

Without Prejudice

Times Network's Response to the Consultation Paper on Regulatory Framework for Over-The-Top (OTT) Communication Services

Preamble/ Background of Telecom and OTT services:

Before sharing answers to the queries raised in present Consultation Paper (CP), we wish to put forth certain basic pointers on Telecom and OTT business sectors which are summarised as follows. These pointers will help us to understand the answers in a better manner.

Primary & Secondary Object of Telecom & OTT Business: Primary object of telecom business for which the companies are set up and incorporated, is providing the telecommunication services by voice communication and all other services provided additionally including text messaging etc. are ancillary services to the main service. Similarly, primary service of the OTT service providers is pertaining to sharing of content on-line such as audio/ video content including still/ snaps/ photographs for connecting with their friends/ relatives, which is not always a real time connect like TSP. All other services of sending message, comments and video calls are ancillary services to the primary service of on-line content sharing on OTT platforms.

Technology Used: Technology used by TSP for providing traditional voice communication was earlier carried through cables whereas presently it is carried using electrical signals, optical or electromagnetic waves etc. With time, the telecom technologies have progressed to more advanced Fourth Generation technologies. OTT services are provided through the Internet Protocol which use packet-switched connections to exchange voice, fax and other forms of information that have traditionally been carried over the dedicated circuit-switched connections of the public switched telephone network (PSTN).

Place of Operations: TSP operates locally within the city or country by setting up their infrastructure. While, OTT platform operators like Facebook, Twitter, WhatsApp, Instagram, Skype, Google operate from various countries but are easily available and accessible throughout the world.

Subscription and Revenue: Telecom services are subscription based and OTT services are many times on FOC basis which are surviving on ad-revenue. Only certain audio visual content services made available by OTT platforms are on subscription or payment basis as per the usage by the viewer.

Moreover, it has been observed that with an increase in the OTT Apps/ Platform, there has been an exponential increase in the use of handsets/ smartphones. This has not only resulted in more mobile number connections for the TSPs but has also resulted in the expanded usage of the bandwidth data, both of which have actually helped to augment the business/ revenue of TSPs.

Laws Applicable: Basis the primary services, TRAI Act and Telegraph Act are applicable to TSPs and the IT Act is applicable to OTT platform operators. Since, TSPs and OTT players are

providing the additional services; all other acts are also applicable to them like any other industry.

Considering the above, just because some of the services provided by TSP and OTT look similar, we cannot treat both the platforms in one category and with the same yard stick. Except, Voice Calling Services and Messaging Services, no other service between TSP and OTT is same. But due to technological advances, the TSP understood the importance of OTT services and hence, they have started providing the same to their subscribers as additional services with the intent to increase their subscription revenue and subscriber base to remain in competition.

We are of the view that although OTT and TSPs provide these services that appear similar, there are glaring differences between the same due to which OTTs cannot be regarded as substitutes for TSPs. Therefore, it is imperative to consider the various dissimilarities between the TSP and OTT. Regulating the OTT services, on the understanding that OTT services are substitute of Telecom Services, the same will affect the consumers and industry at large. It will impede entry for new apps and services by raising the cost of provisioning of services.

We strongly recommend here that there should be no comparison between the two on the basis of the impression of substitutability and the present regulations should only be strengthened to support the OTT businesses as an independent business sector without mixing the same with telecommunication sector which has different dynamics. This approach will help the industry to improve the capital/ investment infusions.

Below are the Answers to the Queries raised in present CP:

Q1. 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.

A1. Broadly, the following services provided by the OTT service provider create an impression that they are same or similar to the services provided by TSPs:

- a. Voice Calling Services; &
- b. Text Messaging Services

We are of the view that although OTT and TSPs provide these services that appear similar, there are glaring differences between them due to which OTTs cannot be regarded as substitutes for TSPs. The above services are primary services for TSP and the same are secondary services for OTT as explained in preamble. Infact, OTTs completely rely on TSPs since a consumer cannot access OTT services without having an active internet connection from a TSP/ISP. Knowing the significant growth in OTT sector, the TSP have started investing in OTT platforms to improve their business opportunities.

There is an inherent difference in the technology used by OTTs and TSPs for calls and messaging. Hence, they cannot be classed as “similar services” from a licensing perspective.

Further, TSPs as ISPs are access providers who control the underlying broadband access infrastructure, with few market players due to high barriers to market entry. By contrast, OTTs do not control the underlying broadband access point, have significantly lower barriers to market entry and are faced with many competing services unlike TSPs. Consumers can add or stop using OTTs at will whereas switching between TSPs involves incurring cost for the consumer and generally involves a longer relationship.

