

COMMENTS ON “CONSULTATION PAPER ON REGULATORY FRAMEWORK FOR OVER-THE-TOP (OTT) COMMUNICATION SERVICES” ISSUED BY THE TELECOM REGULATORY AUTHORITY OF INDIA DATED NOVEMBER 12, 2018

**TO
THE TELECOM REGULATORY AUTHORITY OF INDIA**

**FOR AND ON BEHALF OF
SONY PICTURES NETWORKS INDIA PVT. LTD.**



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India is truly set to add its own flavour to the Internet and make it an engine for socio-economic growth. In the words of Google’s Rajan Anandan “Recent internet growth in India is unlike anything in the history of commercial internet”. Most of the pillars of the digital India structure rest squarely on Telecom and ICT. However, the current reality is that in respect of the ICT development index (IDI) 2017, India ranks as low as 134 out of a total of 176 countries as per ITU¹. Penetration of Telecom and ICT have a positive impact on employment generation, enhancement in foreign investment and overall socio-economic development. Considering the low position in IDI, one of the highest priorities before the Government appears to be providing access to internet to larger population. Such growth in ICT/internet is also in-sync with Government’s vision of ‘Digital India’.

If we look at the below reporting on Sample Estimates for Impact on GDP² available on your website, it is evident that increase in broadband penetration has positively impacted GDP. We have extracted relevant portion from the report and reproduced the same below for ease:

Research by	Country	Measure of Impact/Value
McKinsey & Company	Cross-country	• 10 % increase in broadband’s household penetration delivers a boost to a country’s GDP that ranges from 0.1 – 1.4%
Boston Consulting Group	India	\$60 billion in 2013
Booz & Co	Cross-country	• 10 percent higher broadband penetration in a specific year is correlated to 1.5 percent greater labor productivity growth over the following five years. • Countries in the top tier of broadband penetration have also exhibited 2 percent higher GDP growth than countries in the bottom tier of broadband penetration
Gartner	India	\$67.058 billion in 2014
Copenhagen Economics	India	• \$41 billion – estimate for 2015(intermediaries excluding private investments)
McKinsey & Company	Argentina	• 2.2% of GDP in 2012
Boston Consulting Group	Hong Kong	• 5.9% of GDP in 2009
Boston Consulting Group	Sweden	• 7.7% of GDP in 2012

With this in the backdrop, the present Consultation Paper on Regulatory Framework for Over-The-Top (OTT) Communication Services which was been issued by the Telecom Regulatory Authority of India (TRAI) on November 12, 2018 (“CP”) is we understand basis recommendations sought by the Department of Telecommunication (DoT) committee on “Net Neutrality including traffic management system, economic, security and privacy aspects of OTT services apart from other relevant standpoints covered in the TRAI’s (the Authority) consultation paper on Regulatory Framework for Over-the-top (OTT) services issued earlier on March 27, 2015”. Basis the said recommendations sought by the DoT, various regulations have been issued by the TRAI pertaining to – The Prohibition of Discriminatory Tariff for Data Services Regulations, 2016; Encouraging data usage in rural areas through provisioning of free data; Regulatory framework for Internet Telephony; and Net neutrality.

As mentioned in the CP, the DoT Committee Report on Net Neutrality, 2015 has classified the OTT services into two buckets as follows:

- OTT communication services (VoIP) providing real-time person to person telecommunication services using the network infrastructure of the TSP and competing with them; and

¹ <http://www.itu.int/net4/ITU-D/idi/2017/index.html>

² <https://www.traai.gov.in/sites/default/files/ICRIER-Rajat.pdf>

- OTT application services such as media services (gaming), trade and commerce services (e-commerce, radio taxi, financial services), cloud services (data hosting and data management platforms or applications), social media, etc. using the network infrastructure of the TSP but not competing with them.

We note that TRAI has made a categorical demarcation and has chosen to restrict the CP to the first category provided by the DoT viz 'OTT services as can be regarded the same or similar to the services provided by TSPs'. The second category specified by the DoT *inter alia* pertaining to content creators/aggregators have accordingly been kept outside the purview of the CP. We agree with this classification of TRAI. Hence, we have restricted our comments to VoIP OTT communication services. The CP mentions in case of such OTT platforms, there exists a regulatory and pricing arbitrage which creates a non-level playing field between the Telcos and the OTT providers. The CP further mentions that OTT players do not have licensing and regulatory obligations while TSPs incur license fees and have to meet regulatory obligations. In this regard, it is important to take note of the facts that – (i) operation of OTT platforms is not dependant on TSPs but on the internet (mobile number(s) / email id(s) are only pre-requisites); (ii) the services being provided by the OTT platforms are free of cost, although consumers do bear the cost of data charges/internet which accrue to the TSPs and the revenues are not passed on to the OTT service providers. Hence, it is evident that the mode of operation, revenue generation and the nature of offerings of OTT communication service providers and TSPs are not the same and accordingly, the yardsticks applicable to TSPs should not be made applicable to OTT service Providers.

Further, as the CP points out, the growth of OTT services has undeniably led to tremendous social and economic benefits. These benefits range from ease of communication amongst persons situated in different parts of the country and abroad, access to information, entertainment and business opportunities, improved transparency and e-governance solutions. In all this, the TSP networks have served as the backbone for enabling access to the services. At the same time, TSPs themselves have also benefitted from increased data consumption due to the proliferation of OTT services. With amendment to the unified access service licence, TSPs are now allowed to offer internet telephony, or VoIP service, from applications developed by TSPs which is untethered from the underlying network.

In light of the aforesaid, we believe that no regulatory intervention is required since it could stifle innovation and strait-jacket technological innovation and the development of this sunrise sector. A policy of forbearance on regulation [as has been the case so far] should be continued in order to avoid hampering growth in the sector. At the same time telecos should be given opportunities to avail themselves of fair market pricing and sufficient policy backed impetus to enable them to invest in infrastructure and upgradation of technology. Any additional regulation could have an adverse impact on the growth of the internet applications and platforms.

Additionally, TSPs have consistently been raising concerns regarding spectrum licensing/spectrum usage charges. If this issue is resolved, it would go a long way for TSPs.

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