

ASSOCHAM Suggestions on Consultation Paper on Regulatory Framework for Over-The-Top (OTT) communication Services

Preamble

The National Digital Communications Policy 2018 is a watershed document as it clearly indicates the commitment of the Government to

- Promote and protect fair competition
- Attract long term high quality and sustainable investments
- Pursue regulatory reforms to ensure that the regulatory structures remain relevant, transparent, accountable and forward looking
- Remove regulatory barriers and reduce regulatory burden that hampers investments, innovation and consumer interest
- Strengthen the sector's institutional mechanism & legislative framework
- Secure India's digital sovereignty encompassing data privacy choice & security of its citizens

The Policy states its intent to ensure a holistic and harmonised approach for harnessing Emerging Technologies, under which one key element/strategy is to promote innovation in the creation of Communication services and network infrastructure by developing a policy framework for 'Over The Top' services.

The policy also states its intent to enable Infrastructure Convergence of IT, telecom and broadcasting, including by restructuring of legal, licensing and regulatory frameworks for reaping the benefits of convergence.

We submit that the Consultation Paper on Regulatory Framework for Over-The-Top (OTT) communication Services, must be examined against the context and framework that has been enunciated in the National Digital Communications Policy 2018.

Further, given the onset of convergence and the increase envisaged in the number of providers offering communication applications and services, the traditional licensing and regulatory regime needs to be reconsidered. The Authority should thus consider opportunities to deregulate the communications sector where possible.

We therefore advocate the adoption of a future fit regulatory framework for the communications sector - which should be light touch, simple, transparent, and limited to what is necessary to address any actual consumer or competitive harm. The Authority should evaluate each and every regulatory obligation on its relevance, requirement, practicability and desirability whilst formulating this future fit framework. Global practices and considerations may also be taken into account. Importantly, Regulation should provide predictability and legal certainty by adopting clear frameworks that are enforced in a transparent manner.

To the extent possible, the government should consider horizontal regulations that are applicable across sectors at the national level.

The concept of sector specific taxes should also be reviewed. Apart from the impracticality of enforcing a traditional license fee regime across all players offering communications applications and services, a recent report of the GSMA has also opined that sector-specific taxes on mobile economy hinder connectivity and development of the mobile industry.

In view of the above, we believe a simple future fit and practical solution would be to **subsume the license fee into the GST regime**. This will provide a simple and implementable solution that will ensure growth of the communications industry.

The discussions on a national data protection and privacy law are already underway. The specific provisions under license pertaining to privacy and data protection may be reviewed and be replaced with a cross reference to the data protection law, as and when announced.

In respect of commercial conditions, we believe that TSPs should be allowed to offer OTT packs – this will not only give desirable commercial flexibility to the TSPs but will also facilitate the contribution of OTTs in supporting the investments in the telecom networks especially required from time to time for network capacity expansions and technology upgradations.

Q.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.

- The Authority has, in its Consultation Paper given the definition of OTT adopted in various jurisdictions.
- In this context, EU has proposed expanding the definition of electronic communication services:-

“EU proposes to expand the definition of electronic communication services to inter alia include ‘interpersonal communication services’ meaning a service that allows direct interactive interpersonal exchange of information via an electronic communications network between a finite number of people, where the persons initiating/participating in the interaction determine its recipients...”

- We propose that the above definition of electronic communication services may be adopted in the Indian context as well.
- We further call the Authority's attention to the European Union's revised European Electronic Communications Code which has expanded the scope of "electronic communications services" (ECS) to include "number-based interpersonal communications services" ("NB-ICS"), such as those interconnected with the public telephone network, and "number-independent interpersonal communications services" ("NI-ICS"), which includes non-interconnected OTT communications apps. The EECC places higher regulatory obligations on NB-ICS than NI-ICS.
- Simultaneously under Regulatory fitness and simplification [REFIT agenda] it has sought to simplify and reduce the administrative burden on communication services in order to avoid overregulation.

Q.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.

- Substitutability is one of the many criteria that should be considered by the Authority in determining what regulations should apply to TSPs and OTTs. Other criteria such as switching costs, level of competition, cost of service etc should also be considered.
- Substitutability may be assessed from both from the point of view of the consumer and considering the characteristics of the application or service.
- However, we believe that comparison of regulatory or licensing norms or trying to assess the extent of substitutability to determine which rules should be applied/be applicable may be a narrow approach if it is carried out within the confines of the existing framework.
- The legacy rules that are applied to TSPs are in urgent need of a review to ensure that the TSPs are not burdened by outdated or inappropriate regulation.
- The TSPs operate under the ambit of a rigorous licensing framework, which needs to be reviewed to introduce a light touch approach which can then be applied across the entire digital communications eco-system.

- In our view, the Authority should opt to deregulate traditional communications framework wherever possible and refrain from over-regulating or regulating in a manner that disproportionately burdens companies or prevents innovation and investment.
- We therefore suggest that the Authority should look to redefine and reconsider the licensing and regulatory framework for TSPs.
- This would mean testing each rule under the telecom license and questioning its relevance in the new digital eco-system.

