



## Vodafone Comments to the TRAI's draft Telecom Commercial Communications Customer Preference Regulations, 2018, issued on 29.05.2018

At the outset, we are grateful to the Authority for having issued a draft Regulation and giving us opportunity to provide comments to it. We also welcome the co-regulation approach with which the draft Regulation has been framed.

However, considering the vast framework and complete sea change in existing ecosystem being envisaged through this draft regulation, three weeks period is insufficient to provide the comments covering all the elements, system changes, processes etc. We reserve our right to provide additional comments/inputs to Authority at a later stage.

Our comments to the draft Regulation are given as follows:

### A. Concerns in Draft Regulation

#### 1. Does not effectively address consumer concerns and relaxes existing strict controls:

Presently, the issue being faced by subscribers is two-fold i.e.

##### i. Voice UCC from unregistered telemarketers (UTM)

The regulation does not effectively address the concern of customers owing to voice UCC from UTMs and hence, will not provide relief to consumers. The step mentioned as honeypots would also be ineffective for existing DND subscribers (as their numbers are available to TMs) and hence, it appears that honeypots can be easily bypassed by such UTMs. Further, mechanism of honeypots is subjective and based on manual analysis, which is practically not possible.

Also, concern on unwanted commercial calls despite registering with DND service, is also identified by DoT for it to be taken up in a review meeting by Hon'ble Prime Minister, as highlighted in DoT's letter number 13-27/2015-16/PG&I/Pragati Meeting dated 15.06.2018.

Post the TRAI regulation prescribing charge of Rs 0.50/ SMS post 100 SMS per day as well as signature solution, there has been decrease in UTM activities over SMS. This has also led to sending very less number of SMS/MSISDN by UTMs due to the said deterrents, which also makes UTM activity economically unviable, leading to huge respite for the customers from UCC menace coming from unregistered telemarketers through SMS route. Similar to SMS, there is a need to take steps to mitigate the UCC over voice call by UTMs and similar to SMS, some minimum voice call charges should be mandated post a certain number of calls per day.

##### ii. Promotional SMS being mixed with transactional SMS, under the subscriber consent allowed under TRAI's regulation:

There are cases observed where promotional SMS are being mixed with transactional SMS basis the provisions of TRAI regulation, which are subjective, does not provide clear process and sample scenarios and hence, prone to exploitation. The draft Regulation also poses the same challenge and provides for subjective definitions, complex processes, which will continue to provide room to some entities (knowingly or unknowingly due to complexity of processes being sought vide draft Regulation) to mix promotional content with transactional SMS. Such approach will not address the issue faced by subscribers and will continue to lead to consumer dissatisfaction.



iii. **Existing strict action against Unregistered Telemarketers being relaxed**

Presently, the instances of unregistered telemarketing activity is dealt strictly and immediately leads to disconnection and blacklisting. The draft regulation envisages relaxed rules with unregistered telemarketer being put to usage caps, whereby it can continue to do UCC activities. In our view, it is not consumer friendly and would lead to more UCC activities and also consumer complaints. Further, such UCC being made in this time period cannot be counted for imposing of any financial disincentive on TSPs.

iv. **Existing strict penalties against Registered Telemarketers (RTM), now changed to TSPs**

Presently, RTMs have a fear of deterrent penalties in case of UCC complaints against them and subsequent blacklisting in case of 6<sup>th</sup> complaint. However, the draft Regulation envisages to put financial disincentives on TSPs for such acts of RTMs. While this would lead to less regulatory force and deterrents on RTMs, it would also not be legally consistent by penalising someone else for acts of others.

**2. Increased complexity in Customer preferences – Counterproductive to consumer interests:**

- i. The draft regulation provides for many sub-categories for customer preference registration of commercial communication. Presently, there are 7 categories prescribed for such preference registration.
- ii. While, there can be room for additional 1/2 categories however, prescribing sub-categories, modes of delivery, time period etc. will make the preference registration too complex and cumbersome for the customers, to understand.
- iii. It will pose huge challenge in terms of customer awareness and may also lead to increased customer complaints and thus huge customer dissatisfaction.

