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**Sent:** Wednesday, August 16, 2023 10:30:48 PM

**Subject:** TRAI consultation paper on OTT an selective banning of OTT services - Response from Culver Max Entertainment Put Ltd

16<sup>th</sup> August, 2023

To,  
Shri Akhilesh Kumar Trivedi,  
Advisor (Networks, Spectrum and Licensing),  
Telecom Regulatory Authority of India ('TRAI')  
Mahanagar Doorsanchar Bhawan,  
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**Subject: Consultation Paper dated July 7, 2023 on Regulatory Mechanism For Over-The-Top (OTT) Communication Services, And Selective Banning Of OTT Services**

Dear Sir,

We write to you in response to the Consultation Paper promulgated by TRAI on 07/07/2023 on 'Regulatory Mechanism For Over-The-Top (OTT) Communication Services, And Selective Banning Of OTT Services' ("Consultation Paper").

Please find enclosed herewith our responses to the issues raised by TRAI in the Consultation Paper.

We hope that our submissions shall be considered favorably by TRAI while evaluating changes to be carried out.

Thanking you,

Yours Sincerely,

**For Culver Max Entertainment Private Limited  
(formerly Sony Pictures Networks India Private Limited)**

Sd/-

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**Gururaja Rao  
Principal Legal Counsel**

Encl.: Comments on the Consultation Paper

16<sup>th</sup> August, 2023



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Encl.: Comments on the Consultation Paper

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**Go-Beyond**

**COMMENTS OF CULVER MAX ENTERTAINMENT PRIVATE LIMITED (FORMERLY SONY PICTURES NETWORKS INDIA PRIVATE LIMITED) TO THE ISSUES RAISED IN THE CONSULTATION PAPER ON REGULATORY MECHANISM FOR OVER-THE-TOP (OTT) COMMUNICATION SERVICES AND SELECTIVE BANNING OF OTT SERVICES:**

Culver Max Entertainment Private Limited (CME, formerly known as Sony Pictures Networks India Private Limited) inter alia owns a digital streaming platform Sony LIV. Sony LIV hosts vast library of more than 40,000 hours of audio-visual content including daily / weekly episodes of various programs which were originally broadcast on our television channels, made for digital web series, movies, kids content which is broadcast on our kids television channel, and sports. Further, Sony LIV hosts content in various languages including English, Hindi, Tamil, Telugu, Malayalam, Kannada, Bangla, Marathi, Punjabi, Assamese and Khasi.

With regards to the issues raised under the Consultation Paper, please find our responses as below.

**Q1. What should be the definition of over-the-top (OTT) services? Kindly provide a detailed response with justification.**

**CME response to Q1:**

The term 'OTT' was coined more than a decade ago to denote any service that works over the top of internet. The term is generic and covers any internet enabled service that is made available to end users. Since its inception, there have been numerous attempts worldwide to define the term. There is no globally accepted definition of OTT services. The term is commonly applied to video-on-demand platforms, audio streaming, messaging services, gaming services, social media services or internet-based voice calling solutions. Even e-commerce platforms are covered under the term OTT - they get classified as e-commerce only because of the nature of services provided by them.

Accordingly in our view, OTT refers to a delivery platform that offer services to the consumers using the internet. There should not be an attempt to force fit or restrict certain delivery platforms from being covered under the OTT. Any platform that satisfies the criteria of mode of delivery using the internet should be qualified to be covered as an OTT platform.

The term OTT services can be defined as:

A platform that is over-the-top (OTT) of internet, (both broadband and mobile technology), designed to be accessed only by using internet and which enables the consumers to avail directly the services offered by such platform.

Digital service providers, referred to as "over-the-top" (OTT) applications in the Consultation Paper, provide different services with diverse functionalities that do not merely replicate legacy telecom services. The Consultation Paper uses the term "OTT" to equate the legacy telecom services with the OTT applications while differentiating the mode of their accessibility. However, the services provided by digital service providers in the areas of communication, e-commerce, news, social media etc., do not provide substitutable services. In order to account for the innovation and diversity displayed by such online digital applications, we request such services be recognised as independent consumer businesses rather than merely "over-the-top" services.

With regard to the specific query under the Consultation Paper, if we were to retrogress and analyse the various consultations undertaken by the Telecom Regulatory Authority of India (TRAI) in the years 2015 and 2018 pursuant to which, the last set of recommendations were issued on September 14, 2020 titled “Regulatory Framework for Over-The-Top (OTT) Communication Services”, the TRAI had rightly recommended that:

- “i. Market forces may be allowed to respond to the situation without prescribing any regulatory intervention. However, developments shall be monitored and intervention as felt necessary shall be done at appropriate time;*
- ii. No regulatory interventions are required in respect of issues related with Privacy and security of OTT services at the moment;*
- iii. It is not an opportune moment to recommend a comprehensive regulatory framework for various aspects of services referred to as OTT services, beyond the extant laws and regulations prescribed presently.  
The matter may be looked into afresh when more clarity emerges in international jurisdictions particularly the study undertaken by ITU.”*

**Q2. What could be the reasonable classification of OTT services based on an intelligible differentia? Please provide a list of the categories of OTT services based on such classification. Kindly provide a detailed response with justification.**

**CME response to Q2:**

An OTT service platform can be classified based on the nature of services offered by it to the end consumers such as e-commerce, gaming, financial services, education services, communication (calling, messaging, emails), entertainment (audio and audio-video), travel and transport (ticket booking, cabs, maps), payment platforms, social media platforms, medical services (online consultations, e-pharmacies) and likewise.

