

Asia Internet Coalition (AIC) Comments on The Draft Indian Telecommunication Bill, 2022

20 October 2022

To,
Shri Ashwini Vaishnaw
Minister of Communications
Ministry of Communications, Government of India, New Delhi, India

Shri Anand Singh
Joint Secretary, Telecom
The Department of Telecommunications (DOT), Ministry of Communications

Re: Asia Internet Coalition (AIC) Comments on The Draft Indian Telecommunication Bill, 2022

I write to you on behalf of [Asia Internet Coalition](#) (AIC). We are an industry association of leading internet and technology companies. We seek to promote technology and policy issues in the Asian region, and we are fully committed to the cause of a safe and open internet.

At the outset, we thank the Department of Telecommunications (DOT), Ministry of Communications for giving the public the opportunity to provide comments on the Draft Indian Telecommunication Bill, 2022 released in the public domain on September 21, 2022 (**Draft Bill**).

In our capacity as a leading industry association, we would like to extend our appreciation to the DOT for undertaking the watershed task of revising legacy telecom laws in India and introducing a holistic and updated framework. In this regard, we note that the Draft Bill contains various noteworthy provisions that relate to simplifying ‘right of way’ related procedures, empowering the Central Government to provide relief in case licensees are undergoing financial hardship, introducing legal certainty and flexibility regarding spectrum management and so on. However, and at the same time, we would like to put forth certain comments that we have with the Draft Bill before the same is finalized and tabled in Parliament.

Specifically, we are concerned with the regulation of online services, such as over-the-top (OTT) communication services, internet-based communication services, [Machine-to-machine communication services](#), interpersonal communication services, data communication services, etc. within the purview of a law that ought to be limited to regulation of traditional telecom services. This is because we believe that services provided over-the-top of the public internet and traditional telecommunication services are not similar and should ideally be regulated under separate frameworks altogether (such as information technology laws for OTT services, and telecom laws for telecommunication services). Unlike OTT service providers, telecom service providers (TSPs) have the right to lease spectrum from the Government, obtain numbering resources, interconnect with the Public Switched Telephone Network (PSTN) and set up ‘right of way’. In fact, TSPs have always been subject to the rigors of telecom laws and Governmental oversight on account of these exclusive rights.

It is important to note that:

- The OTT industry is reliant upon innovation and flexibility in order to provide the users with unique services and experiences, as well as become economically viable.
- Barriers to OTT service providers are likely to detract from the Government's objective to develop a robust, competitive landscape in the telecommunication sector.
- The Draft Bill also stands contrary to the Govt's vision of a safe, open, trusted internet for all. A less competitive internet trends towards a less open internet. There's a risk that some regulatory interventions will undermine competition and entrench incumbent services, reducing consumer choice. The Open Internet is global, should be available to all, and should be built on open standards and the protection of human rights.

Thus, the same laws should not be extrapolated to OTT service providers – that primarily offer services for free and are entirely dependent on the public internet and network connectivity offered by TSPs to provide such services. We apprehend that doing so will adversely affect the ease of doing business in the internet industry, among other things. Subjecting OTT service providers to a licensing regime may also lead to the imposition of unwarranted Governmental oversight vis-à-vis their operations (such as in the form of stringent licence terms and conditions). This is likely to affect the existing nature of OTT services offered to the general public and may even lead to a scenario where users believe that they are unable to openly and freely use OTT services as a medium of expression¹ – and thus undermine their fundamental right to free speech and expression.

We strongly recommend that OTT service providers be kept out of the ambit of the potential licensing framework as license and entry fee burdens on OTT service providers are likely to act as economic disincentives and result in services becoming more expensive for users.

In view of the industry concerns detailed below, we urge the DOT to reconsider the Draft Bill in its entirety.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact us directly at Secretariat@aicasia.org or +65 8739 1490. Importantly, we also look forward to offering our inputs and insights, directly through meetings and discussions.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Jeff Paine".

Jeff Paine
Managing Director
Asia Internet Coalition (AIC)

¹Please note that the Supreme Court of India has, in the past, recognized that the right to free speech and expression extends to the medium over which it is expressed as well. Please see *Indian Express v. Union of India*, (1985) 1 SCC 641 and *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

Detailed Comments and Recommendations

1. Issue no. 1 – No transition period provided in the Draft Bill

- The Draft Bill in Clause 1(3) states that different dates may be appointed for the coming into force of different provisions.

Comments and suggestions:

- We note that the Draft Bill does not explicitly mention a transition period during which the entities that it seeks to regulate may comply with the obligations under it. This may have an adverse impact on businesses (especially entities sought to be covered by the Draft Bill which were not previously regulated under the telecommunication framework), as the lack of any specific transition period is likely to render such entities unable to plan their compliance obligations and investment requirements. Entities would require the Draft Bill to lay out a definitive timeline in accordance with which they can modify their business operations and make significant investments to adapt to the revised regulatory framework.
- The Draft Bill provides for multiple substantive provisions to be introduced by way of subordinate legislation (for instance, standards to be implemented with respect to telecommunication services, etc.). This further augments the above mentioned lack of clarity as even post enactment of the Draft Bill, the entities regulated thereunder may not have clarity on all the specific compliances required to be met and may struggle in working towards it.
- Thus, it is our submission that the DOT ought to consider providing a reasonable and clear transition period in the text of the Draft Bill, which also accounts for the time that different entities may require to comply with the provisions.

2. Issue number 2 – Overbroad definition of ‘telecommunication’, and ‘telecommunication services’ and ‘messages’

- The Draft Bill provides for a broad definition of ‘telecommunication’. It includes any transmission, emission or reception of any messages, by wire, radio, optical or other electro-magnetic systems, whether or not such messages have been subjected to rearrangement, computation or other processes by any means in the course of their transmission, emission or reception.
- The definition of ‘messaging’, which includes any sign, signal, writing, image, sound, video, data stream or intelligence or information intended for telecommunication. The definition of messaging, being broad has the potential to bring in-app messages and push notifications in internet based applications under the regulatory ambit.
- The Draft Bill also provides a broad definition of ‘telecommunication services’. It seeks to include services of any description made available to users over telecommunication, such as, inter alia, broadcasting services, electronic mail, internet-based communication services, OTT communication services and interpersonal communication services. The

definition is broadly worded, and the Ministry of Communications can include any other service to be telecommunication service by notification.

