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Subject: Comments on aspects related to “Online Gaming” raised in TRAI Consultation Paper on “National Broadcast Policy” from online gaming stakeholders

Respected Sir,

Greetings from FICCI, the largest and oldest apex business organization, voicing views and concerns of industry with an objective to enable favorable policies for sustainable growth of businesses in India.

At the outset, we commend the TRAI’s initiative to launch a second consultation to seek inputs from stakeholders on the National Broadcasting Policy, pursuant to pre-consultation on the policy that was held last year. With reference to Question 9, raised under sub-section ‘Issues for Consultation’ in the consultation paper, *“Online gaming being a rising sector holds potential for contributing to economy, what policy and regulatory aspects should be adopted for the orderly growth of online gaming in India? Further, suggest measures to support local game developers to compete and grow. Also suggest safeguards to protect general public (especially underage players) from negative and psychological side effects, while promoting healthy gaming”*, we would like to make a detailed submission, on behalf of our online gaming industry members.

The online gaming industry in India has emerged as a vibrant sunrise sector, showcasing remarkable growth over the past three years. With a striking Compound Annual Growth Rate (CAGR) of 28%, the industry surged to INR 16,428 crore in FY23 and is poised to escalate further, with projections soaring to INR 33,243 crore by FY28 as noted in the latest EY report, ‘New frontiers - Navigating the evolving landscape for online gaming in India.’ Worldwide online gaming is expected to reach \$7.5 billion in the next five years. Factors like widespread smartphone penetration, improved internet connectivity, a growing youth population, and the development of local gaming content has made India, home to 568 million gamers, a quarter of which are paid users. As per EY report, real money gaming (RMG) sub-segment, commanded an impressive 82.8% of the market share in FY23, boasting a thriving landscape of over 400 RMG startups. Industry foresight indicates that this sub-segment is poised to make substantial contributions, projecting direct tax revenues ranging between INR 6,500 crore to INR 6,800 crore (inclusive of TDS and corporate tax), along with indirect tax revenue (GST) of INR 75,000 crore to INR 76,000 crore to the exchequer during the FY24–28E period.

The sector has drawn significant investment interest, with a whopping INR 22,931 crore injected between FY20 and FY24 YTD from domestic and international sources alike. In addition to traditional venture capital funding, the digital gaming realm in 2023 experienced an influx of investments from unconventional sources. According to a report from the Interactive Entertainment and Innovation Council (IEIC), the online gaming industry in India employed over 100,000 skilled professionals directly and indirectly in 2023. It is expected that this sector will generate over 250,000 more jobs in the coming decade. Driving this gaming economy are approximately 15,000 game developers and over 1,400 gaming companies (including 500+ studios). It is interesting to note that a research by the Indian Statistical Institute (ISI), Kolkata found that

a substantial 73% of respondents exhibited a strong inclination towards pursuing careers in the online gaming domain. Equally significant, 68% acknowledged the sector's role in improving their skill sets, while 60% believed it could stem the 'brain drain' to foreign tech roles by providing opportunities on home turf. The study further noted that over 84% of technology practitioners believe India could lead the global gaming industry.

Gaming industry is a turbo-charger for the consumption of 5G services, standing at the forefront of technological revolution, embracing innovations such as augmented reality, virtual reality, and cloud gaming. The sector is also catalysing growth of complementary sectors such as fintech, cybersecurity and data analytics, setting the stage for future investments and fostering potential economic development.

The Ministry of Information and Broadcasting has also acknowledged the contribution of gaming in its Draft Model State Policy for AVGC. It has emphasized that gaming is central to the growth of the AVGC sector and impacts its entire ecosystem

Key points to be kept into consideration while drafting National Broadcasting Policy - 2024.

