

From: amk@cuts.org
To: "Akhilesh Kumar Trivedi" <advmn@traf.gov.in>
Sent: Tuesday, September 19, 2023 4:04:48 PM
Subject: CUTS Counter Comments on TRAI CP on Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services

Dear sir,

Please see our counter comments on the subject consultation paper.

Kindly acknowledge receipt and oblige.

Regards,
Amol

Amol Kulkarni
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Also at Lusaka, Nairobi, Accra, Hanoi,
Geneva, Delhi, Calcutta and Washington D.C

On Wed, Aug 23, 2023 at 1:03 PM CUTS CCIER <c-cier@cuts.org> wrote:

Dear Mr. Trivedi,

Greetings of the day!

[CUTS](#) expresses its gratitude to the Telecom Regulatory Authority of India (TRAI) for inviting comments on the [Consultation Paper](#) on *Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services*.

Now, we are pleased to submit our comments on it, which have been attached herewith for your kind perusal. We would be grateful if you could kindly acknowledge receipt of the same.

We have engaged with different consumer groups on key issues arising out of the Consultation Paper. We hope our submission would be useful to understand the consumer's perspective.

We are keen to engage with TRAI on this proposed facility, and would be happy to make an in-person submission and presentation to you. Look forward to your kind positive response in this regard.

Please feel free to reach out to us, in case of any queries/clarifications.

Thanking you,

Warm regards,

Amol

Amol Kulkarni
Director (Research)



9/20/23, 10:37 AM

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CUTS INTERNATIONAL

Counter Comments on TRAI Consultation Paper on *Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services*

Background

CUTS thanks Telecom Regulatory Authority of India (TRAI) for conducting consultation on the issue of regulatory mechanisms for over-the-top (OTT) communication services, and selective banning of OTT services. We approached this issue from the perspective of consumer welfare,¹ ability of smaller OTT providers to provide services, income generation and employment opportunities created by the communication and broadcasting ecosystem.

CUTS submitted its detailed comments on the consultation paper². In addition, we organised in-depth consultations with credible consumer groups across the country, and submitted collective representation on behalf of consumer groups to TRAI.³ We reiterate our comments and collective representation of consumer groups.

We understand that key arguments of stakeholders endorsing proposals mentioned in the TRAI consultation paper include, similarity between services of OTT service providers and telecom service providers (TSPs), inadequate regulatory oversight of OTT services, insufficient contribution to infrastructure development, among others. We submit counter comments to some of these points, from consumer perspective.

1) It will lead to overregulation and will stifle innovation

The regulator and telecom service providers (TSPs) are concerned about the regulatory imbalance between OTT services and traditional telecom services. The TSPs have identified a lack of regulatory oversight for OTT communication and broadcasting services. They have demanded that OTT communication services be regulated, and that the

¹ [View: Consumers cannot be the collateral in OTT tussle - The Economic Times](#)

² [CUTS comments on TRAI CP on Regulatory Mechanism for OTT Services and Selective Banning.pdf](#)

³ [Collective representation by consumer organisations on OTT regulation](#) Some of the Consumer organisations and groups with whom we have engaged include *Bhartiya Manav Kalyan Samiti, Noida; Consumer Guidance Society, Patiala; Consumers & Telephone Subscribers Forum, Himachal Upbhogkta Sanrakshan Parishad, Shimla; CREATE; Avadh Upbhokta Hit Sanrakshan Samiti, Lucknow; Consumer Guild and Bharat Jyoti.*

government levy a licence fee on them at par with telcos, and that carriers should be compensated for all OTT data consumed on their networks.⁴

It is incorrect to assume that OTT players are unregulated and that the government has no regulatory oversight on them. OTT services are already subject to a myriad regulation under the Information Technology Act, 2000 (“IT Act”) and the various rules made thereunder. Some of this is likely to continue under the forthcoming Digital India Act, which is likely to replace the IT Act. The recently passed Digital Personal Data Protection Act, 2023 will also impose additional obligations on the OTT players. A committee on digital competition law is considering imposing additional obligations on digital platforms to mitigate competition concerns. Earlier versions of the Telecommunications Bill also intended to cover OTT players. Imposition of any additional regulations on OTT services, should only be considered after review of prevailing regulatory burdens, and in-depth assessment of costs and benefits of such regulations on different stakeholders, particularly consumers and start-ups. This stands true for TSPs as well, wherein there is a need to thoroughly examine direct and indirect costs and benefits of prevailing regulation on TSPs.

Additional regulation of OTTs through proposed means like licensing, would potentially stifle innovation and hinder economic growth,⁵ and could also have implications for privacy and data protection of consumers.⁶ This could have a chilling effect on investment and entrepreneurship on an emerging sector.⁷

Moreover, a mutually dependent relationship exists between TSPs and OTT services. The bandwidth-intensive and high-quality content and application services that are provided by the OTT platforms leads to increased use of data services by end-users and, therefore, higher revenue for TSPs. Similarly, increased network connectivity offered by the TSPs increases the customer base for OTT service providers and enables them to generate high quality content and digital services. Thus, both these services are co-dependent on each other. Any attempt to disturb this fine balance through regulation may unnecessarily tilt the scales in favour of one the entities, while risking the benefits realised by the ecosystem.

