CUTS International

COMMENTS ON TRAI'S CONSULTATION PAPER

INPUTS FOR FORMULATION OF NATIONAL TELECOM POLICY – 2018

Mission:

1. **Point number 1** suggests for facilitating "affordable prices". The term "affordable" is highly subjective. Thus, CUTS suggests it to be changed to "competitive prices" by ensuring a competitive market. This may be done by lowering entry barriers and keeping a check on anti-competitive practices. Also, the regulator should not engage in "price control", unless there is a market failure, in order to ensure that prices are "affordable". Price Control often leads to market distortions and may also raise certain competition issues.
2. **Point number 1** should also establish the outreach of communication services to "every" individual, enterprise and industry, in the country, including the ones at the last mile.
3. Following points should be added to the mission:
    a. "To ensure ease of doing business with a light touch regulatory approach."
    b. "Telecom is a key Infrastructure Sector in India and requires enhanced proliferation and impetus. Thus, enabling a single window clearance for all telecom projects."
    c. "To promote innovation, enhance the indigenous pool of Intellectual Property (IP), Standardisation, etc."

Objectives:

1. **Point d, like Point 1 of Mission,** suggests for "affordable" prices, for which we suggest competitive prices.
2. **Point h** should also include an improvement in India's ranking on "average network speed".
3. Following points should be added to the Objectives:
    a. To ensure high quality telecom services to consumers and businesses. For this, high performance benchmarks should be mandated for operators, which should be periodically reviewed by the regulator to ensure their relevance to evolutions in technology.
    b. To ensure Progressive and Enabling rules for internet (aspects like net-neutrality, data protection, etc.).
    c. To enhance transparency in telecom services and safeguarding consumer welfare. This may be achieved by prescribing information disclosure tools, such as consumer labels for operators, which will dispense actual information on Quality of Service. Such an information will enable consumers to draw comparison between various available services and accordingly making an informed choice. More information on Consumer

Labels for Broadband Services is available at: http://cuts-ccier.org/broadbandlabel/index.htm

E. Strategies to increase rural tele-density to 100% and to provide data connectivity of at least 1 Gbps speed to all Gram Panchayats:

- A point should be added, "By promoting innovative ways of providing connectivity to consumers such as Cable to Home, Balloon powered internet, etc.
- Facilitating erection of new mobile towers, especially in urban areas where there is high opposition by residents.

G. Strategies to enable access for connecting to 10 billion IoT/M2M sensors/devices:

- For seamless interoperability, ensure adherence to and adoption of international standards and encourage local participation in international SDOs
- Harmonise policy and legal frameworks (mainly competition law and IP law) to promote incentives to innovate and encourage fair access to users of underlying technologies.
- Generate awareness about Standards and SEP exposure amongst local firms and SMEs

H. Strategies to establish India as a global hut for data communication systems and services:

- By facilitating transfer of technology through a strong IP protection regime.

I. Strategies to become net positive in international trade of telecommunication systems and services:

- Following point needs to be added:
    a. Skill development for Indian workforce, to enable greater value addition to the manufacturing process for telecommunication systems and equipment.

Q.2 Other issue related to Policy Framework:

1. **Empowering TRAI**

To forge an effective regulatory framework, presence of a strong regulator is must. While the regulator must be capacitated to draft optimal regulation, which are not only facilitating to the sectors, it must also be able to enforce clauses, which act as a deterrent for any unfair practice by players. However, in wake of the recent examples such as call drop penalty, it was seen that TRAI is not empowered enough. While TRAI has been rigorously engaging with stakeholders on numerous issues, its role has been confined to a recommending authority than an enforcer.

Thus, enhancement in regulatory powers of TRAI is must for the sector to grow. TRAI should be able to implement its suggestions and also penalise the operators, in case of breach of mandates, as per the regulatory framework.

2. **Formal inclusion of Regulatory Impact Assessment**

Optimal regulations are the need of hour. However, considering the dynamic nature of the sectors and its constant evolution, the shelf life of regulations has decreased substantially. Also, it is highly challenging for the regulators, to devise regulation for the new technologies as well as ensure a level playing field between new players and incumbents.

Thus, Regulatory Impact Assessment (RIA) is the most appropriate tool for the regulator to devise optimal policies. RIA (cost/benefit analysis) will help in ex-ante identification of issues and challenges for suggestive policies, before they are implemented and RIA may also help in optimising the existing polices for a greater impact.

More details on the RIA, may be found at: http://cuts-ccier.org/ria/

3. **Regional presence of DoT and TRAI**

The presence of Department of Telecommunication is restricted to Delhi, while the presence of TRAI is restricted to a 6 centres in India. For an inclusive participation of stakeholders in regulatory process, enhancement in the visibility of DoT and TRAI is required.

