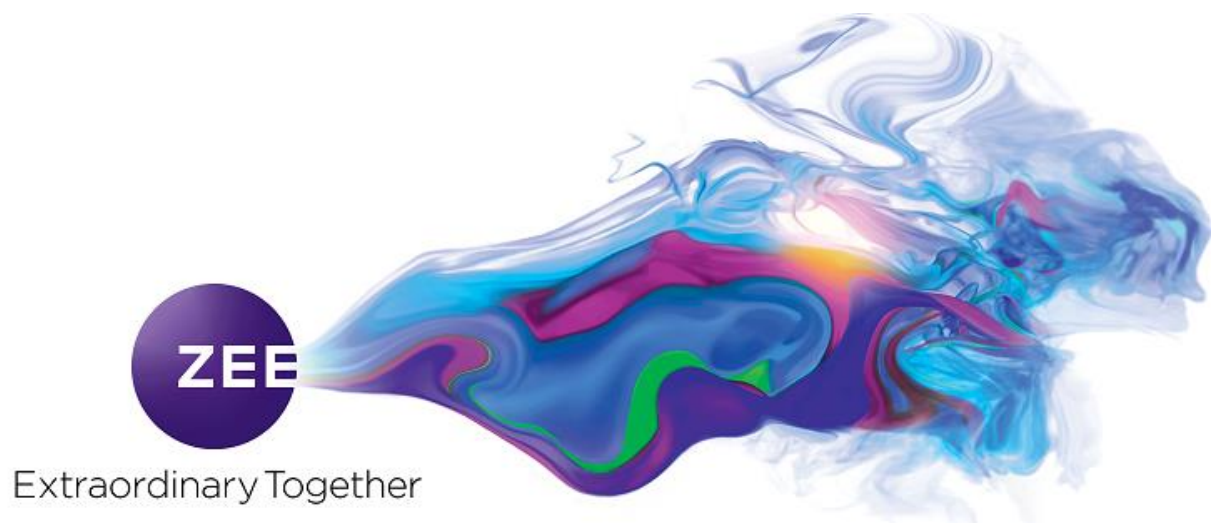


RESPONSE OF ZEE ENTERTAINMENT ENTERPRISES LIMITED

TO

**CONSULTATION PAPER ON REGULATORY FRAMEWORK
FOR OVER-THE-TOP (OTT) COMMUNICATION SERVICES**

ISSUED BY TRAI ON 12 NOVEMBER 2018



Response by Zee Entertainment Enterprises Ltd (“ZEEL” or “we”) on behalf of our digital video-on-demand OTT business with the brand name of ‘ZEE5’ to TRAI’s Consultation Paper on Regulatory Framework for Over-The-Top (OTT) Communication Services dated 12th November 2018 (“Consultation Paper”)

We, are thankful to the Telecom Regulatory Authority of India (“TRAI” or “Authority”), for giving us an opportunity to provide comments on the Consultation Paper. We are submitting this response on behalf of our digital video-on-demand OTT business with the brand name of ‘ZEE5’.

Over the last few years, India has witnessed a tremendous growth in Internet penetration through cheaper and more accessible services provided by Internet service providers (ISPs), telecom service providers (TSPs), etc. TSPs have played a significant role in making the Internet-based services available to the last mile user. Access to affordable data has perpetuated sharp growth in the consumption of Internet-based services. Increased smartphone penetration in the Indian market and improved connectivity and affordable data prices has fuelled the growth of various Internet and mobile based service offerings.

In view of the fact that OTT service providers provide a gamut of services, we appreciate that TRAI has limited and restricted the scope of this Consultation Paper to ‘focus only on the regulatory issues and economic concerns pertaining to such OTT services as can be regarded same or similar to the service provided by TSPs’.

We strongly feel that with constant technological advancements and innovation, OTT services are poised for growth. We advocate complete forbearance on any kind of regulatory framework by the Authority.

Issue-wise response:

Issue No. 1:

Which service(s) when provided by the OTT service provider(s) should be regarded as the same or similar to service(s) being provided by the TSPs. Please list all such OTT services with descriptions comparing it with services being provided by TSPs.

