

Consultation Paper No.: 2/2015; dated 27th March 2015

Consultation Paper on Regulatory Framework for Over-the-top (OTT) services

Q.1. Is it too early to establish a regulatory framework for OTT services, since internet penetration is still evolving, access speeds are generally low and there is limited coverage of high-speed broadband in the country? Or, should some beginning be made now with a regulatory framework that could be adapted to changes in the future? Please comment with justifications.

Comments:

Presently Internet penetration is still very limited in the country, specially as you move out of the metro cities. The important issue is that we should have high speed internet broadband network across the country. Government and TRAI should come up with policies for incentivizing the spread of broadband networks by enabling competitive environment.

Keeping this in view we feel that it is too early in our Indian Context to establish a regulatory framework for OTT applications. Any regulatory intervention would only help dominant TSPs further enhancing their market power thus stifling competition. This is not a desirable situation.

Basically, there are 3 important paradigms to be considered

- 1) **Netneutrality** :Flow of packets in the network has to strictly adhere to Net neutrality without any packets getting preferential treatment
- 2) **Competitiveness** : Dominant TSPs should not have further enhance or have potential to enhance market power by any new regulatory intervention
- 3) **Internet Based Services (IBS)** : Any services being offered on the Internet network should be governed as per laws of the land for that service with level playing field to all service providers e.g. taxi service, ecommerce service, Content providers etc. This is Internet based service (IBS).

Actually Competitiveness and Netneutrality should be addressed first.

Q.2. Should the OTT players offering communication services (voice, messaging and video call services) through applications (resident either in the country or outside) be brought under the licensing regime? Please comment with justifications.

Comments:

All IBSs should be governed by similar law such that there should be a level playing field for similar service among all the operators, whether Indian or foreign for tax, for Security considerations. However comparison has to be on similar service.

It is an irony that when SMS/VAS got enabled by CMSPs, the view taken was no regulatory intervention. Now these CMSPs were allowed to offer VoIP services as early as in 2005 but did not offer the same thus depriving customers in India where as in rest of world it proliferated. It is not at all justifiable to compare Normal voice service with Voip service.

Q.3. Is the growth of OTT impacting the traditional revenue stream of TSPs? If so, is the increase in data revenues of the TSPs sufficient to compensate for this impact? Please comment with reasons.

Comments:

There are innovations constantly happening in the Internet echo system. Data revenues also fall under the traditional revenue streams category. Both on OTTs and in general data consumption. And this is leading to very high CAGR of data consumption due to large no of devices (in addition to traditional computer only), displays with higher resolution HD, 4K, now 8 K thus data consumption going up manifold over last few years. This is a huge upside to TSPs.

Any spectrum was clearly bid on the basis of present operating environment.

Q.4. Should the OTT players pay for use of the TSPs network over and above data charges paid by consumers? If yes, what pricing options can be adopted? Could such options include prices based on bandwidth consumption? Can prices be used as a means of product/service differentiation? Please comment with justifications.

Comments:

IBS players should not pay for use of the TSPs network over and above data charges paid by customers. Charging extra for specific apps or services is also akin to breaking up the Internet into pieces, which is fundamentally against what Net Neutrality stands for.

The traffic is being generated by the customer to a particular OTT. OTT has developed an application, hosted it and is providing to the customer who is approaching him for that service.

Concerned TSP's are getting their bandwidth revenues at both ends respectively. Any discriminatory charges on OTT in this relationship would eventually be at the cost of the consumer in terms of higher unaffordable charges or denial of service and also killing innovation. This also has the potential of killing competition.

Forcing Internet-based services to pay extra for using a particular network negatively impact consumers and harm the Indian digital ecosystem. As mentioned in the above answer, data revenues of Indian telecom operators is already on an upswing and is slated to increase rapidly over the next few years, hence the argument for creating a new revenue source is not justified.

Q.5. Do you agree that imbalances exist in the regulatory environment in the operation of OTT players? If so, what should be the framework to address these issues? How can the prevailing laws and regulations be applied to OTT players (who operate in the virtual world) and compliance enforced? What could be the impact on the economy? Please comment with justifications.

Comments:

We do not feel there are any such imbalances which require regulatory changes. Innovative service offerings will constantly be developed and come into the market. We need a consistent and confident policy which envisages and encourages innovation.

Telecom operators provided the pipe or network on top of which Services exist. So, there's a clear distinction between Network and services. Services need to be governed by the law of the land. TSPs should not be the arbitrators here.

It also needs to be pointed out that various services attract respective laws. If it is Taxi service, transportation laws. Ecommerce would attract taxes rules and consumer goods supplied governed under consumer protection laws, Content service under IT act.

Q.6. How should the security concerns be addressed with regard to OTT players providing communication services? What security conditions such as maintaining data records, logs etc. need to be mandated for such OTT players? And, how can compliance with these conditions be ensured if the applications of such OTT players reside outside the country? Please comment with justifications.

Comments:

Same regulation should be applicable as per the services being offered. Level playing field needs to be there among all such services. E.g. in case of VoIP, service provider is required to keep the data records and logs. Company residing outside the country should not be a deterrent. TRAI/ Government needs to educate customers about which Companies are not responding/adhering to the Sovereign requirements of security, privacy.

Adequate safeguards can be easily applied as is being done by other countries of the world.

Q.7. How should the OTT players offering app services ensure security, safety and privacy of the consumer? How should they ensure protection of consumer interest? Please comment with justifications.

Comments:

There are several laws in different service area to protect the customer interest as well as national security. Any service player offering app services should be governed by such laws to create a level playing field.

Q.8. In what manner can the proposals for a regulatory framework for OTTs in India draw from those of ETNO, referred to in para 4.23 or the best practices summarised in para 4.29? And, what practices should be proscribed by regulatory fiat? Please comment with justifications.