Major players in the market including Whatsapp, Facebook, Google and Skype have taken the voice calling/ messaging services to a new level altogether introducing an alternate platform for the end users/ consumers.

There has been a visible spike in the tie-ups between businesses, big & small, established & newly set up, all alike, with the OTT service providers who are providing varied options/ services to these businesses to advertise their content/ products; to closely connect with the end users and to gauge the user responses/ reactions/ preferences.

Therefore, it is imperative to consider the various dissimilarities between the TSP and OTT voice and message services including the certain exclusive rights that are enjoyed by the TSPs due to the licenses granted to them as compared to OTT platforms.

Q2. 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.

A2. NO. Since there is no substitutability of OTT services with Telecom Services, there is no question of applying any similar regulatory or licensing norms to TSP and OTT service providers. As clarified in answer to Q1, only on the impression of similar and overlapping services between TSP and OTT, we cannot and should not plan and propose to regulate the OTT platform on the similar lines of TSP.

Comparing or attempting to substitute OTT communications with traditional communication services offered by TSPs ignores the fact that OTTs often offer diverse functionalities and may use ancillary services of messaging or calling merely to augment unrelated services and improve the consumer experience with their main on-line content related services. Considering, substitutability as a primary criterion to justify regulation or licensing requirements for OTT services will affect the consumers and industry at large. It will impede entry for new apps and services by raising the cost of provisioning of services.

Technology and its consistent updations has been the very foundation of the concept of OTTs and TSPs. Despite few common concepts involved, these two operate at entirely different footing whereby OTTs can be said to be making extensive use of the internet and the network base provided by the TSPs. This is also helping TSPs in revenue generation by way of data usage.

Further, OTTs do not fulfil the rationale of the licensing regime as in the case of TSP since the OTT service providers operate from various countries and hence, OTTs cannot be termed as falling within the ambit of the Telegraph Act, 1885 under which the license is granted to TSPs. There is an inherent difference in the technology used by OTTs and TSPs for calls and messaging. Hence, they cannot be classed as “similar services” from a licensing perspective.

We strongly recommend here that there should be no comparison between the two on the basis of the impression of substitutability with respect to licensing norms & regulatory requirements. Further, since both the categories of service providers depend on technology, we recommend that the present regulations should only be strengthened to support the OTT businesses and that they should not be curbed/ burdened with any regulatory/ licensing requirements.

Q3. 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.

A3. First of all we wish to clarify that there is no adverse impact on investment on OTT services which is evident from investment by independent operators like Netflix, VIU, YouTube Red, investment by E-Commerce Operators (like Amazon Prime Video), by Broadcasters/ Production Houses (like Voot, Hotstar, ALT - Balaji, Zee 5, Sony LIV), and also by TSP (like Jio, Airtel, Vodafone). We believe that there is no regulatory imbalance between OTT and TSPs’ and therefore, the same cannot impact investments in telecom networks and put a monetary burden on the TSPs.

In fact, OTT services are being regulated and have accountability under the Information Technology Act, 2000.

It is the constant network capacity expansions and technological upgradations that fuels the need for making monetary infusion/ investments in the telecom networks and primarily the increase in demand of data services which is mostly effected due to the ever increasing consumption of OTT services by the consumer. This implies that OTTs’ are indirectly participating in infusing investment in the telecom networks.

The increased demand and array of services provided by OTTs, have made them a popular platform and have only helped the TSPs in making money in the form of massive increase in the internet data usage thereby resulting in generation of additional revenue for the TSPs by cashing on the economies of scale. Therefore, the increased popularity of internet platforms and services like OTT has incentivized TSPs to invest in the development of their own Internet Platforms and Services.

With reference to the capital/ investment infusions, the prevailing trend/ set precedents bring to light the cases where the Telcos, observing the growing business opportunities, have made investments/ acquisitions in the OTT space rather than vice-versa. The

prominent examples of this trend are companies like Verizon, Comcast and Reliance who have made huge investments in the OTT sector.

Further, TRAI have acknowledged in its recommendations on regulations for Internet Telephony that internet use is growing at an unprecedented high rate, and existing providers will generate revenue from data services which will be required by a subscriber to make even an internet telephony call. The increasing revenue realisations from data services due to increasing internet traffic will not only compensate for the loss of conventional voice traffic but will also increase the revenue potential.

There are several other important factors affecting capital infusion in the telecom sector like cut throat competition between the infrastructure service providers in the telecom space. Hence, taking the view that licensing and regulatory imbalance between OTT and TSP is impacting capital infusion in telecom space is a misnomer, to say the least.

