

BIF's counter-comments on TRAI Consultation paper on "Licensing Framework and Regulatory Mechanism for Submarine Cable Landing in India"

Broadband India Forum (BIF), is an independent policy forum and think-tank, dedicated to working towards the proliferation of high-quality broadband and the realisation of a 'Digital India'. BIF follows an all-inclusive approach and technology neutrality and engages in regulatory and policy consultations, with participation from various stakeholders, including technology providers, telecom operators, and internet-service providers and others in the broadband ecosystem.

Submarine cable investors are developing and investing in new submarine cable systems in Asia, working in close partnership with key players in the regional connectivity ecosystem. These investments improve the reliability and performance of services, consumers finally receive, and also improve the overall resiliency, performance and cost-effectiveness of Internet infrastructure in the region. This positively impacts the connectivity ecosystem, supporting continued growth in the number of consumers using the Internet and the amount of data consumed. Better connectivity, in turn, supports economic and social benefits for consumers, businesses and governments.

Submarine cable systems are an expensive part of the infrastructure value chain and countries have traditionally been reliant on investments from a limited group of incumbent telecoms operators. But as noted by other industry participants in their submissions, content providers and cloud providers are increasingly the more active investors in subsea cable systems. This is something to be encouraged, particularly in relation to content providers who bring their content closer to end users, providing a better customer experience, and removing costs for local ISPs. Without these investments, the level of investment in submarine infrastructure would inevitably decline and would be concentrated in the hands of very few industry participants in India.

While new cables will continue to land in established submarine cable hubs in APAC such as Singapore, Japan, they will also increasingly reach other countries, particularly where the regulatory frameworks are balanced so that the country in which the cable lands benefits and yet investor's investment is also protected. The most important criterion in determining investments is long-term regulatory stability, where the laws are not continuously changing, and laws that allow content providers to own and control their infrastructure assets, given the high cost and long life of 25 plus years of submarine cables.

BIF had submitted its comments to the captioned consultation paper. In continuation of the same and in light of the above-mentioned reasons, BIF would like to make the following additional submissions

1. Indian Landing Party should not be required to hold a stake in Subsea Cable System

There is no justification for a landing provider to be required to invest in a subsea cable system in order to supply landing services to it pursuant to condition (i) in TRAI's Consultation Paper. Indeed, such a requirement is likely to shrink the pool of potential International Long Distance Operators (ILDOS) who are willing to act as the landing party to such subsea cable system because it is likely that many will not be willing to make this investment, which in turn will result in reduction of supply of subsea cables landing in India. Such a move would be anti-competitive and lead to market dominance by a few large players. We are not aware of any country in the world which requires such an investment other than Indonesia, and these regulations only require a 5% investment in the part of the submarine cable system that sits within Indonesian territory.

The proposal under condition (i) is also not justified on national security grounds as the Indian Government can ensure it has the same powers over the subsea cable system and its Indian landing provider regardless of whether the provider is a party to the cable system consortium or not. This approach satisfies all other governments across the world - for example, the US Government does not require the entity that lands the system must exercise ownership or control over the system or consortium.

2. Indian Landing Party should not be required to own or operate the Subsea Cable and Equipment in Indian Waters

In our opinion, there is no rationale as to why the local landing provider must own the cable and associated equipment or operate the equipment in Indian Territory, whether pursuant to condition (ii) in the TRAI Consultation Paper or for any other reason. Earlier, when the submarine cable market provided complete turnkey solutions that included both the wet and dry networking technology as a single solution, this approach might have been appropriate. But this is no longer the case with the advent of Open Cables enabling the disaggregation of the wet and dry plant and for participants to operate their own SLTE, as per ITU Recommendation ITU-T G.977.1 dated October 2020.

The concept of one entity being solely in control of the cable system in a country is no longer an efficient nor secure approach. In addition, the idea that a SLTE must be housed in a CLS is also outdated. India should be looking to the latest advancements to drive its regulations.

If there are significant concerns with opening up ownership and operation of submarine cable systems and related equipment, then a model to consider is the private use exemption where entities that own and operate submarine cable assets solely to support their own products and services and do not offer telecommunication services to the public in India for a fee are allowed to own and operate such systems and equipment. There are a few nations in South-East Asia that already support a private use exemption - some support it publicly and others by way of private negotiations.

3. ILD Licensee need not be required to own and operate a Cable Landing Station (CLS)

As other industry participants have noted in their submissions, most of the CLS in India are concentrated in Mumbai and Chennai today because of preferences of the main ILDOs. Since only a handful of entities are ILDOs, it is possible for them to drive costs and control the entire sector due to their monopoly. This would quickly change if the Indian Government were to permit carrier neutral CLS with open Meet Me Rooms. There would be more CLS in more places in India, because the pool of potential investors would grow significantly.

At the moment, the restriction on who can own CLS in India is driving an artificially low limit on the number of cables which can be landed in India at any given time, and diversity around the locations where they land and the high cost of landings. It is a key reason why international bandwidth to India is prohibitively high as other submissions have noted. The existing 'Reference Interconnect Offer' (**RIO**) in India is also significantly higher than is reasonable for a cross connect framework. When only a few ILDOs control a fundamental component related to submarine cable systems, this leads to a situation of monopoly and monopolies inevitably lead to higher prices.

4. Indian flagged installation and repair ship is not necessary

While having an Indian flagged ship may be preferable from a Make-in-India perspective, it would not result in faster repair times. In fact, if rules permitted exclusive permission to an Indian flagged ship to conduct any subsea cable installation and/or repair then this would actually not help matters as there will be less ships to call upon. Instead, Indian maritime laws should be harmonized with international standards to promote ease of doing business in India, such as the vessel importation regulations and the requirement to put up a bond for the value of the vessel which has presented obstacles (due to the fact that the entity establishing the bond must be Indian-registered and contractually 'tied' to the project). Such conditions make it difficult for ship operators working in Indian waters to operate effectively and efficiently.

TRAI's consultation paper on 'Ease of Doing Business in Telecom and Broadcasting Sector' dated 8 December 2021), notes how damage to submarine cables can impact global internet connectivity, which may consequently cause an internet slowdown that can affect a nation's economy and national security. It also makes note of the time-consuming and expensive process that currently exists to obtain various permits for undertaking cable repairs. A simplified procedure for the operation and maintenance of undersea cables with lower costs and faster processes for obtaining permits or clearance would lead to much greater improvements at a lower expense than establishing an Indian flagged ship.

In conclusion, we believe India could foster a dynamic and diverse submarine cable industry (both domestic and international cables) if the activities of setting up of CLS and laying submarine cables in India is permitted also to new entrants who do not mandatorily have a ILDO license. Competition must be welcomed as it will lead to better services at lower costs for the end consumer. Facilitation of the process of 'unbundling' and 'open access' must be welcome through Regulations as it would lead to more competition which will help in enabling better services at cheaper prices for the end consumer.
