

Nasscom's Counter Comments on Telecom Regulatory Authority of India Consultation Paper on the Framework for Service Authorisations to be Granted Under the Telecommunications Act, 2023

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SUMMARY OF RECOMMENDATIONS

- 1. OTTs are not covered under the ambit of Telecommunications Act, 2023. There is no need to bring OTTs under Service Authorisation and impose any additional regulatory burden on them.**
- 2. OTTs are fundamentally different from telecommunication services and therefore, same service-same rule does not apply.**
- 3. OTTs and TSPs complement each other and do not compete.**
- 4. OTT service providers contribute immensely to the revenues generated by telecommunication service providers (TSPs).**
- 5. OTTs make substantial investments in complementary network infrastructure such as content delivery networks (CDNs), undersea cables, data centres and more. These investments help optimise the delivery of content through telecom networks, enabling cost savings and enhanced quality of service for TSPs and users.**
- 6. OTTs are adequately regulated in the country under various laws – for example, Information Technology Act, 2000 (IT Act) and the Digital Personal Data Protection Act, 2023 (DPDPA), Competition Act, 2002 and the Consumer Protection Act, 2019.**

COUNTER COMMENTS

Nasscom has already submitted its feedbackⁱ to the Consultation Paper on “*The Framework for Service Authorisations to be Granted Under the Telecommunications Act, 2023*” (**Consultation Paper/Paper/CP**) released by TRAI in July 2024ⁱⁱ. We also welcome the opportunity to provide counter comments on comments made by stakeholders on this Paper.

While reading the comments of other stakeholders, published by TRAI on the website, we noticed that some of the stakeholders have stated that Over the Top (**OTT**) entities be brought under Service Authorisation framework.

Given below is our response based on the comments made by some stakeholders:

OTTs are not covered under the Telecommunications Act, 2023

The finalisation of the Telecommunications Bill was a detailed process incorporating public consultation, deliberations and subsequent revisions. As explained below, the process of finalisation of the Act as well as the text of the Act adequately clarifies the position:

Original definition of telecommunication services under the Telecommunications Bill, 2022 released for public consultation in September 2022

Section 2(21)

“telecommunication services” means service of any description (including broadcasting services, electronic mail, voice mail, voice, video and data 6 communication services, audiotex services, videotex services, fixed and mobile services, internet and broadband services, satellite based communication services, internet based communication services, in-flight and maritime connectivity services, interpersonal communications services, machine to machine communication services, over-the-top (OTT) communication services) which is made available to users by telecommunication, and includes any other service that the Central Government may notify to be telecommunication services;

Final definition of telecommunication services under the Telecommunication Bil, 2023 as introduced into the Parliament and thereafter notified Telecommunications Act, 2023

Section 2(t) *“telecommunication service” means any service for telecommunication.*

Notably, in December 2023, the Union Minister of Telecommunications, Shri Ashwini Vaishnaw in an interview to Economic Times clarified that *“OTT has been regulated by the IT Act of 2000 and continues to be regulated by the IT Act. There is no coverage of OTT in the new telecom bill passed by the Parliament”*.ⁱⁱⁱ

Therefore, comparing the above-mentioned original definition and the final definition of “telecommunication services” which was enacted, and considering the public clarification provided by the Union Minister, it is clear that OTT services are excluded from the scope of the Telecommunication Act, 2023.

TSPs and OTTs are fundamentally different

We have submitted in our past representations that telecommunication services provided by TSPs include fixed and mobile telephone services (including internet connectivity), and data transmission services. TSPs provide these services through a license granted by the government which confers to them an exclusive right to acquire and exploit scarce natural resources like spectrum, numbering resources, and the right of way to set up infrastructure, among others. OTTs facilitate the exchange of information over the internet. Internationally, it is well recognised that the communication OTTs are different from traditional telecom services. For instance, the Body of European Regulators for Electronic Communications in its report on OTT services defines an OTT service as “content, a service or an application that is provided to the end user over the public Internet.” This means that the term OTT does not refer to a particular type of service but to a method of provision, namely provision over the public Internet.^{iv}

The TRAI in its consultation paper on “Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services” has cited ITU-D report (2021) wherein it is clearly stated that *“communications-based OTTs typically differ in a number of ways from traditional telecommunication services. For example, OTTs generally do not provide connection to a public network and instead create a type of closed-user group within the application. Thus, OTTs do not require scarce numbering resources, nor do they require interconnection agreements with traditional operators”*.^v

Further, OTT platforms provide **device synchronicity** i.e., they can be accessed through multiple internet-enabled devices simultaneously whereas TSPs cannot because of the hardware

requirement of a SIM card. Given the rapid pace at which OTT platforms innovate and grow, these differences between OTTs and TSPs will only increase in the future.

