

SOME COMMENTS TO QUESTIONS RAISED BY THE TRAI

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Question 1: *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.*

Response 1: There is no need for OTT regulation in our country currently. Bulk of our internet usage is smart phone driven and supported by cheap and free access to services. Creating OTT regulation at this stage will only lead to limiting the growth of the internet to rural areas. The question then become why should we support the growth of the internet? While it may superficially seem frivolous, a recent Mckinsey report (Source:

http://www.mckinsey.com/insights/high_tech_telecoms_internet/the_great_transformer) demonstrates that the internet has a direct impact on GDP, growth, innovation and development of an economy. Moreover, the internet enabled economy is growth faster than agriculture and manufacturing globally. This has only been possible on the basis of a free and fair internet. If we allow regulation of OTTs, especially permit differential pricing, speed regulation or any infringement that treats the same set of data transfer between individuals differently, then it would result in preventing this access to the internet.

While some companies may promote free usage of basic services, such as facebook by internet.org or airtel with whatsapp etc, this limits the options given to consumers. Currently, the success of an OTT is on the basis of the quality of the service provided. Any changes to this principle, will result in dis-incentivising innovation (a key need for India) and promoting existing applications that are popular which in turn development of new applications.

Question 2: *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.*

Response 2: No. The OTT service does not provide a network, it just facilitates transfer of data. If the data is by way of voice and video, then we would use skype, if through text and recorded media, we would use whatsapp. However, principally both are equivalent to the extent that a TSP only has to carry the load of the information provided. No separate service, infrastructure or endeavour is required by the TSP to transfer different forms of data. The current regulatory framework governs OTTs to the extent of national security and monitoring, which are viable and the only grounds of monitoring. Allowing any other form of regulation or intrusion would affect free and fair competition and harm consumer access.

Question 3: *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.*

Response 3: A TSP when it bids for a licence, gives the government a bid price for the right to carry its citizens data. Any other business that it has, i.e. to transfer voice or text messages is an additional service that it provides to generate revenue. The base service provided by a TSP is that of providing bandwidth to citizens of India.

If an OTT provides a more efficient form of transferring this data, then it only leads to an increase in the use of the TSP's bandwidth, which is the primary business of the TSP. If it results in decrease in revenues from its other businesses, then that is a consequence of a changing market and modern technology. A TSP can easily generate revenue by building and promoting its own OTT services. However, at no point should the TSP's service discriminate against any other existing OTT. Secondly, the balance sheets of these TSP's do not support any conclusion that they are financially infirm due to the growth of OTTs. These are based on an implicit understanding that the TSP can no longer generate the type of revenues that it could when it was the sole provider of voice and data across its lines.

Moreover, if the technology revolution is resulting in changing the business model of the TSP then it is for the TSP to adapt to changing market conditions. The goal of the government should be concern itself with consumer welfare and not the survival of an outdated business model. Infact, other than the TRAI, all other forms of services in India are now welcoming competition and freedom. The government should not be concerned about if the revenues of the TSP are adequate or not. If a TSP has bid for bandwidth, it is on the basis that the current business model will provide adequate ability to the TSP to recover its investment. The government is not the entity that needs to concern itself with the financial performance of the TSP.

Question 4: 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.

Response 4: No. As it would lead to double revenues for the TSP for transferring the same data. On one hand it would charge the consumer for the data and then charge the OTT for the data.

And if it agrees to partner with the OTT to provide the data for free to the consumer, then it prevents free and fair competition in the market. OTTs with the partnership would inherently be successful. This will lead block innovation the key driving force of the internet economy. Today, net neutrality allows a developer in Kerala or Karnataka to build the next twitter, or the next facebook, with the assurance that if the product is of a good quality it will be adopted by the market. Cases include zomato, a small indian startup which has now become the second biggest food discovery OTT in the world. Ola is the second biggest transport OTT, competing with Uber, Zoho a small Chennai based startup is the biggest business services application. Allowing differential pricing will lead to Indian consumers being tied to one service while the other may be better, just more expensive.

TSP argue that the additional price of an OTT would be minimal, however a number of behavioural science studies have established that we are conditioned to support free over any price. It is this bias in behaviour that TSP bank on. The fact that a regular person would support the free application over paying INR 50 rupees per month for a better application.

The question then is that how does it affect Indian citizens. It does so as it prevents innovation. Technological innovation, software services and entrepreneurship are the foundation on which India will be needed to be build for it to become a superpower. If we limit the options of consumers to a few application, then we will inherently become beholden to those services, at the cost, and detriment to local innovation.

For example, if an Amazon enter into a free partnership with a service provider, it would have prevented the rise of a flipkart or a snapdeal.

Question 5: 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.

Response 5: No. Currently we need to ensure that OTTs are compliant with India's cyber security and data sharing requirements. Any other regulation would only enable greater revenue maximisation by TSP, at the detriment of innovation, greater penetration of the internet and development.