

**Comments on TRAI's Consultation Paper on Regulatory Framework for Over-The-Top (OTT) communication Services**

This submission presents comments by ALT Digital Media Entertainment Limited (ALT Digital) on the Consultation Paper on Regulatory Framework for Over-The-Top (OTT) Communication Services published by the Telecom Regulatory Authority of India dated November 12, 2018. ALT Digital has conducted research on the issues pertaining to OTT communication services and is thankful for this opportunity to put forth its views. We offer our brief comments as follows.

**Introduction**

On November 12, 2018, the Telecom Regulatory Authority of India released a Consultation Paper on Regulatory Framework for Over-The-Top (OTT) Communication Services. The issue sought to be addressed here is whether OTT services which compete directly with the telecom service provider (TSP) should be subject to the same licensing and regulatory requirements.

Our specific responses to the consultation are as below:

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.**

**Response:** The paper makes references to the communication-based services like WhatsApp and Skype which have been considered for having created a huge dent in the revenue of the TSPs. However, drawing a parallel between traditional and new age technology, with the suggested implementation of "same service, same rules" approach may be considered to be highly regressive. In our humble opinion, it is best to steer clear of this approach.

In adopting a definition, it is necessary to ensure that the same is future proof, and that it is technology agnostic. The Body of European Regulators for Electronic Communications (BEREC) in its report has defined OTT service as "*content, a service or an application that is provided to the end user over the public internet*"<sup>1</sup>.

- a. This definition is broad and encompasses everything which either provides content, or any service, or any application via public internet. Also, it is to be

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<sup>1</sup> Body of European Regulators for Electronic Communications, *Report on OTT Services*, January 2016, BoR (16) 35; at p.14. (BEREC Report).

noted that with this definition, it is implied that content may arrive from a third party (OTT provider) without any intervention from the internet service provider (ISP) as such. The definition also envisages a situation where the ISP may also provide its own OTT services or may also choose to partner with OTT providers.

- b. This definition focuses on the delivery of the service, and not the nature of the service itself, and in doing so, has a greater outreach.
- c. Further, the taxonomy adopted by BEREC, also recognized by the captioned consultation paper, adopts and qualifies the services as per their services.

Adopting this definition and borrowing the *rationale* from the judicial precedents discussing several portions of this definition might just enable and foster a healthy regulatory environment in the country. However, in adopting a broad definition, we also run a risk of overlapping of services, and service providers.

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.**

**Response:** Once a clear definition has been adopted, it will then be necessary to understand the specific nature of services which compete with one another. Substitutability may be treated as the primary criterion for comparison of regulatory or licensing norms as applicable to TSPs and OTT service providers. Additionally, due consideration must be given to the distinction between the inherent services, and the ones which are ancillary only to the primary business purpose.

Again, drawing from the BEREC Report, it is not too farfetched to adopt the following factors in distinguishing between the service providers.

- a. Technical criteria discussing the nature of devices, technical equipment involved in the delivery and access to the services.
- b. Market defined criteria including the demand and supply substitutability will stand out as a factor in making an assessment. This will include the perception of the end users, and will enable to understand better the service offerings, use cases, and the prices. This criterion also explains the flexibility that the service provider enjoys in respect of the nature of services rendered by them to the end users.



- c. Finally, the impact that is made on the relevant market players, and any and all effects experienced by the end users.

Several National Regulatory Authorities (NRAs) in Europe, have not found any substitutability between the services offered as under OTT-0 (OTTs qualifying as electronic communication services) and OTT-1 (OTTs not qualifying as electronic communication services but potentially competing with TSPs). Reasons for the lack of substitutability has been highlighted to be lower quality and security; and, lack of interoperability among OTT voice services. This point of inadequate operability standards refer to the requirement for the caller and the recipient party to be subscribed to the same service. For eg. For enabling a call to be routed through WhatsApp / Skype, the party making the call, and the intended recipient of the call must be both on the same platform, WhatsApp / Skype, as the case may be.

Surveys must be conducted to understand the perception of the end users, before any parallels are drawn between the relevant stakeholders.

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

**Response:** The consultation paper rightly points out that owing to an increase in mobile internet penetration and affordable data plans, along with affordable smartphones, there is a visible growth in OTT messaging, voice calls and video calls.

Presumably, the TSPs are expected to provide a certain standard of QoS, and as such with an increase in the requirement of the end users, the investment that must be made towards network capacity extensions usually flows from the TSPs alone. Also, due credit must be given to the fact that in enabling access to data plans, the TSPs have benefitted from the increased data consumption due to the explosion of OTT services.

