



*Koan Advisory Group's Counter Comments for the TRAI CP consultation paper on "Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services"*

We appreciate and thank the Telecom Regulatory Authority of India (TRAI) for publishing comments on the Consultation Paper on 'Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services' and providing an opportunity to submit counter-comments. Please see our counter comments below. We respond specifically to stakeholder views in support of 'fair share' contributions or network charges on OTTs.

Stakeholder comments	Our Counter Comments	Recommendations
OTTs drive demand for data	OTTs do not drive demand for data. The consumer preference for content drives demand for data. User engagement with OTT applications is directly proportional to the amount of data consumed over the internet. <sup>1</sup> OTT applications encourage people to purchase data packs and upgrade to higher-tiered data services supplying faster speeds and greater bandwidth. <sup>2</sup> Moreover, The Body of European Regulators for Electronic Communications (BEREC) found that the success of OTT services is core to the recent surge in demand for broadband access. <sup>3</sup> More content brings more people online, which drives data usage and concomitantly, revenues, for telecom companies. Hence OTTs solely do not drive demand for data. Their content may be a reason	The TRAI should not accept the contention that OTTs solely drive demand for data.

<sup>1</sup> Economic impact of OTTs on national telecommunication/ICT markets', ITU-D Study Groups (2019-2020): [https://www.itu.int/dms\\_pub/itu-d/oth/07/23/D07230000030001PDFE.pdf](https://www.itu.int/dms_pub/itu-d/oth/07/23/D07230000030001PDFE.pdf)

<sup>2</sup> Noyanika Batta & Meghna Bal, 'Unbundling the demand for a Network Usage Fee', Esya Centre (July 2023): [https://static1.squarespace.com/static/5bcef7b429f2cc38df3862f5/t/64b67e01b347d74316ed377d/1689681414242/ESYA-Centre\\_Report\\_Network-Usage-Fee\\_July-2023.pdf#page=5](https://static1.squarespace.com/static/5bcef7b429f2cc38df3862f5/t/64b67e01b347d74316ed377d/1689681414242/ESYA-Centre_Report_Network-Usage-Fee_July-2023.pdf#page=5)

<sup>3</sup> Body of European Regulators for Electronic Communications, 'BEREC preliminary assessment underlying assumptions of payments from large CAPs to ISPs', (October 2022): [https://www.berec.europa.eu/system/files/2022-10/BEREC%20BoR%20%2822%29%20137%20BEREC\\_preliminary-assessment-payments-CAPs-to-ISPs\\_0.pdf](https://www.berec.europa.eu/system/files/2022-10/BEREC%20BoR%20%2822%29%20137%20BEREC_preliminary-assessment-payments-CAPs-to-ISPs_0.pdf)



	for consumers to avail their services but there are other important socio-economic factors such as ability to purchase a phone/ device, data plans and access to areas where network connectivity is available.	
TSPs require investments to meet data demand and serve consumers	<p>It is true that TSPs require investments to meet data demand and serve consumers. However, this assertion is incomplete. It is also true that more traffic means more revenue for telcos. The telcos enjoy forbearance by the TRAI and operators are free to charge consumers appropriate data tariffs.<sup>4</sup> The consumption of online content and services is at an all-time high.<sup>5</sup> On average, Indian users spend approximately 70 minutes a day on OTT platforms, with each session lasting 40 minutes.<sup>6</sup> India also has the highest data traffic per smartphone worldwide, which is projected to grow from 25 GB per month in 2022 to 54 GB per month in 2028 – a compound annual growth rate (CAGR) of 14 percent.<sup>7</sup></p> <p>Thus, mandatory NUF or fair share will amount to TSPs chagrining double for access to internet. Moreover, the consumers may also witness increased prices for subscription-based OTT services.</p>	While it is true that TSPs require investments for infrastructure, the TRAI should take note that there are no pricing restrictions for TSPs and ISPs on data services for consumers. Any imposition of fair share on OTTs will amount to double charging.
The present internet pricing model is obsolete	The internet is a network of networks. A particular method of pricing the internet does not exist. There is no international policy	The TRAI should note that an internet pricing model does not exist.

