

TRAI OTT Recommendations: A bold and progressive stroke in Consumer Interest and Economic Development - BIF

15th September 2020, New Delhi: Broadband India Forum (BIF), the leading independent Think-Tank and Policy Forum for Digital Communications in the country, stated that the TRAI's Recommendations on Regulatory Framework for Over-The-Top (OTT) Communication Services as issued on 14th September 2020, would aid the progress of the sector, and are largely in the interest of the consumers. BIF congratulated the Regulator on adopting a forward-looking approach in choosing to not regulate a sector wherein there have been no demonstrable and evident instances of harm or dysfunction of the markets.

The importance and effectiveness of OTTs have been amply demonstrated during the Covid19 crisis, as numerous digital services have aided the citizens in maintaining connectivity and near-normal operations via OTT applications. Several studies have also established the critical relevance and contribution of OTTs in enhancing productivity, efficiency and progress – both in socio-economic as well as national economy terms. An ICRIER report noted that apps contributed at minimum INR 1.4 lakh crores to India's GDP in 2015-16, and this is continually rising to INR 18 lakh crores by end of 2020. As per a WIK (German Consultant) report, each user of Applications in India receives on average \$249 (INR 16,000) of consumer surplus annually. Applied to the total population, this number stands at \$74 (INR 4,800) per capita. The WIK study estimates that for the year 2017¹, this consumer surplus² for India was a substantial Rs 6.3 lakh crore. WIK has also observed that each 10% increase in usage of Rich Interactive Applications have led to an average increase of USD 5.6 trillion in global GDP (0.33% of GDP) from 2000 to 2015.

In rural India today, videos consist almost 65% of the data consumption, and BCG states that by 2023, about 48% of India's net users (approx. 650 million) are expected to be from rural areas. According to BCG, the OTT industry will unlock its potential to reach a market size of USD 5 billion by 2023. From the above data it is evident that OTT services are beneficial to the overall economy and to the growth of the country's GDP.

Mr. TV Ramachandran, President, BIF, shared, *"OTTs have enabled accessibility of digital tools and amenities for the people, thereby enriching lives and empowering them by helping to enhance their productivity and socio-economic standing. This in turn, has led to massive spill-over effects, adding to the nation's economic prosperity. It is great that the regulator has decided to permit market forces to operate freely in the sector without need for any regulatory intervention, which will help incentivise the growth and progress of this vital sector."*

"TSPs and OTTs are as different as chalk and cheese, and therefore should not be compared on equal grounds. We firmly believe that the interests of a particular segment of the industry should not prevail over the numerous benefits to the citizens, the national economy, and the overall growth of the sector," he added.

Certain quarters have incorrectly expressed concern regarding lack of provision of a level-playing field in the TRAI recommendations. BIF maintains the following position in regard to the issue:

- 1. Telecom Service Providers (TSPs) are regulated/licensed under the Indian Telegraph Act 1885. The Telegraph Act does not apply to OTTs.** This is because OTTs are essentially internet-based apps which offer Information and Communication Technology services, but

¹ In its report "The Economic and Societal Value of Rich Interaction Applications (RIAs) in India", WIK has stated that RIA usage saves on average 803.9 minutes per week.P. 13, available at [https://www.wik.org/fileadmin/Studien/2017/WIK-BIF_Report - The Economic and Societal Impact of RIAs in India.pdf](https://www.wik.org/fileadmin/Studien/2017/WIK-BIF_Report_-_The_Economic_and_Societal_Impact_of_RIAs_in_India.pdf).

² Consumer surplus indicates economic welfare that people gain from buying and consuming goods or services.

do not operate a telecommunication/telegraph network nor does it lease network capacity from a network operator. Since it does not own or work a telegraph, they cannot be regulated under ITA1885

2. **Substitutability Criterion:**

- a. Substitutability has to be complete and both ways. However, this factor must be treated at par with the level of competition, the level of innovation, consumer welfare, the ubiquity and adoption of such technology, amongst several other factors.
- b. **OTTs are not substitutes of TSPs; but rather depend on them. OTT applications cannot be offered without access to the physical networks that *only* TSPs deploy.**
- c. Telecom networks and OTT applications operate in different layers (network layer and application layer respectively).

3. **Exclusive rights of TSPs:** Licenses granted to TSPs under the Indian Telegraph Act 1885, also confer several exclusive rights that OTT players do not enjoy. These include, for example:

- a. *the right to acquire spectrum,*
- b. *the right to obtain numbering resources which are also scarce,*
- c. *the precious right to interconnect with the PSTN, and*
- d. *the right of way to set up infrastructure.*

4. **OTT and TSPs are NOT in the same game or playing field and hence, the Level Playing Field condition does not apply:** The argument that OTT services should be regulated under the same licensing regime that applies to TSPs is incorrect and erroneously overlooks the vast and critical differences between the two entities. TSPs, for example, enjoy several exclusive rights as stated above. OTT players neither have these privileges, nor own the network or control the access to telecom infrastructure.

5. **Article 14 of The Constitution of India which governs level playing field,** guarantees equal treatment only to persons who are equally situated. This is a well-established point and enough legal precedents are available on this. Moreover, unequals are not only permitted to be recognised unequally but they also have to be treated unequally. Importantly, equal treatment to unequals is nothing but inequality. Therefore, **to put TSPs and OTTs at par is wholly unjustified, arbitrary, unconstitutional and violative of Article 14 of the Constitution.**

Going forward, BIF strongly believes that all members contributing to the delivery of enabling and empowering digital services; including OTTs, should be treated as essential service providers. Today, measures like work-from-home, distant education, updating and dissemination of critical information and messages, etc. have been enabled by these services in the challenging circumstances. Therefore, they should be provided all the required support to nurture and advance, for the benefit of the citizens and the growth of the national economy.

About Broadband India Forum

Broadband India Forum (BIF) functions as a policy forum and think-tank that works for the development & enhancement of the entire broadband ecosystem in a holistic, technology-neutral and service-neutral manner. BIF has established itself as a thought leader and a credible and effective voice, to help propel the nation to achieve the country's ambitious vision of creating a Digital India. To achieve this, BIF works to promote the rapid development of policies, so as to facilitate affordable and high-speed ubiquitous broadband throughout the country.

For further information, please contact:

Kaustuv Sircar – kaustuv@broadbandindiaforum.com/+91-9999326911/+91-7003157047