On this aspect, CUTS did a survey across Rajasthan, National Capital region and West Bengal, which suggested that more than half of the population was unaware of the existence of TRAI in Rajasthan and West Bengal. At the same time, only 15 percent of respondents from NCR, claimed to be unaware of TRAI as a regulator for telecom services. High awareness of TRAI in NCR may be attributed to its presence in Delhi. The report is available at: http://www.cuts-ccier.org/QOSII/pdf/Mobile_Internet_Services_in_India-Quality_of_Service.pdf

4. **Efficient Redress Mechanism for Consumer Grievances**

With the rising need of ICT in human life, the consumers are rising in numbers as well. With the increase in number of consumers, the quantum of consumer grievances is liable to rise too, unless the services providers start dispensing perfect quality services overnight. Hence, there has to be a stronger consumer grievance redress mechanism in place.

Looking at the aspect of price consideration or ticket size for each of the consumer issue, most consumers prefer to ignore the issue and hence, no complaint is lodged. This leads to poor Quality of Experience (QoE) among consumers and also a poor feedback mechanism for service providers. This also amounts to consumers bearing an undeserved cost.

Thus, an effective and easy process of lodging complaints, added with efficient resolution provisioning, is must for telecom services in India. This is critical to not only the digital aspirations the country has, it will also ensure a greater consumer satisfaction and welfare. TRAI had proposed establishment of a telecom Ombudsman in one of its consultation. Establishment of an Ombudsman will be very timely to the future scenario.

5. **Increase specialisation and provide incentives for firms to move up the Global Value Chain**

Although India has attracted a number of Original Equipment Manufacturers (OEMs) to set up plants, their role has largely been restricted to that of an assembler, and not even a manufacturer. A major part of the manufacturing value chain (MVC) is still happening in other countries such as China, Taiwan etc. where there is a well-built component ecosystem, which supports its manufacturing. Furthermore, evidence suggests that there are enormous differences in the SEP stocks between different countries and there is a distinct dichotomy therein, i.e. some countries (the Haves) like the United States of America (USA), China, Japan, South Korea and Germany have SEP stocks above the third quartile of all SEPs.[1] India is amongst the 'Have-Not' jurisdictions that hold only a few or no SEPs.

Notably, due to the fact that patented and standardised technology confers considerable competitive advantage to firms (which is possessed by the Haves), some have suggested that it would benefit local firms to increase their own SEP portfolios through extensive investment in R&D or through strategic acquisitions.[2] The underlying rationale is that it would give such firms greater bargaining power in licensing negotiations and also increase the possibilities of cross-licensing.[3]

However, while this conclusion seems to be theoretically correct, it may oversimplify the correlation between patents and innovation. This is because the acquisition and ownership of patents is not an end in itself, but is in fact a consequence of technological innovation.[4] In this context, emerging and 'Have-Not' economies such as India ought to take note of the fact that much of the technical development naturally occurs within international SDOs and institutions and firms in India need to play a more participative and competitive role therein. This would increase their capacities in terms understanding the process and content of standards development. In the long term, it will allow them to focus their R&D efforts towards achieving specialisation in technical development and then leverage their IP to move up the GVC. The Indian governments 5G initiative is a welcome step and the funds allocated therein should be utilised to further encourage and incentivise local firms to develop their internal capacities and compete in voluntary standard setting activities. Hence, to achieve long-term ambitions, India needs to turn around this situation by initiating specific policy interventions which targets to increase its own competitiveness vis-à-vis SEP portfolios rather than undermining those of the current 'Haves'.

6. **Avoid unilateral standard setting initiatives and encourage participation in international SDOs**

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[1] Ramel, Florian and Laer, Maximilian et. al., *Standard Essential Patents and the Distribution of Gains from Trade of Innovation*, (2016), available at https://www.eastwestcenter.org/sites/default/files/filemanager/pubs/pdfs/5-5RamelVonLaerBlind.pdf

[2] Ramel, Florian and Laer, Maximilian et. al., *Standard Essential Patents and the Distribution of Gains from Trade of Innovation,* (n.22)

[3] Contreras Jorge L., *National Disparities and Standards-Essential Patents: Considerations for India,* COMPLICATIONS AND QUANDARIES IN THE ICT SECTOR: STANDARD ESSENTIAL PATENTS AND COMPETITION ISSUES (Ashish Bharadwaj, Vishwas Deviah & Indraneth Gupta, eds., Springer, 2017)

[4] Contreras Jorge L., *National Disparities and Standards-Essential Patents: Considerations for India* (n.24)

The historical perspective on standards development and the relative advantages and disadvantages vis-à-vis different modes of standardisation advances several arguments which should ideally encourage jurisdictions such as India to vigorously pursue participation in international standard development processes. Lessons from other jurisdictions which have sought to increase the competitiveness of domestic market players by either introducing protectionist policies or by developing their own standards unilaterally have not been successful and they too have moved towards international fora.

