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Mahanagar Door Sanchar Bhawan,
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New Delhi-110002

Ref: **ACTO's Response to TRAI's Consultation Paper dated July 07, 2023 on Regulatory Mechanism for Over-The-Top (OTT) Communication Services and Selective Banning of OTT Services**

Dear Sir,

With reference to the *Consultation Paper on Regulatory Mechanism for Over-The-Top (OTT) Communication Services and Selective Banning of OTT Services* issued by Hon'ble Authority, Association of Competitive Telecom Operators (ACTO), is pleased to provide our comments.

We hope that our comments (enclosed as Annexure - I) will merit 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

Summary of ACTO's suggestions on this Consultation:

1. ACTO suggests TRAI to recommend light touch regulatory regime for regulating both the OTT Communication Services and Licensed Telecom Service Providers (TSPs). **There should be no onerous UL licensing regime or Authorization required for OTTs in the Country.**
2. Traditional communication services such as voice, video, SMS, and e-mail can now be substituted on a range of OTT platforms. ACTO believes this should lead to lifting onerous telecom compliance requirements rather than imposing new ones.
3. In order to ensure adequate enforcement by the security agencies, OTTs may be subjected to requirements contained under existing laws, rules and regulations including Information Technology Act, 2000, CERT-IN Directions, 2022, Digital Personal Data Protection Act, 2023, The Consumer Protection Act, 2019, and facilities such as content blocking or such similar measures, as may be deemed necessary.
4. ACTO suggests registration with general guidelines framework for OTT communication services.
5. Emphasis to be given on identification of the source of harmful content coupled with prompt action on removal as well as strong legal action. Identification of the source of harmful content is very important and prompt removal by the concerned website/ OTT platform is the right approach in this regard. It is therefore, recommended to direct the concerned OTT platforms, content owners and websites to stop services/ transmission of objectionable content in the specified region as per the existing laws.
6. **Any rules aiming at protecting consumers/residential users** be it OTTs or TSPs should not apply to enterprise providers. The Enterprise providers should be kept out of the purview of any OTT regulations as the concerns mentioned in the consultation are consumer centric and enterprise users don't raise similar issues.

ACTO's comments on TRAI's Consultation Paper on Regulatory Mechanism for Over-The-Top (OTT) Communication Services and Selective Banning of OTT Services

Introduction

Association of Competitive Telecom Operators (ACTO) appreciates TRAI for bringing out the comprehensive Consultation Paper on "Regulatory Mechanism for Over -The Top (OTT) Communication Services and Selective Banning of OTT Services" dated 7th July 2023.

Over the last several years, the impact of OTT services/applications is one of the most debated topics in the telecommunication/ICT industry across the globe. The demand for OTTs has reshaped several aspects of the telecommunication market and changed the way citizens and businesses consume digital technologies. OTTs are playing vital role in driving growth, creating jobs, and advancing innovation in the global economy. OTTs do also have great contribution in the increase of broadband (BB) demand of the Country. Notably, these services are not restricted to the communication space and have shown exponential pace into broadcasting, media and entertainment industries as well. Telecom Service providers (TSPs), on the other hand, are limited in their ability to provide certain services by inflexible and stringent regulation. It may be worth pointing out that the media layers (i.e. physical, data and network as per OSI model) are created by TSPs and OTT services sit above these 'network' levels. In fact, the business model of OTT providers is heavily centred around the concept that their applications (services) are network independent, though fully reliant on the existence of an underpinning network.

We, therefore, understand that the TSPs and OTTs are part of the same ecosystem, however it is the consumer's choice for OTT services which has increased the exponential demand for data/BB from telecommunication service providers. The rich features available with OTTs (esp. Instant Messaging and Apps) as compared to traditional voice/SMS are important factors for this reduction. While the competition provided by the OTT application providers has led to change of status quo, OTTs are driving innovation and futuristic technologies for the end consumers which is now an unavoidable necessity in the global context.

Now, the policy makers/regulators have a unique opportunity to set the policy agenda in a way that will support growth of both the OTTs as well as the TSPs and add to India's overall economic development. In order to see the continued and accelerated investment and development in this market, India's regulatory regime must keep to its current approach of liberalizing and moving towards the creation of a light touch regulatory environment for both the OTTs and TSPs as it progresses to embrace the current and future innovative and technology driven offerings.

ACTO believes that even though reform is necessary, one must proceed with caution as merely imposing onerous obligations to the level which are currently imposed on traditional network operators and services, is more likely to kill start-ups and businesses based on such growing innovation and will thus, disincentives investments and innovations in the country.