Response:

We submit that OTT *service* providers are intrinsically distinct from *network* providers like TSPs and ISPs, though some of the services by OTT service providers such as VoIP, video calls, text messaging, etc may overlap with TSPs. Any mapping of similarities between OTT service providers and TSPs should depend not only on the underlying function served but also the technical and architectural frameworks, over which, the said service is provided. Any OTT platform/application cannot be offered to consumers without access to physical infrastructures that TSPs and ISPs deploy. OTT service providers do not control the Internet access points and are dependent on network providers for reaching out to their customers. Thus, making the OTT service providers heavily dependent on the TSPs. It is not incorrect to say that, to a large extent, TSPs control the underlying broadband Internet access infrastructure and thus control the delivery of OTT service to the last mile user by controlling Internet access and connectivity. For example, communication OTT services such as voice communication services transmit data over IP networks.

Most TSPs already provide some or the other online services in addition to Internet access provided by them. It is pertinent to note that TSPs can operate in both the network and application layers while OTT service providers are restricted to only the application layer. Hence, it will be counter-productive to have licensing for communication applications and Internet platforms. In fact, due to low entry barriers, TSPs have an advantage over the online service providers.

We, thus, believe that any attempt to regulate OTT service providers when they are already in a disadvantageous position will result in a fragmented regulatory approach towards Internet as a sector.

Issue No. 2:

Should substitutability be treated as the primary criterion for comparison of regulatory or licensing norms applicable to TSPs and OTT service providers? Please suggest factors or aspects, with justification, which should be considered to identify and discover the extent of substitutability.

Response:

We submit that substitutability should not be treated as the primary criterion for comparison of regulatory or licensing norms applicable to TSPs and OTT Service Providers. OTT service and Internet-based applications are not generic in design. Most of the solutions offered by OTTs and other Internet-based applications are customized and tailor-made to the requirement of the consumer or any specific problem. OTT service, as a product, has unique and distinguishable features, functionalities, purpose and content. Such uniqueness and experience make these services offered by OTT service providers not substitutable. In fact, services offered by OTT service providers use Internet as a medium to reach the last mile consumer while the widest reach to the Internet is offered by the TSP. Thus, OTT services and telecom services are, at best, complementary to each other.

Any step towards substitutability between the services to justify regulation or licensing requirements for TSPs will hurt consumers and industry. It will create a new barrier to entry for both new apps and service providers by raising the cost of service provision. Low barriers to entry, the open nature of the Internet, and rich interactions and experiences that OTT service providers (including digital platforms and services and content providers) enable are key to the continued growth of the digital economy.

Furthermore, the criterion of substitutability is contrary to the government's current approach to carriage (TSPs) and internet content (Digital Platforms And Services) which fall under the Department of Telecommunications ("DoT") and Ministry of Electronics and Information Technology ("MeitY"), respectively.

Therefore, in our view, the services provided by OTT service providers and TSPs cannot be substituted with or for each other. Substitutability is an incorrect criteria, whether primary or otherwise, for evaluating need for any regulatory or licensing norms applicable to TSPs and OTT service providers.

Issue No. 3:

Whether regulatory or licensing imbalance is impacting infusion of investments in the telecom networks especially required from time to time for network capacity expansions and technology upgradations? If yes, how OTT service providers may participate in infusing investment in the telecom networks? Please justify your answer with reasons.

Response:

In our view, regulatory or licensing imbalance is not impacting infusion of investments in telecom networks, especially required from time-to-time for network capacity expansions and technology upgradation.

We believe that there is absolutely no imbalance in the regulatory environment in the operation of OTT players. The Information Technology Act and Rules regulates the internet based companies.

However, the areas relevant to OTT service providers are already regulated by the Information Technology Act and the Rules (including the IT (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009 and IT (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011) notified thereunder. The Information and Technology Act, as amended and the forthcoming Privacy Act mandates to safeguard the fundamental rights of the consumers keeping in mind the extremely dynamic technology environment which requires push for development.