**3. Regulatory impact assessment:**

- i. The draft regulation envisages sea change in the present UCC ecosystem and the requirements being stipulated by TRAI are quite complex as well as comprehensive. It is pertinent to highlight that TRAI has not shared any regulatory impact assessment / cost benefit analysis, for bringing in such huge changes to an existing model.
- ii. Also, we would like to draw your attention towards a policy on pre-legislative consultation formulated by Ministry of Law & Justice on 5<sup>th</sup> February 2014, which also governs the handling of subordinate legislations. As per the said policy/process, it states that broad financial implications and an estimated assessment of the impact of such legislation etc., should be placed in public domain with the draft legislation.

**4. Huge cost to meet the Regulation:** In our view, the processes and systems to be developed for this new ecosystem, would lead to huge costs and cumbersome processes, without any corresponding benefit. As per our preliminary assessment, the cost may come approx. Rs 50 crores for the initial first year. This cost may also increase depending upon the Code of Practice, which are to prepared and submitted with TRAI once regulation is notified by the Authority.

**5. Impact on continuity of business:** Besides above issues, there are serious concerns on the continuity of business, given as follows:

- i. We anticipate significant fall in the A2P sms & voice revenues across the ecosystem of TSPs, partners, aggregators etc.



- ii. In addition, the entities/commercial establishments who use these channels for genuine communication will not be able to provide a smooth experience to their end customers.
- iii. End recipients/individuals will also face vast complications in the proposed process of consent, content, complaints etc. For the sake of a few, the satisfied customers will also need to undergo a sea change in current way of working. Even a massive education campaign may also not be sufficient to cover these issues.
- iv. The complicated processes will accelerate movement of commercial communication to OTT players.
- v. Presently, there are lakhs of headers assigned in our systems. Any process aiming to migrate such headers, with registration of its related entities to new ecosystem as per draft regulation, will be a mammoth task and would certainly lead to serious impact on business.

**Overall, such complex process and system heavy approach is detrimental to the bulk sms & voice business in the foreseeable future.**

#### **6. Competition Concerns:**

- i. By asking access providers to put their information/data onto DLT (e.g. consumer's consent, content templates, entity with header assigned etc.) which is then accessible to all TSPs, leads to disclosure of business sensitive information to the competition, which can then be used by competitor for commercial activity, at the cost of efforts and processes put in place by another TSP.
- ii. Further, sharing of records between all access providers, leaves no incentive for a access provider to push for investing into this ecosystem, developing the model and driving all stakeholders (i.e. Customers, Telemarketers, Aggregators, Content provider/Principal Entities etc.) to meet the provisions of regulation.

#### **7. Distributed Ledger Technology (Blockchain):**

In our view, Distributed Ledger Technology is a new technology, without any clear established examples of implementation at such a large scale in India or telecom industry. In our view, there are concerns related to no clear standards, no clear legal backing under Indian laws, security and privacy, high energy consumption, all TSP systems/nodes handling 5 to 7 times transactions etc. Such concerns need to be addressed first, before using such technology at this huge scale involving crores of subscribers, TSPs, PE/CPs, RTMs etc.

#### **8. Huge financial disincentives:**

- i. As per clause regulation 16 of the draft regulation, the access providers are required to submit the CoPs to the Authority within three months of regulations coming into force. Further, as per regulation 17 of the draft Regulation, the Authority may direct access providers to make changes in the CoPs at any time. Further, as per regulation 21, financial disincentive has been prescribed for non-compliance to the provisions of such CoPs.
- ii. Therefore, clearly the entire procedure being set-up to meet regulatory compliance through CoPs, would be known to TRAI and its non-compliance would attract financial disincentive.
- iii. However, the regulation 27 of the draft regulation provides for another set of huge financial disincentive on OAP for failing to curb the UCC.