A more appropriate solution to the regulation of OTT is likely to be meeting somewhere in the middle. That is, lowering the regulatory burden on traditional operators, whilst making OTT providers accountable under existing legal framework such as Information Technology Act, CERT-IN Directions, 2022, Digital Personal Data Protection Act and may bring in some defined light touch measures to address key security concerns.

Utmost care must be exercised in regulating innovation driven ecosystem which has developed on its own as this will place India at the centre stage of innovation as an emerging hub for new services and technologies.

ACTO's response to the specific questions raised in the consultation paper:

Q1: What should be the definition of over-the-top (OTT) services? Kindly provide a detailed response with justification.

ACTO's response:

Globally acceptable and legal definition of Over-The-Top (OTT) services is yet to be available. It has been defined in many ways by different bodies. However, from a technical/practical perspective, it can be said that the availability of several existing or any future services directly to the end users through the internet. The services ride over the top of the internet connection without TSPs being able to control their dissemination. We are now in the era of the digital communications space, where technology and innovation happens in every moment. Therefore, the list of availability of such services can be an indicative, but not exhaustive in nature.

Broadly, we agree with the definition given by ITU as:

"An application accessed and delivered over the public Internet that may be a direct technical/functional substitute for traditional international telecommunication services".

Q.2 What could be the reasonable classification of OTT services based on an intelligible differentia? Please provide a list of the categories of OTT services based on such classification. Kindly provide a detailed response with justification.

And

Q.3 What should be the definition of OTT communication services? Please provide a list of features which may comprehensively characterize OTT communication services. Kindly provide a detailed response with justification.

And

Q.4 What could be the reasonable classification of OTT communication services based on an intelligible differentia? Please provide a list of the categories of OTT communication services based on such classification. Kindly provide a detailed response with justification.

ACTO's response:

In general, OTT services can be classified as three categories like **communications, content delivery and platform based applications** that the end users access using their own internet

connections. Typically, providers of OTT services do not supply network access on their own to end users. These services are an increasingly important element of the broadband value chain and are diverse and fast evolving, providing solutions that were previously unavailable or unaffordable to many people and businesses. OTT services provide users, developers, and SMEs around the world with access to jobs, education, news, trading platforms, productivity tools, enterprise services, app stores, and entertainment choices that were unheard of just a decade ago.

OTT based communication services may include voice, video, message and also file/data transfer. In future, some more may be added to it. OTT services can be classified broadly as communications and content delivery services and platform based applications.

Further communication services may be categorised in many ways like:

1. One way- broadcast/podcast/unicast/multicast as some examples.
2. Two way- Involved between calling party and called party.
3. Between selected number persons/ Close User Group/ conference/webinar.
4. Communication between assigned numbered entity or non-numbered entity or a mix.

The quality and features of the communication is an important factor in each case, be it from telecom operators or OTTs. As a result, one is not fully a substitute to others with respect to quality, cost and connectivity. Most of the domestic tariff plans of traditional voice & SMS services offered by TSPs are coupled with data packages. With the 4G/5G deployment, voice is carried on data, thus, it makes difficult to differentiate between data and voice.

In view of above, we would recommend to broadly go with the DoT Committee on Net Neutrality (May 2015) Report's classification of OTTs with some modifications as per below:

(i) OTT communications services – These services (e.g., VoIP, Video, Messaging) provide real-time person to person communication services. These services are similar to the telecommunication services provided by the licensed telecom service providers (TSPs) but are provided to the users as applications carried over the internet using the network infrastructure of TSPs.

(ii) OTT Media Services: These services are media services such as broadcasting, gaming, content services to end-users using the network infrastructure created by TSPs.

(iii) OTT application services – All other OTT services such as trade and commerce services (e-commerce, radio, taxi, financial services), cloud services (data hosting & data management platforms/applications), social media (Internet based intermediary applications like Facebook, YouTube) offer services to end-users using the network infrastructure created by TSPs.

Q.5 Please provide your views on the following aspects of OTT communication services vis-à-vis licensed telecommunication services in India:

- (a) regulatory aspects;**
- (b) economic aspects;**
- (c) security aspects;**
- (d) privacy aspects;**

- (e) safety aspects;
 - (f) quality of service aspects;
 - (g) consumer grievance redressal aspects; and
 - (h) any other aspects (please specify).
- Kindly provide a detailed response with justification.

AND

Q.6 Whether there is a need to bring OTT communication services under any licensing/regulatory framework to promote a competitive landscape for the benefit of consumers and service innovation? Kindly provide a detailed response with justification.

