



July 2023

Consultation Paper on Regulatory Mechanism for Over-The-Top Communication Services, and Selective Banning of OTT Services

The Telecom Regulatory Authority of India (“**TRAI**”) through its notification dated July 7, 2023 released a consultation paper on Regulatory Mechanism for Over-The-Top (“**OTT**”) Communication Services, and Selective Banning of OTT Services (“**Consultation Paper**”).

The Department of Telecommunications (“**DoT**”) through a letter dated September 7, 2022 requested TRAI to reconsider the recommendations on the Regulatory Framework for OTT Communication Services which was released in September, 2020 (“**2020 Recommendations**”). The 2020 Recommendations broadly captured that no regulatory interventions were required in respect of issues pertaining to privacy and security of OTT services and that it was not an opportune moment to recommend a comprehensive regulatory framework beyond the extant laws and regulations that were already prescribed.

DoT, while reasoning out the request to reconsider the 2020 Recommendations, mentioned that OTT services, having witnessed a humongous growth in the recent past, needed to be holistically viewed and that it was essential to take into consideration the regulatory, economic, security, privacy, and safety aspects. DoT then made a reference to the National Digital Communications Policy, 2018, that recommended a holistic and harmonized approach for harnessing emerging technologies.

DoT also requested TRAI to suggest a fresh regulatory mechanism for OTTs including issues in relation to selective banning of OTT services as part of its recommendations.

The central government, in exercise of the powers conferred to it by the Indian Telegraph Act, 1885, notified the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 (“**Suspension Rules**”) that sought to regulate the temporary suspension of telecom services due to public emergency or public safety.

However, the matter relating to the Suspension Rules came up for adjudication and the Hon’ble Supreme Court of India issued directions that stated, inter-alia, that any order suspending internet services indefinitely is not permissible under the Suspension Rules, and that the suspension of such nature could only be utilized for a temporary duration.

Further, the Hon’ble Supreme Court of India also, in its directions, stated that an order suspending internet under the Suspension Rules would require to be subject to judicial review. Subsequently, the Suspension Rules were amended that ensured that the suspension order that would be issued by the competent authority would not be in operation for more than 15 (fifteen) days.

Thereafter, in December 2021, the Parliament’s Standing Committee on Communication and Information Technology (“**Committee**”) submitted a report titled *Suspension of telecom services/internet and its impact*, which sought to understand the feasibility of carrying out selective banning of services.

In its report, the Committee urged DoT to explore the option of banning selective services such as Facebook, WhatsApp, Telegram, among others, as an alternative to banning the internet as a whole.

In the above background, TRAI has released the Consultation Paper that seeks views of the stakeholders on the issues related to regulatory mechanism for OTT communication services as well as issues related to selective banning of OTT services.

The views of the stakeholders that are sought through the Consultation Paper are listed down below:

1. The definition of “OTT services” and “OTT communication services”;
2. List of categories of OTT services and OTT communication services that could be reasonably classified based on intelligible differentia;
3. The need to bring OTT communication services under any licensing/regulatory framework to promote a competitive landscape for the benefit of consumers and service innovation;
4. The probable provisions in the licensing/regulatory framework for OTT communication services in respect of lawful interception, privacy and security, quality of service, unsolicited commercial communication, customer verification, customer grievance redressal, among others;
5. The need for a collaborative framework between OTT communication service providers and the licensed Telecom Service Providers (TSPs), and the potential challenges that are likely to arise out of the aforementioned collaborative framework;
6. Technical challenges in banning specific OTT services and websites for a specific period;
7. The need to develop a regulatory framework for selective banning of OTT services under the Suspension Rules;
8. The classes of OTT services that would be covered under selective banning;
9. The need to ban any specific websites apart from the OTT services.

Accordingly, the stakeholders are required to provide their comments by August 4, 2023, and counter comments by August 18, 2023.

Telecommunications & Broadcasting Practise

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This Prism has been prepared by:



Tony Verghese
Partner



Radhika Gupta
Principal Associate



Rhea Sydney
Associate



Shruthi Shekar
Associate



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11 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



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39 Ranked Partners
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