It will not be incorrect to state that. the OTT service providers help in growth of business of TSPs. A substantial part of data consumption on TSPs' network happens due to usage of various OTT services. Consumers buy data packs from TSPs and use them to access various OTT services. In fact, OTT services help in the growth of TSPs. As per CISCO forecast - VNI Complete Forecast Highlights, in India, Internet video traffic will grow 5-fold from 2016 to 2021, a compound annual growth rate (CAGR) of 40%. It has also been reported that Internet-Video-to-TV traffic will increase 6-fold between 2016 and 2021 (43.8% CAGR). In view of the rapid growth of OTT service providers, the TSPs have gained phenomenal increase in data consumption. This growth in data consumption is actually helping TSPs in recovering their losses which they are suffering due to sharp decline in voice call tariffs over a period of last few years. Thus, OTT service provider only promotes use of TSPs service among the end users

Moreover, as you are aware, there are restrictions on cross media holding in the broadcasting and distribution sector. similar restrictions on crossholdings should be made applicable on the TSPs to own stake in OTT platforms. This will further the growth of industry and foster healthy competition in the online digital media sector.

Therefore, in our submission, any regulation or licensing regime players could hamper innovation in digital applications, and raise costs for consumers and the economy at large, instead of spurring investment. However, we urge TRAI to look into the issue of cross holding between OTT service providers and TSPs especially in the media sector.

Issue No. 4:

Would inter-operability among OTT services and also inter- operability of their services with TSPs services promote competition and benefit the users? What measures may be taken, if any, to promote such competition? Please justify your answer with reasons.

Response:

We are of the view that there is no question of interoperability of OTT services with TSPs as OTT is only an over-the-top service which can be accessed by an end-user through a TSP whose services have been subscribed to by the end subscriber against a subscription fee. There is also no discrimination as far as accessing any OTT service available through various TSPs is concerned. An end subscriber may use the network of any TSP of their choice to access content available on an OTT platform. Since TSPs market various tariff packages, it is up to the end subscriber to open for any of those said packages based on their data and/or voice usage requirements.

OTT services are not generic and have unique product functionalities, functions, services and content. Constant new entry is a feature of the online space because the barriers to entry for online services are low. Due to low entry barriers there is healthy competition and constant innovation. Consumers can anyway shift from one product to another without any significant cost impact. Hence, no regulatory measure to achieve interoperability is needed.

Issue No 5:

Are there issues related to lawful interception of OTT communication that are required to be resolved in the interest of national security or any other safeguards that need to be instituted? Should the responsibilities of OTT service providers and TSPs be separated? Please provide suggestions with justifications.

Response:

No comments.

Issue No. 6:

Should there be provisions for emergency services to be made accessible via OTT platforms at par with the requirements prescribed for telecom service providers? Please provide suggestions with justification.

Response:

No comments.

Issue No. 7:

Is there an issue of non-level playing field between OTT providers and TSPs providing same or similar services? In case the answer is yes, should any regulatory or licensing norms be made applicable to OTT service providers to make it a level playing field? List all such regulation(s) and license(s), with justifications.

Response:

We submit that there is no issue of non-level playing field between OTT service providers and TSPs providing same or similar services as both OTT Providers and TSPs complement each other. As explained in the response to the questions above, the very nature of the services provided by OTT Providers as well as TSPs are totally different.

OTT providers require infrastructure from the TSPs to enable users to use their services. TSPs can provide OTT services at any time by starting their own OTT businesses. But, not vice-versa. Digital Platforms And Services operate in an extremely competitive market and they do not control critical infrastructure that holds value to the public. Additionally, Digital Platforms And Services providers thrive on the open and unbound nature of the Internet which leads them to constant innovation.

Issue No. 8:

In case, any regulation or licensing condition is suggested to be made applicable to OTT service providers in response to Q.7 then whether such regulations or licensing conditions are required to be reviewed or redefined in context of OTT services or these may be applicable in the present form itself? If review or redefinition is suggested then propose or suggest the changes needed with justifications.

Response:

No regulation or licensing conditions have been suggested in response to Question No. 7, and thus, no review or redefinition is required. As discussed above, legacy telecommunications regulations should not be automatically extended to online applications because of the fundamental technical and business differences between traditional services and apps.

Issue No. 9:

Are there any other issues that you would like to bring to the attention of the Authority?

Response:

We have no additional issues that we wish to bring to the attention of the Authority. The future of digital product offerings and growth of OTT services will depend on a robust environment which does not stifle technology based innovation and provide a competitive market environment. Low entry barriers for new entrants, minimal regulatory barriers and technological advancement will be the cornerstone of such growth of the sector for investments, innovation and consumer interest. Therefore, we urge the Authority that a policy of forbearance is best suited.