Comments and suggestions:

- **Definition of the term ‘telecommunications’ in the Draft Bill should be narrowed down** - In its current form, the definition of ‘telecommunication’ is likely to bring a large spectrum of telecommunication services — from telecom service providers to app developers within the regulatory ambit of the DoT. Since ‘telecommunication’ is defined to include ‘any messages’, it will cover the reception of any message on any electro-magnetic system, services such as video calls, emails, and interpersonal messages could also be impacted. ‘Telecommunication services’ also includes Machine-to-Machine (M2M) communications, which broadens the scope of licensing. The definition of ‘Message’ should therefore exclude data-based messages/platforms offered by businesses; and any in-app notifications/messages provided to users by businesses within the application. Provisions for commercial communications that mandate prior user consent should also be modified to exclude push messages and notifications of new features and pop-ups that are incidental to OTT communication services.
- We note that the definition is broad and does not distinguish between telecom infrastructure services and internet infrastructure services. . It is clear from the draft explanation that the intention of the Bill is to focus on regulation of Telecom services, which is the best approach as internet infrastructure is regulated under the IT act. Therefore, it is suggested that the draft definition be amended to specifically define the services accurately or carve out a distinction for internet infrastructure services. We note that since such messaging services are already regulated under the IT Rules, 2021, any additional regulatory oversight in the form of licensing will negatively impact the ease of doing business, hamper innovation and lead to over-regulation.
- **OTT service providers and TSPs do not provide substitutable services** – Services offered by OTT service providers and traditional TSPs are fundamentally different and cannot be regulated under the principle of ‘same service, same rules’. The services they offer are also not comparable with one another (for instance, please consider services offered by a TSP such as Airtel in comparison to services offered by Meta).

To elaborate, there exist technical and business differences between TSPs and OTT service providers – they operate in two separate layers (i.e., the application layer for OTTs and the network layer for TSPs), offer different functionalities and compete for different groups of customers. Where TSPs operate in the market that controls and operates the critical infrastructure for providing telecommunication services, OTT service providers operate in a market that enables them to offer applications that the public accesses for the exchange of content over the public internet (which is, again operated by TSPs). OTT service providers not only offer a wide range of services but also provide additional functionalities to traditional communication features like messaging (for instance, Telegram gives the users the ability to send stickers and GIFs, share files and locations, etc). Users also have the option to use traditional telecommunication services along with OTT services or use the former just by itself. We believe that they are well aware of the broader experience that OTT services provide and do not treat the same as interchangeable services.

While services provided by TSPs (including their own OTT services, as the case may be) may be used without any dependence on third party OTT services, the reverse does not

hold true – i.e., OTT services necessarily require the existence of services provided by TSPs. However, OTT service providers do not ‘free ride’ over the underlying infrastructure established by TSPs. The purpose for providing internet connectivity as a service is to facilitate the provision of other services through the internet, and the provision of such services by OTT service providers is a legitimate use of internet services. To that extent, TSPs are gatekeepers to the internet (for both OTT service providers and users) and are crucial for the operation of OTT services and in enabling user access to the same.

TSPs are also granted exclusive rights to use and monetize a limited public resource i.e., the spectrum, and control critical infrastructure. They further are entitled to right of way to build infrastructure, and provide interconnectivity services, as well as interconnect with the PSTN. It is on account of these rights and entitlements that TSPs have always been subject to Governmental oversight and regulation. OTT services are, as noted above, dependent upon this critical infrastructure to provide their services to the users. Further, they exercise no control over or have any rights on how critical telecommunication infrastructure is developed. In addition, TSPs are an established and powerful industry who have had the chance to develop and solder their importance to the economy over a substantial amount of time, as opposed to OTT service providers who are still at the initial growth stages in the Indian context. Thus, TSPs enjoy distinct advantages and benefits over OTT service providers, including but not limited to being the only link between the users and the OTT service providers. In light of the above, we submit that OTT services and traditional telecom services are different from one another and cannot be treated as substitutable services.²

In any event, while comparing these two services, we must also take into account other factors such as level of competition, respective markets of each economy, nature and features of the technology used, maturity of the industry, lifecycle of the products/services, impact on the Indian economy, etc.

- **Fundamentally different services have been combined under the definition:** While the definition of ‘telecommunication services’ includes services provided traditionally by TSPs, it also brings under its purview other services generally regulated by other frameworks. For instance, ‘OTT communication services’, which is also regulated under frameworks formulated by the Ministry of Electronics and Information Technology (MEITY). Clubbing all such services under the same definition indicates that they have similar features or underlying characteristics and may be regulated in the same manner. However, as has been argued above, this assumption is problematic as OTT services and services provided by TSPs are not substitutable. Providing equal treatment to unequal entities is also likely to be manifestly arbitrary in nature and be susceptible to Constitutional challenges in court. Accordingly, in order to facilitate the growth and development of

² This distinction between the two types of services (i.e., OTT services and telecom services) has also been recognized by TRAI in its [‘Recommendations on Regulatory framework for Internet Telephony’](#) dated October 24, 2017. Certain foreign jurisdictions have also recognized this distinction, such as the Australian Competition and Consumer Commission (ACCC), which has observed that there is no basis in requiring equivalent treatment of OTT and traditional voice services, as the substitution from traditional voice services to OTT voice services is limited by technical shortfalls. Consequently, the ACCC does not consider OTT services to be full substitutes for voice services currently. Please see Australian Competition and Consumer Commission – Communication Sector Market Study, April 2018, available at https://www.accc.gov.au/system/files/Communications%20Sector%20Market%20Study%20Final%20Report%20April%202018_0.pdf.

fundamentally different services, they must be regulated in a manner that acknowledges the same and appreciates their differences.

- **Different types of OTT services have functional overlaps:** OTT services operate on the application layer of the network and deliver their services over-the-top of the network layer. Thus, ‘OTT’ is the medium by which the services are provided. The type of services offered by way of this medium often have similar / overlapping functionalities to cater to user convenience and facilitate greater user choice. Often, OTT services also offer users different features – all combined into one service (for example, courier service apps allow users to coordinate with delivery partners, and ride-hailing apps allow users to speak to their drivers)

While the Draft Bill references ‘communication services’ in relation to OTT services and internet-based services within the definition of ‘telecommunication services’, it fails to provide any explanation or guidance on what would distinguish a communication OTT service from a non-communication OTT service. In that regard, the Draft Bill has not taken into account the above mentioned overlap between OTT services and thus does not provide any clarity on the same. This is likely to bring about uncertainty among entities that offer both types of services, i.e., communication, as well as non-communication services, as they may not be able to determine whether they are covered under the Draft Bill and required to comply with the obligations. Further, any disagreement between the Government authorities and such entities may result in extensive litigation – leading to an adverse impact on the ease of doing business in India.