- iv. This would be improper and not tenable considering the CoPs are submitted with TRAI and only its adherence can be checked for ascertaining regulatory compliance.
- v. Further TRAI has envisaged to put financial disincentives on TSPs for UCC done by RTMs, whereas in the present ecosystem, the same

## 9. Header registration:

Clause 4e and 4f of Schedule-1 to the draft regulation, states that Access provider should carry out function of additional authentications if headers issued to corporate(s) or well-known brands. It also states that additional checks for look-alike headers including proximity checks to be carried out.

In this regard, we would like to inform TRAI that as TSP, we do not have any list of brands / well-known brands. For it to be part of regulation, TRAI should arrange to provide a clear list of such brands, their holding entities names etc., followed by incremental data to it. Unless the same is provided, it cannot form basis of any regulatory or legal obligations.

Further, check of look-alike headers will also pose operational and practical challenges and cannot form any substantive compliance requirements.

## 10. Ambiguity in some clauses/Timelines: There is substantial ambiguity in various clauses and/or timelines being mentioned for corresponding regulations, e.g. as follows:

- i. Regulation 6 on customer preference registration, provides for registration of customer preference including on preference of mode of communication and time band/types of day etc. This is stated to be effective as on 01.07.2018. Whereas Regulation 5, which is also to be effective on 01.07.2018, states that access provider shall develop or cause to develop, facility to its customers for registering preferences for commercial communication.
- ii. Regulation 10 which is effective 01.07.2018 provides that commercial communication should take place by using header(s) assigned to the registered sender for the purpose of sending commercial communication. Presently, headers are allocated to registered telemarketers or Transactional message sending entities and not to Sender(s) as defined in draft Regulations. Whereas Regulation 8, which is effective 01.10.2018, provides for developing the code of practice for registering entities/Sender(s).
- iii. Regulation 11, which is effective 01.07.2018, provides that due publicity to be given to make customer aware about registering preferences, registering and revocation of consent. Similarly, regulation 12, which is effective 01.07.2018, also seeks access providers to ensure to deploy, maintain and operator systems to record preference, consent, revocation of consent etc.
- iv. Regulation 4 which is effective 01.10.2018, provides that no sender registered for making commercial communication shall initiate calls with an Auto dialer that may result in silent or abandoned calls. Whereas in Regulation 12 (8), which is effective 01.07.2018, it seeks to ensure compliance by the registered sender(s) who have notified the access provider about the use .....
- v. Further, TRAI has given ambiguous requirement of dealing with telephone number harvesting software, and the basis to identify such telephone number harvesting software has not been specified. Extract of such clauses, given as follows:
  - Regulation 2, clause (bo) *“Telephone number harvesting software” means software that is specifically designed or marketed for use in –*
    - (i) searching the Internet, directories, contact lists in devices for telephone numbers; and
    - (ii) collecting, compiling, capturing or otherwise harvesting those telephone numbers;



*(iii)generating most likely valid telephone numbers using automated means;"*

- Schedule-1, clause 4. (4)(b)(iii) *"to identify and report probable instances of request received for scrubbing of list of phone numbers collected through harvesting software or instances of dictionary attack to relevant entities authorized to take action;"*
  - Schedule-IV, clause 3. *"Report of entities found to be engaged in making or causing to make silent calls, robocalls, abandoned calls or using telephone directory harvesting software to make Unsolicited Commercial Communications, as and when came to notice for the access provider, or as provided for in the regulations for the registered sender(s) with the access providers, on basis of following criteria: -  
(a) Ratio of Abandon Calls to total attempted calls for a registered entity exceeding 3% over a period of 24 Hours by an entity using Auto Dialer for Commercial Communications calls;  
(b) Ratio of Silent Calls to total attempted calls for a registered entity exceeding 1% over a period of 24 hour by an entity using Auto Dialer for Commercial Communications Calls;  
(c) Entity (ies) found to be using telephone number harvesting software for sending Unsolicited Commercial Communications are barred to use their network;"*
- vi. In Regulations 1.(2) (a), it states that *"Except as otherwise provided in **clause (b) and (c)**, these regulations shall come into force on 1<sup>st</sup> day of July 2018."* The said regulation 1.(2) does not have any sub-clause (c) and we are not sure what above provision refers to.