1. As the designated nodal Ministry for Online gaming, Ministry of Electronics and Information Technology (MeitY) issued amendments to IT Rules for regulating online gaming including online real money gaming. The rules are yet to be implemented.
2. IT Rules have laid out a comprehensive framework to address the dual objectives of fostering innovation and growth in online gaming while safeguarding citizens from illicit betting and wagering. Additionally, they encompass a range of responsible gaming measures that online gaming intermediaries must adhere to when operating in India. Furthermore, the IT Rules mandate Self-Regulatory Bodies to establish a framework addressing concerns such as user harm, addiction, and possible financial losses.
3. The decisive factor in determining whether a game constitutes permissible gaming or gambling lies in the predominance of skill. Online gaming can be games played with or without money as also identified in the IT Rules. Presence of money does not fundamentally change the nature of the game or the elements of skill and/or chance involved in it.
4. Real money gaming is strictly for adults, with intermediaries enforcing age restrictions universally. This ensures consumer protection and compliance with regulations.
5. Additionally, legitimate Indian online gaming intermediaries have voluntarily adopted a code of ethics, guided by industry associations, to enhance user protection by protecting minors, adopting fair gaming policies, applying financial safeguards, advertising responsibly, and employ other measures for safe, secure, and reliable gaming services. They are required to comply with applicable Indian laws such as laws relating to consumer protection, data protection and cyber security.

Policy and regulatory aspects should be adopted for the orderly growth of online gaming in India

The Central Government has been enacting robust measures to develop a strong regulatory structure for online gaming in India with an aim to foster a favorable and effectively regulated the online gaming sector in India

a. MeitY

In May 2022, an Inter-Ministerial Task Force (IMTF) was established in response to court pleas seeking regulations for online gaming. Composed of a seven-member panel including key figures like the CEO of

Niti Aayog and Secretaries from various ministries, the IMTF was charged with formulating regulations and designating a nodal ministry. Following extensive stakeholder consultations, the IMTF recommended MeitY as the overseeing ministry.

Subsequently, on December 23, 2022, amendments were made to the Government of India (Allocation of Business) Rules, 1961, officially appointing MeitY as the nodal ministry for online gaming. MeitY took significant steps by issuing a notification on April 6, 2023, amending the IT Rules to establish a regulatory framework for online gaming intermediaries.

This framework operates on a three-tiered approach:

- Tier 1- Self-compliance and grievance redressal by the intermediary
- Tier 2- Oversight by Self-Regulatory Bodies (SRBs) designated by MeitY
- Tier 3- Final recourse with the Grievance Appellate Committee overseen by MeitY

SRBs are to operate with limited government oversight, aiming to balance industry autonomy and regulatory supervision. According to the IT Rules, MeitY will designate SRBs, inter alia, responsible for certifying permissible online real money games. However, the notification of SRBs is pending, indicating ongoing progress in the regulatory framework.

b. Ministry of Home Affairs

Under Section 69A, the Central Government possesses the authority to instruct any government agency or intermediary to block public access to information stored in computer resources if it deems it necessary for the interests of India's sovereignty, integrity, defense, security, foreign relations, or public order. MeitY, acting on recommendations from the Ministry of Home Affairs, has utilized its powers under Section 69A to block over 230 illicit betting & gambling apps.

c. Ministry of Information and Broadcasting

The Ministry of Information and Broadcasting has issued multiple advisories¹ to newspapers, digital news publishers, and private satellite TV channels, urging them to refrain from publishing advertisements promoting online betting and gambling platforms.

d. Ministry of Consumer Affairs

The Ministry of Consumer Affairs also recently issued an advisory² stating that any advertisement or endorsement, whether directly or indirectly, of activities which are otherwise prohibited by law, including but not limited to betting or gambling, through advertisements or promotions, shall be subject to rigorous scrutiny.

e. Ministry of Finance

New sections have been introduced for online gaming under the Income Tax Act, 1961 that provide for a distinct and independent treatment to online games from lottery/betting/gambling. As per the new

¹ <https://mib.gov.in/sites/default/files/Advisory%20dated%2025.08.2023%20with%20enclosures.pdf>;
<https://mib.gov.in/sites/default/files/Advisory%20dated%2021.03.2021%20%281%29.pdf>;
<https://mib.gov.in/sites/default/files/06.04.2023%20Advisory%20on%20Betting%20Advertisements.pdf>;
<https://mib.gov.in/sites/default/files/Advisory%20on%20online%20betting%20advertisements%2013.06.2022.pdf>

² <https://mib.gov.in/sites/default/files/Advisory%20dated%2021.03.2021%20%281%29.pdf>

norms, 'net winnings' from online games are to be taxed under provision Section 194 BA and not anymore under Section 194B. Section 194 BA states that the 'net winnings' from online gaming will be taxed @30% on every withdrawal or at the end of the financial year. Section 194B is a separate section dealing with lottery, gambling or betting. Similarly, Section 115 BBJ, is a separate section from Section 115BB. Section 115BB deals with lotteries, gambling or betting. These amendments signify the government's commitment to providing a structured and regulated environment for the online gaming industry while ensuring proper taxation procedures are in place. The Ministry of Finance has recently also issued an amendment to GST Law effective 1st October, 2023 wherein all online gaming is liable to pay GST @28% on face value of every deposit.