Comments:

Relevance of picking ETNO as a model is not understood. Why ETNO? ETNO's suggestions on this subject so far appear to be controversial and do not seem to be accepted by any government agency - including the regulators in their own host countries. It is therefore suggested that TRAI should not refer to ETNO at all.

Q.9. What are your views on net-neutrality in the Indian context? How should the various principles discussed in para 5.47 be dealt with? Please comment with justifications.

Comments:

Net neutrality means that Internet Service Providers charge consumers for internet access, do not favour one content provider over another. TSP's should not differentiate between data packets. All traffic should be treated equally in a non discretionary manner.

It is very important to have an open and free internet where users are free to choose the services they want to access—instead of a telecom operator deciding and nudging its customers to what information they can or should access.

Assuming there is no net neutrality, only the big application/service players will be able to strike deals with large/dominant TSPs telcos while the smaller players remain inaccessible, which will go against the principles of net neutrality as listed below:

- No blocking by TSPs and ISPs on specific forms of internet traffic, services and applications.
- No slowing or “throttling” internet speeds by TSPs and ISPs on specific OTT services
- No preferential treatment of services and platforms being operated by TSPs and ISPs and their subsidiaries/related companies.

It is also worth noting that any tinkering with netneutrality , would give too much power in the hands of the Dominant /large TSPs and big application/service provider which is not healthy for the ecosystem.

Q.10. What forms of discrimination or traffic management practices are reasonable and consistent with a pragmatic approach? What should or can be permitted? Please comment with justifications.

Comments:

As Netneutrality is being followed, traffic discrimination is unnecessary. Traffic discrimination is against the principles of net neutrality.

Keeping this in mind, TRAI needs to ensure that instances of discrimination of traffic should only be privacy, security related.

Q.11. Should the TSPs be mandated to publish various traffic management techniques used for different OTT applications? Is this a sufficient condition to ensure transparency and a fair regulatory regime?

Comments:

There should be no traffic management for different OTT services. If there is any management being done to prefer one or many OTTs, this should not be permitted.

Q.12. How should the conducive and balanced environment be created such that TSPs are able to invest in network infrastructure and CAPs are able to innovate and grow? Who should bear the network upgradation costs? Please comment with justifications.

Comments:

This question appears to be already biased in favour of a particular stand. It is but natural that TSPs have to bear the network upgradation costs which is due to higher data consumption.

The data revenues of TSPs are already increasing at a rapid pace in line with worldwide trends. The increased revenues from Data services will be able to meet the upgradation costs.

The Government should keep this in view and also incentivize spread of Internet network for ISP's by doing away with the AGR on internet bandwidth for ISPs, and allowing unrestricted infrastructure sharing. DoT must expeditiously come out with required notifications on this.

Q.13. Should TSPs be allowed to implement non-price based discrimination of services? If so, under what circumstances are such practices acceptable? What restrictions, if any, need to be placed so that such measures are not abused? What measures should be adopted to ensure transparency to consumers? Please comment with justifications.

Comments:

No, TSPs should not be allowed to implement non-price based discrimination. This would be grossly uncompetitive and would kill competition leading to all traffic being cornered by few. In a country like India with diverse regions, cultures internet service would not be universal and would be as per whims of TSPs, as happens in an oligopoly situation.

Q.14. Is there a justification for allowing differential pricing for data access and OTT communication services? If so, what changes need to be brought about in the present tariff and regulatory framework for telecommunication services in the country? Please comment with justifications.

Comments:

There is absolutely no justification for differential whether pricing or on packets being moved on preferred basis.

Q.15. Should OTT communication service players be treated as Bulk User of Telecom Services (BuTS)? How should the framework be structured to prevent any discrimination and protect stakeholder interest? Please comment with justification.

Comments:

Treating OTT communication service players as Bulk User of Telecom Services again amounts to discrimination of data services and hence it should not be allowed.

Q.16. What framework should be adopted to encourage India specific OTT apps? Please comment with justifications.

Comments:

Vibrant Competitive universally available Internet Broadband throughout the country is needed. Like for telecom voice services, regulatory intervention was to support the growth like license fees changed from fixed license fees to revenue share, calling party pays, spectrum being given on subsidised rates on administrative basis. Dominant /large TSPs should not at this stage should not be given regulatory shield to stifle competition.

India is a software giant, OTT apps will be developed by the entrepreneurs if they have usage and resultant value. India specific apps are being developed based on the above principle. No regulatory incentive will push developers to develop apps which do not meet the test of usage and commercial value.

Content hosting within the country would surely help domestic App developers and content creators.

Q.17. If the OTT communication service players are to be licensed, should they be categorised as ASP or CSP? If so, what should be the framework? Please comment with justifications.

Comments:

The categorization is unnecessary and undesirable. Services offered by any Internet based service provider OTT or otherwise should follow regulation and corresponding laws of the land for that service.

Q.18. Is there a need to regulate subscription charges for OTT communication services? Please comment with justifications.

Comments:

Subscription charges for such apps need to be allowed to evolve as it would in a pure market economy. In case at a later stage any large player is seen to charge high price should attract TRAI intervention based on its regulatory principles.

Q.19. What steps should be taken by the Government for regulation of non-communication OTT players? Please comment with justifications.

Comments:

As already commented above, there should be a level playing field to follow laws etc as relevant for the specific Internet based service on all IBS providers including TSP if it is offering such IBS.

Q.20. Are there any other issues that have a bearing on the subject discussed?

Comments:

TRAI should issue an order or regulation clearly in favour of netneutrality and measures to prevent services violating network neutrality and/or killing competition by Telecom service providers.