#### **11. Auto-dialer - Silent calls:**

As per Schedule-IV, clause 3, it seeks to ascertain entities found in indulging in silent calls (basically missed calls) basis the ratio of silent calls to total attempted calls. In this regard, we would like to highlight that presently, CDR of missed calls is not available to meet this requirement.

**12. Complex provisions of draft Regulation requiring clarifications:** There are many areas of the draft regulation, which are ambiguous and requires written clarifications from TRAI, enabling us to fully comprehend the proposed ecosystem envisaged vide draft Regulation. In interest of transparency, we request TRAI to provide written clarifications, post which, allow us to submit our comments to draft regulation post the same and not to issue the regulations in haste. Such queries are attached at *Schedule-1* herewith.

**B.** If our contentions mentioned in this response does not find favourable consideration with the Authority, without prejudice, we would like to provide following points as high-level approach to the draft regulation:

#### **13. Regulation and requirements relies heavily on Code of Practices (CoPs):**

- i. The regulation gives very high level requirements and seeks to put in place code of practice (CoP) by TSPs within 3 months, which is the least period it requires, considering that the CoP will cut across all processes, systems and functions across TSP for this ecosystem.
- ii. Further, most of the activities and its technical flows are dependent on the code of practice of a TSP, which further is dependent on acceptance from TRAI as well. Also, considering the distributed ledger technology, all TSPs who have to frame their respective CoPs, would be interconnected.
- iii. Thus, the system and its designing would depend on the CoP framed by an operator and accepted by TRAI, as well as CoPs of all other TSPs. Therefore, the system designing, development and deployment, can happen only post CoP formulation.



#### **14. Inherent disadvantages in TSP specific CoPs as part of regulatory compliance:**

- i. Non-standard CoP/several different CoPs in the market will confuse the ecosystem of customers, Telemarketers and aggregators etc. who will have to follow different compliances.
- ii. Entities like TMs, Aggregators may perceive finer points (eg. different penalties proposed on TMs basis different risk acceptance by TSPs) as being more lenient in certain TSPs' CoP, leading to comparisons / non-level playing field. This will lead to further competition among TSPs to appear more TM-friendly, which would be non-friendly to customers and also, impact business.

#### **15. Timeline and Migration:**

- i. The implementation and migration of existing ecosystem to new ecosystem would be time consuming activities and would need extensive consumer awareness, system and processes to work in sync.
- ii. Considering very short timeline given by TRAI to examine and provide comments to the draft Regulation and the CoPs to be formulated at a later date, it is not possible to examine the technical changes and processes at this stage, being envisaged vide draft regulations. Post CoP finalization, the implementation will take time as an entire ecosystem through DLT would need to be set-up as well as huge changes would be required in our systems viz. CRM, SMSC, Core switch, Billing, Complaint handling etc. and would include multiple teams within access provider organization and would need to pass through various stages e.g. budgetary allocations, approvals, vendor selections, development, PoC and deployment, extensive testing etc.
- iii. On a high level and as per our preliminary estimate, which would need to be examined post CoPs finalization, it would take at least 36 weeks for solution designing, development and deployment.
- iv. Also, in interest of consumers and all other stakeholders, migration timeline of at least 6 to 9 months would be necessary post deployment.