That said, even if a test is developed to make such a distinction between communication and non-communication OTT services, it would not be accurate or beneficial as the identification of whether communication features are significant / central or ancillary to a service may depend on vague factors. Additionally, creating such a distinction between OTT services (who have far more in common with each other in comparison to services provided by TSPs) only creates an uneven playing field between services using the same medium to provide their service.

In the event that this is proceeded with, OTT services may find themselves burdened with onerous compliance obligations, and may be likely to pull out of investments in communication services and focus on services that may be perceived as ‘non-communication services’. The impact of this will be multi-fold – a) it will result in a decrease in the number of OTT service providers offering communication services in the market, thereby reducing competition, as well as hurting businesses (especially start-ups) that cater to users in India; b) it may lead to slowdown in research, development and innovation in communication technologies provided through OTT; c) it may adversely impact user experience as not only could the number of communication services available in the market reduce but several other services may also do away with their communication features to remain out of the ambit of the Draft Bill; and d) this may consequently lead to a loss of jobs as well, as innovation and investment in the sector decreases.

- **Overbroad scope of the Draft Bill due to the definition of ‘telecommunication services’** – As stated above, the definition of ‘telecommunication services’ includes a wide range of terms within it – thereby extending the scope of the Draft Bill and compliances thereunder. Further, given that the terms within the definition have not been explained further, it may

perpetuate confusion with respect to the types of OTT products/services the Draft Bill seeks to regulate. For instance:

- ‘Internet based communication services’: Such a term may include any communication service using the internet as a medium. Consequently, the same is likely to overlap with the term ‘OTT communication services’ and the Draft Bill does not provide any clarity regarding the inclusion of such similar terms. While ‘internet-based communication services’ is a commonly used term, it does not find any explicit reference in Indian or foreign law. Thus, without a distinct definition under the Draft Bill, entities may potentially be unable to determine if their service is an ‘internet-based communication service’.
 - ‘Interpersonal communication services’: This term too does not find any explanation or explicit reference in Indian law and thus, the risk of such term being misinterpreted cannot be ruled out.
 - ‘OTT communication services’: Similar to the abovementioned terms, Indian law does not make any explicit reference to this term. We find that such a broad term may potentially refer to any service offering that provides users the ability to communicate through the means of OTT. The Draft Bill also does not provide any specific method to differentiate between OTT communication services and other OTT services, which further contributes to the uncertainty around the terms.
- Thus, it is our submission that the definition of ‘telecommunication’ be revisited, and restricted to reduce its broad coverage. Further, we also submit that terms such as ‘internet-based communication services’, ‘OTT communication services’, ‘interpersonal communication services’, ‘data communication services’, ‘electronic mail’ etc. be removed from the definition of ‘telecommunication services’ before the enactment of the Draft Bill. This will, among other things, help avoid the creation of artificial distinctions between online services that are communication based, and those that are perceived as not being communication based. Instead, a more tailored definition may be used to limit the ambit of the Draft Bill to services provided through the network layer. The definition of ‘message’ under the Draft Bill should also be modified to exclude data/internet based communications as it renders the ambit of regulation too wide. The broad powers of the Central Government to notify any other services as ‘telecommunication services’ must also be restricted. If there is any need to revise these definitions in the future, it must be done following detailed stakeholder consultations. In furtherance of this point, the distinction between spectrum controlling and spectrum utilising entities should continue to be maintained.
 - Finally, it may also be noted that various countries like Argentina, Chile, Israel, South Korea, Thailand have not adopted any formal regulatory framework for OTT services, to promote innovation.
- 3. Issue no. 3 – Lack of clarity in the definitions of ‘telecommunication infrastructure’, ‘telecommunication equipment’ and ‘telecommunication network’**

- The Draft Bill defines ‘telecommunication infrastructure’ as including the infrastructure that is used, or capable of being used for the purpose of telecommunications, as laid down in Schedule 5.
- Further, the Draft Bill defines ‘telecommunication equipment’ as: “any equipment, appliance, instrument, device, material or apparatus, including customer equipment, that can be or is being used for telecommunication, and includes software integral to such telecommunication equipment;”
- Additionally, the Draft Bill defines ‘telecommunication network’ as: “a system or series of systems of telecommunication equipment, or telecommunication infrastructure, or both, including terrestrial or satellite networks or submarine networks, or a combination of such networks, used or intended to be used for providing telecommunication services, but shall not include customer equipment.”

Comments and suggestions:

- We note that the broad definition of ‘telecommunication infrastructure’ could include cloud service providers as a part of the infrastructure used to provide telecommunication services since they support telecommunication service providers. Such a broad definition could lead to inclusion of cloud service providers within the regulatory ambit of the DoT. It is essential to note that cloud services are already regulated by the MEITY.
- Separately, we also note that neither the definition nor the Draft Bill provides any further guidance on what “software integral to such telecommunication equipment” may include. We find that this is likely to bring about confusion regarding the kinds of software and associated devices envisaged to be brought under the revised regulatory framework. Entities may also find it difficult to determine whether their software must adhere to the compliances outlined in the Draft Bill for telecommunication equipment, such as with respect to the standards that the DOT may issue for telecommunication equipment.
- The definition of ‘telecommunication infrastructure’ should be modified to exclude cloud services. Use of such broad language could lead to inclusion of cloud services under the telecom regulatory ambit. As cloud services do not provide connectivity or communication services, it is rational to exclude such services from the ambit of the telecommunication regulatory ecosystem.
- Additionally, the definition of ‘telecommunication equipment’ includes terms which seem to mostly relate to tangible equipment, and the inclusion of ‘software’ does not appear to be comparable.
- Finally, the inclusion of the phrase ‘any equipment,’ could lead to cloud service providers being considered as a telecommunication equipment since they are used to transmit information to data centers for telecommunication platforms.
- Additionally, we also note that the definition of ‘telecommunication network’ is also too broad and vague, and could conceivably include data centers, cloud services and enterprise services within the ambit of its definition.
- Thus, it is our submission that the DOT may narrow the definitions of ‘telecommunication infrastructure’, ‘telecommunication equipment’ and ‘telecommunication network’ to exclude ‘data centers’, cloud services and enterprise services from their ambit. We also propose that the DOT may modify the definition of telecommunication equipment to specifically state telecommunication equipment used to provide telecommunication services (subject to definition of telecommunication services being made clearer) and potentially exclude ‘software integral to provide telecommunication services’. from the definition of ‘telecommunication equipment’.

