innovation without permission’ principle continues to apply, which has underpinned the Internet’s success and contribution to economic and social development.

The ITU is currently still a body that gives access mainly to public authorities and large stakeholders, as the resources required to participate (both in terms of cost of membership fee, travel costs and human resources) are simply too high for the average Internet start-up or small and medium enterprise (SME). Yet such companies form the backbone of the Internet and are key to keep it the innovative environment it has been since its inception.

We have provided in Annex a non-exhaustive list of provisions VON considers should be rejected, based on the Draft available at WCITLeaks.org.² In some cases, the ITU’s public version³ no longer seems to include some of these changes, but we understand the process is in constant evolutions and some of these changes could re-surface during the negotiations.

DETAILED REMARKS

1. VON encourages governments and regulators to oppose the expansion of the International Telecommunication Regulations (ITRs) to include Internet connectivity, online communications and the Internet and ICTs more generally.

The fact that the ITRs were written in 1988 at a time when the public Internet did not exist, does not mean that the review suddenly needs to encompass the Internet now.

Indeed, the rationale behind the ITRs in 1988 was to set some high level principles to manage the particular state of affairs at the time. The ITRs were namely set in place to address a context where most, if not all, countries across the world, telecommunications infrastructure was in the hand of state-owned monopolies, with liberalisation of the market only in its infancy.

The Internet comes from a very different place. To quote DeNardis, *“the Internet is a self-formulated ecosystem of interconnected autonomous systems conjoined at bilateral interconnection points and global Internet exchange points (IXPs) to collectively form the global Internet”*.⁴

² See <http://files.wcitleaks.org/public/T09-CWG.WCIT12-120620-TD-PLN-0064IR1IMSW-E.pdf>.

³ See <http://www.itu.int/en/wcit-12/Documents/draft-future-itrs-public.pdf>.

⁴ See DeNardis, L. (2012). Governance at the Internet's Core: The Geopolitics of Interconnection and Internet Exchange Points (IXPs) in Emerging Markets. *Telecommunications Policy Research Conference (TPRC)*, Arlington, VA, September 21-23, 2012. p. 1. Retrieved at, <http://ssrn.com/abstract=2029715>.

As put more directly by Mueller:

“The world of the Internet is very different. It is a world of liberalized trade in services, of transnational services and corporation, of dozens if not hundreds of private-sector voluntary technical standards forums, a world of multiple, competing private network operating entities, most of them no longer state-owned, and millions of Internet-based services riding on and crossing over those multiple platforms. So why are we treating governance of this sector as something that should be happening through treaty negotiations among governments?”⁵

VON’s answer to this question is clear: Internet should not be part of the ITRs. Including Internet in a document that was created to address telecommunications services would imply regulating an environment currently subject to market forces, at a time where no relevant market failure has been observed (see our comments below in Section 2). Similar suggestions to include ICTs more widely are also misguided: the ITRs should remain tightly focussed on the ITU’s core expertise of international telecommunications, rather than expand to cover all information technologies.

On questions relating specifically to Internet communications, including Voice over Internet Protocol (VoIP), there is a risk of an unintended and unnecessary extension of telecommunications regulation to Internet-based, network-independent services and applications across the globe, which are very different from traditional telecommunications services. Internet is a platform for innovation, a driver for broadband deployment, and a vehicle for continued economic growth. In fact, with the right policies it can save consumers, public administrations and businesses billions over the next years, notably through productivity and efficiency gains.

Some of the most exciting Internet developments for consumers come from applications that move beyond basic voice to put consumers in charge of their own communications. Voice is being integrated into web sites, social networking communities, instant messaging software, videoconferencing and business collaboration tools, blogs, mapping programs, office productivity suites, CRM software, voice recognition applications, and is likely to be used tomorrow in ways we can’t even imagine today.

⁵ See Mueller, M. (2012, June 7). Threat Analysis of WCIT Part 2 : Telecommunications vs. *Internet*. *Internet Governance Project (IGP)*. Retrieved at, <http://www.internetgovernance.org/2012/06/07/threat-analysis-of-wcit-part-2-telecommunications-vs-internet/>.

