

Counter Comments on Consultation Paper on ‘Terms and Conditions of Network Authorisations to be Granted Under the Telecommunications Act, 2023’

At the outset, we would like to thank the Telecom Regulatory Authority of India (“TRAI”) for providing us with the opportunity to submit our counter comments on the Consultation Paper on ‘[Terms and Conditions of Network Authorisations to be Granted Under the Telecommunications Act, 2023](#)’ dated 22 October 2024 (“CP”).

We have reviewed the comments submitted by industry stakeholders on the Consultation Paper and provided our counter comments below. We look forward to engaging in further discussion with the TRAI on our inputs and comments below.

1. **Argument: JOTT Communication Services and Telecommunication Services operate on a ‘Level Playing Field’**

Response: OTT Communication Services and Telecommunication Services are different and the ‘Level Playing Field’ and ‘Same Service, Same Rules’ Arguments are Unfounded

Layer of Operation and Market Restrictions:

Telecom Service Providers (TSPs) operate at the **network layer**, managing broadband and network infrastructure to provide internet access. In contrast, OTT platforms function at the **application layer**, relying on TSPs for connectivity to deliver services such as messaging, video calls, and content sharing.

TSPs operate in a restricted market with specific privileges, such as spectrum acquisition, numbering resources, and rights of way for infrastructure setup. OTT platforms lack these exclusive rights and do not enjoy similar regulatory privileges.

Service Nature and Functional Differences:

OTT services and telecom services are fundamentally distinct and not direct substitutes. While TSPs provide essential connectivity, OTT platforms enhance this connectivity by offering diverse functionalities, including group chats, live location sharing, and online payments, making them supplementary rather than competitive.

Users often rely on both TSP and OTT services concurrently. Unlike TSP services like SMS and voice calls, which can stand alone, OTT services depend on TSP-provided internet access. Jurisdictions like **Australia** and the **European Union** recognize this distinction, treating OTT services with a differentiated regulatory approach.

Symbiotic Relationship Between TSPs and OTT Platforms

The growth of OTT platforms has significantly contributed to telecom service providers' (TSPs) revenues by driving higher data consumption and increasing the demand for broadband access. This mutually beneficial relationship was highlighted by TRAI in its 2023 consultation paper, which noted the correlation between the rise in wireless internet subscribers, data usage, and the popularity of OTT services. Furthermore, international studies, such as the 2022 BEREC report, emphasize this symbiosis, with content demand fueling broadband expansion and vice versa. Rather than viewing OTT platforms as competitors, they should be recognized as key enablers of the digital ecosystem, complementing the services offered by TSPs.

OTT Communication Services and Regulatory Oversight

OTT communication services should not fall under the ambit of the Telecom Act, as the Act was designed to regulate telecommunication services such as telegraphs and telephones. The Ministry of

Electronics and Information Technology (MeitY) already governs OTT platforms under the IT Act, 2000, which includes provisions for interception, monitoring, content takedown, and cybersecurity compliance. Moreover, the upcoming Digital India Act is expected to further enhance the regulatory framework, introducing stricter obligations for intermediaries, including OTT platforms. These platforms also adhere to extensive consumer protection measures such as grievance redressal mechanisms, voluntary account verification, and robust anti-spam technologies, ensuring user safety and satisfaction in a competitive, low-barrier market.

Data Privacy and Consumer Safeguards

OTT platforms are regulated under the recently enacted Digital Personal Data Protection Act, 2023, which imposes stringent obligations related to consent, data security, and user rights. Additionally, these platforms already implement effective Know Your Customer (KYC) measures through phone number and email verifications, with significant social media intermediaries offering account verification options under the IT Rules. Consumer protection is further bolstered by internal safeguards, such as spam reporting tools and AI/ML-based fraud prevention systems employed by platforms like WhatsApp, Apple's iMessage, and ShareChat. These efforts highlight the robust mechanisms in place, ensuring compliance and consumer trust without requiring additional regulatory burdens.