- We further submit that the definition of ‘telecommunication network’ should exclude enterprise cloud services or business services are offered to organizations. Since such services are governed by the MEITY, they should not be brought within the Draft Bill.

4. Issue number 4 – Broad definition of ‘user’ and user identification

- The Draft Bill defines a ‘user’ as: “any person using a telecommunication service.” The term has been further referenced in other clauses of the Draft Bill, for instance Chapter 9 which contains clauses on protection measures for users and their duties.
- The Draft Bill also mandates licensed entities to ensure that the identity of its customers is unequivocally identified through a verification process.

Comments and suggestions:

- The scope of ‘user’ under the Draft Bill appears to be wide-ranging and the same may be narrowed. For instance, user-oriented frameworks such as the Consumer Protection Act, 2019 (CPA) define a ‘consumer’ as a person who hires or avails of any service for a consideration. Further, the definition of ‘service’ under the CPA includes ‘telecom’ in its ambit and excludes the rendering of any service free of charge. Even in practice, the current telecommunication framework primarily covers users paying consideration to TSPs to avail their services.
- Thus, it is our submission that the DOT may consider limiting the scope of ‘user’ to those persons who avail a telecommunication service for a consideration.
- The requirement to ‘unequivocally identify’ users would result in collection and storage of large volumes of personal information of users. This could also raise privacy concerns as all private entities will have to mandate sharing of personally identifiable information of its users with receivers of communication from them. The clause contradicts principles of data minimization as service providers will have to collect additional users' data to comply with this provision.
- We submit that verification of user identity should be restricted to pure communication/connectivity services. It would not be feasible to implement verification processes especially for communication services through emails and pure-play video conference applications.

5. Issue number 5 – Existing frameworks already regulate OTT service providers

- Various existing legislations already regulate several aspects of OTT service providers and the services offered by them – such as content regulation, interception, competition, consumer protection and other concerns that may impact OTT services and its users. For instance:
 - The Information Technology Act, 2000 (IT Act) and rules and regulations thereunder administered by the MEITY govern various aspects of OTT services. The IT Act empowers the Central Government to undertake lawful interception and monitoring with respect to a wide range of entities, including OTT service providers. Similarly, Section 79 of the IT Act governs the operations of ‘intermediaries’ (a term which

encompasses several OTT service providers) and discusses the safe harbour protections provided to the same against liability for third party content (subject to certain conditions). These conditions include but are not limited to complying with due diligence requirements provided under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, (**IG Rules**), such as adhering to information requests by the Government within the prescribed timelines.

- Other provisions of the IT Act, such as Section 69, Section 69A and Section 70B (read with the rules issued thereunder) also govern security, interception and monitoring requirements that overlap with the Draft Bill.
- While the Government is in the process of developing a data protection legislation, currently the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (**SPDI Rules**) issued under the IT Act provides the general framework for data protection in the country, including with respect to protection of personal data of users of OTT services. The SPDI Rules prescribe, inter alia, notice, consent, and security practices for the processing and storage of sensitive personal data or information.
- As per our understanding, the upcoming data protection framework and ‘Digital India Act’, in all likelihood, may also apply in a sector agnostic manner and include OTT service providers within its ambit.

We note that the Draft Bill is likely to prevail over these aforementioned laws in the event of a conflict. Thus, this may place OTT service providers in a precarious situation from a regulatory perspective where they are unsure of how to resolve conflicting obligations under different laws, and which to prioritize over another (for example, in order to avoid losing safe harbor protection under the IT Act).

Thus, it is our submission that in light of the fact that such extensive frameworks regulating various aspects of OTT services (which include OTT communication services, internet-based communication services, etc.) already exist, further regulation of the same under the Draft Bill ought to be avoided. This may result in an overlapping and unpredictable legal regime for OTT service providers – and consequently affect their ease of doing business. As the Draft Bill also empowers Government authorities to introduce subordinate legislations in relation to various substantive provisions, it may bring about further uncertainty in how existing compliance requirements and future compliances will be harmonized with each other and how contradictions will be reconciled, if any.

6. Issue number 6 – Compliance requirements imposed on TSPs should not be extended to OTT service providers

- As stated above, TSPs are provided with the exclusive privilege in the telecommunication industry of, inter alia, commercializing a limited public resource like spectrum. As TSPs are provided with this privilege, their primary task is to make such resource useable to the rest of the society. Consequently, a licensing regime is vital to ensure that the spectrum is

used and distributed appropriately and efficiently. It also enables oversight that may be required to ensure equitable distribution amongst a limited pool of private players and the Government.

Comments and suggestions:

- At the outset, telecommunication infrastructure / systems and services have been recognized as essential connectivity infrastructure and considered at par with roadways, railways, waterways, airlines, etc., for the development of India, by the Government in the National Digital Communications Policy, 2018. As noted above, TSPs own and control critical infrastructure and resources in the country to provide access to telecommunication services to the public at large. Accordingly, if the TSPs do not utilize their licenses to access / harness such infrastructure and resources effectively, it may have adverse impacts on the public at large. The country may face a slowdown in development due to misuse and lack of availability of a critical State-owned resource. This may also impact the public's ability to exercise their rights and freedoms. Furthermore, any adverse effects on network infrastructure may have the potential to cripple the communication network in the country.
- In comparison to the primary role TSPs play in the telecommunication industry, OTT service providers do not have any control over such critical infrastructure. They merely provide their services on the application layer facilitated by such infrastructure. The higher compliance obligations required on TSPs cannot be equally applied to OTT service providers, as the services provided by the latter are not similarly critical.
- Moreover, the telecommunications industry is accompanied by high entry barriers and thus has only a few players. Consequently, their regulation is required for user protection. However, the same does not apply in the case of OTT service providers, which operate in a market with low entry barriers, thus enabling unlimited competition. For instance, [Hike Messenger](#) / StickerChat which in 2016 had an estimated 100 million registered users, recently retired from the Indian market likely due to stiff competition.
- Thus, it is our submission that OTT service providers should be left out of the potential licensing frameworks to be developed under the Draft Bill as the responsibility and accountability required from TSPs are not comparable to and should not be extended to OTT service providers. Separately, licensing conditions proving to be excessive or onerous on the development of TSPs may be revisited in themselves.