AND

Q.7 In case it is decided to bring OTT communication services under a licensing/regulatory framework, what licensing/ regulatory framework(s) would be appropriate for the various classes of OTT communication services as envisaged in the question number 4 above? Specifically, what should be the provisions in the licensing/ regulatory framework(s) for OTT Communication services in respect of the following aspects:

- (a) lawful interception;
- (b) privacy and security;
- (c) emergency services;
- (d) unsolicited commercial communication;
- (e) customer verification;
- (f) quality of service;
- (g) consumer grievance redressal;
- (h) eligibility conditions;
- (i) financial conditions (such as application processing fee, entry fee, license fee, bank guarantees etc.); and
- (j) any other aspects (please specify).

Kindly provide a detailed response in respect of each class of OTT communication services with justification

ACTO's response:

Regulatory aspects:

Our views on various aspects of TSPs and OTT Communication Services is highlighted, as below:

| S No | Aspects | Licensed Telecom Service Provider | OTT Communication Services | Resultant Effect |
|-------------|--------------------|---|---|---|
| (a) | Regulatory aspects | Sector specific regulation in addition to other existing legal framework comprising of Information Technology Act, 2000 CERT-In Directions, | Governed under existing legal framework comprising of Information Technology Act, 2000, CERT-In Directions, 2022, Digital Personal Data Protection Act, 2023 etc. | Given the numerous existing laws governing OTTs, the emphasis should be on harmonizing these regulations rather than imposing new onerous |

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|-----|------------------|---|---|--|
| | | 2022, Digital Personal Data Protection Act, 2023 etc. | | obligations under a telecom framework and therefore, to have better enforcement of these governing rules, Government may decide to have registration with general guidelines framework for OTT communication services. |
| (b) | Economic aspects | Monetization of network deployment is by way of charging the consumers for services and payment of License Fees and USOF levy to DoT. | Monetization is largely by way of provision of services to business and / or advertisement revenues. | Both OTTs and TSPs have their own monetization aspects. Moreover, their interdependence is evident, as the rising content demand fuels greater internet access requirements. Recognizing these varied contributions to the internet ecosystem is crucial when assessing the dynamic between OTT and TSPs. |
| (c) | Security Aspects | Comply to the security requirements mandated under the License. | Existing laws such as Information Technology Act, 2000, CERT-IN Directions, 2022 and Digital Personal Data Protection Act apply. Adequate enforcement of these laws may be ensured along with some measures addressing security concerns such as light touch subscriber verification process. | OTTs, like all other internet-based services, are already subject to security measures and privacy compliances under various existing laws thereby making additional regulations in this regard from DoT unnecessary. Instead, the focus should be strengthening the implementation of existing measures including greater assistance by OTTs to |
| (d) | Privacy Aspects | Comply with Privacy aspects as mandated under the License and Digital Personal Data Protection Act, 2023. | Comply to Digital Personal Data Protection Act, 2023. | |

| | | | | |
|-----|--------------------------------------|--|--|--|
| | | | | the law enforcement agencies. |
| (e) | Safety Aspects | Comply with requirements on Consumer protection. | Existing laws of consumer protection applies where services are chargeable. | Regulations in this regard for both OTTs and TSPs are at par. |
| (f) | Quality of Service Aspects | Require to comply to both network centric and customer centric quality of service. | No such mandate. Governed by free market economies. | May be left to market dynamics. |
| (g) | Consumer Grievance Redressal aspects | Compliance as per mandate by DoT and TRAI. | Paid/subscription-based OTT communication services fall under the purview of the Consumer Protection Act 2019, as they offer services for a consideration and consumer grievance can be addressed accordingly. | Since both are equally regulated in this regard, there is no need for a separate customer grievance redressal mechanism. |
| (h) | Any other aspects | Revenue sharing with Government in form of License fees and USOF. | Not Applicable. However, most services are either free or where chargeable, is governed by market conditions. | |

Other than licensing, OTTs in India are also regulated in many aspects. OTTs are governed by Information Technology Act 2000 and its Rules, Digital Personal Data Protection Act, the Consumer Protection Act 2019 and the Consumer Protection (E-commerce) Rules 2020, the Cert-In Direction 2022 etc. (**Existing Laws**). OTTs are responsible for blocking, end user protection, privacy / confidentiality and content regulation etc. Introducing additional regulation on the same subject matter from different government departments or regulators could lead to regulatory arbitrage and overlapping jurisdiction.

Efforts should be made towards reduction of compliance burden of Licensed TSPs. A level playing field must be ensured for provision of OTT communications services provided by TSPs.