Therefore, the fundamental differences between OTTs and TSPs continue to remain and hence, they are neither the same nor similar services which are substitutable in nature. These differentiations have been amply discussed in the previous years and have also been noted by TRAI in their previous consultation papers and recommendations over the past years.

There is collaborative approach amongst TSPs and OTTs as they complement the services of each other and the same needs to continue.

OTTs have positive impact on TSPs' revenues

It was noted by TRAI in its Consultation Paper on Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services, 2023 that the TSPs' revenue from data usage has increased more than **10 times from 8% to 85% in the last nine years i.e., from 2013 to 2022.**^{vi}

OTT services have had an overall positive impact on the revenues of TSPs. Further, TSPs **partner with OTTs to offer bundled services that attract subscribers, build customer loyalty, and increase user spends on mobile and broadband services.**^{vii} This was observed during a 2019 study conducted in India, Australia, Singapore, Thailand, & Philippines.^{viii}

OTT service providers do not ride free on TSPs, but **they complement telecom service and contribute immensely to the revenues generated by TSPs.**

Both TSPs and OTTs make significant investments

Both TSPs and OTTs are making significant investment in infrastructure development. While the TSPs make investments in setting up the telecom network infrastructure, OTTs make substantial investments in complementary network infrastructure such as CDNs, undersea cables, data centres and more. These investments help optimise the delivery of content through telecom networks, enabling cost savings and enhanced quality of service for TSPs and users. CDNs enable faster page loads, reduced latency, and lower bandwidth cost. For instance, **Netflix's Open Connect program and optimised codecs** together have yielded substantial cost savings for ISPs, surpassing USD 1 billion worldwide in 2021.^{ix}

A report by Analysys Mason on **'The Impact of Tech Companies' Network Investment on The Economics of Broadband ISPs'** notes that to deliver their content and applications to end-users more efficiently, OTT service providers invest significant amounts in hosting, transport, and delivery networks. OTT service providers have continued to increase their investment, and it is estimated that on average, between 2018 and 2021, the investment was approximately \$120 billion annually.^x These investments are only increasing with increase in consumption by the consumers. For example, in 2022, **Meta announced a collaboration with Airtel and Saudi Telecom** to expand its subsea cable called 2Africa Pearls which connects Africa, Europe, and Asia to India.^{xi}

OTTs are sufficiently regulated

OTTs are sufficiently regulated for the services provided by them. The existing relevant regulatory obligations on OTTs are listed below:

- i. All body corporates (which includes OTT service providers) are required to comply with the SPDI Rules if they are dealing with or processing personal information (PI) and sensitive personal data or information (SPDI).^{xii} The **Rules for Data Privacy and Security Practices**

issued under **Section 43A** stipulate the various reasonable security practices and procedures that an entity (such as an OTT service provider) should implement.

- ii. Under the **IT Act**, the State is enabled to undertake measures relating to **content regulation** on the grounds of, among other things, national security. For instance – **Section 69 read with the Rules for Interception** empower the government to issue interception, monitoring, decryption directions vis-à-vis any information generated, transmitted, received, or stored in any computer resource.^{xiii}
- iii. **Section 69A** read with the **Rules for Blocking** empower the government to issue blocking orders vis-à-vis any information generated, transmitted, received, or stored in any computer resource.^{xiv}
- iv. **Section 69B** read with **Rules for Monitoring Traffic** empower the government to issue directions to monitor and collect traffic data or information generated, transmitted, received, or stored in any computer resource for cyber-security purposes.
- v. **Section 79** read with **Intermediary Rules** prescribes the intermediary liability framework (OTTs are intermediaries) where intermediaries must act as a passive agent (or distributors) insofar as the illegal content is concerned, must observe “due diligence” conditions, and disable access to unlawful content upon receiving “actual knowledge” thereof.^{xv}
- vi. The **CERT-In framework**, along with the **SPDI Rules** contain many obligations to handle cyber-security incidents and to maintain privacy.^{xvi}
- vii. In addition to the above, OTTs are covered as **data fiduciaries** under the recently legislated **DPDPA**. As per this law, OTTs are required to adopt/implement security practices/measures to comply with the obligations under the DPDPA. Further, OTTs are likely to continue to be regulated as **intermediaries** under the proposed Digital India Act which would replace the IT Act.
- viii. OTT services are already subject to grievance redressal requirements under existing frameworks, such as the consumer protection framework under the Consumer Protection Act, 2019 and Intermediary Rules.
- ix. Consumers can also report grievances while using social media platforms under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules 2021).