Take the case of China, which realised the near absolute dominance of western firms in the wireless telecommunications standards field, and the high royalty rates charged by them from Chinese firms and adopted a proprietary approach to 3G standardization. Their efforts resulted in TD-SCDMA, which was a Chinese standard developed by the Chinese Academy of Telecommunications Research (CATT) and its state-owned affiliate Datang in collaboration with German equipment vendor Siemens. Though the standard cannot be considered to be a market success, it surely advanced China's goal of building in-house technical expertise, thereby enhancing their domestic manufacturing capacity for advanced ICT products. Considering the high cost of developing these standards, coupled with their lack of international adoption, China has now moved towards international interoperable standards, through significantly increased participation in international SDOs.

Participation in international fora has several benefits for firms which currently lie in the 'Have-Not' category. First, the embodiment of proprietary technology in the industry standards itself give an early advantage to contributory firms which can thereby utilise SEPs to gain strategic advantages over competitors.[5] Second, participation in international standards development is the only viable process through which local companies and domestic firms in different jurisdictions can influence the direction of standardised technologies by voicing their opinions and putting forth their special requirements.[6] This is a crucial component of standardisation which can simultaneously guide new entrants in terms of finding specific research vacuums in technology development and focussing their R&D efforts to plug the same.

Lastly, apart from the economic arguments in favour of participation, it is also important to view standardisation from the policy perspective. National standards development authorities such as Telecom Standards Development Society of India (TSDSI) which have started to participate in SDOs such as 3GPP can play a crucial role in influencing their underlying policies and practices. By influencing global policy progress to the benefit of domestic firms, such institutions can practically provide the much needed impetus to domestic innovations by incentivising domestic firms to invest in specific R&D efforts and also facilitate them to compete globally.[7]

To this end, the following specific steps can be taken:

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[5] Contreras Jorge L., *National Disparities and Standards-Essential Patents: Considerations for India* (n.24)
[6] Contreras Jorge L., *National Disparities and Standards-Essential Patents: Considerations for India* (n.24)
[7] Ibid.

Capacity Building of domestic firms

Recognising the principle that standardisation is a highly knowledge-intensive activity which requires well-capacitated individuals and technical experts, India must undertake local capacity building efforts to support greater international SSO participation by representatives from its domestic forms. However, the requisite training and skill development for such capacity building does not come cheaply. Therefore, domestic firms may require significant financial and institutional support in the absence of internal resources, from the government or multi-governmental organizations (e.g., the World Intellectual Property Organization (WIPO)), as well as non-governmental organizations (NGOs).

Leverage support initiatives of various SDOs

Many SDOs offer support to firms from developing countries, which demonstrate their eagerness to participate and even contribute to the standardisation efforts. The Internet Society (ISOC), which is a US/Switzerland-based NGO which oversees the Internet Engineering Task Force (IETF), a major developer of Internet standards, is good example. It regularly supports Fellows from developing countries to participate in IETF meetings and other activities. One of its programs is also running in India: 'Indian IETF Capacity Building Program'.[8] Various other SDOs also sponsor participation by consumer advocates and other civil society organisation members, which help in broadening the overall participation and ensuring inclusive representation in global organizations.

Educate relevant personnel about standardisation

The Country must also inculcate and emphasize the need of imparting knowledge and skills for standards education and training. India can adequately utilise its higher educational institutions in providing greater education in the area of standardisation.

Increase firm-level awareness about standards and exposure to SEPs

Apart from the general IP awareness programmes run by the Indian government as a part of the National IPR Policy, 2016, there is also a need to create a sense of awareness about the increased exposure to standards and SEPs. With the upcoming 5G standard acting as the all-pervasive bedrock for countless use cases, it is but natural that device makers and implementers will have to utilise the standard, thereby getting exposed to SEPs. With the IoT ecosystem growing by leaps and bounds, it can be assumed that the implementer base would grow and even SMEs and small start-ups would be exposed to SEPs along with its requisite licensing requirements. This can pose a serious challenge for small businesses as lack of awareness can lead to unintentional infringement of SEPs on the implementer's part and/or put implementers in a situation where licensing negotiations prove to be complex and perplexing. Hence, awareness generation and capacity building activities can play a crucial role, especially for jurisdictions such as India which are currently net implementers of standards and SEPs.[9]

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[8] http://www.iicb.org/

[9] This recommendation is in consonance with EC's recent Communication which sets out the EU approach to Standard Essential Patents. See European Commission, *Setting out the EU approach to Standard Essential*

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Patents: Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, (2017), available at http://www.mlex.com/Attachments/2017-11-29_S0TV38CYI2RDO43O/com-2017-712_en.pdf