<sup>4</sup> TV Ramchandran, 'Why should OTTs pay fees to telcos', Economic Times (August 2023): <https://economictimes.indiatimes.com/opinion/et-commentary/otts-vs-telcos-why-should-otts-pay/articleshow/102917049.cms?from=mdr>

<sup>5</sup> S. Saini, 'OTT platforms one of the key drivers of demand for smartphones', Exchange4media (July 2022): <https://www.exchange4media.com/marketing-news/ott-platforms-one-of-the-key-drivers-of-demand-for-smartphones-rajiv-bakshi-zeel-121592.html>

<sup>6</sup> Nokia, 'India Mobile Broadband Index' (2020): [https://www.nokia.com/sites/default/files/2020-02/Nokia\\_MBiT\\_2020\\_Report%20%28web%29.pdf](https://www.nokia.com/sites/default/files/2020-02/Nokia_MBiT_2020_Report%20%28web%29.pdf)

<sup>7</sup> Ericsson, 'Ericsson Mobility Report' (November 2022): <https://www.ericsson.com/4ae28d/assets/local/reports-papers/mobility-report/documents/2022/ericsson-mobility-report-november-2022.pdf>



	on who can connect or what they should pay. <sup>8</sup> One does not need any permission from any central authority. <sup>9</sup> Accessible infrastructure and a common protocol ensure low barriers to entry. <sup>10</sup> The TSPs and the ISPs that provide access to the internet can charge for those access services.	
Global trends, specifically South Korea indicate movement towards fair share.	Few stakeholders have cited South Korea as a precedent to support their assertion about imposition of NUF on OTTs. However, this assertion is misplaced. Within the Telecommunication Business Act there is no legal obligation on content services or OTTs to pay the network providers. The same has been clarified by Professor Kyunf Sun Park. <sup>11</sup> In 2016 the South Korean government introduced the sending party network pays (SPNP) arrangement in the country. Under it, internet service providers were required to pay each other for the traffic originating from their network. Further, the impact of SPNP is destructive as it provides disincentives among ISPs to refuse to host popular content. In addition, the European Parliament's own research indicates that South Korea's experiment with SPNP is failing. <sup>12</sup>	The TRAI should note that the precedent of South Korea is incorrectly quoted in some stakeholder comments. Moreover, wherever the precedent is cited, the comments do not throw light on its impact on internet prices and services.
The fair share proposal is fully compliant with net neutrality obligations.	The concept of fair share conflicts with the principle of net neutrality. If an OTT provider were to decline to pay the fee demanded by telcos, the latter may intentionally slow down the OTT service, impacting the end-user experience. <sup>13</sup> An app service	The Department of Telecommunications (DoT) cleared India's stance on net neutrality by crystallising regulations for the protection of the same in 2016. The government should remain

<sup>8</sup> 'Internet Way of Networking', Internet Society (September 2020): <https://www.internetsociety.org/resources/doc/2020/internet-impact-assessment-toolkit/critical-properties-of-the-internet/>

<sup>9</sup> *Ibid*

<sup>10</sup> *Ibid*

<sup>11</sup> Kamya Pandey, 'Dispelling The Myths Surrounding Korea's Network Fee Arrangement: An Interview With Professor KS Park', Medianama (September 2023): <https://www.medianama.com/2023/09/223-interview-professor-ks-park-korea-network-fee-arrangement/>

<sup>12</sup> European Parliamentary Research Service, 'Network cost contribution debate' (April 2023)

<sup>13</sup> Body of European Consumers, '[Connectivity Infrastructure and the Open Internet](#)' (September 2022)