**Considering all above, we most humbly request the Authority to:**

- 1. Not to issue the regulation, in the present shape of draft regulation.**
- 2. In the alternative, opt for fine-tuning the existing processes to address the issues being faced by consumers.**



## Schedule-1 - Key areas requiring clarifications

1. **Inferred consent**: We require clarity as to in which scenarios it is applicable & how it is to be defined which can get practically implementable. It is critical to have a clear definition alongwith samples. The present definition provided is subjective and is liable to exploitation by TMs, as is the case with consent today. Considering, the relationship is between the content provider/principal entity and the customer, which is dynamic and would depend upon situation to situation, it is not possible at TSPs end to decipher as to what can fall under inferred consent, between CP/PE and customer, for ascertaining compliance to TRAI's regulation/CoPs.
2. **Content Templates**: It is not practical to build content templates for all messages, even for promotional messages for non-DND. Content templates should only be applicable for transactional messages in certain defined industries/use cases. Need to clearly provide in which cases content template is needed.
3. Is content template required in case there is existing explicit consent to a promotional header?
4. Also approval of consent templates by end recipient at the time of registering consent is not possible [Schedule-I, 4.(2)(b)], because under each header there could be several forms of transactional messages – eg. For an Airline company, flight details, delay information, list of prohibited items on board, information to reach airport at designated time etc. → Today ALL these items go as different service/transactional sms to any customer for a single flight. If we assume ticket booking as inferred consent, as per current draft we will have to inform the customer of each of these! (this 'informing' process may be viewed as more spam!)
5. Need clarity on all aspects of DND/Non-DND customer possibilities as per flow of messages given in *Annexure-A and B*, as attached.
6. How will migration [Schedule-VI] work – effectively will it lead to starting with a clean slate, wiping out all 'consents' taken so far if they are not in the format specified?
7. If prefix & suffix is required in each sms [Schedule-I,6.(1)], we see minimum 65-100 characters of available 140 characters being used in this itself. Unviable for:
  - Senders as it will leave no space for actual message content
  - Senders as it will automatically double their cost if it is sent as 2 or more messages
  - Receivers of basic handsets where long messages / more than 140 characters appears broken/incomplete.

Hence suggestion is instead of 'Transactional' / 'Promotional' / 'Service' being a suffix within the sms, these 3 categories can be indicated as part of Header format (eg. Header VMT-ICICI for transactional or VMP-ICICI for promotional). Need some solution for suffix too.

8. Complaints assignment by TAP to OAP, can't happen on real-time basis as it would need examination to identify the OAP, and real-time information availability from CDRs may not be practically possible. It would also depend as to how header structure and standardization is being envisaged. We request TRAI to provide clear details for the same and also confirm if the same is dependent on CoPs to be formulated by access providers.

*"25. Complaint Mechanism: Every Access Provider shall establish system(s), functions and processes to resolve complaints made by the customers and to take remedial action against sender(s) as provided hereunder: -*

