

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

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.

ISPAI Response -

Number of services provided by OTT content providers are similar to services provided by TSPs but they have no regulation / taxation / compliance requirements on them.

Some key ones are as below:

1. VOIP / Video Calling –Such services are free on applications like Google Duo, WhatsApp, WeChat, IMO, facebook, Skype, FB Messengers and other messenger services but these similar services are taxed to TSPs/ISPs.
2. Messaging Services; Music Applications like Saavan & Wynk; Gaming platforms are common.
3. From ISP perspective any VAS provided is charged and taxed by the government whereas any OTT content provider gets them without any related regulatory compliances.

It is further seen that many OTT providers are directly interconnecting with ISPs and other non-ISP entities and providing them with access to Internet based content; this is equivalent to the OTT playing the role of a backbone ISP albeit without the necessary licenses of ISP, ILD & Gateway Approval. Such OTTs are also connecting at some of informal internet exchanges operating in India with Indian ISPs, other foreign telecom operators and other non-ISP entities at such informal exchanges in India. The existing regulatory framework does not allow for such direct interconnections between OTT, Indian ISP, foreign telecom operators and other non-telecom entities which bypass the licensing and taxation regimes of the country and posing threat to national security as well. Such interconnection / internet peering services are comparable to internet access service provided by ISP licensed service providers in India.

The legality of such arrangements by such OTTs needs to be examined as this may result in some traffic going unmonitored and also pilferage of revenue to exchequer since in ordinary situation this peering would have been sold as an Internet leased Line service /Internet Access Service by one of the licensed ISP operator with international gateway to such other ISPs and other entities.

In addition, few OTT players have started announcing network connectivity service offerings in selected markets. These services are similar in nature, as provided by TSPs in India for connecting a customer's location to OTTs Data Center locations either via a direct or virtual connectivity. In future, once when these services are extended in India by these OTTs, they shall be required to be reviewed under existing regulatory and other compliances requirements, currently applicable to TSPs.

<https://docs.microsoft.com/en-us/azure/virtual-wan/virtual-wan-about>

<https://aws.amazon.com/about-aws/whats-new/2018/11/introducing-aws-global-accelerator/>

Internet Service Providers Association of India

1509, Chiranjiv Tower, 43, Nehru Place, New Delhi – 110 019 – INDIA

Email: info@ispai.in, URL: www.ispai.in

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.

ISPAI Response -

Yes, Substitution should be treated as primary criterion. Some of the OTTs are providing services which are substitutable to the licensed telecom services. In the interest of the level playing field it would be appropriate that the principle of 'same services – same rules' should be applied. Therefore, a level playing field in terms of regulatory requirements / restrictions and payment of various taxes has to be evolved for both TSP's and OTT service providers offering same services.

This can be achieved by either bringing the OTT players under the regulatory and taxation regime as is for TSP's or removing the regulatory and taxation regime to bring TSP's at par with the OTT players offering similar services. A light handed sectoral neutral approach of bringing TSP's at par with OTT players has the advantage of not suppressing innovation as well as cheap services for our masses who are very price sensitive. This approach will also remove the regulatory uncertainty and distortions due to fast changing technologies and services.

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.

ISPAI Response –

In the current scheme of regulatory and taxation regime for TSP's, the TSP's certainly are effected in their revenues for messaging and voice communication services. Regulatory, high taxation via GST / AGR is definitely impacting the TSP (mobile & broadband) badly. Margins are low leading to poor operations efficiency. High volume of traffic requires investment in network which is being impacted by different level playing fields for different parties based on licences, services etc. Since OTT providers services are leading to high usage of data, may be a commercialization of volumes can help in more revenues for TSP's. OTT cannot raise investment but above specific volumes of usage (which can be defined for top 100 OTT providers), they should be charged by operators to access. A standard charge should be formulated by Government / DOT which can be collected by TSP from OTT providers. For example - TSP's can charge to Netflix for data usage above certain levels. To maintain transparency, Government should regulate the charges which should review every 3 months to keep them relevant to market pricing.

The OTT players wanting to provide services be mandated to have offices in India, maintain Indian customer data in India, provide financials of India operations to concerned CCA and pay taxes equally as TSP's for similar services.

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.

ISPAI Response -

Inter-operability among OTT services will increase the bandwidth consumption further as users will have the access to more OTT contents and they can view more contents subscribing to single OTT services which is not possible as of now as users don't subscribe to multiple OTT service of same category. This will again put the extra burden of increasing the network capacity for TSP.

In case the TSP's and OTT players are brought on the same level playing field of Regulatory and Taxation regime or a light handed sectoral neutral approach the market forces will drive the TSP's and OTT players towards interoperability for better customer services and will promote competition and benefit the end users.

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.

ISPAI Response -

Yes, lawful interception of OTT service providers should also be held equally responsible for issues relating national security and other aspects like CAF, data localization and customer reporting should also be framed. TSPs/ISPs operators are required to follow certain rules and regulations as per their license but OTT providers have no compliance requirements. Not only nil/ no taxation but there is no real policy to govern their operations in India and there is no level playing field on this Section 4 at all. TSPs/ISPs are only providing the data services and have no control over the content. TSPs/ISPs have to deploy large URL filtering systems to block unsolicited contents time to time as per the instructions of the licensor which involves huge costs and QoS which can be easily blocked at OTT/ Content service providers end.

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.

ISPAI Response –

Yes, emergency service platform should be there for OTT providers especially ones in messaging, calling and other direct communications models. It will help users and also add another layer of security as

young generations are more familiar with OTT apps but in that case TSP/ISP also need to provide the free access to those services.

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.

ISPAI Response –

Yes, as OTT providers offer similar services without attached licensing obligations, conditions and levies (such as licence fee). In addition to this TSP/ISP operators also have to abide by stringent service quality benchmarks and invest in networks and infrastructure. The principle of ‘Same Services – Same Rules’ should be applied.

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.

ISPAI Response –

To maintain a level playing field as well as address the requirements of national security the OTT players need to be brought on the same regulation and licensing conditions for similar services. However if a light handed sectoral neutral approach is to be followed, which we recommend, then as regards lawful monitoring the regulatory and licensing conditions should remain same while the taxation be reduced for TSPs/ISPs to the level of OTT players as TSPs/ISPs need to make huge investment in infrastructure building.

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

ISPAI Response -

1. OTT service provider must follow the present tariff order while providing LIVE channels SD or HD else it would be kind of discriminatory approach for distribution of same content via different platform.
2. As OTT content now started widely consumed in large screen via smart TV and smart STB, similar type of content regulation like parental control / censorship rule which are applicable for LIVE TV channel transmission through cable DTH and HITS platform should be made applicable for OTT content as well.