



Association of Unified Telecom Service Providers of India

AUSPI/12/2015/014

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Subject: AUSPI's response to the TRAI Consultation Paper No.2/2015 on Regulatory Framework for Over-the-top (OTT) Services

Dear Sir,

Please refer to the Consultation Paper issued by TRAI regarding Regulatory Framework for Over-the-top (OTT) Services and seeking comments of stakeholders.

We are pleased to enclose AUSPI's response to the Consultation Paper, and request the Authority to please take our views into consideration.

Thanking you,

Yours sincerely,

Ashok Sud
Secretary General
Mob: 9312941515

Encl: As above

Copy to :

1. Dr. Rahul Khullar, Chairman, TRAI
2. Dr. Vijayalakshmy K Gupta, Member, TRAI
3. Shri Anil Kaushal, Member, TRAI
4. Shri Sudhir Gupta, Secretary, TRAI



AUSPI's Response to the TRAI Consultation Paper No.2/2015 on
Regulatory Framework for Over-the-top (OTT) Services

Issues for Consultation

Q1: *Is it too early to establish a regulatory framework for OTT services, since internet penetration is still evolving, access speeds are generally low and there is limited coverage of high-speed broadband in the country? Or, should some beginning be made now with a regulatory framework that could be adapted to changes in the future? Please comment with justifications.*

India has one of the largest and fastest growing populations of Internet users in the world and is the second largest market for some social networking sites. With the current rate of proliferation of smart phones and adoption of OTT services by the consumers in India, this is the right time to make a beginning for a framework on the aspects related to OTT services, which could be adapted to changes in future.

At the same time, it is pertinent to mention that the policy has to be neutral, transparent, protect privacy, freedom of commerce and non-discriminatory to ensure that TSPs and the OTT players work under a framework, which is manageable and predictable.

Q2: *Should the OTT players offering communication services (voice, messaging and video call services) through applications (resident either in the country or outside) be brought under the licensing regime? Please comment with justifications.*

Q17: *If the OTT communication service players are to be licensed, should they be categorised as ASP or CSP? If so, what should be the framework? Please comment with justifications.*

OTT communication service providers should be registered as OSPs for provisioning of services in India, with mandated regulatory obligations for LIM and sharing of revenue with the national exchequer.

It is important that any regulatory mechanism being adopted for OTT services need to balance the requirements of

- (a) providing the freedom for innovation, and development and deployment of OTT services
- (b) Transparency
- (c) revenue share and National security



Q3: *Is the growth of OTT impacting the traditional revenue stream of TSPs? If so, is the increase in data revenues of the TSPs sufficient to compensate for this impact? Please comment with reasons.*

Yes, OTT services are impacting the traditional revenue stream of TSPs and the increased data revenue is not fully compensating from this impact. The fact remains that the increased data usage fails to compensate for loss of revenues to the TSPs arising due to OTT services provisioning traditional telecom services.

Q4: *Should the OTT players pay for use of the TSPs network over and above data charges paid by consumers? If yes, what pricing options can be adopted? Could such options include prices based on bandwidth consumption? Can prices be used as a means of product/service differentiation? Please comment with justifications.*

Yes, OTT players should pay for use of the TSPs network over and above data charges paid by consumers.

TSPs should be allowed to enter into a mutually commercial agreement with the OTT service providers and be under forbearance with adequate measures for consumer protection.

Q5: *Do you agree that imbalances exist in the regulatory environment in the operation of OTT players? If so, what should be the framework to address these issues? How can the prevailing laws and regulations be applied to OTT players (who operate in the virtual world) and compliance enforced? What could be the impact on the economy? Please comment with justifications.*

Yes, we agree that in the current regulatory environment an imbalance exists. To bridge the gap, the telecom regulatory regime needs to be realigned for the perspective of the network provider as well as the content and application provider.

Apart from what has been stated in the TRAI consultation paper in table 3.1 and 3.2, certain imbalances in the regulation which need to be addressed are:

- a. **Content regulation:** In the current scenario TSPs cannot regulate the contents available. A system has to be in place for necessary regulation of the internet content.
- b. **Customer service:** As customers are acquired by the TSPs, they are liable to provide a mechanism for redressal of customer grievances, similarly OTT service providers shall have to be obligated for deploying a customer service help desk for attending to the requirements of the customers.