Regulatory Considerations and Market Implications:

OTT platforms and CDNs do not require traditional telecom licensing. Imposing compliance burdens on these entities risks stifling innovation and market growth. For instance, **India's CDN market is projected to grow by over 700% between 2018 and 2027**, highlighting the need for an enabling policy environment rather than restrictive measures.

CDNs are auxiliary to telecom networks, improve performance, handle traffic loads, localize delivery, and enhance security. CDNs enhance the efficiency of telecommunication networks and are fundamentally different from telecommunication providers as they require: (i) appliances for computing and storage; and (ii) connectivity. Depending on whether they build their own connectivity or not, CDNs are either a customer of telecommunications providers (for internet access) or a private network interconnecting with telecommunications providers (through transit and peering). CDNs contribute to the development of the internet. They rely on telecom infrastructure for connectivity and contribute to the internet's growth without functioning as telecommunication networks themselves.

International norms emphasize "innovation without permission" and favour efficient traffic exchange. Introducing mandatory registration for CDNs or restricting interconnection to registered networks would hinder market responsiveness, delay service rollouts, and disrupt local traffic management, pushing traffic internationally. This would counter global best practices and impede the flourishing internet ecosystem.

The CDN market is competitive. Several companies offer commercial CDN services and some companies have successfully implemented their own CDN solutions, which has benefited local content delivery to global audiences. Evidence of high competition is that the prices for CDN services are constantly dropping.

2: Argument: CDN's to set up their network in Tier 2 and Tier 3 Cities as well

Response: Mandating CDNs to establish infrastructure in Tier 2 and Tier 3 cities is unnecessary, as CDNs already collaborate with ISPs across all regions to deliver high-quality services to consumers. However, as highlighted in the TRAI Recommendations on the Regulatory Framework for Promoting Data Economy Through Establishment of Data Centres, Content Delivery Networks, and Interconnect Exchanges in India (Table 2.3, page 28), data centre operators in India predominantly focus on Tier 1 cities like Mumbai, Delhi-NCR, Bengaluru, and Chennai. This is primarily due to the availability of robust connectivity, reliable power supply, and strong local market access in these locations.

Instead of imposing requirements on CDN providers, it would be more effective to incentivize data centre operators to expand their presence in Tier 2 and Tier 3 cities. Strengthening data centre infrastructure in these regions, as recommended in Recommendation 2.45 (page 30) of the TRAI report, would create a more conducive environment for CDNs to establish networks in these areas, driving overall growth in connectivity and digital services.

3: Argument: CDNs should be subjected to light touch regulation.

Response: Regulatory frameworks, even when designed to be "light touch," can inadvertently stifle innovation, raise operational costs, and create entry barriers for smaller players. Mandating infrastructure deployment or proprietary CDN development by content providers would upset market dynamics and restrict competition.

CDNs are crucial for improving internet performance by reducing latency, managing congestion, and optimizing network efficiency. Instead of introducing onerous regulations, TRAI and the government must focus on enhancing ease of doing business and creating market friendly policies for CDNs.

4. Additional Recommendations with respect to CDNs:

IXPs utilize CDNs to manage local traffic exchange effectively. However, if interconnection in India were restricted to only registered networks, it would impede the ability to serve traffic locally resulting in a shift in traffic internationally. A registration process for CDNs should not be introduced as this will cause delays in launching new services and expanding existing ones, thereby adversely impacting the ability of CDN providers to respond to evolving market needs. Restricting CDN operations to only registered networks will slow down content delivery and stifle innovation in the CDN space.

Contracts between CDNs and TSPs / ISPs are B2B contracts. They should be governed by market forces only and should not be subject to any burdensome regulations. If needed, for example to enforce Net Neutrality Rules, TRAI can use their existing powers to request information about CDN-ISP interconnections from licensed ISPs, and does not need CDN regulations or licensing to achieve this.

Moreover, CDNs should not be held responsible for content blocking . Existing legal mechanisms under Section 69A of the IT Act and the Telecom Act are sufficient for addressing content-blocking needs. Moreover, proposals to issue blocking orders to CDNs fall outside the scope of this consultation paper.