If some of the current ITR proposals were successful, Internet communications could find themselves regulated, including on pricing, interoperability and standards for example, which aside from the direct impact on these products and services could also induce undesirable effects for related infrastructure, such as server locations, hosting and connectivity arrangements.

VON hence believes that there should be no expansion of the scope of regulated communication products, networks or services, namely because of the inherent differences in technology and consumer perception. Moreover, these innovations are crucial for any country's economic and social development and should not be hampered by over-reaching regulation.

2. VON encourages governments and regulators to oppose the involvement of nation states or the ITU in 'facilitating' IP interconnection in any manner, including through arbitration or other forms of dispute settlement.

The OECD pointed out in its 2011 Report on peering, presented jointly with the BEREC, that the peering market is efficient and competitive.⁶

Moreover, in the explanatory note to the European Commission's Relevant Markets Recommendation, the European Commission reached the following conclusions in the area of peering:

"There are a number of differences between the typical arrangements for terminating calls on the public telephone network and delivering packets to destination addresses on the public Internet. In the latter case, end-users are implicitly paying to both send and receive packets. It is not automatically or typically the case that incoming traffic is charged for and that this charge is passed to the traffic sender via the sender's network. As indicated above, traffic connectivity can be arranged in a number of ways.

Entry barriers to this market are low and although there is evidence of economies of scale and that the ability to strike mutual traffic exchange (peering) agreements is helped by scale, this alone cannot be construed as inhibiting competition. Therefore [...] there is no a priori presumption that ex ante market analysis is required. Therefore, no

⁶ See OECD. (2011). *Internet Traffic Exchange: Market Developments and Policy Challenges* (OECD DSTI/ICCP/CISP(2011)2). Retrieved at, <http://www.oecd.org>; and Weller, D. (2011, November 2). IP Traffic Exchange Market Developments and Policy Challenges. *BEREC Expert Workshop on IP-Interconnection in Cooperation with OECD*, Brussels, November 2, 2011. Retrieved at, <http://berec.europa.eu/>.

market for wholesale Internet connectivity (or delivery of incoming packets) is identified for the purposes of the Recommendation.”⁷

In addition, as pointed out in the 2012 BEREC draft Report ‘An assessment of IP-interconnection in the context of Net Neutrality’,⁸ the European Commission has clearly stated in the framework of a notification by the Polish NRA UKE⁹ that the IP peering and transit markets did not require *ex ante* regulation as they are competitive.

VON therefore considers that IP interconnection should be left to market forces. As stated by the BEREC in its 2012 Draft Report on IP interconnection:¹⁰

- *“The Internet ecosystem has managed to adapt IP interconnection arrangements to reflect (inter alia) changes in technology, changes in (relative) market power of players, demand patterns and business models. This happened without a need for regulation.”;*
- *“In the Internet ecosystem speed and flexibility to adapt interconnection arrangements outweigh formal codification of interconnection rules (99 % of interconnection arrangements are concluded on a handshake basis).”; and,*
- *“The market has developed very well so far without any significant regulatory intervention.”*

VON therefore encourages governments and regulatory authorities to reject any discussions regarding the inclusion of IP interconnection in the ITRs. The ITRs are aimed to set rules where rules are required, not to interfere where market dynamics are functioning well.

3. VON encourages governments and regulators to put an end to the myth of the need to ‘ensure an adequate return on investment for telecoms operators’.

Moreover, the claims that the current market dynamics are ‘unfair’ to some actors (usually the telecommunications operators) and to the benefit of others have been seriously debunked by the

⁷ See European Commission. (2007). *Commission Staff Working Document – Explanatory Note – Accompanying document to the Commission Recommendation on Relevant Product and Service Markets* (SEC(2007) 1483 final). p. 37. Retrieved at, http://ec.europa.eu/information_society/policy/ecomm/doc/library/proposals/sec2007_1483_final.pdf.

⁸ See BEREC. (2012). *Draft Report for Public Consultation ‘An Assessment of IP-interconnection in the Context of Net Neutrality’*. p. 44 (Footnote 128). Retrieved at http://berec.europa.eu/files/news/bor_12_33_ip_ic_assessment.pdf.