- c. **Plagiarism and Content Piracy:** A suitable regulation has to be in place for OTTs with regards to proprietary ownership of the content.
- d. **Arbitration:** A well defined system has to be in place for defining the areas of responsibility and methodology for monitoring of the QoS and mechanisms in case of deficiency of services and the recourse available.
- e. **Net Neutrality:** Regulators to ensure that there is no service differentiation and all traffic is to be treated equally by the OTT players.

Q6: *How should the security concerns be addressed with regard to OTT players providing communication services? What security conditions such as maintaining data records, logs etc. Need to be mandated for such OTT players? And, how can compliance with these conditions be ensured if the applications of such OTT players reside outside the country? Please comment with justifications.*

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Q7: *How should the OTT players offering app services ensure security, safety and privacy of the consumer? How should they ensure protection of consumer interest? Please comment with justifications.*

With regards to OTT players providing communication services for security and compliance purposes, registration as an OSP would help addressing this concern.

As part of the registration process, for the OTT players, regulations need to be in place with reference to the content regulation and mandated local hosting. Also certification and clearance by the local body should be considered along with provisions of maintaining data records, logs etc.

Q8: *In what manner can the proposals for a regulatory framework for OTTs in India draw from those of ETNO, referred to in para 4.23 or the best practices summarised in para 4.29? And, what practices should be proscribed by regulatory fiat? Please comment with justifications.*

The TRAI consultation paper has given the detailed proposals and we support the proposals (a) of para 4.23 however, the contractual agreements between the OTT players and the TSPs should be left to mutual arrangements between them.

Para 4.29 (a) We are in agreement that the OTT services should be categorised as communication services (Voice & Video, Messaging & E-mailing and Social networks & E-commerce) and non - communication services. In the interest of public good, maintenance of national social fabric and national security, the government should



balance the requirement of exercising control over the OTT service providers and the freedom of speech of the citizens.

Para 4.29 (c) Though FRAND [Fair (Anti-trust / Competition law), Reasonable (Rates), and Non-Discriminatory (To both the terms and the rates included in licensing agreements)] approach is applicable for licensing requirements for device manufacturers, however, the principles can be applied while registering the OTT service providers as OSPs.

Besides the above in India the guiding parameter to be implemented may be transparency, no blocking, no unreasonable discrimination and a regulatory neutral environment.

- Q9:** *What are your views on net-neutrality in the Indian context? How should the various principles discussed in para 5.47 be dealt with? Please comment with justifications.*
- Q10:** *What forms of discrimination or traffic management practices are reasonable and consistent with a pragmatic approach? What should or can be permitted? Please comment with justifications.*
- Q11:** *Should the TSPs be mandated to publish various traffic management techniques used for different OTT applications? Is this a sufficient condition to ensure transparency and a fair regulatory regime?*

We submit that the concept of net neutrality is applicable to the handling of data traffic over a TSPs network as well as OTT service providers. The traffic management practice must be non-discriminatory and TSPs/OTT service providers should not block/throttle/prioritize traffic related to any services on their networks subject to requirements of "national security", "congestion management", "emergency services" and "existing fair usage policy" of reduction of access speed beyond a certain data usage and congestion management for:

- a) Ensuring the application latency is maintained within permissible limits at all times
- b) Controlling any sabotage of the network through any kind of malpractice

The price based product differentiation should not be a consideration in addressing net neutrality issues. As product differentiation is an essential element and construed as a normal business strategy for competitive growth in a free market, it should be left to market forces.



We support the laid down principals as mentioned in para 5.47 of the consultation paper no 2/2015. Consumers have the freedom to choose what content to see and TSPs in no way can restrict the users and restriction on the content is under the purview of the government and not of the TSPs.

We support traffic management practices that are reasonable and consistent with a pragmatic approach for requirements of national security, congestion management, emergency services and existing fair usage policies.

Traffic management practice must be non-discriminatory and must not result in any consumer or a group of consumers being denied / suppressed / accelerated access to any part of the internet. It is felt that the existing fair usage policy mechanism is adequate to achieve this.

TSPs may be mandated to publish the various traffic management techniques as and when required.

