**IAMAI Counter Comments | TRAI Consultation Paper "Framework for Service Authorisations to be Granted Under the Telecommunications Act, 2023"**

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Established in 2004, the Internet and Mobile Association of India (IAMAI) is a not-for-profit industry body representing the digital services industry with over 600 Indian and multinational corporations as its members, which include established companies in diverse sectors of the digital ecosystem as well as start-ups. We firmly believe that India's digital industry is going to be a major driving force in the economic and social development of the country which includes job creation, innovation, contribution to the GDP, inclusion and empowerment of our citizens.

IAMAI, on behalf of its members, would like to put forth counter comments in response to some of the points raised in representations made by certain other organisations to the Telecom Regulatory Authority of India (TRAI) on its consultation paper "Framework for Service Authorisations to be Granted Under the Telecommunications Act, 2023". However, our members, Airtel and Reliance Jio Infocomm Ltd have divergent views from the ones expressed below.

## IAMAI Counter Comments

In their respective submissions to TRAI, certain organisations have fallaciously claimed that OTT service providers in India are not regulated. Such organisations have advocated for the imposition of a licensing/regulatory regime for OTT services akin to that for licensed telecom service providers (TSPs) in India.

### 1. OTT services are not within the scope of the Telecommunications Act, 2023

While the definition of "telecommunication services" within the Draft Indian Telecommunications Bill, 2022 included "OTT communication services", it is pertinent to note that OTT communication services were excluded from the Telecommunications Act, 2023 ("Telecom Act") that was eventually notified.

When the Telecom Act was introduced in the Parliament, Shri Ashwini Vaishnaw (the then Telecom Minister) clarified that "*OTT has been regulated by the IT Act of 2000 and continues to be regulated by the IT Act. There is no coverage of OTT in the new telecom bill passed by the Parliament*." https://economictimes.indiatimes.com/industry/telecom/telecom-news/ott-not-under-ambit-of-telecom-bill-ashwini-vaishnaw/articleshow/106224226.cms

Moreover, even the Terms of Reference for this CP (as issued by the DoT to the TRAI) pertain to only seeking the TRAI's recommendations on terms and conditions governing authorisation of telecommunication services. Dealing with regulating OTT communication services goes beyond the scope of these Terms of Reference. Accordingly, we request TRAI to not delve into this issue, while issuing its recommendations under the CP. There have been separate (3-4) consultation papers since 2015 issued from TRAI which has looked into this aspect. The recommendations flowing from the papers have not supported a regulation for OTTs. Therefore, TRAI should not include OTTs in their recommendations on the current paper.

### 2. OTT services are inherently different from TSPs

Certain organisations have advocated for regulatory equality among OTT service providers and licensed TSPs by way of implementation of a framework based on a claim of 'same service same rules'. As we have previously highlighted in several of our submissions to TRAI, there cannot be drawn a parity between digital service providers and TSPs.

From a technical perspective, TSPs operate on the network layer (i.e., the layer connecting different networks and driving the operation of the internet) while OTT providers operate on the application layer (i.e., the layer which rests above the layers responsible for complex network interactions and utilize such underlying network layer to transfer data). Therefore, there is a clear distinction in the operational and technical and nature of OTT service providers and TSPs. Notably, TRAI has previously recognised this distinction in its 'Recommendations on Regulatory Framework for Internet Telephony' (2017) with respect to internet telephony services. Keeping in mind that OTT service providers and TSPs are fundamentally different, 'same service, same rules' cannot apply here.

### 3. OTT services are comprehensively regulated in India

Contrary to claims made by certain organisation that OTT services exist in a regulatory lacunae, robust regulatory frameworks for digital service providers in India already exist. Notably, such services are already regulated under the Information Technology Act, 2000 (IT Act) and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (IT Rules) and the Digital Personal Data Protection Act, 2023 (DPDP Act). They are also variously required to comply with the Consumer Protection Act and Rules for consumer welfare, and the Competition Act for economic regulation.