Thus, we recommend that capital/ investment infusion in the sector be governed by market forces and the decision be left on the OTT Service Providers and the TSPs only.

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

A4. The inter-operability of the OTT services with the services provided by the TSPs may promote competition and benefit the end users.

We are of the view that lack of inter-operability among OTT services and along with TSP services has not affected competition and there has not been any harm to consumers due to lack of inter-operability. Moreover, the rationale for requiring TSPs to interconnect and interoperate does not apply to OTT communications services. TSPs offer essential services including access to emergency services and if TSP services did not interoperate then large populations would be cut off from life-saving access to emergency services.

Where on one hand the massive increase in data consumption has helped the TSPs to generate additional revenue, the consumers on the other hand have benefitted from the reduced tariffs of both, the voice calling services and the data services.

TRAI has already examined and confirmed the interoperability between telecom and OTT services, to a certain extent, in its Recommendations on Regulatory Framework for Internet Telephony, 2017.

Further, we also recommend non - introduction/ non - imposition of any unwarranted regulations which may impede the growth of this buzzing as well as budding industry which has given a huge push to the start-up entrepreneurial spirit in the country. Also, interoperability of OTT apps with traditional network-based services may lead to a loss of innovative features and functions available on OTT services.

Q5. 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? Please provide suggestions with justifications.

A5. We are of the opinion that the responsibility for monitoring the quality of content passing through the TSPs and the OTT platforms is equivalent.

We also suggest that the Government should be having an on – demand access of the requisite information/ data that would enable it to track any violations and punish the wrong – doers. This however should be subject to strict guidelines/ check points which, as far as possible, need to be clearly pre-determined and pre-defined.

Infact several OTT players are actively working with the government and have introduced new features to curb rumours, identify fake news and to develop techniques of traceability.

Further we suggest that a mechanism to deal with the content regulation including IPR infringements should be formulated and the prevailing laws like the Information Technology Act and the Privacy Laws should be strengthened enough to bring the violations with respect to these platforms within their ambit rather than introduction of any further laws/ regulations in this regard.

Since the TSP and OTTs’ operate in different layers and have differential rights therefore it is fair and justifiable that they should have differential responsibility in this regard.

Q6. 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.

A6. As mentioned in our response to Q2 and Q3, there are various difference between the OTT and TSPs. Therefore, provision of emergency services at par for both OTT and TSPs’ may be impractical.

The main reason for emergency services being more effective on TSP services is because they own the network and they automatically know the location of its consumers which is based on GPS information and tower location information. TSPs’ have both and can therefore route calls properly unlike OTTs’ who in such a case have to rely on the device operating system and user consent for location access for providing such emergency services.

Access of emergency services via OTT Platforms has presently been visible on the platform of a few services providers like Cab Aggregation and Transportation companies including Ola and Uber.

We are also of the opinion that this facility is slowly finding a place in the OTT space and would definitely be helpful for users. This facility might however take a little longer to be fully absorbed within the system.

Q7. 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.

A7. No. There is no issue of non-level playing fields between OTT Service providers and TSP since both the sectors are majorly different than each other in all aspects and parameters as clarified in above answers. We continue to hold that the TSPs and the OTTs cannot be compared and they are standing on completely different footings, where the TSPs are in a supportive position for the OTTs.

The regulation of an essential resource is different from the regulation of any other service. OTT services operate in an extremely competitive market, and OTT operators do not control critical public infrastructure. Thus, the regulatory framework for the two cannot be the same.

We are of the opinion that the prevailing Regulatory and Licensing norms should continue and the OTT service providers/ OTT sector should not be burdened with additional regulatory/ licensing norms. The said opinion is also in consonance with the current flow of initiatives taken by the Authority to provide the end users/ consumers with more power of choice at affordable prices.

The impact of a potential license regime for OTT would affect consumer welfare, individuals, companies and entire industries that rely on various OTT services would find their costs increasing. It would also be confusing as to who falls within the ambit of “levelling” regulation. Moreover, licensing requirements or other heavy-handed regulatory obligations could create barriers to entry and expansion for app providers, particularly start-ups. This could result in consumers not being able to access the full benefit of global online applications, depriving the general public of innovative and useful technology. Licensing requirements could also impair the ability of Indian businesses to use online applications to grow and reach more people.

Q8. In case, any regulation or licensing condition is suggested to made 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 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.

A8. No

Q9. Are there any other issues that you would like to bring to the attention of the Authority?

A9. No