	<p>that has the propensity to pay a TSP can do so till its competitors are not able to do so and compete without burning capital.<sup>14</sup> Non-discrimination of content is a prime principle of net neutrality which stands at risk in light of NUF. The telco may even have the power to terminate the OTT's ability to transmit content and services to consumers – even if the consumer requests it. Net neutrality seeks the equal treatment of all traffic to give consumers control over their online experience.<sup>15</sup></p> <p>Imposing a mandatory fair share contribution would seize that agency from consumers and put in the hands of telecom operators, allowing the latter to engage in discriminatory practices and determine what users can and cannot see.<sup>16</sup></p>	<p>committed to principles of net neutrality, in light of its vision of 'Digital India' and providing access to affordable internet.</p>
<p>OTTs erode into TSP revenues without contributing to infrastructure.</p>	<p>OTTs actively invest in network infrastructure, enabling improved service that reduces costs for telcos and consumers.<sup>17</sup> From 2011-2022, OTT providers invested approx. USD 900 billion into network infrastructure, with an average spend of USD 120 billion per year from 2018 to 2021.<sup>18</sup> These investments include communications infrastructure network components such as content delivery networks (CDNs), public clouds, submarine cables, data centres and data cache servers.</p>	<p>The TRAI should reject the contention that OTTs do not contribute to network infrastructure.</p>

<sup>14</sup> Vivan Sharan, 'Upholding Principles of Net neutrality' (September 2023): <https://www.hindustantimes.com/opinion/upholding-principles-of-network-neutrality-101695822506859.html>

<sup>15</sup> C. Liu, E. Falcon & K. Trendacosta, 'Network usage fees will harm European consumers and businesses', Electronic Freedom Foundation (December 2022): <https://www.eff.org/deeplinks/2022/12/network-usage-fees-will-harm-european-consumers-and-businesses>

<sup>16</sup> *Ibid*

<sup>17</sup> *Ibid*

<sup>18</sup> ET Bureau, 'BIF counters telecom industry demands over usage of network infrastructure' Economic Times (November 2022): <https://economictimes.indiatimes.com/industry/telecom/telecom-news/bif-counters-telecom-industry-demands-over-ott-usage-of-network-infrastructure/articleshow/95887624.cms?from=mdr>



<p>Telcos are entitled to charge rent for their infrastructure; TSPs need to invest in infrastructure to meet data demand; NUF is a return on such investments.</p>	<p>The telcos want OTTs to contribute to infrastructure cost as fair share or rent. Experts have stated that OTTs are not consulted in selection, negotiation and buying of infrastructure equipment for telecom networks.<sup>19</sup> The telcos also state that 5G technology entails huge investments. However, experts point out that OTTs were not consulted before telcos participated in 5G and committed to financial obligations for procuring 5G spectrum.<sup>20</sup></p>	<p>The TRAI should note that OTTs are not a part of the various processes during which telcos invest in infrastructure.</p>
<p>Non-regulated commercial negotiations with large OTT players may not result into efficient arrangements as they enjoy a large bargaining power.</p>	<p>While the stakeholders have advocated for regulation backed collaborative framework they have not established the ineffectiveness of the existing commercial arrangements. Currently, network providers and OTTs enter into mutual commercial arrangements to provide consumers bundled offerings for data and content subscriptions.<sup>21</sup> The Competition Commission of India has noted the same.<sup>22</sup> These commercial arrangements are driven by market forces. The ISPs and TSPs have entered into such commercial arrangements with popular content providers like Netflix, Hotstar and Prime Video. However, in their comments the stakeholders have not indicated any ineffectiveness or gap in the present commercial arrangements that warrants regulation backed collaborative frameworks.</p>	<p>The TRAI should note that no substantial gaps in the current mutual commercial arrangements have been pointed out in the stakeholder comments</p>

<sup>19</sup> TV Ramchandran, 'Why should OTTs pay fees to telcos', Economic Times (August 2023): <https://economictimes.indiatimes.com/opinion/et-commentary/otts-vs-telcos-why-should-otts-pay/articleshow/102917049.cms?from=mdr>

<sup>20</sup> *Ibid*

<sup>21</sup> ET Bureau, 'Jio announces prepaid plans bundled with Netflix' Economic Times (August 2023): <https://economictimes.indiatimes.com/industry/telecom/telecom-news/jio-announces-prepaid-plans-bundled-with-netflix/articleshow/102836513.cms?from=mdr>

<sup>22</sup> 'Market study on the telecom sector in India', Competition Commission of India (January 2021): <https://www.cci.gov.in/images/marketstudie/en/market-study-on-the-telecom-sector-in-india1652267616.pdf#page=15>