



Response to TRAI Consultation Paper on Regulatory Framework for Over-The -Top (OTT) Communication Services on behalf of OLX

Q.1 Which service(s), when provided by OTT service provider(s), should be regarded as the same or similar to service(s) provided by the TSPs? Suggestions are required, naming OTT services with descriptions comparing them with services provided by TSPs.

Internet-based companies and mobile applications, such as OLX, integrate multiple services within a single platform, often including a real-time person-to-person (P2P) communication service. Such a feature is now an established practice of many consumer-oriented businesses as it enhances the user experience and customer engagement on the platform.

The test suggested by the EU (in its draft Electronics Communications Code) to determine a communication service as ‘substantial’ or ‘ancillary’ proposes that there are two categories of OTT services. **Substantial** OTT communication services are defined as those that use Voice over Internet Protocol (VoIP) over the Public Switched Telephone Networks (PSTN) or the Internet, to largely provide real-time P2P communication services, such as voice, video, and text messaging. **Ancillary** OTT communication services provide a real-time P2P communication service as a complimentary function, which is integrated into a larger online service, such as banking, travel, entertainment, e-commerce, and social media. Both substantial and ancillary service providers use TSPs’ network infrastructure, however, only substantial OTT services compete with their traditional telecommunication businesses. Therefore, if at all, substantial OTT service providers should be regarded as the same or similar to TSP services, as they are substitutable and compete with them. In light of competition with TSPs, we believe it would be arbitrary and anti-competitive to conflate substantial and ancillary OTT services, since nearly all OTT services incorporate an element of communication.

Q.3. Whether regulatory or licensing imbalance is impacting infusion of investments in 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.

It is appreciated that TSPs reinvest in telecom infrastructure, and incur heavy license fees to operate, as they use a public resource, spectrum. OTTs, meanwhile, operate as an auxiliary service over networks that are dependent on the ownership and control of TSPs, and the consumption of OTT services is therefore dependent on the contract between the network subscriber and the TSP. Customers pay the TSPs directly for Internet bandwidth to use OTT services, leading to revenue inflows for TSPs catering to data traffic. OTT service providers do not directly gain revenues from network usage, and seldom do consumers pay OTTs a fee to use their services. The average OTT’s revenue model provides services at a free or near-zero cost, while monetizing its platform through third-party advertisements. A simple cost-benefit analysis finds that TSPs stand to gain most from making investments in network capacity expansions, as they charge customers a regular direct-subscription fee, and gain profits directly from the rise in the user growth and data consumption of OTT services.



Q.4. Would interoperability among OTT services and also interoperability 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.

The increased popularity of OTT services has incentivized TSPs to invest in the development of their own OTT platforms. For example, the TSP Reliance Jio has launched OTT content-streaming apps, namely, Jio TV and Jio Cinema. As TSPs already own and control the networks upon which OTT apps operate, promoting interoperability could give rise to anti-competitive practices by TSPs. TSPs may engage in price-based discrimination of data services to incentivize their in-house and owned OTT platforms, which would be antithetical to net neutrality.

On the other hand, when two different OTT services enable interoperability, it is generally a part of their contractual agreement, making the possibility of entering into a monopolistic agreement negligible. For example, an e-commerce app might enter into agreement with a payment wallet to operate its transactions to benefit the end-customer. In this case, the two parties are generally at an arms-length and there is little opportunity for OTT service providers to act anti-competitively, as they do not provide competing or substitutable services.

As a few big players dominate the TSP market, promoting their interoperability with OTTs could give rise to oligarchic, if not monopolistic, and predatory behavior towards OTTs. The same does not hold true for interoperability between OTT services, which would benefit the end-user, given the volume and of versatility of OTT services.

Q.5. Are there issues related to lawful interception of OTT communication that are 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?

The Code of Criminal Procedure and the Information Technology Act, which apply to OTT services and other intermediaries, allow the Indian government to access and intercept data stored by internet platforms in the interest of national security and public order. Rule 3(7) of the Information Technology (Amendment) Act (2011) lays down a positive obligation on part of intermediaries to comply with all lawful orders and render assistance to government agencies that are lawfully authorized. In compliance with Rule 3(7), when required, OLX provides information or any such assistance to government agencies that are lawfully authorized for investigative, protective, and cyber-security activities. Therefore, there does not seem to be a need to burden OTT platforms that are fully compliant with existing laws and regulations.

The responsibilities and obligations of OTT service providers and TSPs are distinct, and they should be addressed by separate regulatory regimes. For example, OTT services providers do not operate a network of their own nor do they lease network capacity from a network operator. Any issue that is extraneous to or is not currently addressed by existing laws, such as, data protection and privacy, should also regulate TSPs and OTTs separately.



Q.7. Is there an issue of 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.

TSPs are free to enter into businesses competing with OTTs. Market dynamics are best qualified to determine the course of the OTT ecosystem, as regulatory and licensing norms in the space may raise the entry barrier for start-ups and SMEs.