⁹ See European Commission. (2010, March 3). *Commission Decision of 3 March 2010 pursuant to Article 7(4) of Directive 2002/21/EC (Withdrawal of notified draft measures) – Case PL/2009/1019 : The wholesale national market for IP traffic exchange (IP transit) – Case PL/2009/1020: The wholesale market for IP traffic exchange (IP peering) with the network of Telekomunikacja Polska S.A.*. Retrieved at, http://circa.europa.eu/Public/irc/infso/ecctf/library?l=/poland/registered_notifications/pl20091019-1020/act_part1_v4pdf/ EN_1.0 &a=d.

¹⁰ See BEREC. (2012). *Ibid.* p. 49-50.

various studies recently conducted by the BEREC in the area of net neutrality. Indeed, the BEREC has notably pointed out that Internet content, service and application providers:

“Make substantial payments for hosting and connectivity (...) Therefore different from what is sometimes alleged by some telcos in the Net Neutrality debate there seems to be no free-riding problem (...) BEREC conjectures that everything is covered and paid for in the Internet value chain (from content providers to the CAUs).”¹¹

Moreover, as regards the claimed requirements for investment by some operators, the BEREC concluded that *“overall, in fixed networks the decrease in unit-costs is not overcompensated by the increase in volume implying that there is no substantial increase in overall costs”*, and that *“the assumptions of many operators that costs are exploding due to traffic increases lose much of their seeming persuasiveness if cost developments on a per unit basis are looked at”*.¹²

The same conclusions were reached in a recent study by Communications Chambers entitled ‘Are Traffic Charges Needed to Avert a Coming CAPEX Catastrophe?’.¹³

4. VON encourages governments and regulators to oppose the prospect of compensation between providers based on ‘sending party network pays’.

Some observers seem to consider that a sending party network pays principle might tip the balance more fairly between countries that produce a lot of content and countries that consume it. Yet the reality is that such a principle is likely to increase the existing ‘digital divide’ between countries, rather than provide a solution for it.

As regards ‘sending party network pays’, the negative impact of the introduction of such a model is likely to occur at various levels:

- **At an architecture level: obliging the Internet to abandon its current architecture to fit old telecoms models** – Sending party networks pays is a principle inspired from the Plain Old Telephony Services (POTS) concept of ‘calling party network pays’. However, as pointed out by Mueller, *“the idea that connectivity charges should be rigidly governed by some regulatory-*

¹¹ See BEREC. (2012). *Ibid.* p. 48.

¹² See BEREC. (2012). *Ibid.* p. 34.

¹³ See Kenny, R. (2011). *Are traffic charges needed to avert a coming capex catastrophe? A review of the AT Kearney paper A Viable Future Model for the Internet.* Available at, <http://www.commcham.com/storage/publications/TrafficChargesATKReview.pdf>.

mandated metric like duration in minutes or traffic or number of packets or the direction of packet flows is simply an anachronism that does not reflect the heterogeneity of online services and the prevalence of multi-sided markets”, as “data is not voice, and telecommunication authorities pining for the good old days of predictable settlements simply need to wake up and face the facts about the way Internet applications work”.¹⁴ From an architecture point of view, Internet traffic does not generate a stream comparable to ‘a call’, as the flow of IP packets does not generate a reservation of network resources as is the case of a traditional POTS voice call. Trying to make the IP ecosystem fit a circuit-switched model is simply counter to its nature. It is what ISOC calls ‘retrofitting’ a sender pays settlement regime to an architecture that was not built to handle this.¹⁵ Such a settlement regime would also remove the incentives that currently exist to invest in local caching, a practice which is aimed at maximising network performance on the Internet. Indeed, some believe it could be more profitable (though highly inefficient from an engineering perspective) for the terminating Internet Service Providers (ISPs) to require content to be re-sent each time it is requested, as it would oblige the network sending to compensate them more often than in a caching scenario.

