



Koan Advisory Group's Comments for the TRAI Consultation Paper on Formulation of a Regulatory Framework for Application-based Linear Television Distribution (ALTD) Services (Including Free Ad-Supported Streaming Television (FAST) Services)

We thank the Telecom Regulatory Authority of India (TRAI) for giving stakeholders the opportunity to submit comments on the Consultation Paper (CP) on Formulation of a Regulatory Framework for Application-based Linear Television Distribution (ALTD) Services (Including Free Ad-Supported Streaming Television (FAST) Services). We specifically respond to the wide definition of ALTD services and respectfully submit the following:

1. The CP's broad definition of an 'ALTD' service clubs FAST channels with distributors and risks creating an all-encompassing definition which will make India an outlier in the global media value chain, fragmenting globally standardised product lines.
2. FAST channel development and adoption is at a nascent stage in India. At this juncture, introducing prescriptive regulation will be premature and can risk stifling the segment's growth and potential to innovate.
3. FAST channels operate via the open internet and not by utilising scarce and finite resources. Thus, introduction of licensing measures such as authorisation is unwarranted and can create entry barriers for new players.
4. Internet services fall outside TRAI's regulatory remit and must be regulated by line ministries – the Ministry of Information and Broadcasting (MIB) and the Ministry of Electronics and Information Technology (MeitY) instead.
5. By virtue of the broad definition of ALTD services, the CP risks saddling FAST channels, and even OTT streaming services, with distributor-style, legacy broadcasting regulation, thereby blurring the established distinction between content and carriage.
6. Online content providers are sufficiently regulated via the Information Technology Act, 2000 and rules made thereunder and the Consumer Protection Act, 2019 and the introduction of new regulations can risk overregulating the sector by creating parallel obligations.

Recommendation: Thus, we recommend that no authorisation framework be introduced for FAST channels at this stage. Additionally, no regulatory interventions must be introduced that equate FAST channels with legacy players such as distributors. If needed, the Ministry of Information and Broadcasting (MIB) must consult on this issue with relevant stakeholders, as the nodal regulator for online content.

Please see our detailed comments below.

Detailed Comments

1. **TRAI's expansion of the scope of FAST channels, by introduction of a new term 'ALTD', is unheard of in any other jurisdiction and can disrupt the global value chain**

The CP risks expanding the scope of the commonly accepted understanding of FAST channels, by clubbing it with other parts of the ecosystem of 'ALTD services'. The CP proposes an expansive



definition of ALTD services that encompasses all application providers distributing linear television channels, whether pre-installed on devices, downloadable, or web-based over the internet. This definition is so broad that it risks capturing a wide range of internet-based services, including OTT streaming services that offer some linear content alongside on-demand libraries, smart TV manufacturers whose devices come with pre-loaded apps, and operating system providers. Further, while the CP acknowledges that ALTD services are akin to traditional broadcasting services given their linear pre-scheduled nature, it also indicates widening of the services' scope, by stating the following:

- FAST channels bundle linear offerings by making them available via dedicated apps downloadable on television, mobile or any other device or through pre-installed applications integrated into smart TVs. The CP further highlights how FAST channels are also provided on webpages.
- FAST channels are not limited to live content but also include free on-demand content
- FAST channel services are available via various form factors such as connected TV, smartphones, tablets, personal computers.
- Some service providers also offer on-demand content on FAST channels with greater user choice and control.
- Some ALTD service providers also provide value added services in the form of on-demand content

Traditionally, the term 'FAST channels' has referred to channels that offer viewers free-to-air linear programming, without any paid subscription, and is funded exclusively by advertising. We believe that such a broad definition that clubs various unrelated services and products together and significantly expands the business model of FAST channels is unheard of in any other jurisdiction and will make India an outlier in the global value chain.

[Canada](#) and [Italy's](#) regulatory interventions with respect to FAST channels are limited to their availability on connected TVs only. In the [United Kingdom](#), regulation of FAST channels is only limited to linear content, and will be implemented in a phased manner, starting from content made available via television sets. These international precedents suggest balanced, calibrated approaches that are proportionate and favour evidence-based regulation. TRAI's approach, on the other hand, suggests subjecting ALTD services, including FAST channels, to prescriptive authorisation requirements. This licensing-style regime will be unique to India, as other jurisdictions such as the European Union, Australia, United Kingdom continue to opt for lighter-touch, technology-neutral approaches. Many online content providers that provide FAST channels are global content companies which operate across multiple jurisdictions, by leveraging standardised products. In such a scenario, an India-specific licensing mandate can fragment these global value chains and stem India's growth as a global content hub.