⁴ [“OTTs Eating Into Our Revenue”: Telcos in India](#)

⁵ [Letting go of a chance to democratise telecom services - The Hindu](#)

⁶ [CUTS Submission to the Department of Telecommunications, Ministry of Communications, on the Draft Indian Telecommunication Bill, 2022](#)

⁷ [IAMAI slams COAI over revenue sharing demand that may dilute net neutrality | Business Standard News](#)

2) Adverse impact on the communication ecosystem and indirect effect on consumers

There is significant penetration and wide usage of OTT communication services in India. India has the highest number of WhatsApp users, with 487.5 million users.⁸ Another report puts India's broadcasting OTT user base at 423.8 million.⁹ The report suggests that there has been a 20% growth of this user base in 2022, of which a large share has come from rural areas and smaller towns.¹⁰ With growing internet penetration, these services will continue to influence the consumers socially as well as economically. It is noteworthy that rural India, despite its internet connectivity hovering around 40%, is a significant contributor to OTT consumption, accounting for over 70% of video consumption.¹¹ Consequently, any regulation must cater to nurturing this vibrant sector, acknowledging its vast potential to benefit the public. Therefore, any adverse implication of proposed regulation needs thorough examination.

There is a multitude of local and regional OTT content, which are provided by small and medium sized service providers. The small OTT providers will be disadvantaged if the TSPs will receive a network fee proportional to the internet traffic generated by OTT players. This is because TSPs will not have an incentive to make the network available to the small OTT service providers. These have a significant presence, in terms of users, in certain regions of India. Moreover, the suggested methods of categorising application or services as “large traffic generators” and deciding the “fair and proportionate share/contribution” lack necessary clarity and guidance. This may lead to significant discretionary powers to the executive without necessary checks and balances, possibly resulting in abuse of such discretion.

Burdensome regulations and mandatory revenue-sharing mechanism will hinder smaller OTT providers, innovation, income generation and employment opportunities they create, and have an indirect adverse impact on the consumers. This could lead to denial or services for consumers, deterioration in quality of services, unavailability of customised/ local content, and challenges with grievance redress. The content providers create the necessary bandwidth-intensive content that leads to higher revenue generation for both OTT services and TSPs. Therefore, financial imposition would indiscriminately disincentivise the generation of digital content by OTT services. In any case, in the proposed model, while some small OTT services would gain better access to the market, a whole segment of

⁸ [WhatsApp Statistics 2023 — How Many People Use WhatsApp. \(February, 2023\)](#)

⁹ [India Records Nearly 423 Mn OTT Users, 65% Male Paid Subscribers: Report](#)

¹⁰ [Indian OTT users grew by 20% in 2022: Ormax report | Campaign India](#)

¹¹ [Don't kill the golden goose | The Financial Express](#)

content providers which rely on these large OTT services would face market barriers. If the NUF is imposed on OTT services, then the same would be reflected in the increase of subscription costs which will percolate down to the end-users. Global experiences support such concerns of repressed innovation, and slower speeds for consumers, as a result of costs imposed on OTT players.¹²

3) Potential of significant adverse impact on end consumers:

As highlighted by CUTS in the comments, any regulation must cater to nurturing this vibrant sector, acknowledging its vast potential to benefit the public. Herein the proposed regulation raises some serious risks of adversely impacting consumers. Among the many risks of the proposed regulation and the mandated network fees/cost-sharing framework between OTT players and TSPs, one significant risk is differential pricing for different sets of consumers, which can impair consumer choice for the desired service. This can particularly adversely impact low income vulnerable consumers who are substantially dependent on OTT services for income generation, education, and economic opportunities, and might find such services prohibitively expensive, thus being deprived of benefits of the technology revolution. Moreover, there is significant risk of increased cost for consumers. The consumers will face double whammy as they might need to pay the TSPs for broadband access and to the OTT providers for access to content.

In February 2016, the TRAI had issued the Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016, by which it restricted the charging discriminatory prices to consumers based on the content. The spirit of these regulations must be upheld so that the consumers retain control over the type and manner of content they consume.

Moreover, international examples show that there is a possibility of lower quality of services from the OTT providers and increased latency of telecom services. There is also well anticipated risk of increased data prices, which are currently one of the lowest in India. Concerns of internet fragmentation and threat to net-neutrality due to such regulation also have been raised by multiple stakeholders.

CUTS does not intend to suggest that there is no need to review the regulatory and governance framework for communication and broadcasting services. Instead of increasing the regulatory burden on OTT players, the government and regulator should consider reviewing and reducing the unreasonable costs and burden on TSPs. Consumers value both

¹² [Interview: Professor KS Park on Korea's network fee arrangement \(medianama.com\)](#)

TSPs and OTT players as both provide unique and necessary services, foster income generation, education, entertainment and other requirements of consumers, and support micro, small and medium enterprises and start-ups to sustain and grow. It appears that consumers are already adversely impacted by unreasonable over-regulation on TSPs, and imposing similar shackles on OTT players will make consumers worse-off. Thus, in consumer interest, and to ensure competitive communication and broadcasting ecosystem, the government and the regulator should seriously consider reducing prevailing burden on TSPs, and avoid imposing extra burden on OTT players.