- **At a commercial level: making the Internet more expensive for all ISPs and users and remove incentives to make the Internet more efficient and quick by investing into caching** – Moving to a sending party network pays system will increase costs for all ISPs as the Internet architecture was not built to support such a charging mechanism. As pointed out above, specific technical mechanisms will need to be implemented, including new network components to send, collect and analyze the traffic data, hence rendering the introduction of such a settlement extremely burdensome and expensive to implement. Moreover, this increase in cost is likely to result in an increase in tariffs charged to Internet users.¹⁶
- **At a social level: the risk of an increase of the ‘digital divide’ phenomenon** – Moreover, content providers, transit providers and access ISPs will be unable to predict the settlement charge they incur, which will create commercial and legal uncertainty and is likely to push

¹⁴ See Mueller, M. (2012, June 9). *Threat Analysis of WCIT Part 3: Charging You, Charging Me*. Retrieved at, <http://www.internetgovernance.org/2012/06/09/threat-analysis-of-wcit-part-3-charging-you-charging-me/>.

¹⁵ See ISOC. (2012). *Internet Interconnections: Proposals for New Interconnection Model Comes Up Short*. p. 6. Retrieved at, <http://www.internetsociety.org/sites/default/files/Internet%20Interconnections%20Proposals%20For%20New%20Interconnection%20Model%20Comes%20Up%20Short.pdf>.

¹⁶ See CDT. (2012). *ETNO Proposal Threatens to Impair Access to Open, Global Internet*. p. 3. Retrieved at, http://www.cdt.org/files/pdfs/CDT_Analysis_ETNO_Proposal.pdf.

these providers to cautiousness. This may result, as shown by some observers, in a behaviour whereby content providers will avoid sending traffic to regions that represent a high-cost/low-revenue ratio. In practice, this could mean that users in some regions of the world (most likely the less developed ones) could be cut off from accessing the full range of information, services and tools available online, just because it would not be economically viable for content providers to make that content available to them. This is equally likely to stifle innovation and entrepreneurship in these areas.

VON therefore considers discussions on this issue not only misguided but threatening to the entire balance on which the Internet was built.

5. VON encourages governments and regulators to oppose the inclusion of discussions on QoS relating to the Internet.

Introducing any form of mandatory minimum quality of service in the Internet ecosystem would have the effect of prohibiting many Internet-based services and applications, as many of the most successful applications and services that make users want to go on the Internet and consume more are built on the best-effort principle. This is true of many VoIP applications or services offered by network independent providers such as VON's members, which have enabled real-time online communications without the need for enhanced or guaranteed quality of service.

Such an approach would simply destroy many innovative applications and services, and ignore user demand, as many consumers have no issue with current best-effort quality Internet, especially when it means having access to a free or reasonably cheap service.

And here again, the *"costs of developing and deploying end-to-end QoS would ultimately be passed along to Internet users"*.¹⁷

6. VON encourages governments and regulators to oppose the inclusion in the ITRs of discussions on 'security', 'harm', 'fraud', or related concepts, such as the concept of misuse or inappropriate use of numbering resources. Such elements are of an extreme complexity and the language associated to them in the proposals can lead to misinterpretations with harmful consequences, such as the blocking of VoIP.

¹⁷ See CDT. (2012). *Ibid.* p. 7.

From the point of view of traffic management practices, academic research shows that the security rationale¹⁸ is “often used to justify practices that block traffic”, and therefore “this rationale should be divided into two categories — traffic management to address traffic potentially harmful to the user versus network management techniques employed by broadband Internet access providers to address traffic harmful to the network”.¹⁹

More generally, the terms used in the various proposals are vague enough to permit, amongst other things, having VoIP be deemed ‘illegal’ as it could be erroneously treated as fraud (like call-back and bypass products) in many countries.

7. VON encourages governments and regulators to oppose the inclusion of policy discussions related to non-telecommunications matters, such as content including child protection, spam or free speech, in the ITRs.

The ITU is respected for its expertise in the telecommunications sector, and known for handling difficult technical areas such as standards and spectrum. Policy issues that affect such areas as child protection, spam or free speech are however of an entirely different nature and require analyses that go beyond the online ecosystem and delve into fundamental rights and societal challenges.

8. VON encourages governments and regulators to support the insertion of the notion of Global Telecommunication Service.

This proposal²⁰ would give a legal basis for countries to recognize global services based on global numbering resources (based for example on a single country code for a global service) which per se is outside of their jurisdictions. These global services are today possible thanks to the IP based technologies and might be a driver of innovative services for the future.

