

**COMMENTS ON “CONSULTATION PAPER ON REVIEW OF TERMS AND CONDITIONS FOR
REGISTRATION OF OTHER SERVICE PROVIDERS (OSPs)” ISSUED BY THE TELECOM REGULATORY
AUTHORITY OF INDIA DATED MARCH 29, 2019**

**TO
THE TELECOM REGULATORY AUTHORITY OF INDIA**

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



Dated: May 16, 2019

The Consultation Paper on the Review of Terms and Conditions for registration of Other Service Providers (OSPs) (“CP”) has been issued by the Telecom Regulatory Authority of India (TRAI) citing vast changes in technology, evolution of different networking architectures and solutions for setting up of OSP network and evolution of new user applications and service delivery scenarios. Accordingly, the Department of Telecom (DoT) has felt it timely to review the technical, financial and regulatory requirements, scope of operations and the terms and conditions of registrations of OSPs in a comprehensive and holistic manner. Also, the DoT is keen to ensure that a technology neutral framework is devised so as to promote innovations for setting up the OSP service delivery platform in the most cost-efficient manner, for faster promotion of these service providers in the country.

Under the CP, TRAI has *inter-alia* sought stakeholders’ views on whether the definition of the application service in context of OSPs needs modification and “Whether, the Application Services which are purely based on data/ internet should be covered under Application Service for the purpose of defining OSPs” (Query 1). We are confining our response for the time being to this question.

Presently, OSPs have been defined to mean:

“A company providing Application Services.”

Application Services have been defined to mean:

“Services like tele-banking, telemedicine, tele-education, tele-trading, e-commerce, call centre, network operation centre and other IT Enabled Services by using Telecom Resources provided by authorized telecom service providers.”

We note from media reports TRAI has clarified that the idea behind the question whether Over The Top (“OTT”) services should be covered is not to increase the ambit of regulations around new apps or internet-based services, including ecommerce players, but simply to upgrade the regulatory structure around OSPS making it more contemporary¹.

Unfortunately, the query as drafted leaves scope for regulatory overreach to include even mobile applications and internet based services in its scope. To put this beyond any doubt, we suggest that while introducing any modifications to the definition of OSPs, due care should be taken to ensure that service providers like OTT platforms and especially OTT content providers that offer content to consumers are not in any manner impacted by an enlarged definition of OSPs. The mode of operation, revenue generation and the nature of offerings of OTT service providers are entirely different and cannot be included within the scope of OSPs. Unlike OTT platforms, OSPs utilize telecom infrastructure including spectrum and require licenses from the DoT. Hence, there is no reason to treat OSPs on the same pedestal as OTT service providers. An analogy can be drawn with the power sector: electricity generation and distribution is regulated by licensing and tariffs. However products and services that use electricity are not. Merely because a product or service uses electricity cannot be the basis to include it within the scope of regulations.

Further, OTT services providers (and especially content OTT services) are not regulated as a telecom service and TRAI would not have jurisdiction to regulate any aspect of OTT service providers.

¹ <https://economictimes.indiatimes.com/industry/telecom/trai-begins-consultation-to-review-terms-conditions-for-osp-registration/articleshow/68633236.cms>

We would like to stress here that the exponential growth of and innovation in OTT video services is a result of market forces and competition. The absence of regulatory controls and entry barriers has seen an explosion of OTT services, which have gone a long way in democratising the access to information, utilities and services that were hitherto either unaffordable or difficult to obtain. Any attempt regulate this fast growing jobs creating sector will only stymie innovation, adversely affect start ups and the country's economic growth. A 'Light touch regulatory' approach is the need of the hour.

Note: *We have limited our inputs to Query 1 pertaining to the definition of OSPs that concerns us.*

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