Q.3

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.

- There is no doubt that the growth of OTT applications and services increases the need for infusion of investments in the network to maintain and upgrade capacity on an ongoing basis.
- The relationship between TSPs and OTTs is symbiotic – OTTs drive user demand for data, which in turn requires the TSPs to invest in expanding network capacity and coverage.
- The increased use of OTT services has resulted in higher network utilization and is contributing towards the increased revenues, which in turn would lead to higher investments in the TSPs' networks.
- Reducing the regulatory burden on TSPs would be a desirable step to increase the investible funds in the hands of the TSPs to cater to the growing requirements for network capacity expansions and technology upgradations.
- OTTs participation in infusing investments can be achieved by allowing TSPs to offer OTT packs to their consumers.

Q.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.

- We believe that interconnection is mandated only in respect of network interconnection, i.e. for communication between two networks.
- In case of OTTs, mandating inter-operability amongst OTTs and between OTT and TSPs may not be practical or advisable, and should be left to mutual agreement between the parties.

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? Please provide suggestions with justifications.

- Regulation in this space should focus on both national security and safety along with fostering innovation and growth for the development and expansion of the sector and economy.
- We note that the Authority has recommended a National Encryption Policy in its recommendations on “Privacy, Security, and Ownership of the Data in Telecom Sector” – we support this recommendation to applied by way of a horizontal regulations.

Q.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 justification.

- Under the existing licensing framework, TSPs are mandated to provide Emergency services to their subscribers.
- In the Authority’s Internet telephony recommendations, which have been accepted by the Government], it is provided that

The Licensees providing Internet Telephony service may facilitate access to emergency number calls using location services; however it is not mandated to provide such services at present. The subscribers may be informed about the limitation of providing access to emergency services to internet Telephony subscribers in unambiguous terms

- A similar approach may be adopted in the case of OTTs as well. We thus suggest that provision of emergency services by OTT players not be mandated at this stage.

There should however be complete transparency to the consumer with regard to emergency number calling.

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.

- The communications eco system has widened and grown to cover services being offered through various technologies/platforms, communication applications and services.
- The legacy rules that are applied to TSPs are in urgent need of a review to ensure that the TSPs are not burdened by outdated or inappropriate regulation.
- The TSPs operate under the ambit of a rigorous licensing framework, which needs to be reviewed to introduce a light touch approach which can then be applied across the entire digital communications eco-system. The key areas that should be reconsidered include:
 - Financial Conditions – the license fee, spectrum and other charges payable to the Government
 - Security Conditions
 - Commercial Conditions – Tariffs
- The TRAI too, in its NDCP consultation, has noted that there is a growing convergence of the digital ecosystem which is transforming the way electronic communication and digital services can be offered,
- Any new regulations for TSPs and OTTs should be considered taking into account the respective regulations govern the TSPs and the OTTs under the Telegraph Act, license, TRAI Act and the Information Technology Act. We recommend that the Authority consider new future fit frameworks that lightens the regulatory burden on the TSPs and adopts a progressive approach that allows all

entities in the eco-system to proliferate and grow – offering maximum benefits to the consumers.

- The new **future fit framework should recognize this growing convergence of networks, services, technologies** and should consider the emerging digital ecosystem and ensure growth for all players.

As submitted above, given the onset of convergence and the increase envisaged in the number of players offering communication applications and services, reconsideration of the traditional licensing and regulatory regime may be advisable. It is eminently **desirable that the regulatory regime be light touch as appropriate.**

To the extent possible, the government should consider horizontal regulations that are applicable across sectors at a national level.

We believe that the direct tax levy of license fee, spectrum charges etc creates a huge financial burden to TSPs. The concept of sector specific taxes should also be reviewed. Apart from the impracticality of enforcing a traditional license fee regime across all players offering communications applications and services, a recent report of the GSMA has also stated that sector-specific taxes on mobile economy hinder connectivity and development of the mobile industry.

In view of the above, we believe a simple future fit and practical solution would be to **subsume the license fee into the GST regime.**

The discussions on a national data protection and privacy law are already underway and we believe that the provisions under that law would apply to both OTT players as well as TSPs. The specific provisions under license pertaining to privacy and data protection may be reviewed and be replaced with a cross reference to the data protection law, as and when announced.

In respect of commercial conditions, we believe that TSPs should be allowed to offer OTT packs – this will not only give desirable commercial flexibility to the TSPs but will also facilitate the contribution of OTTs in supporting the investments in the telecom networks especially required from time to time for network capacity expansions and technology upgradations.

Q.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.

- Applying legacy rules to all providers of communications may be neither desirable nor practical. We therefore believe that Authority should consider opportunities for deregulation and a new frameworks that are progressive and inclusive, that consider the entire emerging digital ecosystem and the specific characteristics of each service and also allow all entities in the eco-system to proliferate and grow, offering maximum benefits to the consumers.
- As suggested that in the new framework, there should be no sector specific taxes, the license fee and spectrum charges should be subsumed into GST, and commercial flexibility should be allowed to TSPs to offer OTT specific tariff packs.

Q.9

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

No comments