7. Issue number 7 – High compliance burdens on OTT service providers may adversely impact innovation

- The Draft Bill seeks to bring OTT service providers and TSPs under the same regulatory framework. While the same is unlikely to be practical for the reasons stated above, there is also potential for the OTT market to be significantly impacted in an adverse manner.

8. Issue number 8 – Lifecycle of OTT services

- At the outset, the inherent lifecycle of OTT services compared to services provided by TSPs are quite different. We have elaborated on the same below.

Comments and suggestions:

- Long license terms provided to TSPs for their services are logical as the technologies and infrastructure underpinning such services take a substantial period of time to develop and set up. On the other hand, OTT services are more dynamic in nature and evolve constantly. For instance, an OTT service within a period of 10 years may introduce a varied set of key functionalities to its users, to the extent that at the end of that period the application may no longer resemble itself when it was first launched.
- Such rapid and dynamic developments are also because of the nature of the OTT market and its inherent competitiveness. OTT service providers are constantly required to innovate and evolve to compete with new applications deploying futuristic technology. For instance, OTT services may also enter and exit the market within a short span of time. However, even when certain OTT services and providers exit the Indian market, we believe that their impact persists as they provide inspiration to other applications and services – who may, in turn, model their applications or services on them to provide a better consumer experience. The imposition of a license regime may have adverse impact on OTT services and the freedom required to innovate, develop and keep pace with emerging technologies, leaving them vulnerable to being replaced by newer services by the time the license term ends.
- Thus, it is our submission that OTT services should be left out of the ambit of the potential licensing framework to be developed under the Draft Bill, as it will detract from the inherent nature of OTT services, which is to evolve and grow at a rapid pace.

9. Issue number 9 – Absence of guidance on OTT licensing regime

- As noted above, OTT service providers are already subject to regulation under the IT Act and its rules and regulations. They are also subject to the CPA and are likely to be governed by the Government's upcoming laws, including a data protection law. In this regard, please note the following:

Comments and suggestions:

- The Draft Bill does not expressly delineate the contours of a licensing regime for OTT service providers. The Government is empowered to determine and elaborate on the same in the form of subordinate legislation. This leaves all OTT service providers that are potentially affected by the Draft Bill in a lurch as they have no way of knowing what their licensing regime will look like. This is exacerbated by the fact that the Government has the power to suspend OTT services in the event of breach of licensing conditions. In addition, and as noted above, we are concerned that a licensing regime will impact the way users of OTT services express themselves through the medium of the internet. In the event this regime seeks to impose restrictions on this fundamental right, it is critical that the same be spelled out within the text of the law.
- In any case, if the primary reason behind inclusion of OTT services in the Draft Bill is to protect users, we submit that OTT service providers are already subject to the IT Act, etc. which contain adequate protections for the rights of users, while simultaneously ensuring that they are protected from harm as well.
- By regulating OTT service providers within the Draft Bill as potential licensees, OTT service providers are being subject to the purview of another regulator (i.e., the Telecom Regulatory Authority of India (**TRAI**), as well as DOT). However, it is important to note that they are currently already subject to the jurisdiction of various ministries / regulators /

agencies under the IT Act – including the MEITY, Ministry of Information and Broadcasting, Ministry of Home Affairs, and Indian Computer Emergency Response Team.

- The requirement of a license, approval or authorisation for provision of telecommunication services such as OTT services runs contrary to TRAI’s observations that a comprehensive regulatory framework for various aspects of services referred to as OTT services is not recommended beyond the extent laws and regulations prescribed presently and that the matter may be looked into afresh when more clarity emerges in international jurisdictions. Additionally, TRAI also recommended that no regulatory interventions are required in respect of issues related with privacy and security of OTT services.
- We recommend that a specific clause may be incorporated in Clause 3 and 4 of the Draft Bill to clarify that OTT service providers will continue to be regulated by the IT Act.
- Thus, we submit that the Government may consider limiting the scope of the licensing regime in light of previous recommendations by regulators such as TRAI. Further, the Government should consider the scope of licensable services to exclude features that may be incidental or additional to a service and not its core functionality (for instance, chat feature that is incidental to many services).

10. Issue number 10 – Government surveillance to be balanced against privacy rights

- The Draft Bill gives the Central Government, the State Government (in certain cases) and authorized officers the power to carry out certain actions in the event of a public emergency or war, for public safety, in the interest of national security, sovereignty, integrity or security of India, etc. This includes, in general, the ability to intercept, detain or suspend communications, to take temporary possession of telecommunication services, telecommunication network, etc. and to issue relevant directions.
- Furthermore, what amounts to public emergency or public safety has not been defined. This is critical when read in the context of the Ministry’s earlier consultation paper titled ‘Need for a new legal framework governing Telecommunication in India’ wherein industry had asked for SoPs/ and detailed procedures for any kind of suspension of services including internet shutdowns.
- Provisions relating to interception/disclosure of messages/non-transmission of messages has also been included in the event of in the interest of the sovereignty, integrity or security of India, friendly relations with foreign states, public order. The usage of vague, undefined terms such as ‘public safety’, ‘emergency’, the absence of any judicial oversight and lack of accountability on surveillance powers may open the Bill to scrutiny. Further, while the Bill provides that an appeal may be preferred, it does not disclose any details of the appellate authority.
- Notably, the threshold for ‘public safety’ or ‘public emergency’ has not been defined in the Bill, and it is left to the subjective interpretation of the Executive. Similarly, ‘public emergency’ or ‘interest of public safety’ may be used as grounds to authorize surveillance or order internet shut-downs as well. Internet shutdowns cost the country more than \$580 million in 2021, with 59 million people impacted by the halt of wireless services that lasted for over 1,150 hours, a [research report](#) by internet privacy group top 10vpn says.

Comments and suggestions:

- The substantive grounds provided in the Draft Bill on the basis of which such actions may be taken by the Government are broad in nature. The Draft Bill does not provide any

guidance on how terms such as ‘public safety’, ‘public interest’, etc., may be interpreted, and neither is a definitive maximum time limit provided within which the Government may undertake such actions. In the absence of such a maximum time limit, Governmental action may continue for a prolonged / indefinite duration. Further, there is no reference to any requirement vis-a-vis procedural safeguards that Government actions must be subject to (such as the right of an affected party to be heard). Even with respect to existing rules relating to interception (i.e., Rule 419A of the Indian Telegraph Rules, 1951) that may continue to apply to Clause 24 of the Draft Bill in light of Clause 53, a statutory guarantee for safeguards has not been provided.

