

FICCI Response on TRAI Consultation Paper
on
Regulatory Framework for OTT Communication Services



Preamble

The recently released “National Digital Communications Policy 2018” is an excellent document as it clearly indicates government’s vision for expanding the horizons of Digital Communication sector of India, and further utilising it as a tool of socio-economic development of the nation. The guidelines of the said policy promote innovation, growth, and development of the sector on the basis of fair competition, sustainable investments, and light touch regulatory and licensing reforms. Understanding the role of Digital Communication in the New India initiative, the policy clearly states its intent to ensure a harmonised approach for harnessing the true potential of these digital technologies alongside emerging technologies for fostering innovation and growth.

In the same directions, it is further suggested that the TRAI Consultation Paper on Regulatory Framework for Over-The-Top (OTT) communication services, should be observed with the same objectives and framework that has been used during the formulation of the National Digital Communications Policy 2018. We request TRAI, for the adoption of a future-ready light touch regulatory framework for the communications sector of India.



Q. 1) Which service(s), when provided by the OTT service provider(s), should be regarded as the same or similar to service(s) being provided by the TSPs. Please list all such OTT services with descriptions comparing it with services being provided by TSPs.

By delivery model, OTT voice calling, and instant messaging services use the open internet communication protocols. TRAI has, in its Consultation Paper given the definition of OTT adopted in various jurisdictions. Further taking Authority's attention to the European Union's revised European Electronic Communications Code which has expanded the definition of electronic communication services as to include "number-based interpersonal communications services" ("NB-ICS"), such as those interconnected with the public telephone network, and "number-independent interpersonal communications services" ("NI-ICS"), which includes non-interconnected OTT communications apps. The EECC places higher regulatory obligations on NB-ICS than NI-ICS. Simultaneously the EU has also sought to simplify and reduce the administrative burden on communication services in order to avoid over-regulation.

Recommendation: It is suggested that moving towards future regulatory fitness-simplification of TSP regulations and reduction of the administrative burden on communication services should be explored in order to avoid overregulation. We suggest that TRAI may consider the EU approach to electronic communication services in India.



Q. 2. Should substitutability be treated as the primary criterion for comparison of regulatory or licensing norms applicable to TSPs and OTT service providers? Please suggest factors or aspects, with justification, which should be considered to identify and discover the extent of substitutability.

Substitutability can be treated as one of the many criteria for comparison of regulatory or licensing norms applicable to TSPs and OTT service providers, other factors also include like; functional and technical characteristics. We have to also understand that the substitutability of OTT communications services is not universal in nature. Substitutability may be assessed from both from the point of view of the consumer and considering the characteristics of the application or service. However, it is suggested that comparison of regulatory or licensing norms or trying to assess the extent of substitutability to determine which rules should be applied/be applicable may be a narrow approach if it is carried out within the confines of the existing framework. The legacy rules that are applied to TSPs are in urgent need of a review to ensure that the TSPs are not placed at a disadvantage.

Recommendation: It is suggested that the Authority should opt to deregulate traditional communications framework wherever possible and refrain from over-regulating or regulating in a manner that disproportionately burdens companies or prevents innovation and investment. It is hence suggested that the Authority should look to redefine and reconsider the current licensing and regulatory framework.



Q. 3. Whether regulatory or licensing imbalance is impacting infusion of investments in the telecom networks especially required from time to time for network capacity expansions and technology upgradations? If yes, how OTT service providers may participate in infusing investment in the telecom networks? Please justify your answer with reasons.

There is no doubt that the growth of OTT applications and services increases the need for an infusion of investments in the network to maintain and upgrade capacity on an ongoing basis. The relationship between TSPs and OTTs is symbiotic - OTTs drive user demand for data, which in turn requires the TSPs to invest in expanding network capacity and coverage. Reducing the regulatory burden on TSPs would be a desirable step to increase the investible funds in the hands of the TSPs to cater to the growing requirements for network capacity expansions and technology upgradations. Infusion of investment in the telecom sector, as enunciated in NDCP 2018 should be encouraged.

Recommendation: It is suggested that more focus can be given on unshackling TSPs from unnecessary and expensive regulation which severely limits their ability to invest in networks.



Q. 4. Would inter-operability among OTT services and also inter-operability of their services with TSPs services promote competition and benefit the users? What measures may be taken, if any, to promote such competition? Please justify your answer with reasons.