We recognize that the OTT service platforms offering communication services do not offer the same/similar services as traditional Telecom Service Providers (TSPs). There are significant technological differences between the OTT service providers and TSPs. The services of OTT communication service providers are like an added layer to the base services being provided by the TSPs i.e. over and above the services provided by the TSPs. Also, the OTT service providers provide varied services including value added services which TSPs don't. Hence, OTT services cannot be used without using services provided by TSPs, but the converse is not true. Expansion in consumption of OTT services has resulted in enhanced demand in network capacity of TSPs and rise in its subscribers and increase in their revenue. Even TRAI has recognized the same under the present Consultation Paper and in its recommendations with respect to OTT communications services. Hence, OTT services and traditional TSPs should not be equated in the same manner.

There are inherent differences between the OTT communication service providers and TSPs due to which OTT cannot be regarded as substitutes for TSPs. Therefore, it is imperative to consider the various dissimilarities between the TSPs and OTT communication service providers. Regulating the OTT communication services, on the understanding that OTT communication services are substitute of telecom services will lead to economic imbalances that will affect the consumers and industry at large. Even the Competition Commission of India, while evaluating market dynamics looks at OTT service providers and TSPs as two separate operating markets.

OTT service providers, at large, provide different services with diverse functionalities that do not merely replicate traditional services. Evolution in technology has paved the way for emergence of OTT centric services that are different from the traditional services and in the competition landscape these OTT services are substitutes of the traditional services. That's the economic and competition lens which is adopted by the Competition Commission of India which is the apex regulator in the competition field in the country. To give an example, entertainment can be accessed on a television set via cable and satellite television or an OTT platform. It's the choice that a consumer makes. To arrive at a conclusion that some of the content of television is available on OTT, and OTT can be accessed on TV too, and therefore the same regulations of TV must apply to OTT can lead to conclusions on the regulatory front that can erode the economic value and sustenance of the OTT industry which is still considered to be a mere fledgling across all burgeoning services using the OTT technology.

Therefore, the use of the term "OTT" must be in the context of differentiating the mode of their accessibility using technology while keeping it agnostic to the service that is offered on the platform over which OTT is an added layer.

We would like to stress that the exponential growth of and innovation in OTT services across the spectrum is a result of market forces and competition. The "light touch" regulatory regime and lack of entry barriers has seen tremendous explosion in OTT services, which have gone a long way in democratising the access to information, utilities and services that were thus far either unaffordable or difficult to obtain. During the Covid-19 pandemic, OTT platforms have helped the population of the country tide over the monotony<sup>1</sup> and has once again proved why liberation of OTT is crucial. Hence, any regulations around OTT services within the proposed guidelines is best avoided.

Further, it is expected for the Ministry of Electronics and Information Technology (**MeitY**) to initiate consultation on the prospective Digital India Act ("**DIA**"). The MeitY has on various occasions, conveyed the objective of the DIA to be 'principles & rule-based approach' (and not prescriptive) that provides a broad legislative framework. This is based on certain governing principles for the digital media explicitly differentiating it from the intermediaries including social media intermediary. Moreover, we understand that the DIA would be an umbrella legislation which would replace the Information Technology Act, 2000 along with rules issued thereunder.

In the light of the foregoing, we humbly request TRAI to refrain from classifying digital platforms and allow let MeitY & Indian Parliament take first right step in setting the "principles & rule-based approach". Through the DIA, a "light touch" governing framework is expected for the composite digital landscape. Hence, any regulatory overreach at this stage must be avoided when the scope and applicability of the DIA is yet to be established.

**Q3. What should be the definition of OTT communication services? Please provide a list of features which may comprehensively characterize OTT communication services. Kindly provide a detailed response with justification.**

**AND**

**Q4. What could be the reasonable classification of OTT communication services based on an intelligible differentia? Please provide a list of the categories of OTT communication services based on such classification. Kindly provide a detailed response with justification.**

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<sup>1</sup> [https://www.business-standard.com/article/pf/ott-platforms-to-help-you-tide-over-the-monotony-of-the-covid-19-lockdown-120052801684\\_1.html](https://www.business-standard.com/article/pf/ott-platforms-to-help-you-tide-over-the-monotony-of-the-covid-19-lockdown-120052801684_1.html)

**CME response to Q 3 and 4:**

The term communication needs to be interpreted restrictively and the term must find its footing in the types of services that could be offered which could be seen as “communication” between two direct consumers of the same internet-based platform (or even two consumers of different internet-based platforms) after having classified the universe of services using the intelligible differentia.