We thank you in advance for taking consideration of these views. Feel free to contact Herman Rucic, VON Europe, by phone (+32 (0)478 966701) or email (hrucic@voneurope.eu) should you need further information.

¹⁸ For a more detailed analysis of the security proposals see CDT. (2012). *Security Proposals to the ITU Could Create More Problems, Not Solutions*. Available at, https://www.cdt.org/files/pdfs/Cybersecurity_ITU_WCIT_Proposals.pdf.

¹⁹ See Jordan, S. (2010). A Framework for Classification of Traffic Management Practices as Reasonable or Unreasonable.

ACM Transactions on Internet Technology, 10(3), 1-23. p. 15. Retrieved at, <http://www.escholarship.org/uc/item/3ng6r1fw>.

²⁰ See Article 2.17 (definition) and new Article 4.5.

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ABOUT THE VON COALITION EUROPE

The Voice on the Net (VON) Coalition Europe was launched in December 2007 by leading Internet communications and technology companies, on the cutting edge to create an authoritative voice for the Internet-enabled communications industry. Its current members are iBasis, Google, Microsoft, Skype, Viber, Vonage, Voxbone and WeePee.

The VON Coalition Europe notably focuses on educating and informing policymakers in the European Union and abroad in order to promote responsible government policies that enable innovation and the many benefits that Internet voice innovations can deliver.

ANNEX – NON-EXHAUSTIVE LIST OF PROPOSALS VON CONSIDERS SHOULD BE REJECTED

PROVISIONS EXTENDING THE SCOPE OF THE ITRs TO COVER ICT, IP NETWORKS AND IP APPLICATIONS	
Article 1 Article 3.2	These provision propose to replace the regulated category of ‘recognised operating agency’ with ‘operating agency’ to cover public telecommunications networks or public telecommunications services; they also add ‘ICTs’ throughout the treaty (<i>i.e.</i> ‘telecommunication / ICTs’). This would extend the scope of the ITRs, notably to IP networks and IP applications.
Article 2.1	This provision adds the processing of information to the definition of telecom (<i>“Any transmission, emission, or reception or processing of signs, signals, writing, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems”</i>).
Article 4.2	This provision would extend the supervision of private commercial arrangements by ITU. It also adds <i>“services for carrying Internet traffic and data transmission”</i> to the list of services that states agree to cooperate to help provide.
New Article 3.7	This measure asks administrations to <i>“take appropriate measures nationally to ensure that all parties (including operating agencies authorized by Member States) involved in the provision of international Internet connections negotiate and agree to bilateral commercial arrangements, or an alternative type of arrangement between administrations, enabling direct international Internet connections that take into account the possible need for compensation between them for the value of elements such as traffic flow, number of routes, geographical coverage and cost of international transmission, and the possible application of network externalities, amongst others”</i> .
PROVISIONS GIVING ITU REMIT OVER CONTENT REGULATION	
Addition Art. 2 New Article 8.6 New Article 8.B	These articles slip in ‘content’ regulation in the ITRs by – for example - adding a definition of Online Child Protection and provisions concerning free speech and countering spam.
PROVISIONS AFFECTING COUNTRIES’ SOVEREIGNTY IN THE AREA OF FRAUD	
Article 1	This provision requires Member States to align national law with ITRs that references fraudulent practices or possible harm to another Member State. This could result, amongst other things, in having VoIP deemed ‘illegal’ as it is treated as fraud (like call-back and bypass products) in many countries.
Article 2.16	<i>“Inappropriate use of numbering resources”</i> or <i>“misappropriation of numbering resources”</i> could be interpreted as prohibiting any extra-territorial use of national numbering resources (such as call forward outside of the territorial boundaries), and treated as fraud.