Q12: *How should the conducive and balanced environment be created such that TSPs are able to invest in network infrastructure and CAPs are able to innovate and grow? Who should bear the network up gradation costs? Please comment with justifications.*

Level playing field amongst various operators will ensure that the operators are incentivized to invest further in the spectrum auctions, network upgrade and expansion projects. This inturn will ensure that more consumers get a quality of service at reasonable prices. For the TSPs to be able to innovate, invest and grow, the TSPs should be allowed to have contractual agreements on mutually acceptable terms and conditions with CAPs.

Q13: *Should TSPs be allowed to implement non-price based discrimination of services? If so, under what circumstances are such practices acceptable? What restrictions, if any, need to be placed so that such measures are not abused? What measures should be adopted to ensure transparency to consumers? Please comment with justifications.*

TSPs should not be allowed to implement non-price based discrimination of services. The only circumstances under which TSPs should be allowed to implement non-price based discrimination of services are as under:

- i. The existing fair usage policy of reduction of access speed beyond a certain data usage.



- ii. Congestion management for ensuring that the application latency is maintained within permissible limits at all times.
- iii. Restrictions directed to be imposed by the LIM agencies.
- iv. Prioritization for communications for emergency and disaster management services.

We believe that the existing regulatory restrictions and legal requirements are considered adequate for negating the misuse of these measures.

Q14: *Is there a justification for allowing differential pricing for data access and OTT communication services? If so, what changes need to be brought about in the present tariff and regulatory framework for telecommunication services in the country? Please comment with justifications.*

Yes, allowing differential pricing for data access and OTT communication services is justified as OTT services are competing directly with the services of the TSPs. The product pricing should not be a consideration in addressing net neutrality issues as product price differentiation is an essential element for competitive growth in a free market. , Also, the pricing of these products should be left to the machinations of the market forces.

The Authority has been able to ensure that there are no predatory or over priced services through a considered mix of forbearance and regulatory intervention and there is no reason why this should not continue to be effective for all types of service providers.

Q15: *Should OTT communication service players be treated as Bulk User of Telecom Services (BuTS)? How should the framework be structured to prevent any discrimination and protect stakeholder interest? Please comment with justification.*

OTT communication service players should not be treated as Bulk User of Telecom Services (BuTS). It is the end user who decides to use any particular OTT communication service (app) that suits his / her requirement and access it on their device using the TSPs network.

In the best interest of the society and to encourage imaginative thinking and development of innovative OTT applications it is recommended that OTT communication service players should not be treated as Bulk User of Telecom Services (BuTS).



Q16: *What framework should be adopted to encourage India specific OTT apps? Please comment with justifications.*

- a) **Enforce Net Neutrality:** Net neutrality as a core policy would help in service provisioning for both start ups as well as established players by ensuring.
- b) **Local Vernacular based Content:** Availability of the content in local languages will help in promoting OTT applications development in India once the access to information is convenient.
- c) **Classifying SMEs:** Small start-ups/initiatives of students interested in developing OTT apps should be classified as SMEs with easy finance and concessions.

Besides the above the following are suggested for consideration:

- i. Reduced Customs duty on hardware (server) imports.
- ii. Local and indigenous CPE manufacturing.
- iii. Initial tax breaks for India specific OTT service providers.
- iv. Provisioning of subsidized power for the initial incubation and nascent stage of the
- v. OTT services.

Many interventions are possible and by different players in the eco system. Investment support, developments/technical support, partnering to distribute etc are possibilities and these could come from government, or industry or investment houses.

Q18: *Is there a need to regulate subscription charges for OTT communication services? Please comment with justifications.*

Authority has been able to ensure that there are no predatory or overpriced services through a considered mix of forbearance and regulatory intervention and there is no reason why this approach should not continue to be effective for all types of service providers in the future.



Q19: *What steps should be taken by the Government for regulation of non-communication OTT players? Please comment with justifications.*

Non-communication OTT players may be treated as the existing VAS providers and may be subject to the regulations similar to those applicable for VAS providers.

Q20: *Are there any other issues that have a bearing on the subject discussed?*

- i. A monitoring committee should be formed which should have participation of all stake holders.
- ii. OTT service providers should be liable to pay service taxes on their services.
- iii. Encryption laws of India are required to be revised from the existing restriction of only 40 bit encryption to 256 bits or more. It will encourage local hosting of OTT services.
- iv. Government is setting up the CMS and the OTT service providers should be asked to deposit the decryption keys to them.