f. Advertising Standards Council of India (ASCI)

ASCI's Guidelines for 'Online Gaming for Real Money Winnings' push for inclusion, in advertisements for online real money games, of appropriate and prominent disclaimers which make consumers aware of the financial risks involved in such games. Advertisements for online real money games which do not comply with ASCI's guidelines may, pursuant to ASCI's recommendations, nonetheless attract rigorous scrutiny from the MIB as well.

Given the existing state of the online gaming industry with its established presence and comprehensive regulations, it is imperative to ensure balanced growth while prioritizing user protection. In view of this, we propose that MeitY considers the following interventions:

- a. Implementation of Amended IT Rules will effectively govern, administer, and regulate the online gaming industry in India. These rules have been formed pursuant to extensive stakeholder consultations and aim at fostering an open, safe, transparent, and accountable online gaming environment. Necessary amendments could be made to address overarching concerns regarding the regulatory structure and any regulatory ambiguity. In addition to the existing three-tier regulatory structure outlined in the IT Rules, MeitY could contemplate the adoption of the following regulatory models to further fortify the regulatory framework:
 - i. **Three-Tier Regulatory Framework akin to OTT:** Similar to the regulatory framework for Over-The-Top (OTT) platforms, implementing a three-tier regulatory structure could provide enhanced oversight and accountability within the online gaming industry.
 - ii. **Establishment of a Single Independent Regulator:** While considering this option, it is crucial to recognize that an independent regulator operating autonomously from industry involvement and potentially distant from ground-level industry concerns may inadvertently stifle innovation and hinder the sector's growth. Thus, a balance between regulatory oversight and industry collaboration must be maintained.
 - iii. **Introduction of a Registration Mechanism:** Implementing a registration mechanism wherein all online gaming intermediaries are required to register with MeitY could ensure that only legitimate platforms operate within India. This would enhance transparency, accountability, and consumer protection within the online gaming ecosystem.

Furthermore, to ensure a resilient regulatory framework, MeitY should conduct periodic reviews of the IT Rules' effectiveness and introduce additional safeguards as needed.

- b. Although the Ministry of Information and Broadcasting and the Ministry of Consumer Affairs have issued numerous advisories to curb the advertising and endorsements of betting and gambling platforms, it is imperative to formalize these advisories into enforceable regulations and to take

stringent and consistent action against such illegal platforms. Therefore, MeitY might contemplate incorporating explicit obligations regarding advertisements in the Code of Ethics outlined in Part III of the IT Rules. This would prohibit news publishers, current affairs publishers, and online content creators from featuring any form of advertisements related to online betting and gambling platforms, whether direct or indirect.

Supporting local game development in India

Gaming serves as a potent avenue to exhibit India's vibrant culture, art, and narratives, providing an engaging platform to uphold heritage and present it to the world in modern formats. By showcasing Indian characters and stories, gaming has the ability to surpass boundaries, enhancing India's international visibility, stimulating exports, and fostering a robust global market for homegrown gaming content. In addition to fostering indigenous content and intellectual property, gaming's impact on a nation's GDP and economic advancement is substantial. It facilitates employment opportunities, attracts investments, and contributes revenue to the national treasury, as emphasized earlier. Further, in the recent interaction by Hon'ble Prime Minister, Narendra Modi with gamers, he suggested that gamers should create online games on climate change, swachhta (cleanliness), and on Lord Hanuman.³

The Ministry of Information & Broadcasting (MIB) has initiated various efforts, including the draft national promotion policy for Animation, Visual Effects, Gaming, and Comics (AVGC), to position India as a global gaming and AVGC hub. Many states (Karnataka⁴, Kerala⁵) have also introduced or are developing AVGC policies to support local game development. These initiatives, along with the proposed establishment of Centers of Excellence (CoEs) and the creation of a nodal agency under MIB, underscore the government's commitment to fostering the growth of the gaming industry.