- Consequently, the risk of such interception provisions under the Draft Bill being subjected to review before court of law and potentially struck down cannot be ruled out. In this regard, we may refer to the *Shreya Singhal v. Union of India*³ case wherein the Supreme Court highlighted the significance of a reasoned blocking order under Section 69A of the IT Act, which is subject to procedural safeguards (including providing a hearing to the originator and intermediary).
- Government actions under such provisions are also likely to be subjected to judicial review against the privacy principles set out by the Supreme Court in the case of Justice. K S Puttaswamy v. Union of India.⁴ In fact, it is settled law that Governmental surveillance measures must meet the three-fold requirement of (i) legality, i.e., the action must be sanctioned by law; (ii) need, i.e., the proposed action must be necessary in a democratic society for a legitimate aim; and (iii) proportionality, i.e., the extent of such interference must be proportionate to the need for interference.⁵
- Additionally, as stated above, the existing regulatory framework under the IT Act already contains provisions relating to lawful interception and monitoring which bring within its ambit a wide range of entities – such as persons in charge of a computer resource, intermediaries, etc. – and thus may also cover a range of OTT service providers. We do not see any logical justification in bringing forth an additional set of lawful interception and monitoring provisions applicable to OTT service providers.
- Thus, it is our submission that the DOT may consider providing an exemption under Clause 24 and 25 of the Draft Bill for entities operating in the application layer as they are already covered under the IT Act framework. Further, we also submit that the DOT may introduce safeguards and oversight mechanisms in line with existing mechanisms under IT Act and current telecom laws to tackle misuse.
- Additionally, the provisions of the Draft Bill empower the Government to suspend any telecom service relating to any particular subject, or taking control of services/ equipment/ networks. These provisions are also bereft of any procedural or other safeguards. Accordingly, it is recommended safeguards are put in place to ensure no arbitrary suspensions are ordered.
- In any case, we believe that at the very least a minimum defined time period should be prescribed for Government surveillance and possession of telecommunication services.

11. Issue number 11 – Encryption is necessary to safeguard the privacy of users

³ AIR 2015 SC 1523

⁴ (2017) 10 SCC 1

⁵ This was also held in the Aadhaar judgement, i.e., *Justice K.S. Puttaswamy v. Union of India*, (2019) 1 SCC 1

- The current Unified License (UL) framework prohibits licensees from employing bulk encryption equipment in their network. The Draft Bill does not provide any clarity on whether with the proposed licensing framework, the terms under the UL framework will also become applicable to OTT service providers.

Comments and suggestions:

- The Draft Bill, among other things, appears to be focused on preventing cyber frauds and ensuring user safety. Given this, it should be noted that one of the ways OTT service providers and email services enhance security features for users is by deploying encryption. The lack of clarity under the Draft Bill on whether the encryption-related prohibitions under the UL framework may apply to OTT service providers ought to be dispelled, as the same may inhibit OTT service providers from implementing encryption methods to enhance security. Further, requiring OTT service providers to break encryption, for example, to enable interception is likely to weaken the security measures deployed by them, and in turn worsen the problem the Government is trying to address – i.e., tackling cybercrime. In any case, malicious actors may still make use of alternative technology to work around real time monitoring and other modes of interception.
- OTT communication service providers such as Whatsapp, Signal etc., which practice the privacy protecting process of End-to-End encryption (E2EE), may now also be required to not transmit, or intercept or detain or disclose any message or class of messages to the officer specified in the surveillance request/order. Encryption is also undermined by the Bill, which requires licenced entities to “unequivocally identify” all its users, and make such identity available to all recipients of messages sent by such a user.
- Even where the Bill has tried to bring in certain safeguards through the ‘public safety’ and ‘public emergency’ requirements, it must be noted that the power to intercept messages transmitted through a “computer resource” already exists under S.69 of the **Information Technology Act, 2000**. However, S. 69 does not contain the ‘public safety’ and ‘public emergency’ requirements. Effectively, this means the Government can bypass the ‘public safety’ and ‘public emergency’ threshold by conducting the surveillance under S.69 of the existing IT Act. This makes the procedural safeguards provided under 24(2) essentially meaningless.
- The encryption methods used by OTT service providers also help increase the trust of users in their services and it is likely that users choose to communicate on those services that offer encryption so they reasonably expect their online privacy to be maintained. Diluting encryption mechanisms may have detrimental consequences for OTT service providers as it may result in a dilution in users’ trust in any given OTT provider and in their service. Further, users may potentially shift to other services if OTT services can no longer provide them with the assurance of security and privacy. Requiring OTT services to dilute encryption mechanisms to facilitate surveillance or interception, is likely to put informational privacy⁶ and freedom of speech and expression via the internet⁷ at high risk in India.
- In addition, we note that there are other provisions in the Draft Bill that may result in dilution of encryption measures. For instance, the Draft Bill requires licensees to identify their users using a verifiable mode of identification, and even make available the identity of the sender to the receiver of a given message. Other provisions mandate the sharing of

⁶ As laid down in *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

⁷ As laid down in *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

information in the control or possession of licensee with the government on request. These requirements may, in effect, cause OTT service providers to dilute their encryption mechanisms in order to comply with the Draft Bill.

- This provision seems to have been brought in to prevent cyber frauds and reads very similar to the requirement for voluntary verification of users under the IT Rules as well as KYC verification by Cloud Service Providers and VPN Networks under the CERT-In directive.
- These provisions essentially **strip away the user’s right to stay anonymous and puts an obligation on service providers to identify**, with complete assurity, every user. Such a broad and excessive requirement, in the absence of a data protection law, fails to prioritize user safety and security, and should accordingly be removed.
- Thus, it is our submission that the DOT may consider enabling OTT services to retain their encryption features on an ‘as is’ basis and without any dilution.

12. Issue number 12 – Priority call routing during public emergencies

- The Draft Bill under Clause 24(1)(b) empowers the Central Government or State Government to provide for a priority call routing scheme to ensure that certain calls are routed on priority during public emergencies, if they may find it to be necessary or expedient to do so.

Comments and suggestions:

- As stated above, since it is not practicable to distinguish clearly between OTT communication services and non-communication services, it may prove to be difficult to determine which entities should implement the requisite emergency services.
- There is also a lack of clarity on whether the systems used by OTT service providers to offer their services may be able to implement requests for priority call routing. In the event that such a system is to be provided, it may require OTT service providers to make significant investments to upgrade the relevant IT infrastructure and may require fundamental changes to the OTT service being provided.
- Thus, it is our submission that the DOT consider limiting requests for priority call routing to only TSPs or entities that are connected to the PSTN / provide essential communication services. In the event that OTT service providers are required to provide such emergency services, they ought to be permitted to do so on a best-efforts basis.