Article 3.5	The provision that <i>“resources are used only by assignees”</i> impedes on the freedom of any administration to authorize sub-allocation of numbering resources. Such sub-allocation is crucial to VoIP providers, which are in most cases SMEs.
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PROVISIONS ADDING A DEFINITION AND SCOPING OF FRAUD / NETWORK FRAUD WHICH COULD BE IMPLEMENTED IN A WAY THAT RESTRICTS OR EVEN PROHIBITS VOIP

Article 2.1.6 Article 6.10	These provisions stipulate that <i>“use of public international telecommunication services or facilities with the intention of avoiding payment, without correct payment, with no payment at all, or by making someone else pay by misusing numbering resources or other deceptive practices, in order to obtain personal or financial gain”</i> .
New Art. 8A.4	This article references again directly the Internet by stating: <i>“Member States shall take measures to ensure Internet stability and security, to fight cybercrime and to counter spam, while protecting and respecting the provisions for privacy and freedom of expression as contained in the relevant parts of the Universal Declaration of Human Rights”</i> .

PROVISIONS CHANGING THE DYNAMICS OF THE ICT ECOSYSTEM TO ‘ENSURE AN ADEQUATE RETURN ON INVESTMENT’ FOR TELECOM OPERATORS, BY ENSHRINING THE SENDING PARTY NETWORK PAYS PRINCIPLE

ETNO proposal for Article 3.2	This ETNO proposal would radically (and very negatively) impact the architecture of Internet traffic and related business models.
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PROVISIONS EXPANDING THE DEFINITION, REGULATION AND RATE-SETTING OF TELECOMMUNICATION SERVICE TO INCLUDE INTERNET TRAFFIC; GOVERNMENTS / ITU SETTING INTERNATIONAL CHARGES AND ACCOUNTING RATES

A number of proposals relate to pricing, charging based on route, taxation, ‘fair compensation’ for interconnection, transit and termination rates, which could severely increase the cost of Internet services and infrastructure.

Article 2.2	This amendment proposes to add to the definition of ‘International Telecom Service’: <i>“traffic termination services (including Internet Traffic termination, any kind of circuit provision services, other services integral to provision of international telecommunication services (...)”</i> .
New Article 2.11	This provision adds a definition of ‘transit rate’ (<i>“a rate set by the point of transit in a third country (indirect relation)”</i>) which would bring IP hub and peering traffic transiting from one country across another and terminates in another country into the scope of the treaty, which does not reflect commercial decisions regarding routing of traffic.

Article 2.12	This provision redefines a termination rate as <i>“a rate set by the destination administration / ROA for terminating incoming traffic regardless of origin”</i> . Depending on how this provision is applied, it could require that all traffic that terminates and or transits a country be subject to settlement payments.
Article 2.14 Article 2.15	These provisions add a definition of hub / hubbing / transit center as <i>“a transit center (or network operator) that offers to other operators a telecommunication traffic termination service to nominated destinations contained in the offer”</i> , which would bring IXPs and Internet specific service models into ITU / ITR supervision. (the concern behind the proposal seems to be that international hubs drive fraudulent activities)
Article 3.9 ETNO proposal for Article 2.28	This provision adds a definition of IP Interconnection as <i>“technical and business solutions and rules to ensure the delivery of IP traffic through different networks.”</i> This would bring peering agreements that have been handled as private business arrangements into ITU / national regulator’s supervision. A related proposal by Arab States at Art. 3.9, would enshrine governments setting terms for commercial agreements.
Article 6 Article 9.1b	These provisions give ITU and national governments enhanced remit over rate-setting, including for IP traffic. Related provisions refer to ‘avoiding financial and/or technical harm to third countries’ in special contractual arrangements such as those common for IP traffic, which could be implemented in a way that stifles innovation and the free flow and use of online applications. A proposed new art. 6.7 also provides that ‘Member States shall ensure that each party in a negotiation or agreement related to or arising out of international connectivity matters including those for the Internet will have standing to have recourse to the competition authorities of the other party’s country.’
PROVISIONS AIMING AT INTRODUCING CONCEPTS OF QoS ON THE INTERNET	
New Article 2.29 Amending Article 3.1	These provisions aim at adding a definition of end to end QoS and best effort delivery; the risk is to take QoS as currently defined for the PSTN / circuit-switched network and apply it to IP networks and commercial arrangements, including the potential to ‘force’ QoS on VoIP.