Recommendation: In line with international precedents, TRAI should opt for an evidence-based, proportionate approach that does not expand the scope of or prescribe authorisation for FAST channels.

2. **There is no market failure to warrant TRAI's intervention into ALTD Services (Including FAST channels), and the introduction of an authorisation regime can lead to entry barriers**



The CP notes that India is the fourth largest country in terms of revenue generated via FAST channels. FAST channels in India operate in a highly competitive, self-regulated, free market environment and are not subject to prescriptive authorisation requirements or economic regulation. This has allowed the sector to flourish and has enhanced consumer choice. At this juncture and in the absence of any market failure, introducing prescriptive regulatory measures such as authorisation will be premature. It can distort efficient market outcomes, impose heavy compliance burdens and risk reducing the sector's potential to innovate.

We respectfully submit that TRAI should consider *ex-ante* regulatory measures such as authorisation in the industry only on issues that pose a threat of market failure. For instance, an *ex-ante* regulation may be required to prevent gatekeeping by dominant players in the industry or to battle information asymmetry. At the current stage of growth of FAST channels, where there is high competition in the market and the market is able to correct itself, a prescriptive authorisation regime will risk creating barriers to entry and forcing players out. This can result in inadvertently distorting market dynamics by protecting larger players who can absorb hefty compliance costs, while disadvantaging startups and smaller players. This will go against the government of India's intent and priority to develop the Indian media and entertainment sector as a market leader and a key exporter of soft power. It will further deter the growth of digital technologies and startups.

Recommendation: In the absence of any market failure, upending existing regimes and introducing compliance-heavy authorisation is unwarranted.

3. **TRAI's approach risks deviating from the sacrosanct principle of 'content-carriage' separation and saddling online content providers with DPO-style obligations**

The CP suggests recognition of ALTD services as a type of Distribution Service Provider (DSP) and discusses imposition of mandatory sharing provisions, in accordance with laws such as the Broadcasting, Signals (Mandatory Sharing with Prasar. Bharati) Act, 2007. We respectfully submit that DSPs, or DPOs as they are commonly known, undertake carriage of television channels via controlled delivery systems. They do so via leveraging a finite, rivalrous natural resource – spectrum. It is this use of spectrum that justifies the imposition of mandatory sharing and other public service obligations on legacy broadcasters. However, ALTD services including FAST channels do not leverage spectrum and are offered over the open internet, which is not scarce. They operate on the application layer and their delivery does not involve licensed carriage infrastructure, which is the defining characteristic of distribution services regulated by TRAI. In such a scenario, there is no regulatory rationale for introducing a licensing-style regulation for ALTD services, which include FAST channels.

Introduction of any such obligations will go against the legally recognised principle of content-carriage separation, which has recently been upheld by the Supreme Court in *Star India Private Limited v. Department of Industrial Policy and Promotion & Ors.* TRAI's mandate is limited to regulating the technical and economic aspects of broadcasting and we respectfully submit that FAST channels fall outside their purview. TRAI also does not have the power to regulate internet based services that operate on the application layer. Thus, it is our case that TRAI must forbear from creating regulatory inroads into the domain of FAST channels and must limit itself to carriage regulation. Content-related regulatory



interventions must be left to the Ministry of Information and Broadcasting (MIB), which is the nodal regulator of all online content in the country as per the Government of India's Allocation of Business Rules. MIB will be best placed to do so by leveraging its experience and subject matter expertise, resulting in balanced regulation that grants certainty to the market.

Recommendation: We recommend that TRAI should not attempt to regulate FAST channels, but instead delegate this exercise to MIB. We further recommend that an approach that aims to categorise ALTD services including FAST channels as a DSP is misplaced and urge TRAI to take a relook.

4. **OTT streaming services are sufficiently regulated, and the expansive scope of ALTD can envelop them into new regulation, resulting in overregulating and stifling the sector**

As explained above, the wide definition of ALTD services can envelop OTT streaming services within its scope. At present, OTT streaming services are regulated via the Information Technology Act, 2000 and rules made thereunder, including the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Their consumer issues are further regulated via the Consumer Protection Act, 2019. The content related issues, apart from governance via the IT Rules, 2021, are also dealt with via the general laws of the land. Thus, it is our case that these services are sufficiently regulated and there is no regulatory rationale or vacuum for creating further interventions.

Recommendation: In the absence of regulatory vacuum, we recommend TRAI refrain from creating new, parallel obligations that can lead to regulatory overlaps and confusion.