As detailed above, there are sufficient regulatory mechanism in place for OTTs. Existing regulatory conditions have enabled the market to grow organically and provide consumers with choice of application. Low switching costs and high availability of alternatives give consumers agency to download and use multiple OTT communication services and to migrate between them easily.

We are thus of the view that there is no need to bring OTTs under Service Authorisation and impose any additional regulatory burden on them.

Any additional regulatory intervention (like a licensing/ authorisation framework) will negate these advantages by imposing entry costs, increase the cost of service which could be passed on to consumers, and thereby stymie the virtuous economy OTTs are contributing to. The TSP market is an example of how burdensome regulation could result in limited consumer choice, with only two or three alternative service providers and high switching costs.

We believe that the licensing/ regulatory regime should be designed using an **activity-led and risk-based approach** that ensures obligations on an activity are **proportionate to the harms & risks** associated with it whilst keeping in mind the need to **avoid regulatory overlaps**.

For any queries related to this submission, please contact:

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About nasscom

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End Notes:

ⁱ See, [nasscom feedback](#) to TRAI CP on 'Framework for Service Authorisations to be Granted Under the Telecommunications Act, 2023'.

ⁱⁱ See, Telecom Regulatory Authority of India, '[Framework for Service Authorisations to be Granted Under the Telecommunications Act, 2023](#)' (July 2024).

ⁱⁱⁱ See, ET Bureau, [OTT not under ambit of Telecom Bill: Ashwini Vaishnav](#). Also see, [News Clipping](#).

^{iv} [BERC Report on OTT Services](#), BoR 16(35), January 2016,

^v See, para 2.45 at page 27 of the TRAI CP '[Regulatory Mechanism for Over-The-Top \(OTT\) Communication Services, and Selective Banning of OTT Services](#)' (July 2023).

^{vi} See, Table 21 at page 12 of the TRAI CP '[Regulatory Mechanism for Over-The-Top \(OTT\) Communication Services, and Selective Banning of OTT Services](#)' (July 2023).

^{vii} All TSPs have increasingly started offering bundled plans as can be seen from their advertisements:

- [BSNL offers free amazon prime video subscription to postpaid broadband users.](#)
- [ALTBalaji partners with Reliance Jio.](#)
- [Airtel and Hotstar announce strategic partnerships.](#)
- [VI partners Hungama to launch pay-peer view service.](#)

^{viii} See, Ovum, [OTT Media Services Consumer Survey & OTT-CSP Partnership Study](#) (2019).

^{ix} See, [Netflix's Open Connect program and codec optimisation helped ISPs save over USD1 billion globally in 2021](#) (July, 2022).

^x See Analysys Mason report on [The Impact of Tech Companies' Network Investment on the Economics of Broadband ISPs](#), October 2022.

^{xi} See, Outlook India, [Meta To Jointly Invest With Airtel In Telecom Infrastructure](#) (2022).

^{xii} See, Under **Section 43A of the IT Act**, "Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation to the person so affected." Also see, Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (**Rules on Data Privacy and Security Practices**)

^{xiii} See, Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009 (**Rules for Interception**).

^{xiv} See, Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 (**Rules for Blocking**).

^{xv} See, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021) (**Intermediary Rules**).

^{xvi} See, Information Technology (the Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013 (**Cyber-security Rules**).

Cyber-security Directions of April 2022 issued under Section 70B(6) of the IT Act (**Cyber-security Directions** by CERT-In). The Indian Computer Emergency Response Team (**CERT-In**) is the national nodal body to ensure cyber security. It oversees the Cyber-security Rules and Cyber-security Directions. A wide range of entities including OTT service providers are subject to various cybersecurity related obligations in this regard. For example, OTT service provider need to report any incidence of specific cyber security incidents to the CERT-In, as well as designate a point of contact to interface and communicate with the CERT-In.