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UKIBC Response to Consultation Paper on Regulatory Mechanism for Over-The-Top (OTT) Communication Services

Dear Shri Trivedi,

Greetings from the UK-India Business Council (UKIBC). I hope this letter finds you in good health.

As you may know, UKIBC is the premier bilateral trade organisation in the UK-India corridor, serving as the voice of leading British and Indian companies across a wide range of sectors including digital and telecom, among others. We work closely with the Government of India and British Government to strengthen our bilateral trade and economic partnership.

At the outset, UKIBC and its members would like to highlight our appreciation and support towards TRAI's efforts on promoting growth and innovation in India's digital economy, esp., on communication services and network infrastructure. We welcome the opportunity to share our response on the TRAI Consultation Paper on Regulatory Mechanism for OTT Communication Services, and Selective Banning of OTT Services published on 7 July 2023.

Our detailed responses, which are limited to the subset of OTT communication services, are contained in the Annex section below. However, broadly speaking, UKIBC would welcome a new steer from TRAI to govern the converged era of communication services, particularly with respect to a level playing field between telecom & OTT communication services based on the following key principles w.r.t a licensing regime:

- A light touch licensing framework centred on ease of doing business that encourages innovation and competition whilst also being future proofed for the needs of Digital India.
- Regulations introduced are proportionate, justifying the economic costs entailed for each regulated provider.
- Regulatory parity between licensed telecommunication services and OTT communication providers, assessing specific elements of regulatory asymmetry.

My colleague Subhodeep Jash (Subhodeep.jash@ukibc.com), Associate Director – Digital & Data Services, would be happy to provide any further clarification or information. We would also welcome the opportunity for an introductory meeting at a convenient time, based on your diary.

We look forward to your positive consideration of our feedback.

Yours sincerely,

Yashodhara Dasgupta
Advocacy Director
UK India Business Council

ANNEX

UKIBC Recommendations on TRAI Consultation Paper: Regulatory Mechanism for OTT Communication Services and Selective Banning of OTT Services

A. Issues Related to Regulatory Mechanism for OTT Communication Services:

Q1. What should be the definition of over-the-top (OTT) services?

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.

Q3. What should be the definition of OTT communication services? Please provide a list of features which may comprehensively characterize OTT communication services.

COMBINED RESPONSE ON 1-3

In March 2015, The Office of Communications (Ofcom), United Kingdom in its Mobile Call Termination Market Review 2015-18 defined OTT service as “a type of service provided “over the top” of an existing data network connection such as a fixed or wireless broadband connection.” UKIBC respectfully recommends a similar simple definition of OTT services be adopted in India.

OTT communication services is a subset of OTT services, including email, instant messaging and voice and video calling services that are functional substitutes of the telecom services being offered by the licensed telecom operators.

Whilst the new framework is being formulated, there is an urgent need to address the key regulatory imbalances that exist in the digital eco-system between licensed telecom operators and OTT communication players and ensure Regulatory Neutrality i.e., “Same Service Same Rules” ensuring that a level playing field for all the players that exist and operate in the same eco-system offering substitutable services.

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.

UKIBC requests that the principle of “Same Service, Same Rules/Protection” relating to the Over-The-Top (OTT) communication services be applied to address the licensing, regulatory and security asymmetries between the two sets of services.

In our view, bringing parity between the licensed telecom players and the OTT communication players offering any services that are permissible to the former, is essential for a) fair business and fair competition and, b) addressing various national security concerns in terms of access to data/records and ensuring security, safety and privacy of the consumer data. OTT communication services are those that mirror the telecom services offered by the licensed telecom players and are used interchangeably by the consumers to meet the same end objective.

Q5. Please provide your views on the following aspects of OTT communication services vis-à-vis licensed telecommunication services in India:

- (a) regulatory aspects.
- (b) economic aspects;
- (c) security aspects;
- (d) privacy aspects;
- (e) safety aspects;
- (f) quality of service aspects;
- (g) consumer grievance redressal aspects; and
- (h) any other aspects (please specify).

Q6. Whether there is a need to bring OTT communication services under any licensing/regulatory framework to promote a competitive landscape for the benefit of consumers and service innovation?

Q7. In case it is decided to bring OTT communication services under a licensing/ regulatory framework, what licensing/ regulatory framework(s) would be appropriate for the various classes of OTT communication services as envisaged in the question number 4 above? Specifically, what should be the provisions in the licensing/ regulatory framework(s) for OTT Communication services in respect of the following aspects:

- (a) lawful interception;
- (b) privacy and security;
- (c) emergency services;
- (d) unsolicited commercial communication;
- (e) customer verification;
- (f) quality of service;
- (g) consumer grievance redressal;
- (h) eligibility conditions;
- (i) financial conditions (such as application processing fee, entry fee, license fee, bank guarantees etc.); and
- (j) any other aspects (please specify).

COMBINED RESPONSE ON 5-7

UKIBC respectfully requests the following key principles underpin a licensing regime for OTT communications services:

- **A light-touch regulatory framework that encourages innovation and competition but also future proofed for the needs of Digital India.**
- **Measures introduced are proportionate, justifying the economic costs entailed for each regulated provider.**
- **Outdated regulations/provisions be removed.**
- **Pure network regulation be limited to that applicable only to the infrastructure, such as spectrum, roll out, EMF (electromagnetic field) standard compliance, etc.**

Q8. *Whether there is a need for a collaborative framework between OTT communication service providers and the licensed telecommunication service providers? If yes, what should be the provisions of such a collaborative framework?*

Q9. *What could be the potential challenges arising out of the collaborative framework between OTT communication service providers and the licensed telecommunication service providers? How will it impact the aspects of net neutrality, consumer access and consumer choice etc.? What measures can be taken to address such challenges?*

COMBINED RESPONSE ON 8 and 9

The ask for fair-share contribution by large traffic originators is gathering momentum across jurisdictions with multiple countries taking affirmative steps to ensure that the entities benefiting from digital transformation make a fair and proportionate contribution to the costs of public goods, services and infrastructures.

For example, South Korea is the first country to have initiated a form of 'fair contribution' for large traffic generators and introducing the Sending Party Network Pays [SPNP] charging mechanism by law.

In the European Union, the European Parliament passed a resolution stating that the economic sustainability of telecom networks is essential to achieving the 2030 Digital Compass connectivity targets. It called for the establishment of a policy framework where large traffic generators contribute fairly to the adequate funding of telecom networks without prejudice to net neutrality.

Overall, considering the significant investment requirements in the telecom sector in India and the present/emerging realities of large traffic originators on the telecom networks, UKIBC requests TRAI that affirmative steps be designed to ensure all market participants using and benefiting from the digital infrastructure rolled out by the licensed telecom services, contribute fairly and proportionately.

Given the asymmetry in the parties involved in the market ecosystem, we believe that a prescribed regulatory rate as a network usage fee would be the way forward.