13. Issue number 13 – Government’s power to conduct searches and obtain information

- Clause 51 of the Draft Bill enables specially authorized officers of the Central Government and other State-level / Union Territory-level Governments to seek information, documents, or records in the possession or control of licensees relating to telecommunication services, etc. for the purpose of “any pending or apprehended civil or criminal proceedings”. Authorized officers of the Central Government are also empowered to search premises

under Clause 50 in the event it is believed that any unauthorized telecommunication network or equipment with respect to which a punishable offence has been committed is kept or concealed.

- Clause 51 should be accompanied by clearly laid down guidelines which provide for circumstances in which information can be requested. In order to also maintain confidentiality of such information, the Bill must prescribe modes of channels, such that information is shared only through secured channels.
- With regard to Clause 50 and Clause 51, the Draft Bill does not stipulate any minimum procedural safeguards that have to be adhered to before a search is conducted. It is unclear how powers under these provisions of the Draft Bill will be exercised vis-à-vis existing criminal laws, such as the Code of Criminal Procedure, 1973 and clause 6 of the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011. Even with regard to the power to seek information in relation to ‘apprehended’ criminal or civil proceedings, the Draft Bill does not clarify what would constitute an apprehended proceeding. In fact, typically, law enforcement is empowered to seek information under laws such as the Code of Criminal Procedure, 1973 for the purpose of conducting investigations after an FIR is filed and not in relation to ‘apprehended’ proceedings.
- Thus, we request the DOT to reconsider these provisions under the Draft Bill and leave the same to the remit of other existing laws – that contain adequate search, seizure, and information request provisions. Alternately, this provision must be amended to specifically call out instances at which these powers will be exercised; and ensure this power is only exercised after all other powers to investigate have been exhausted. Further, guidelines must also be prescribed on the number of officers that can conduct such searches and lay down clear responsibilities and rules to be adhered by such officers during such search.

14. Issue number 14 – Users may be adversely impacted by the regulatory and financial burdens on OTT service providers

- As has been stated above, the Draft Bill seeks to bring OTT service providers under a similar regulatory framework as TSPs and may also require them to comply with similar financial obligations. We would like to highlight that OTT service providers on their own accord make and have made significant investment in improving the internet, the services offered by them, and user experience. However, excessive regulatory burden sought to be imposed by virtue of the Draft Bill may end up affecting the quality of service that OTT service providers offer to users and the innovation that users have come to expect in relation to OTT services.

Comments and suggestions:

- Financial obligations such as license fees and entry fees imposed on OTT service providers may disincentivise and also prevent many of them from entering the market, which in turn may substantially reduce the competition in the market – thereby, directly impacting the choices and quality of services available to users. Having to make such heavy investments

just to operate may also prevent OTT service providers from investing in improving the quality of their services and developing the user experience further.

- Further, as most OTT service providers offer their services free of cost or at minimal pricing, the increased cost of operation due to such financial and compliance obligations (such as payment of entry and licence fees) may require them to pass on the costs to the users. Users who are unable to afford such costs may be forced to refrain from using such services. This will create an inadvertent digital disparity in India.
- Thus, it is our submission that OTT service providers be kept out of the ambit of the potential licensing framework as license and entry fee burdens on OTT service providers are likely to act as economic disincentives and result in services becoming more expensive for users.

15. Issue number 15 – OTT service providers already implement user protection measures

- User protection is one of the foremost priorities of OTT service providers as it is crucial factor in obtaining and retaining user base in the hyper-competitive OTT services market.

Comments and suggestions:

- Several collaborations are already underway between various OTT service providers and the Government, and OTT service providers are also acting independently, to incorporate better security features and tailor their applications so as to reduce spam, spreading of fake news, prevent phishing attacks, online harassment, etc. Laws such as the IG Rules and the CPA also contain measures that are in the interests of users' well-being and safety.
- Thus, it is our submission that requiring OTT service providers to comply with additional user protection measures may be reconsidered to avoid regulatory overlaps.

16. Issue number 16 – Existing framework for unsolicited commercial communication

- In furtherance of protective measures for users, the Draft Bill empowers the Central Government under Clause 33 to prescribe measures for 'specified messages'. From the explanatory note, we understand that this is in relation to unsolicited calls or messages. It has further been provided in the Draft Bill that such measures may include - (i) obtaining prior consent of users for receiving certain messages, (ii) the preparation and maintenance of one or more 'do not disturb' registers' to ensure that users do not receive specified messages without prior consent, or (iii) a mechanism to enable users to report specified messages received in contravention to these requirements.

Comments and suggestions:

- As 'specified messages' has been defined broadly under the Draft Bill, the scope of Clause 33 is unclear. As per the definition, the clause may, in addition to unsolicited commercial communication, also include the exchange of legitimate commercial messages on OTT services within its ambit – such as online purchase related messages, etc.

- Considering the broad definition of ‘message’ and ‘telecommunication’ under the draft Bill, even promotional messages sent in the form of push notifications may require users to provide consent. A reading of the definitions of ‘messages’ and ‘telecommunication’ together may be interpreted broadly to include all messages using telecommunication. For instance, notification messages within an app (i.e., in-app notifications/pop-up notifications), should be excluded from the scope of ‘specified message’.
- Furthermore, there already exists a specific framework to address unsolicited commercial communication – the TRAI’s Telecom Commercial Communications Customer Preference Regulations, 2018 (TCCCPR). At present, it is unclear how the ‘do not disturb’ framework under the Draft Bill (on which too there is limited clarity) will function vis-à-vis the opt-in framework and creation of customer preference registration facilities under the TCCCPR. Additionally, the upcoming data protection framework may also require notice and consent mechanisms informing the user of the purpose for which their personal data may be used (such as commercial communication).
- Thus, it is our submission that the DOT may consider removing the clauses in relation to ‘specified messages’ and let the same be regulated under existing frameworks (i.e., the TCCCPR) and the upcoming data protection framework, once enacted.

