

Asia Internet Coalition (AIC) Industry Submission on Nepal OTT Regulation Framework

29 May 2023

To
Mr. Purusottam Khanal
Chairman, Nepal Telecommunications Authority (NTA)

On behalf of the [Asia Internet Coalition](#) (AIC) and its members, I am writing to express our sincere gratitude to the **Nepal Telecommunications Authority (NTA)** for the opportunity to provide comments and recommendations on the [Draft OTT Regulatory Framework](#), currently under public consultation. In tandem to the letter sent on 22 May 2023, the purpose of this updated document is to identify our top concerns with Nepal's draft OTT Regulation Framework. Our member companies would like to assure the government and NTA that they will continue to actively contribute to the security of digital platforms, products and services in support of the digital economy goals of Nepal. As an introduction, AIC is an industry association of leading Internet and technology companies in the Asia Pacific region, with an objective to promote the understanding and resolution of Internet and Information and Communications Technology (ICT) policy issues.

We acknowledge the importance of this consultation that outlines the key elements of regulating Over the Top (OTT) Services. As responsible stakeholders, we appreciate the ability to participate in this discussion and the opportunity to provide input into the policy-making process. As such, please find below our detailed comments and recommendations, which we respectfully request the NTA to consider.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact our Secretariat Mr. Sarthak Luthra at Secretariat@aicasia.org or at +65 8739 1490. Importantly, we would also be happy to offer our inputs and insights on industry best practices, directly through meetings and discussions and help shape the dialogue around effective Digital framework in Nepal.

Sincerely,



Jeff Paine
Managing Director
Asia Internet Coalition (AIC)

Detailed comments and recommendations

1. The benefits of online services for people, societies and economies

The overwhelmingly positive contributions of online services should be considered as Nepal looks at the regulatory framework which will support its online economy and digital transformation.

Internet applications and services (aka ‘OTTs’) have been essential for economic growth, free expression, and other societal benefits. They have enabled and supported the free flow of information, educational opportunities, media pluralism, culture, creativity, and economic opportunity.

Online services are sometimes referred to as OTTs, to cover applications and services that are carried over the networks, delivering value to customers without any telecommunication service provider being involved in planning, selling, provisioning, or servicing them.

Online services are an essential element of the Internet economy and broadband value chain: they have brought choice, innovation and new uses to consumers and businesses. They are the reason why end-consumers and businesses want good access to the Internet, with abundant capacity. Consumer demand helps to finance the networks - alongside the massive investments and innovation in technology that Internet companies such as Google make every year, which support enhanced network connectivity around the world.

Online services are also now embedded in our economies, to support the economies as intermediary springboards for growth, and for the diffusion and maintenance of local cultures and languages.

This is especially true in light of the experience of the Covid pandemic: They have provided a lifeline during the Covid pandemic times, allowing people to remain connected, allowing businesses to continue to run and trade, within countries and across borders. In Thailand for example, estimates found¹ that local OTT players created 45,106 jobs and contributed USD1.4 billion (THB 46.7 billion) in economic value to the Thai economy in 2020.

We need to make the most of Internet apps & services / OTTs and enable them to grow, to innovate further, to help our economies and our societies further. Public policy frameworks should be put in place that *encourage and support* the further development and use of online applications and services. Conversely, policymakers should be careful to refrain from introducing regulatory barriers which will hinder online services, and their full utilisation in Nepal, to the detriment of the development of its people and of its economy.

¹ [Innovative Policy Approaches to Thailand's Digital Economy](#), by Thammasat University Research and Consultancy Institute and commissioned by the Asia Internet Coalition.

This regulatory restraint is precisely what has been repeatedly recommended by the UN's International Telecommunications Agency (ITU) concerning 'over the top applications'. They underlined that *"[c]onsideration of the economic impact of OTTs should be based upon recognition of the fundamental differences between traditional telecommunication operators and OTTs, including inter alia, control of broadband Internet access, level of regulatory exposure, barriers to entry, competitive environment, level of substitutability between OTTs and traditional telecom services and interconnection to public networks."*

The ITU-T Recommendation D.262 standard which was judiciously mentioned by the Nepal Telecommunications Authority in its draft framework further emphasises the importance of the regulatory framework supporting, rather than hindering, online services: *"Member States should foster enabling legal and regulatory environments, and develop policies that are fair, transparent, stable, predictable and non-discriminatory; and that promote competition, foster technological and service innovation and encourage private sector investment incentives, in order to ensure the continuing growth and adoption of OTTs."*

2. High-level concerns with the proposed framework

The proposed regulatory framework aims to regulate OTT Communications Services, and considers the definition of such as "online services accessed and delivered over the public Internet that may be a direct technical/functional substitute for voice/video telephony and text messages."

The Government of Nepal should note that there are foundational differences between "communication-based OTT services" and telecommunications services which have significant regulatory implications. Telecommunication regulations were designed for fundamentally different, legacy voice and messaging offerings and may be a poor fit or have unintended consequences for communications apps.

- **Infrastructure control:** telecom services have typically been subject to rigorous regulatory frameworks on account of the exclusive resources (spectrum and numbering) and rights (rights of way and interconnection) they are granted. Meanwhile, OTTs are not allocated such rights or resources.
- **Consumer choice:** OTTs provide a much wider array of functionality to the benefit of consumers compared to telecom services. OTTs launch new features through app updates, and constantly provide consumers with innovative interactions such as group chats, images, avatars, GIFs, video calls etc., while telecoms is associated with voice and SMS services
- **Entry barriers:** entry barriers in the telecom sector are very high, due to scarce resources such as spectrum required to provide telecom services, upfront investments and licensing requirements. That is why every year we continuously see new OTTs being launched which is key to the sector's innovation and growth.
- **Symbiotic relationship:** OTTs drive demand for telcos' customers to subscribe to data plans and broadband services, and with OTT innovation there is demand for new high speed connectivity offerings in the market, which in turn makes the case for future network investments.