However, with the amendment to the unified access service license, TSPs now are allowed to offer internet telephony, or VoIP service from applications developed by TSPs which is untethered from the underlying network. This enabled Reliance Jio's<sup>2</sup> adoption of the data-based Voice over Long-Term Evolution (VoLTE) technology. End users were offered unlimited voice calling and messaging facilities for a lumpsum tariff. It has been highlighted in the past that there has been a drop in the voice-based revenues, however, revenues

<sup>2</sup> <https://www.digit.in/telecom/understanding-how-calling-works-on-reliance-jio-31607.html>; last accessed on December 7, 2018, at 1043 hrs.

attributed to data-based services witnessed an increase. This shift as such cannot be attributed to the existence of OTT services only, rather this drive has been brought upon by the prevalent market forces. The apps that are available to the end users have made more useful and valuable impact on the users. Several avenues have opened for not just the service providers, but also has resulted in increased convenience, transparency, and enabled new services for the end users.

OTTs are innovations which arise from technological developments, and the TSPs as such have no role to play in this. It is best for the Government and the Telecom industry to work together to create a balancing environment for the TSPs to invest in the network infrastructure rather than seeking the OTT service providers to invest. TSPs should ideally not be allowed to "double dip" that is, they should not be allowed to collect payments for the same traffic from content provider as well as the end user.

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.**

**Response:** As a standard, interoperability is favored by most of the sectors. It is at heart of the consumer interest that interoperability is implemented and promoted. Non-interoperability among different OTT services may cause network effect with lock-in; where an OTT end user cannot exit from a particular service and opt for another, which may lead to a barrier to competition.

To this effect, enabling standards must be brought to the fore, for interoperability to be an option available to the end users.

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? Please provide suggestions with justifications.**

**Response:** It is pertinent to note that the Government has the sovereign right to intercept communications for the purpose of maintenance of law and order, and national security. TSPs are obligated to grant law enforcement agencies access to their networks and services, in furtherance of this requirement.

Separately, the Code of Criminal Procedure, the Indian Penal Code, and the Information Technology Act and its different rules pertaining to intermediaries and interception are applicable to internet platforms and services, OTT service providers. There is a need that



these regulations be maintained as technology agnostic. Also, the upcoming Personal Data Protection Bill has further recommendations in the lines of the present.

Further, in terms of traceability and transparency of data, the nature of internet ensures that a lot of data is collected, tracked and mimed by OTT service providers that can be made available subject to requests from authorized Government agencies only. Therefore, there is no need for additional Act and regulations for security for the purpose of OTT service providers only.

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 justifications.**

**Response:** All the requirements that are largely imposed on TSPs are because they form an essential public utility service. It is to be noted that the essential difference between OTTs and TSPs is the way the service is delivered. For OTTs it is through IP based networks, while in case of TSPs it is by way of packet switched networks. We are witnessing a gradual transition whereby the TSP's services are now also being switched to IP based networks, and so the existing traditional service is also underdoing a significant change. Therefore, it is required that new laws apply to the broader set, and there are general rules framed which apply to all services, businesses and other activities which are web-enabled. The upcoming Personal Data Protection Bill is a good example, of how it will apply to any service or business vis a vis privacy and security.

7. **Is there an issue 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.**

**Response:** There is no need for further regulation or licensing of OTT service providers. All the expected projections concerning OTT services, will be affected with introduction of additional compliance requirements. As discussed in our response to Query no. 5, there are provisions of law which regulate the OTT sphere. Apart from the same, the OTT service are guided by self-regulatory mechanisms.

8. **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.**

**Response:** Currently, the OTT service providers have a privacy policy and systems in place to ensure safety, security and privacy of the end users. All of this is made known to the end user through the publicly available terms of use. Owing to the global outreach, the OTT service providers abide by global standards and expectations. Enabled by user led review mechanism and feedback the platforms better their services. There is a continuous effort on part of the OTT service providers to plug holes and provide better protection mechanisms like parental control, anti-virus and anti-phishing tools, which contribute towards enhancing privacy and security of the end users.

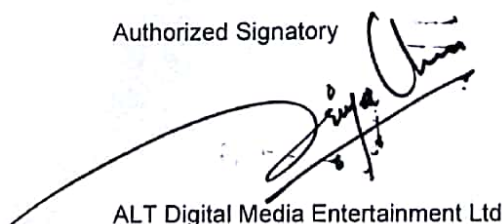
These are a few ways in which the OTT service providers ensure that consumer interests are met with. The services provided thereunder are accessed and utilized by the end users which stems from informed-choice and decision making.

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

**Response:** We would like to draw attention to the fact that there be strengthening of the sector with the implementation of self-regulatory mechanism only. It is also pertinent to note that should there be consideration of framing of new laws, it should be sector specific which applies only to the service layer. In doing so, there will have to be distinction between all forms of services within the OTT service sphere. For example, there must be a difference between taxi aggregators and communication services. Providing the service providers with such optional system, further gives a flexibility for services which provide communication as an ancillary service only. Companies like e-commerce platforms, social media companies, should be enabled to operate without being subjected to the restrictions of a regulation.

Finally, we take this opportunity to thank TRAI for this consultative approach adopted by it and hopefully it will continue with this trend and make the recommendations which would support both TSPs and OTT services.

Authorized Signatory



ALT Digital Media Entertainment Ltd