17. Issue number 17 – Licensing

- We understand that the Draft Bill consolidates the government’s powers to provide licenses/authorizations/permissions to entities seeking to provide telecommunication services, telecommunication networks, and/or telecommunication infrastructure. However, it does not provide for simplification of the licensing framework, which is left to the discretion of the DOT.
- Under the Draft Bill, the government has an exclusive privilege to provide telecommunication services and permit their operations in the country.
- It is further noted that as the licenses are cancellable in nature, it may lead to uncertainty to businesses and onerous license terms.

Comments and suggestions:

- In its recommendations on “Regulatory Framework for Over-The-Top (OTT) Communication Services”, TRAI observed that a comprehensive regulatory framework for OTT services is not needed beyond the existing laws and regulations. It was of the opinion that such regulation could be looked into afresh when more clarity on OTT regulation emerges in international jurisdictions. Additionally, TRAI also recommended that no regulatory interventions are required in respect of issues related with privacy and security of OTT services. Therefore, the requirement of a license, approval or authorization for provision of internet-based communication services is contrary to TRAI’s recommendations on OTT regulation.
- We note that as per Article 39(b) of the Constitution of India, the state policy must be directed at distribution of material resources for community good. Traditionally, ‘material resources’ include spectrum and network services. Application services that are distributed over traditionally licensed network services cannot be considered as a resource or service which is owned and controlled by the government. Therefore, such services should not fall within the ambit of licensing.

- Bringing internet communication services within the regulatory ambit of DOT would lead to a levy of entry fees, license fees and registration fees in addition to license terms and conditions. The definition of ‘Licensed’ activities should be differentiated from a non-licensed activity, where a mere authorisation or permission can suffice.
- Thus, it is our submission that a license regime should only extend to those services which traditionally qualify as ‘material resources’ and are under the ownership of the government – such as spectrum assignment. Further, internet based and network services should be treated differently. The definition of ‘telecommunication services’ should be limited to those services that provide pure-play connectivity services and not include internet based services.
- We also submit that licensable services under the Draft Bill should exclude incidental services such as email, chat features, video, data calling, internet-based communication services, M2M communication services and OTT communication services and private networks.

18. Other issues:

- **Amendment in TRAI Act, 1997:** The TRAI Act, 1997 is sought to be amended by the Draft Bill. The Draft Bill seeks to limit the power of TRAI by doing away with the requirement of obtaining its recommendations before any new category of service providers (including licensees) is introduced and in relation to the terms and conditions of a license granted to service providers. We believe that this requirement should be retained, as it will ensure that the Government is able to consider all comments and inputs – especially from a niche regulator such as TRAI – before introducing any changes to the licensing regime under the law.
- **Implementation of compliances may require significant product changes:** A number of changes to the existing products / platforms of regulated entities (such as OTT service providers) are likely to be required in order for them to comply with certain provisions, including the requirement to broadcast messages in public interest. This, coupled with a lack of transition timelines, may result in business uncertainty and affect the ease of doing business.
- **Standards applicable to telecommunication services, etc.:** The Draft Bill empowers the Central Government to prescribe standards and directions with respect to telecommunication equipment, telecommunication services, etc. However, there is no clarity regarding which ‘standards’ will be imposed under these provisions. Further, it appears that this power is not limited to regulated entities under the law and applies to all telecommunication equipment, services, etc. This provision leaves room for a lot of ambiguity and business uncertainty and we strongly recommend that this be limited the scope of such powers and clearly define the areas under which such standards may be formed and by which authorities. In the interests of regulatory certainty, we request that the DOT expressly limit the same to specific regulated entities. The existing standards by DoT on manufacture/import/sale/distribution of telecommunication equipment in India should be allowed to remain in force. If new standards are introduced, they should be aligned with the existing domestic and international standards. The DoT must conduct extensive consultations before the implementation of any technical standards. Any failure to do so

could lead to conflict and increased costs to existing systems. This can also harm innovation, affect interoperability and hurt ease of doing business.

- **Inadequate guidance on implementation of subordinate legislation:** The Draft Bill does not provide appropriate substantive guidance on the manner in which the DOT will be empowered to formulate subordinate legislation under the Draft Bill. We believe that this may expose the Draft Bill to legal challenges on the grounds of excessive delegation. We accordingly request the DOT to ensure that all substantive provisions are enshrined within the Draft Bill.
- **Government powers to suspend internet services:** The Draft Bill empowers the Government to suspend any telecom service relating to any particular subject. The corresponding provisions in the Bill are bereft of any procedural or othersubstantive safeguards. We request the DOT to ensure that safeguards are put in place to ensure no arbitrary suspensions are ordered. In **Anuradha Bhasin v. Union of India**⁵, the Supreme Court read into existing Telecom Rules, and added safeguards requiring (a) proactive publication, (b) time limitation and (c) periodic review of internet shutdown orders. Further, provisions allowing the government to take control over the use of telecommunication networks, services and equipment, suspension, or prohibition of specified telecommunication equipment, as well as taking over the control and management of any telecommunication network, service, or infrastructure should be subject to checks and balances to ensure that this power is not misused.
- **Imposition of penalties and punishments:** The Draft Bill empowers the Government to impose penalties – which can span civil and criminal repercussions. The penalties under the Bill cover damages to telecommunication infrastructure or network. It also gives the government the freedom to decide on the quantum of penalty/ fine and compensation. Coupled with regulatory uncertainty and the wide power of the government to notify additional telecommunication services operating on license, the penalties could cause an impediment in innovation and ease of doing business. We recommend that criminal penalties are deleted.

Concluding remarks:

- As discussed above, we believe that OTT service providers and TSPs share a mutually beneficial and symbiotic relationship. The former cannot be said to ‘free ride’ on the latter.
- To address concerns of TSPs, such as revenue losses, the DoT may consider liberalizing the licensing framework and restrictions applicable to TSPs, developing innovative pricing models, etc. As stated above, OTT service providers already contribute to the telecommunication industry by making significant investments in the development of passive telecommunication infrastructure. However, as OTT service providers do not offer services comparable to TSPs, it is not reasonable to impose an entirely new and onerous regulatory framework on them to distribute the infrastructure development cost and licensing fees. For any persisting concerns regarding non-level playing field between OTT service providers and TSPs persist, the competition regulator should be sought to be referred to as it has the expertise to undertake the relevant examinations from an antitrust perspective.

We would once again like to express our gratitude to the DOT in undertaking a thorough exercise in revising the telecommunication framework. In light of our submissions above, we urge the DOT to organise a consultation with the industry to discuss their concerns with the draft law. We look forward to engaging in constructive discussion with the DOT on the aforementioned issues highlighted by us before the Draft Bill is introduced in Parliament.
