



COUNTER COMMENTS ON TRAI'S CONSULTATION PAPER ON REGULATORY FRAMEWORK FOR OVER-THE-TOP COMMUNICATION SERVICES

The Internet and Mobile Association of India [IAMAI] would like to thank TRAI for the opportunity to participate in the stakeholder's consultation on the Consultation Paper titled "Regulatory Framework for Over-The-Top (OTT) Communication Services" dated November 12, 2018.

IAMAI has already made its formal submission to the paper and this document, as counter-comments to some of the other submissions, should be read in continuity of our original submission.

Terminology of "Over the top" ("OTT") is problematic

As highlighted in our original submission, we would like to re-iterate that the term OTT does not acknowledge the innovation in the Digital applications at the application layer. Using the terminology of OTT paints digital applications as *free-riding* over telecom networks, as they are accessible to all users with Internet service without any arrangements / agreements with TSPs. Using the Internet to offer services to consumers does not amount to free-riding, as consumers pay TSPs for the data that they use.

These digital applications provide different services with diverse functionalities that do not merely replicate legacy telecom services. The use of the term "over the top" tries to equate the services 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. On this basis, we oppose the characterization of these services as OTT.

In order to account for the innovation and diversity displayed by such services, we request such services be recognised as *digital applications*.

Comparison between digital applications and telecom services

Many of the submissions seek to qualify the services provided by some of the digital applications to be similar or substitutes for telecom services.

The COAI submission states "*The highly taxed Telecom industry, which has incurred heavy costs in terms of license fee, spectrum, telecom equipment and security apparatus, is on an unequal footing with Over the Top Operators (OTTs) that are offering similar communications services without incurring any Regulatory cost*" (emphasis added).

Submission by Bharti Airtel recognizes "*Historically, the voice/video calling and messaging services have been provided by TSPs*", and therefore it draws the conclusion "*For declaring any service as a substitutable OTT communication service, the Authority may*

check if a person can communicate with another individual or a group of target people, through the application created by the OTT service provider.... (emphasis added)

The MTNL submission states *“On the least, the services which are the main revenue source of operators should be regarded as the same or similar services being provided by the TSPs. For this purpose, Voice over IP (VoIP) for voice calling and video chatting services, Instant messaging Servicesand Video and Audio Streaming services may be considered”*. (emphasis added)

Digital applications are qualitatively very different from telecom services. Identifying Rich Interaction Applications (“RIAs”) as comparable to telecom services is highly reductionist and unjustified. Moreover, digital applications are not available to those telecom subscribers who do not have access to the Internet. While Internet penetration in India is increasing with the rapid adoption of smartphones, this number is still a very small percentage of the Indian population. On the other hand, users can access telecom services without Internet access or even smartphones. In this respect, it is difficult to see how digital applications can substitute legacy services, which provide critical connectivity to much of the country.

IAMAI, in its original submission has highlighted how similarity of Digital applications and TSP services should depend not only on the underlying function served but also the technical and architectural frameworks, over which, the said service function. Many other submissions have also highlighted how services at network level cannot be compared to services at application level.

On Regulatory gap between TSPs and digital application providers

Some of the submissions refer to a regulatory gap between ISPs and digital application providers, without and justification for the same.

For instance, the submission by Vodafone Idea states *“The principle of “Same Service, Same Rules/Protection” relating to the Over-The-Top (OTT) services, needs to be applied so as to address the glaring licensing, regulatory and security asymmetries between the two sets of services”*.”

The submission from RCOM states *“The Regulatory imbalance between TSP and OTT communications provider is impacting the sustainability of the TSP’s particularly ILD operators. Significant amount of international traffic has been shifted to OTT communications providers”*.

The argument of “same services same rules” was laid to rest in previous TRAI consultations on the matter. TSPs, with access to scarce national resources like spectrum and having restrictive access over physical infrastructures cannot possible be compared to services being provided at the application layer, and any discussion of regulatory imbalance between the two would be comparing apples with oranges.

The digital applications are duly governed by the IT Act under the Ministry of Electronics & Information Technology (MeitY) and any new regulation under a different regulatory authority will only convulate the existing regulatory regime and adversely affect ease of doing business in the country.



The argument of revenue substitution as the basis for OTT regulation

The reading of many of the submissions suggest all arguments of service or functional substitution by the telcos ultimately stem from a narrow perception of revenue substitution, which, in our opinion, is an unjustifiable ground for categorizing services or technologies.

Digital applications as a category is diverse, and as many observers have submitted, narrow distinction of Rich Interactive Applications (RIA) is onerous and unjustifiable. Many of the applications offer multiple forms of services and often communication channels are in-built as part of the suite of functionalities. Trying to separate communication services from such services would be an impossible task, and grave injustice to the innovative services being offered by these service providers.

We would like to highlight that the same telcos have identified that the rise of digital applications has actually led to rise in data revenues for these service providers (see submissions from Bharti Airtel, COAI). However, certain communication services, which they perceive to be affecting their revenue generation, are the target of their ire.

IAMAI would like to request the Authority not to encourage TSPs to cherry-pick digital applications that help raise their revenues while choose to clamp down those they perceive as a threat for their revenues. Regulations should be based on principles and using regulations as restrictive tools for protecting business interests is a myopic outlook that harms the greater interest of the nation at large.

We request the Authority to take this factor into consideration and allow for an unfettered evolution of the digital economy in India.