It is also worth mentioning that the OTT Communication Services (Voice/ Video/ Messaging) is akin to Internet Telephony services allowed under the Unified License – Internet Service Provider Authorization and Access Service Authorization. While the Internet Service Provider Authorization allows for provision of number-independent internet telephony, the Access Provider Authorization allows for both number-based and number-independent internet telephony.

In view of the above and to have balance in the Telecom Industry with innovation/technology growth in mind, **ACTO suggests below framework for OTT Communications services (not for OTT media or Apps services) which are substitutable:**

- 1. ACTO suggests registration with general guidelines framework for OTT communication services which are not overlapping with compliance requirements under existing laws.**
- 2. However, there should be no onerous UL licensing regime or Authorization for OTTs in the Country including any burdensome compliance requirements that can curb the growth of this budding industry or is against the Government of India's ('GOI') vision of Digital India, Make in India and Start-up India.**

TRAI may note that, licensing should be restricted to those services that utilize scarce resources or pose a threat to public health.

Thus, a light touch regulatory environment will contribute to a robust, pro-consumer level playing field for OTTs and TSPs providing OTT services, alike. **We recommend self-regulation and reduction of the regulations for TSPs.**

ACTO recommends a light touch approach that it is proportionate and mindful of the various factors surrounding OTT communications services as well as telecommunications services offered by TSPs. The light touch approach should be based on the global best practices, Government of India vision like Digital India, Make in India and Start-up India and attracting investments in the country while balancing it with necessary but not burdensome security measures. We are of the view, that there is an urgent need for significant regulatory reforms in the telecommunications sector in order to allow TSPs to have the flexibility to offer innovative services to consumers on the principle of equality.

Enterprise services should not be subject to consumer regulation:

To the extent any regulation of OTT Communication services is considered, we recommend TRAI to evaluate the differences between business customers, who raise different economic and safety policy considerations, from individual consumers. In the event, TRAI adopts regulatory framework for OTT Communication services, provision of such services to business customers should be placed in a separate service category and exempted from requirements applicable to OTT communications services offered to B2C / retail subscribers. The capabilities of these internet-based services can create unprecedented efficiencies for business in India by converging voice, data and video applications to create new services to assist call center operations, remote tele-worker applications, and video or IP conferencing. At the same time, OTT business services should not be subject to levels of consumer protection and emergency service access. We share below the key differences between Enterprise Services and Mass-Market Retail Services and the rationale for not subjecting the Enterprise services to onerous regulations.

Services that cater to enterprise customer markets are categorically different from those offered to mass-market retail service customers, such as residential subscribers, in accordance with the different needs and preferences for each type of customer. Whereas mass-market retail

subscribers typically seek basic voice and data services, large enterprise customers often require a more complex and specialized suite of services involving telecommunications (such as IP voice telephony and high-speed Internet access) and non-telecommunications products, including PBX, cloud services, unified communications (e.g., conferencing services integrated with web tools and apps), among others.

All mass-market retail subscribers are able to choose from the same standard plans. In contrast, enterprise customers often negotiate specific terms and packages with a provider under a service level agreement (SLA). In many cases, enterprise customers even issue a tender process to select a provider on a competitive basis. This enables greater flexibility for enterprise customers to tailor their contractual arrangements, and highlights how the mass-market retail and enterprise customer markets are separate and distinct.

Further, it is commonly understood that large enterprise customers possess the expertise and bargaining power to negotiate with providers on a relatively equal and sometimes dominant basis. Because the negotiating powers between large enterprise customers and providers are relatively balanced or tilted in favor of the large business customers, the regulatory protections necessary for mass-market retail subscribers are typically unwarranted in the enterprise customer scenario. In turn, the array of registration, reporting, and auditing requirements used to protect mass-market subscribers may be unnecessary—and even detrimental—to the enterprise market segment.

To conclude, we summarize our key recommendations for regulators:

- Regulators should support regulatory simplification, which leads to numerous benefits including, greater regulatory certainty and predictability to regulators, domestic and international players, minimization of unnecessary compliance costs and inefficiencies for businesses of all sizes, a more prosperous environment in which innovation and investment from start-ups, SMEs and large businesses can thrive, in particular for new technologies and services; a boost to economic competitiveness and attractiveness which will be critical for economies to promptly recover from COVID recessions and attract international investments.
- To achieve regulatory simplification, regulators should rely on existing horizontal competition and consumer protection rules, and deregulate where appropriate, rather than incrementally build on historic — and often outdated — sector-specific laws and regulations.
- **Regulators should consider the unique characteristics of enterprise services and the benefits of eliminating outdated regulations or taking a light-touch approach when updating applicable rules.**

Q.8 Whether there is a need for a collaborative framework between OTT communication service providers and the licensed telecommunication service providers? If yes, what should be the provisions of such a collaborative framework? Kindly provide a detailed response with justification.

