

Question 1 - Definition of Platform Services

This attempt to regulate platform services appears to be a short sighted regulatory intervention in the face of the long term effects of convergence.

Most TVs sold in the market these days are “smart” TVs, with the ability of streaming content from the internet as well. As a result, people can now stream videos from video streaming services like Youtube etc on their TVs. Most of these video streaming services also provide content in the form of “channels”, which are inherently the same as traditional broadcasting channels.

In fact, the pull based platform services are exactly the same as internet streaming services with the single difference that the only available streaming service is vertically integrated with the DTH/cable provider. Very soon, DTH/cable providers will start integrating with external streaming service providers like Netflix and Youtube for providing pull based platform services. As a result, the platform services currently provided by DTH operators and LCOs are not any different from the services provided by Netflix and Youtube.

The following three levels highlight the fuzziness of the artificial distinction aimed to be created:

- Level 1: Integrated movie on-demand service (eg. Offered by TATA Sky)
- Level 2: External *paid* movie on-demand service (eg. Netflix – consider the possibility of a contract between TATA Sky and Netflix)
- Level 3: External *free* movie on-demand service (eg. Youtube)

Therefore, TRAI needs to make a long term intervention by officially recognising that devices like TVs, Laptop, Tablets and Phones are converging. It needs to officially recognise that creating artificial distinction between these devices by way of regulation is short term; and contradictory to the current state of technology.

Accordingly, the following problems with the definition are recognised:

1. If pull based platform services are provided using “Netflix” by two or more operators, then it falls outside the scope of the definition because the program is not “exclusively” provided to the their own customers.
2. The definition needs to have the foresight to recognise the conditions under which **the integrated streaming service (eg. currently available pull services for watching movies) is converging with an external paid streaming service like Netflix, which is further converging with external free streaming services like Youtube.**
3. The definition excludes programs and channels streamed from the internet (in addition to non-streaming services like e-shopping) which are widely available and not “exclusively” provided by DTH/cable.

Question 2

The “list” will restrict innovative services. For example,

- It appears to be exclude a wide array of interactive services like e-commerce, encyclopedias, and other application based services like Google Maps, Email etc.
- How will it be ensured that the video on demand is not of the nature of current affairs? Would streaming a documentary on the Palestine-Israel war constitute current affairs? Will it be the strict liability of the platform to ensure that all videos placed on demand are scrutinised for not being of the nature of 2.1.1 to 2.1.4? Reference may be drawn to intermediary liability provisions of Section 79 of the Information Technology Act. What if the video-on-demand is found to be defamatory or obscene since it has not been scrutinised by the Censor Board?

Question 3

Notwithstanding the submissions above:

- To ensure that the content is not trespassing on the domain of broadcasters, the broadcasters should approach TDSAT for redressal on a case to case basis. Penalties may be prescribed by TRAI.
- To ensure that the content (of video-on-demand and other permissible platform services) is within the permissible limits of free speech under Article 19, TRAI should consider

deploying the notice-and-takedown process under Section 79 of the Information Technology Act. In this, if any content is alleged to be in violation of the law (say obscene or defamatory), the platform provider will have 36 hours to remove it or face liability even if it is not the creator of that content.

Question 4

A uniform legal status should not be a pre-requisite. It increases the transaction costs (regulator and compliance costs) for the distribution service. What purpose would a uniform legal status achieve? It is only the vehicle for conducting business.

Question 5

Since News & Current Affairs is outside the scope of platform services, 100% FDI can be allowed as it does not lead to any anti-national or anti-competitive concerns. It will only spur innovation.

Question 6

Currently, there are no net worth requirements for being an intermediary on the internet. Given foreseeable convergence, TRAI will only stifle innovation by prescribing net worth requirements for platform services (which will eventually converge with internet intermediaries)

Shri Sen,

Please find attached my comments on the consultation on Platform Services

Regards,

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