



**TRAI'S CONSULTATION PAPER ON REGULATORY FRAMEWORK  
FOR OVER-THE-TOP (OTT) COMMUNICATION SERVICES 07<sup>th</sup>  
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**For and on behalf of STAR India Pvt. Ltd.**

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We have engaged with the TRAI on previous consultations regarding OTTs. While the issue for the current consultation is limited to 'OTT Communication Services,' we would like to take this opportunity to make limited submissions for the consultation process of OTTs itself. Needless to add, we reserve our rights to provide such specific comments as may be necessary at the relevant time, should the need arise.

### **1. Authority and jurisdiction**

It is our humble submission that TRAI does not recommend any further regulation than which already exist, nor seek to regulate OTT Communication Services as they are not telecommunication services. OTTs are not licensees under Section 4 of the Indian Telegraph Act, 1885, and hence TRAI does not have the authority under the Act (Telecom Regulatory Authority Act, 1997) to regulate OTTs.

Without prejudice to the above, and only for the sake of completeness, it may be noted that the internet ecosystem, of which OTTs are an integral part, is governed and regulated by the Information Technology Act, 2000 and the rules notified thereunder. In addition, all internet companies are subject to the extant law of the land such as the Competition Act, Consumer Protection Act, intellectual property laws, to name a few. These legislative frameworks set the commercial and technical parameters and the legal boundaries for OTTs to conduct business in a market-based environment.

### **2. "Substitutability" as the basis for regulating OTT ecosystem**

The consultation paper assumes certain applications of OTTs ('OTT Communication Services') as substitutes to TSP services. This assumption appears unfounded and there is no discernible rationale in keeping with any existing legal criteria or technical parameters, such as those outlined in basic competition law on substitutability, for TRAI to have concluded so in the consultation paper.

### **3. Regulation to deal with privacy and security concerns**

While we are aware of TRAI's concerns around "Privacy, Security and Interception", we would like to reiterate that provisions under the Information Technology Act and the rules notified thereunder specifically address these concerns. For instance, 'lawful interception' is governed by the provisions of the IT Act (Section 69), the IT (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009 and the IT (Intermediaries Guidelines) Rules, 2011. Similarly, provisions to safeguard citizen's privacy and ensure their security online are governed by the IT Act and the IT (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011.

These regulatory frameworks are reinforced by provisions of the Draft Personal Data Protection Bill, 2018 submitted by the Committee of Experts on a Data Protection Framework for India under the chairmanship of

Justice B. N. Srikrishna on July 27, 2018. Therefore, while the concerns may be valid, a framework for dealing with those concerns already exists under other legislations.

We limit our comments to these minimal preliminary and basic issues and urge that the Authority take them into account.