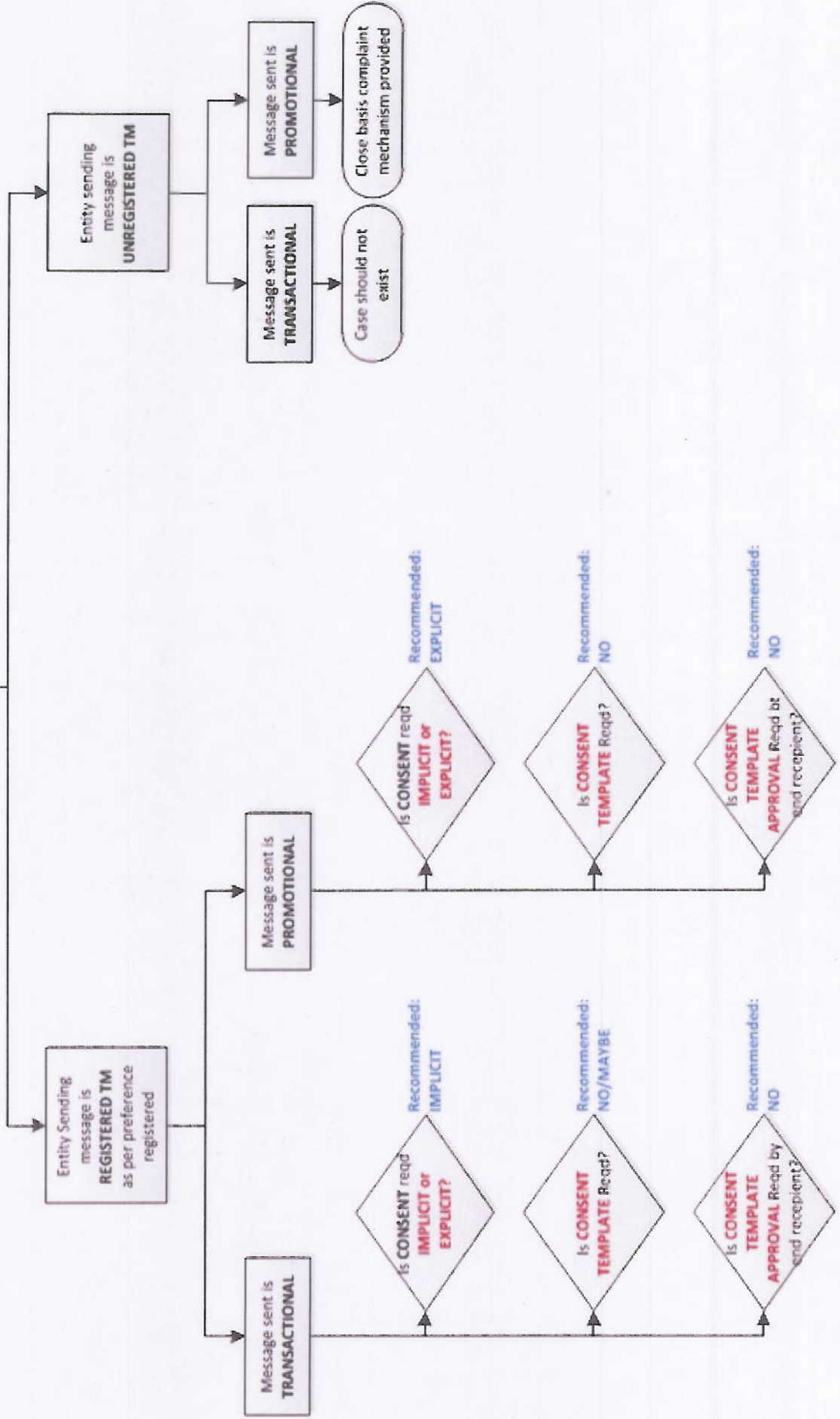


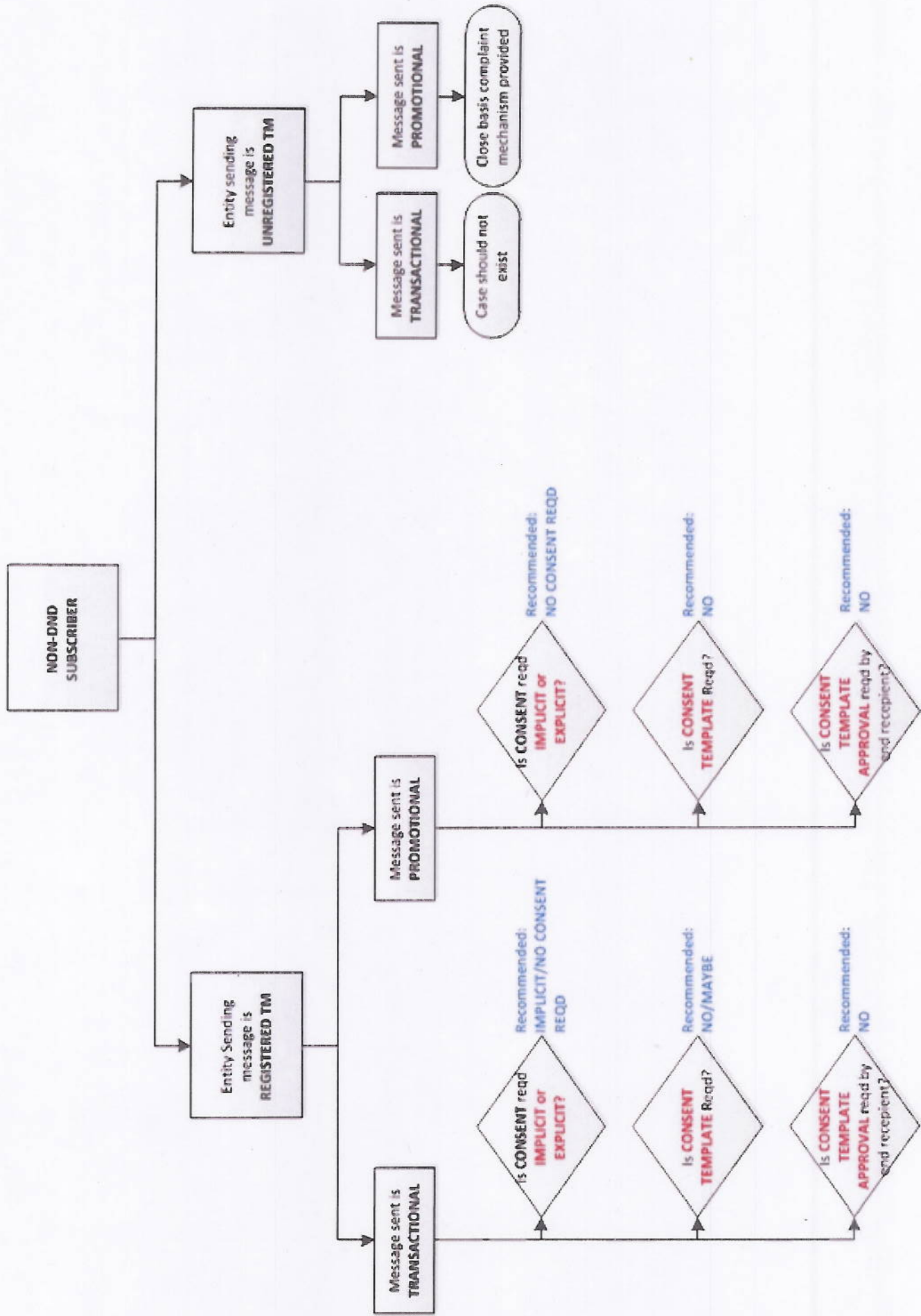
*(1) Terminating Access Provider (TAP) shall record the complaint on DL-Complaints in non-repudiable and immutable manner and shall notify, in real time, the details of the complaint to the concerned Originating Access Provider (OAP)."*

9. Complaints from Non-DND customers – no action can be taken. Customer should be advised for DND registration in such case.
10. There are lakhs of SMS headers allotted/registered in our systems. How is the consent & migration process for these going to be ensured with minimum disruption for existing customers who have been availing services with these headers for the last several years?
11. Header registration for these lakhs of headers will be a mammoth task considering documents pre-checks sought, which will lead to a manual processing. Please clarify clear on-boarding steps required for promotional SMS, transactional SMS and service SMS and if such steps can be made end-to-end digital.



DND SUBSCRIBER





NON-DND SUBSCRIBER

Entity sending message is UNREGISTERED TM

Message sent is PROMOTIONAL

Message sent is TRANSACTIONAL

Close basis complaint mechanism provided

Case should not exist

Entity Sending message is REGISTERED TM

Message sent is PROMOTIONAL

Message sent is TRANSACTIONAL

Is CONSENT reqd IMPLICIT or EXPLICIT?

Recommended: NO CONSENT REQD

Is CONSENT TEMPLATE Reqd?

Recommended: NO

Is CONSENT TEMPLATE APPROVAL reqd by end recipient?

Recommended: NO

Is CONSENT reqd IMPLICIT or EXPLICIT?

Recommended: IMPLICIT/NO CONSENT REQD

Is CONSENT TEMPLATE Reqd?

Recommended: NO/MAYBE

Is CONSENT TEMPLATE APPROVAL reqd by end recipient?

Recommended: NO