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Ref: **ACTO's Counter Comments on the responses to TRAI Consultation Paper dated December 16, 2021 on Regulatory Framework for Promoting Data Economy Through Establishment of Data Centres, Content Delivery Networks, and Interconnect Exchanges in India**

Dear Sir,

With reference to the *Consultation Paper on Regulatory Framework for Promoting Data Economy Through Establishment of Data Centres, Content Delivery Networks, and Interconnect Exchanges in India* issued by Hon'ble Authority, Association of Competitive Telecom Operators (ACTO), would like pleased to provide our counter comments on the response from some stakeholders to this consultation paper.

Our counter comments are enclosed as Annexure – I for the kind consideration of the Hon'ble Authority.

Thanking you,
Respectfully submitted

Yours sincerely,
For **Association of Competitive Telecom Operators**



Tapan K. Patra
Director

Encl: As above

Annexure-I

ACTO's counter comments on the responses to TRAI Consultation Paper on Regulatory Framework for Promoting Data Economy Through Establishment of Data Centres, Content Delivery Networks, and Interconnect Exchanges in India

Association of Competitive Telecom Operators (ACTO) appreciates TRAI for bringing out the comprehensive Consultation Paper on "Regulatory Framework for Promoting Data Economy Through Establishment of Data Centres, Content Delivery Networks, and Interconnect Exchanges in India" dated 16th December 2021".

After looking at the responses from various stakeholders on this consultation paper, ACTO would like to provide counter comments on the response to the few questions related to Content Delivery Network(CDN) and these are as follows:

Broadly all the stakeholders have agreed to the fact that CDNs have played a very important role in delivery of traffic on the Internet. CDNs not only add efficiency to the network by reducing latency but also mitigates congestion by freeing up network capacity for various other purposes. Therefore, CDNs serve to benefit not just the faster delivery of content housed on these networks but also other content that can travel faster due to freeing up of network capacity.

1. Licensing and Regulatory Framework for CDN:

Broadly all the stakeholders and TRAI are in agreement to the fact that CDNs are performing a very important function in delivery of traffic on the Internet. CDNs not only add efficiency to the network by reducing latency but also mitigates congestion by freeing up network capacity for various other purposes. Therefore, CDNs serve to the benefit not just the faster delivery of content housed on these networks but also other content that can travel faster by freeing up of network capacity. This function is in a way helps to the TSPs/ISPs to improve the efficiency of the network. It also brings more revenue to TSPs/ISPs. Thus the role of CDNs are complementary in nature with the TSPs. More generally, technologies like CDN's and IXP's offer great value for the customer, as recognized by in this consultation paper. CDNs add value to the network by providing more contents/data that travel through the network to the customers /end users.

By and large, it is an established fact that licensing regime or over regulation puts barrier to the innovation and growth of the industry. Need for licensing/regulation mainly arises in case of loss of revenue to the Government or market failure. In this case, there no revenue loss to Government as the required license fee is levied by TSPs and TSPs deposit the same with the Government. Moreover, there is no sign of market failure due to CDNs at all and on the contrary the market is growing with the role of CDN. Unnecessary regulations could raise entry barriers and risk of adverse impact on the growth of the market. In this regard, BEREC also believes interconnection services need not come within the scope of regulation as only internet access services provided to end-users need regulation.

Therefore, there is no need for any regulation on the CDNs in the present situation.

2. Reason to cite QoS to bring CDN under regulation:

Few stakeholders have cited QoS as the reason to bring CDN under regulation is completely misunderstood and misleading in nature. Due to the inherent network structure, CDN enhances the quality of the service over and above the quality provided by ISPs/TSPs. Over the time, it has also proven that CDN have enhanced the user experience while accessing the content.

Therefore, QoS is not a good reason at all to bring CDN under regulation and in fact it is on the contrary to the claim.

3. Non Level Playing Field as a reason to bring CDN under regulation:

Some stake holders have raised the concerns raised in of uneven field between telco CDNs and other players. CDN technology architecture puts it in the middle of the network of ISP/TSP network and they do not provide telecommunications service or Internet access service to end users. CDNs rely on ISPs to deliver online content to end-users as they manage the complete network routing process end-to-end. Therefore, the question level playing field does not arise. Moreover, in order to ensure a level playing field, TRAI Recommendation on Net Neutrality dated 28th November 2017 by stating-

“7.3 The Authority recommends that CDNs should not be included within the scope of any restrictions on non-discriminatory treatment, which are designed specifically to cover the providers of Internet Access Services.”

In this regard, DoT Committee report on Net Neutrality in May 2015 had also stated in similar way.

“11.6 The Committee is of the opinion that CDN is an arrangement for management of content as a business strategy. Making available one provider’s CDN to others on commercial terms is a normal business activity. Discrimination in access or adoption of anti-competitive practices by them is best left to be covered under the law related to unfair trade practices.”

CDNs are not regulated even in mature markets such as the European Union, and the United States. ACTO suggests that CDNs whether operated and owned by TSPs or otherwise should not be subject any licensing or regulatory obligations.

4. Issue related to security and requirement of content blocking:

With the implementation of Centralized Monitoring System(CMS), the telecom network including internet traffic is under the surveillance of Government of India. The traffic can be monitored by concerned agencies as and when it is required for. CDN is part of the existing telecom network not an isolated one. Even at any point of time, Government has sovereign power to intervene in case of any national issue. So the concern for security to bring CDN under regulation is not a right reason as it is already under surveillance as well Govt can intervene at any point of time with the existing set up.

On the issue of content blocking, section 69A of the IT Act 2000 is applicable to both ISPs/TSPs and CDNs as intermediaries. The relevant provisions of the IT Act and Intermediary Rules are a self-contained code, sufficiently addressing the requirements of content blocking in double layered – one by ISP/TSPS and second layer by CDN. Therefore, further regulations in this regard is unnecessary.

Summary:

The consistent, light-touch approach to Internet regulation over the last two decades has yielded enormous consumer benefits, and TRAI should maintain that course. Even as the TRAI considers how best to protect consumers and prevent harm to competition, it should pursue a balanced approach that relies most heavily on informed consumer choices and that allows flexibility to meet consumers' evolving demands. More importantly the policy framework should be enabling in nature for third party content providers.

ACTO suggests to maintain the status quo of the CDN industry with respect regulation in line with established CDN markets such as USA and the EU. This will ensure regulatory consistency in India. CDNs will continue to improve the user experience by enhancing the network efficiency by the performing the function of-

- Reduction of latency and congestion across major Internet network chokepoints.
- Augmentation to the overall efficiency in Internet traffic delivery to the end-user.