For telecommunications services, consumers typically have few choices and a limited ability to switch - telecommunications regulations were designed with these monopoly power considerations in mind.

The topic of OTT regulations has been discussed and considered multiple times at the ITU. Most recently at the 2022 Plenipotentiary Conference in October-November 2022, where the ITU member states overwhelmingly rejected proposals to regulate OTT apps like telecommunications services.

Furthermore, Nepal's draft OTT regulatory framework references recommendation [ITU-T. D.262](#) which also acknowledges the distinction between OTT apps and telecom services when considering policies and legal frameworks: “Member States should consider the fundamental differences between traditional international telecommunication services and OTTs, including the cross-border nature of OTTs, low barriers to entry for OTTs and integration of markets amongst other factors”.

Indeed, Internet applications and services (aka OTTs) with communications functionalities offer great choice, innovation and wide benefits to consumers and the economy, offering versatile ways to communicate, from video calling and messaging to new features we haven't even yet dreamed of. The vast majority of the online services are thus fundamentally different to traditional telephony, with many more and innovative functionalities that simply did not exist just two decades ago, from video calling to file sharing and collaboration, among many other features. This is why these applications are not confused with and do not attract the same consumer and market expectations compared to traditional telecommunications services. They should therefore not be regulated in the same manner, especially because content data should not be regulated like transmission.

We believe that the most reliable way to enable innovation in this area is to ensure a clear, predictable and balanced regulatory environment for businesses, which removes barriers to entry and obstacles to growth and adoption. The EU telecom framework, for example, applies greater regulation to public, interconnected communications services and applies only a light-touch regulatory regime to non-interconnected, number-independent services, for those few services that offer close substitutes to telephony and are marketed as such. Companies are already cognizant of, and addressing the concerns set forth in the preamble and the objectives to the Framework. **As such, should the regulation for OTT Communications Services be considered necessary, they should be tailored, fit for purpose, and take account of the diversity of offerings in the online ecosystem.**

3. Onerous requirements for licensing of OTT Services and establishing a local presence in Nepal

Requiring OTT communications applications to obtain a license, and register a branch office in Nepal, would create an additional legal obstacle and regulatory hurdle for existing providers and new entrants. This would potentially discourage their entry into a market, which would deprive individuals of access to useful global services, and potentially hinder the growth of the local digital economy.

Licensing of traditional telecommunications services was considered necessary because of the market power and consumer protection issues associated with their control of last mile access to the consumer and their use of spectrum, a valuable public resource.

These justifications do not exist in the context of OTT communications applications as competition is high, barriers to entry are low, consumers multi-home or switch services with ease, and a virtually unlimited number of OTT apps can coexist and be available to consumers on demand.

A mandatory licensing obligation is a disproportionate obligation for OTTs and would be inconsistent with international best practices. The European Electronic Communications Code recognizes this reality and as such treats number-independent interpersonal communication services (NI-ICS) separately from services that rely on the public numbering system, exempting NI-ICS from authorization and other regulatory requirements.

Normally, the concept of a local representative is to ensure that such a business operator is contactable. As long as there is a contact channel, the requirement of a local licensed and registered office is not necessary.

Registering and opening an office in a market should be primarily a business decision for companies. There are 100s of OTT providers. Some are well established while others are start-ups. **Requiring every OTT Communications Service provider to obtain a license and ensure local presence would be onerous and discourage investment. These requirements should be removed.**

4. Unclear terms related to the objective of protecting the rights of the OTT Consumers in regard to the service usage, data protection, and privacy

The rights of the OTT consumers in regard to Service Usage, Data Protection and Privacy are always top priorities of the OTT providers and the platforms are designed for privacy and data protection by default. **Therefore these concerns are already addressed even without a regulatory framework in place.**

5. Requirement for cooperation with TSPs

The proposed framework recognises the symbiotic, complementary relationship between OTTs and TSPs. The services that OTTs offer drive demand for telcos' customers to subscribe to their data plans and broadband services, which in turn makes the case for future network investment.

There is little need for this to be regulated as partnerships between OTT service providers and TSPs have grown organically, without any regulatory intervention thus far. By offering access to the Internet, TSPs enable users to access a multi-sided market of literally hundreds of millions of websites and applications, from all over the world. This access to a wealth of content, applications and services is enriching for people, and also a key underpinning for future economic growth. Through the voluntary partnerships and

indirect relations between TSPs and online services, the internet has expanded rapidly, connecting billions of people, businesses and communities, in an innovative and sustainable manner, fostering socio-economic benefits to all parties involved. **There is no need for these partnerships to be included within the scope of this proposed framework. The Government should refrain from imposing this as a condition for the provision of OTT Communications Services in Nepal. OTT providers are already partnering with the TSPs to establish cache servers depending on the traffic requirements for better customer experience.**

6. Unclear or burdensome requirements on establishing Content Delivery Network (CDN) inside Nepal

At present all large OTTs invest significantly in their own networks to ensure that users have the best quality of experience when making use of their services. In fact, imposing such a requirement will likely increase the cost of operations and penalise smaller (and even local) start-ups that may lack the resources to comply with this requirement to establish a localised CDN inside Nepal. **The proposed framework should remove this requirement, in the interests of driving innovation and preventing barriers to entry for digital services in Nepal.**