



Tax alert: Consultation Paper on Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services

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The Telecom Regulatory Authority of India (“TRAI”) released a consultation paper on Regulatory Mechanism for Over-The-Top (“OTT”) Communication Services, and Selective Banning of OTT Services, on 7 July 2023, vide Consultation Paper Number 10/2023 (“Consultation Paper”), for soliciting comments of stakeholders. Comments and counter comments are sought at advmn@traai.gov.in by 4 August and 18 August 2023, respectively.

In a nutshell



Defining OTT services and provide reasonable classification



Consultation on need for regulatory and/or licensing Mechanism for OTT Communication Services



Consultation on need for specific provisions for selective banning of OTT services as outlined under Telegraph Act for telecom services and IT Act for applications



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Background

The current paper is a fresh consultation on OTT services, issued by TRAI. TRAI had issued a paper in September 2020 on 'Regulatory Framework for Over-The-Top (OTT) Communication Services' recommending that the situation pertaining to OTT, be open to market forces, without prescribing any regulatory intervention. The paper also suggested reconsideration of the same when more clarity emerges in international jurisdictions.

After receiving reference from the Department of Telecommunication ("DoT") in September 2022 to suggest a suitable regulatory mechanism for OTTs, in November 2022, TRAI agreed to initiate fresh consultation process to frame suitable regulatory framework for OTTs.

Against this background, TRAI released this consultation paper to initiate a fresh consultation process on Regulatory Mechanism for OTT Communication Services and Selective Banning of OTT Services, to solicit comments of stakeholders.

Key Issues for consideration:

This consultation paper seeks stakeholder(s) response to the following questions, with detailed justifications:

A. Issues Related to Regulatory Mechanism for OTT Communication Services

Given that the current regulatory framework of unified license is applicable only for defined telecommunication services such as collection, carriage, transmission and delivery of messages over licensee's network in service area, there is a need to revisit the regulatory framework due to the changes in network technology including OTT services. However, before initiating policy or regulatory measures for OTT services, it is necessary to define OTT services and ascertain the universe of OTT communication services.

In this backdrop, TRAI has sought stakeholders' comments on definition, classification of OTT services in the following set of questions:

1. What should be the definition of OTT services?
2. What could be the reasonable classification of OTT services based on an intelligible differentia? Provide a list of the categories of OTT services based on such classification.
3. What should be the definition of OTT communication services? Provide a list of features which may comprehensively characterize OTT communication services.
4. What could be the reasonable classification of OTT communication services based on an intelligible differentia? Provide a list of the categories of OTT communication services based on such classification.

The paper also mentioned that de-layering of telecommunication networks through Internet Protocol has facilitated the OTT communication service providers to directly offer voice, video, and messaging services, to end users. This does not currently require service license under Section 4 of the Indian Telegraph Act, 1885, for OTT services.

In this backdrop, TRAI has sought stakeholders' comments on aspects relating to need for license, license conditions and collaborative framework with telecom service providers, through the following set of questions:

5. Provide 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).

6. 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?
7. 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 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).
8. 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?
9. 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?

B. Issues Related to Selective Banning of OTT Services

Currently, temporary suspension of telecom services due to public emergency or public safety by the central government is governed under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 (“Suspension of Telecom Services Rules”) of Indian Telegraph Act. Further, the government has powers to issue directions for blocking public access of any information through any computer resource under section 69A of the Information Technology Act 2020.

TRAI recognises that shutdown of telecommunications or the internet can have significant ramifications for a country’s economy and has highlighted the need for examining, the regulatory framework for selective banning of OTT services either under (“Suspension of Telecom Services Rules”) or any other law.

In this backdrop, TRAI has sought stakeholders’ comments on technical issues for banning OTT services and need for regulatory framework through the following set of questions:

10. What are the technical challenges in selective banning of specific OTT services and websites in specific regions of the country for a specific period? Also, suggest technical solutions to mitigate the challenges.
11. 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?
12. 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? (b) What should be the provisions and mechanism for such a regulatory framework?
13. 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?
14. Are there any other relevant issues or suggestions related to regulatory mechanism for OTT communication services, and selective banning of OTT services?

Our point of view

The draft Telecom Bill released by DoT last year had recommended bringing OTT services under its ambit by creating a licensing regime for them. It will be important to provide clarity on the regulatory framework for OTTs, to meet the objective of sovereignty, compliance, and growth.



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