Recommendation:

- Finalizing and promptly notifying the national AVGC policy is crucial, alongside establishing dedicated oversight and coordination mechanisms between state and central governments. This concerted effort aims to foster comprehensive development and regulation of online gaming
- Enhancing synergy between state and central governments is vital to achieve holistic growth and regulation of online gaming. Through policy alignment, sharing of best practices, and coordinated endeavors, both levels of government can collaboratively nurture a vibrant and sustainable gaming ecosystem.

Safeguards to protect the general public (especially underage players) from negative and psychological side effects, while promoting healthy gaming.

As previously noted, online real money gaming is strictly limited to adults, and industry players have universally implemented age gating practices. The age gating measure prioritizes consumer protection and regulatory compliance. Companies have also increasingly laid emphasis on promoting responsible and healthy gaming, by putting in place measures like setting single transaction limits, routinely alerting users of losses accumulated and/or time spent gaming, advising users to take regular breaks or timeouts from gaming, etc.

³<https://www.news18.com/india/pm-modi-gamers-news-noob-fun-interaction-viral-video-playing-games-pubg-watch-8849934.html#>

⁴ <https://itbtst.karnataka.gov.in/storage/pdf-files/DraftAVGCPolicy.pdf>

⁵ <https://avgcpolicy.startupmission.in/>

Further, IT Rules prescribe a comprehensive set of responsible gaming measures, including restrictions on hosting and advertising for non-permissible online real money games. Some of the other obligations imposed on online gaming intermediaries under IT Rules are as follows:

- a. Online gaming intermediaries are required to prominently display a mark of registration on all games approved by the Self-Regulatory Bodies (SRBs);
- b. Similar to entities regulated by the Reserve Bank of India (RBI), online gaming intermediaries must adhere to Know Your Customer (KYC) requirements to verify the identity of users;
- c. Intermediaries are mandated to provide users with comprehensive information regarding online games, potential financial risks, KYC requirements, and the registration process with SRBs, all of which must be outlined in the terms and conditions;
- d. Online gaming intermediaries are obligated to appoint a Grievance Officer, Chief Compliance Officer, and Nodal Officer, all of whom must be employees of the organization and residents of India;
- e. Online gaming intermediaries are responsible for ensuring timely grievance redressal and publishing monthly compliance reports;
- f. Online gaming intermediaries are prohibited from extending financial services, such as credit, and from facilitating financing offered by third parties.

Until MeitY appoints SRBs, industry is proactively united to follow voluntary code of ethics, laid by different sectoral association, which encompasses a wide range of responsible gaming standards. Companies endorsing the code are expected to comply with the code, which includes provisions for responsible gaming practices, protection of minors, fair gaming policies, financial safeguards, responsible advertising, and other measures aimed at ensuring the delivery of safe, secure, and reliable gaming services. This voluntary code serves as a proactive measure to uphold ethical standards within the online gaming industry, promoting consumer trust and confidence while awaiting formal regulatory oversight.

From the above, it is apparent that safeguards to protect the general public are already in place and industry has also opted for voluntary initiatives to ensure consumer protection. At present, the primary requirement is the enforcement of the IT Rules, which will facilitate the effective implementation of user safety principles while fostering the orderly growth of the industry.

Key Takeaways

1. It is crucial to implement Amended IT Rules 2021 to ensure orderly growth of the sector while safeguarding consumer interests
2. The online gaming real money should be subject to stringent age verification measures in place to restrict access to adults only. In case of non-real money games a graded approach of age rating with age gating could be adopted.
3. To give advisories, issued by Ministry of Information and Broadcasting, Ministry of Consumer Affairs and ASCI, preventing advertisement of online betting and gambling platforms, a force of law, MeitY may consider inserting specific obligations under Code of Ethics in Part III of the IT Rules to prohibit publishers from running such advertisements, surrogate or otherwise.
4. Prompt finalisation and notification of a national AVGC policy is essential, accompanied by dedicated oversight and coordination between state and central governments.
5. Legitimate Indian online gaming intermediaries are actively embracing responsible gaming measures. Further, they have adopted voluntary codes of ethics, instituted by industry federations covering areas such as advertising, financial risks, and responsible gaming to enhance

consumer protection. Further statutory recognition through IT Rules and mandatory compliance by all gaming companies will further enhance consumer protection.

We would once again like to express our gratitude for the opportunity given to share our comments on the Consultation Paper on 'Inputs for formulation of National Broadcasting Policy-2024'. We hope that our suggested interventions will help in informed decision-making.