Competition is always to the benefit of businesses as well as consumers if it is fostered in a conducive and balanced environment. However, in the OTT services provided via the Internet, interoperability among OTT services is not a significant competition factor. There are practically no significant costs preventing the users to switch from one OTT service provider to another. It may be due to the following reasons:

- Most OTT Communication Services are offered free of cost or at a very low-price basis
- Most of the OTT service providing apps are easily downloadable on smartphones and can co-exist on the same handset (also called 'multi-homing') without taking much capacity along with another app
- Once consumer communication apps are installed on a device, users can pass on from one app to its competitor apps in no-time

Recommendation: It is recommended that Inter-operability of OTT to OTT and OTT to TSP services should be left to a mutual agreement and market forces.



Q. 5. Are there issues related to lawful interception of OTT communication that is required to be resolved in the interest of national security or any other safeguards that need to be instituted? Should the responsibilities of OTT service providers and TSPs be separated? Please provide suggestions with justifications.

Safeguarding India's national security interests and maintaining law and order is imperative. Lawful interception and customer data privacy is of paramount importance, for all electronic communication services. It is suggested that the regulation in this space should focus on both national security and safety along with fostering innovation and growth for the development and expansion of the sector and economy.



Q. 6. Should there be provisions for emergency services to be made accessible via OTT platforms at par with the requirements prescribed for telecom service providers? Please provide suggestions with justification.

Under the existing licensing framework, TSPs are mandated to provide Emergency services to their subscribers. Therefore, it may not be necessary to have emergency services to be made accessible via OTT platforms.

Recommendation: In the Authority’s Internet telephony recommendations, which have been accepted by the Government of India, it is provided that *“The Licensees providing Internet Telephony service may facilitate access to emergency number calls using location services; however, it is not mandated to provide such services at present. The subscribers may be informed about the limitation of providing access to emergency services to internet Telephony subscribers in unambiguous terms”*. A similar approach may be adopted in the case of OTTs as well. It is thus suggested that provision of emergency services by OTT players not be mandated at this stage. There should however be complete transparency to the consumer with regard to emergency number calling.



Q. 7. Is there an issue of the non-level playing field between OTT providers and TSPs providing same or similar services? In case the answer is yes, should any regulatory or licensing norms be made applicable to OTT service providers to make it a level playing field? List all such regulation(s) and license(s), with justifications.

The communications ecosystem has widened and grown to cover services being offered through various technologies/platforms, communication applications and services. The TSPs operate under the ambit of a rigorous licensing framework, which needs to be reviewed to introduce a light touch approach which can then be applied across the entire digital communications eco-system. Any new regulations for TSPs and OTTs should be considered taking into account the respective regulations govern the TSPs and the OTTs under the Telegraph Act, license, TRAI Act and the Information Technology Act. We recommend that the Authority consider new future fit frameworks that lighten the regulatory burden on the TSPs and adopts a progressive approach that allows all entities in the eco-system to proliferate and grow - offering maximum benefits to the consumers. As submitted above, given the onset of convergence and the increase envisaged in the number of players offering communication applications and services, reconsideration of the traditional licensing and regulatory regime may be advisable. It is eminently desirable that the regulatory regime be light touch as appropriate.

Recommendation: It is suggested to have a simple future fit and light touch policy reform, with the objective to subsume the license fee and spectrum usage charges into the GST regime. This will provide a simple and implementable solution that will ensure parity. Additionally, the following key areas that should be reconsidered include:

- Financial Conditions - the license fee, spectrum and other charges payable to the Government
- Security Conditions
- Commercial Conditions - Tariffs

Q. 8. In case, any regulation or licensing condition is suggested to make applicable to OTT service providers in response to Q.7 then whether such regulations or licensing conditions are required to be reviewed or redefined in the context of OTT services or these may be applicable in the present form itself? If review or redefinition is suggested then propose or suggest the changes needed with justifications.

Putting similar licensing regulation on TSP and OTT service providers is not a suggested, and a new digital communication ecosystem approach is the need of the hour. The current regulations that apply to TSPs cannot be made applicable in the present form to OTT service providers. Applying legacy rules to all providers of communications may be neither desirable nor practical. It is suggested to consider reducing the legacy regulatory barriers on TSPs, especially licence fees, spectrum usage charges, other levies and taxes, to improve the business case for TSPs. A less burdensome regulatory regime will benefit all stakeholders as well as the economy at large. Data Privacy and Protection laws of the land should be equally applicable to all.

Recommendation: It is therefore suggested that TRAI should consider opportunities for deregulation and a new framework that are progressive and inclusive, that consider the entire emerging digital ecosystem and the specific characteristics of each service and also allow all entities in the eco-system to proliferate and grow, offering maximum benefits to the consumers.