Under the IT Rules, digital service providers / OTT service providers are subject to dedicated compliance and reporting requirements. The introduction of a telecom regulatory regime would undoubtedly qualify as an act of over-regulation on such service providers and not only increase compliance but introduce a crippling financial burden. This could hamper innovation and consumer choice, significantly affect the ease of doing business in India. It will also have a ripple effect across the digital economy.

It is important to note that TSPs enjoy a special and exclusive position in the telecommunication industry by virtue of having exclusive rights to commercialise a public resource, i.e., spectrum. The licensing regime for TSPs is therefore crucial to ensure that this valuable public resource is distributed and used efficiently and in an appropriate manner. On the other hand, digital service providers, such as OTT service providers, do not have any control over critical national resources such as spectrum as they merely provide their services on the application layer. Therefore, the time-tested distinction between spectrum-controlling entities (TSPs) and spectrum-using companies (digital platforms) should be maintained.

### 4. OTT services do not "free ride"

Certain stakeholders allege that OTT services essentially free ride on the infrastructure / investments made by TSPs to provide connectivity services to users.

However, it is fallacious to state that OTT providers "free ride" in any manner, as they are greatly driving the revenues generated by TSPs. It is the demand for online content and applications provided by OTT providers that is driving an increase in the demand for internet access, that is supplied to consumers by TSPs.

TRAI, in its Consultation Paper 'Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services' rightly recognises the contribution of OTT service providers to the growth in revenue of TSPs, by putting forth the following statistics highlighting the revenue growth of TSPs:

- From 2019 to 2022, the monthly average revenue per user for wireless services in India grew by nearly 90% from INR 74.38[1] to INR 141.14[2];
- From 2014 to 2022 the volume of monthly wireless data usage increased by about 156 times from 92.4 million GB to 14.4 trillion GB; and
- From 2014 to 2022 the average revenue from data usage per wireless subscriber per month increased around 5.6 times from Rs. 22.19 (for GSM service in the QE December 2014) to Rs. 125.05 (for wireless service in the QE December 2022).

Therefore, it is clear that OTT services do not "free ride" but have a positive effect on the revenue growth of TSPs, and on the Indian economy as well.

### 5. No mandatory registration required for CDNs

Certain stakeholders contend that there is a need for registration of CDNs to foster competition, drive down costs and improve service quality. Such stakeholders also suggest that the introduction of such mandatory registration will ensure alignment with international best practices and evolving global standards for CDNs.

We would like to highlight that TRAI in its Consultation Paper "Regulatory Framework for Promoting Data Economy Through Establishment of Data Centres, Content Delivery Networks, and Interconnect Exchanges in India" recognised that India's CDN market will witness a growth of over 700 % between 2018 – 2027 (i.e., from USD 435.2 million in the year 2018 to USD 2846.8 million by 2027).

The CDN market is competitive. Several companies offer commercial CDN services and some companies have successfully implemented their own CDN solutions, which has benefited local content delivery to global audiences. Evidence of high competition is that the prices for CDN services are constantly dropping. In the absence of any market failure, TRAI should not stifle CDN growth in India by introducing excessive regulations and creating barriers to entry.

Moreover, IXPs utilise CDNs to manage local traffic exchange effectively. However, if interconnection in India were restricted to only registered networks, it would impede the ability to serve traffic locally resulting in a shift in traffic internationally. A registration process for CDNs should not be introduced as this will cause delays in launching new services and expanding existing ones, thereby adversely impacting the ability of CDN providers to respond to evolving market needs.

Further, it is pertinent to note that CDNs do not require a licence to operate in other countries and TRAI should not set this precedent. The internet has thrived, including in India, by allowing "innovation without permission" and efficient, localised exchange of traffic through the growth of CDNs. Introducing a mandatory registration regime would stifle this virtuous circle. Moreover, conditioning internet interconnection (peering) to an authorisation or registration should not be introduced as it goes against the commonly accepted and global practice of unregulated peering.

[1] https://trai.gov.in/sites/default/files/PIR_08012020_0.pdf
[2] https://trai.gov.in/sites/default/files/QPIR_31052023_0.pdf