Further, OTT communication services, as the term suggests, should involve those platforms that work over the top of internet to offer services directly to the consumers for communication like messaging (instant messaging and emails), and video and voice calling.

Accordingly, one definition of OTT communication services could be “*a platform that allows its users to communicate with each other via any mode of communication, including instant messaging, emails, voice calling and audio-video calling, where the underlying technology used for communication is internet exclusively and such communication service platform is designed to be over the top of internet.*”

**Q10. What are the technical challenges in selective banning of specific OTT services and websites in specific regions of the country for a specific period? Please elaborate your response and suggest technical solutions to mitigate the challenges.**

**CME response to Q10:** Below are the technical challenges in selective banning of specific OTT services and websites in specific regions of the country for a specific period:

1. Distribution of OTT services– Currently on all online app stores ("Stores"), listing applications can only be restricted to country level. Hence, the publisher of the OTT services can only decide and declare which all countries it intends to release the services in and there is no control or option available to release for specific regions/states/cities.

In case of websites, the traffic release is controlled via IP whitelisting, and IP to geographic mapping comes with low accuracy, and hence, the publisher of the website loses the ability to control the websites basis regions/country/states/cities.

2. Service access control for users who already have installed OTT applications - Majority of the consumers have already installed the OTT apps. Hence, their Service access is controlled via IP whitelisting, and IP to geographic mapping comes with low accuracy, and hence, the publisher of the OTT services loses the ability to control the websites basis regions/country/states/cities.

**Q11. Whether there is a need to put in place a regulatory framework for selective banning of OTT services under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 or any other law, in force? Please provide a detailed response with justification.**

**CME response to Q 11**

It is pertinent to note that the new Telecom Bill, is likely to contain a provision to regulate OTT communication apps like WhatsApp, Signal, Telegram, Skype etc on a case to case basis. This

means that not all OTT apps will need to comply with the said regulations. What has been envisaged is that only some select apps will need to take authorisation from the government to operate, based on criteria such as turnover and user base. In such a scenario, we believe that there is no need for TRAI to regulate the OTT services that do not involve communication.

**Q12. In case it is decided to put in place a regulatory framework for selective banning of OTT services in the country, -**

**(a) Which class(es) of OTT services should be covered under selective banning of OTT services? Please provide a detailed response with justification and illustrations.**

**(b) What should be the provisions and mechanism for such a regulatory framework? Kindly provide a detailed response with justification.**

**CME response to Q12:**

You may note that the OTT platforms offering streaming of content has already embraced self-regulation at the behest of the Ministry of Information and Broadcasting when the new IT Rules 2021 were promulgated. And this self-regulation is increasingly getting accepted by the consumers and platforms equally. It is pertinent to note that OTT content operates on a “pull” model and is already subject to self-regulation, undergoing a comprehensive vetting process before being made available on online platforms. The “pull” model is where consumers ask for the content and it is not broadcast to them.

The process of self-regulation begins with the commissioning of content. Then, data analytics and artificial intelligence are used to identify and select the appropriate audience, categorising the content according to age suitability. To ensure transparency, the content is accompanied by a content descriptor and is age gated for appropriate audiences.

In relation to publishers of online curated content, the IT Rules prescribe that there may be one or more self-regulatory bodies (SRBs) of the publishers of online curated content. As per Rule 12(5) of IT Rules, the SRBs have power of:

*“(a) warning, censuring, admonishing or reprimanding the publisher; or*

*(b) requiring an apology by the publisher; or*

*(c) requiring the publisher to include a warning card or a disclaimer; or*

*(d) in case of online curated content, direct the publisher to,--*

*(i) reclassify ratings of relevant content;*

*(ii) make appropriate modification in the content descriptor age classification and access control measures;*

*(iii) edit synopsis of relevant content; or*

*(e) in case of any content where it is satisfied that there is a need for taking action to delete or modify the content for preventing incitement to the commission of a cognizable offence relating to public order, or in relation to the reasons enumerated in sub-section (1) of section 69A of the Information Technology Act, 2000 refer such content to the Ministry for consideration by the Oversight Mechanism referred to in rule 13 for appropriate action.”*

Given that MIB is the nodal ministry for the publisher of the online curated content and there being regulations around selective deletion/modification of content, we don't see any requirement of additional regulatory framework in relation to the publishers of online curated content.

Further, as regards intermediaries including social media intermediaries and significant social media intermediaries, there are similar take down related provisions under Part II of the IT Rules. Further, other provisions of the Information Technology Act, 2000 (including Section 69, 69A and 69B) regulate certain aspects which the Consultation Paper seems to be concerned with, such as lawful interception and monitoring with respect to OTT providers.

The IT Act and IT Rules sufficiently cover security-related issues pertaining to digital service providers.

Hence, we do not see the requirement for further regulatory intervention on the streaming entertainment content services offered by the OTT platforms.

**Q13: Whether there is a need to selectively ban specific websites apart from OTT services to meet the purposes? If yes, which class(es) of websites should be included for this purpose? Kindly provide a detailed response with justification.**

**CME response to Q13:**

Please refer to our response under query 10, 11 and 12 above.