AND

Q.9 What could be the potential challenges arising out of the collaborative framework between OTT communication service providers and the licensed telecommunication service providers? How will it impact the aspects of net neutrality, consumer access and consumer choice etc.? What measures can be taken to address such challenges? Kindly provide a detailed response with justification.

ACTO's response:

OTTs are offering innovative voice and data services and consumers view OTT as offering better price/performance than the services for which they substitute. Usually, OTT services are either free/less expensive than an equivalent service or offers better value overall. OTTs and TSPs need each other to thrive in the contemporary communications marketplace. **OTTs provide the content that drives demand for telecommunication operator services.** Telecommunication operators provide the connectivity and coverage that enable access to OTTs. It is not a zero sum game but rather it requires a healthy relationship.

In this particular context, the ITU has issued prudent recommendations pertaining to two paramount aspects: 'Enabling an Environment for Voluntary Commercial Arrangements between Telecommunication Network Operators and Over-The-Top (OTT) Providers,'¹ and 'Formulating a Collaborative Framework for OTTs.'²

ITU's judicious approach is noteworthy, which abstains from imposing rigid mandates on specific arrangements. Instead, the focus lies in accentuating the advantages of fruitful collaboration and fostering a congenial atmosphere that encourages stakeholders to actively participate in joint initiatives. This visionary methodology inherently grants an enhanced degree of flexibility and adaptability, precisely tailored to address the intricate and diverse dynamics of the ever-evolving market conditions.

TSPs are to be encouraged to adopt data-driven business models reducing the dependence on telephone and SMS services. OTT providers and telecommunication operators need each other, so these two stakeholders should explore different models of partnerships. Thus, while collaboration between TSPs and OTTs is indeed beneficial for both parties and consumers, it is crucial to ensure that this collaboration is based on mutual understanding and market forces, rather than being mandated or regulated by the government.

Q10. What are the technical challenges in selective banning of specific OTT services and websites in specific regions of the country for a specific period? Please elaborate your response and suggest technical solutions to mitigate the challenges.

AND

¹ Recommendation ITU-T D.1101; <https://www.itu.int/en/ITU-T/studygroups/2013-2016/03/Pages/ott.aspx>

² Recommendation ITU-T D.262; <https://www.itu.int/en/ITU-T/studygroups/2013-2016/03/Pages/ott.aspx>

Q11. Whether there is a need to put in place a regulatory framework for selective banning of OTT services under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 or any other law, in force? Please provide a detailed response with justification.

AND

Q12. In case it is decided to put in place a regulatory framework for selective banning of OTT services in the country, -

(a) Which class(es) of OTT services should be covered under selective banning of OTT services? Please provide a detailed response with justification and illustrations.

(b) What should be the provisions and mechanism for such a regulatory framework? Kindly provide a detailed response with justification.

AND

Q.13 Whether there is a need to selectively ban specific websites apart from OTT services to meet the purposes? If yes, which class(es) of websites should be included for this purpose? Kindly provide a detailed response with justification.

ACTO's response:

ACTO believes that selective banning of platforms and/or websites in specific regions for a specific period is not a good solution to the problem. Considering that the license given for Internet Service Provider is Pan India, the network deployed is on a Pan-India basis, implementation of selective banning of platforms and/or websites in specific region may not be technically feasible.

ACTO believes that selective banning of platforms is not a good solution to the problem, although it may have an impact in the short term. Unless the content is declared as illegal, the same content may appear on other platforms/means since technology allows the quick creation of new platforms. We have noticed that content from blocking of URLs/websites have technical limitation and the content is often still available on the internet.

Identification of the source of harmful content and the prompt removal of the same is more effective rather than selective banning of platform and/ or blocking of website by the Licensed TSP. The source of harmful content may be in country or in other countries. Government need to establish procedure using MLAT/BLAT for the removal of harmful contents in other countries. Selective banning may also go through judicial scrutiny.

It is, therefore, recommended to direct the concerned OTT platforms, content owners and websites to stop services/ transmission of objectionable content in the specified region.

Q.14 Are there any other relevant issues or suggestions related to regulatory mechanism for OTT communication services, and selective banning of OTT services? Please provide a detailed explanation and justification for any such concerns or suggestions.

ACTO's response:

No comment.
