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# OTT Services - Should They Be Regulated or Not?

■ Tejveer S. Bhatia & Rohan Swarup

**O**ver the past decade, the telecom industry has witnessed massive changes in respect to infrastructure, customer growth and most importantly the growth of mobile broadband. Also, today, the way people communicate and go about their day-to-day lives has changed drastically owing to the increasing use of smartphones and significant growth of mobile broadband. In addition, over 2 million connected smartphones were in use in 2015 globally, and it has been estimated to increase three folds by 2020.

Today, downloading OTT (Over-The-Top) applications such as Whatsapp, Skype, etc. by smartphone users have increased. As per a recent study, the most common OTT messaging application Whatsapp has 700 million users, which is the highest, followed

by Skype with 300 and Viber with 290 users, respectively. The increased use of OTT messaging applications as well as VoIP over traditional mobile and SMS, has impacted the revenue generation of telecommunication operators.

## UNDERSTANDING THE CONCEPT OF OTT SERVICES

The term Over-the-top (OTT) refers to all the applications and services that are accessible over the Internet and works on operators' networks that provide internet service to their users. In other words, OTT refers to services provided over the Internet rather than over the provider's own managed network. Some of the common examples of OTT services include -

- Chat Applications such as WhatsApp, WeChat, Facebook Messenger, etc.



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- Video Streaming Services such as Netflix, Amazon Prime, YouTube, etc.

- Voice Calling and Video chatting services such as Skype, Facetime, etc.

OTT players, which rely on IP based networks to reach their customers, do not make any direct contribution towards the cost of providing it.

OTT players aren't just enabling users to access their services at a remarkably lower cost but are also encouraging more and more users to opt for IP-based low cost or free services. In addition, they are constantly introducing innovative services in the communication market, which as a result is helping them create a bigger user base. Also, owing to the increase in the number of smartphone users for making payments, gaming and communicating, OTT players are advancing beyond the traditional voice and messaging services offered by the network operators.

## **BENEFITS OF OTT SERVICES**

In the past, the benefits of economic transformation that is driven by online and OTT services had a propensity to be concentrated primarily in the developing countries. However, today, with the acceleration of the digitization process, more and more people across the globe are connected to the Internet, which resulted in accruing these benefits to both developed and developing countries.

Even though, OTT offers several benefits, it disrupts several traditional arrangements by substituting traditional telephony and broadcasting to a certain extent. Also, they offer many capabilities that go way beyond traditional services.

For example -

- A VoIP service such as Skype, for instance, is not only a telephony substitute but also a means of enjoying rich videoconferencing.
- Instant messaging services can

provide far richer experience than traditional SMS services and they are to some extent supplanting.

- OTT video services such as YouTube provides not only access to professionally produced content but also to user-generated content; thus, simplifying and enriching interactions for end-users.

## **OTT SERVICES IMPACT ON SOCIETAL WELFARE**

There has always been concerns since the advent of OTT services regarding the disruptions it has caused. The major concern among the network service providers is the lost revenues owing to the substitution. Also, owing to increased traffic, the costs of service providers due is increasing. Furthermore, national governments have lost on taxes, and there has been transfer of welfare between countries. It is important to understand that societal welfare is the sum of consumer and producer welfare. However, the considerable gains to

consumer welfare are often forgotten. The online services have a propensity to intensify competition; thus, reducing the profit margin. In addition, they also reduce the inefficiencies that are caused by uninformed or rather wrongly informed consumers.

Nevertheless, OTT services has devoid of any doubt impacted the revenues of traditional services. Even though, the declination of revenue is apparent, especially for SMS, the actual cause is yet to be proven. However, the usage trend is suggestive of the fact that substitution is consistent and this is a major concern.

## SHOULD OTT SERVICES BE REGULATED?

With the rise of both customer base and revenue of the OTT players, regulatory concerns in terms of number of jurisdiction has increased. In past few years, there has been copious complaints from both telecom network operators and owners regarding the unfair competition they have been facing from the OTT players, who aren't subjected to same regulatory obligations. Also, similar concerns are raised by network operators offering traditional services in context of new online service providers who might pose as a challenge for them. They claim that OTTs have impacted adversely on the traditional telecom operators' business model. The stakeholders as well have raised their concerns regarding the alleged unfair competition by OTTs owing to 'lack of level playing field', and lack of regulatory framework and OTT policies.

However, there are certain regulatory challenges. Some of these are -

- **Authorization and licensing:** To which services should these apply?
- **Country of jurisdiction:** Whose rules govern? The country of origin, or the country of consumption?

- **Competition law and economics:** Are current rules appropriate for OTTs?

- **Quality of Service (QoS):** Providers of OTT services are rarely subject to equivalent obligations and may not be able to assure QoS.

- **Promoting the creation, operation and use of OTT and related online services:** Ubiquitous access is clearly important.

- **Security and privacy:** OTT services raise issues in these complicated areas, but not necessarily the same issues as traditional services.

- VoIP caller ID "spoofing", OTT bypass, and other forms of VoIP abuse.

## DIFFERENT TYPES OF REGULATIONS AND THEIR APPLICABILITY IN OTT SERVICES

### PRICING REGULATORY

In the present competitive environment, it is the market force that is more effective than regulation in providing the consumers a vast choice of services at reasonable prices. Therefore, price regulation can only be imposed on dominant operators, who have the capability of abusing their market power and engage in anti-competitive practices. However, this type of regulation doesn't apply to OTT service providers even though they might possess similar market power, which is equally subject to abuse. Furthermore, in the present scenario, it is a mandate for leading operators/service providers to file the price of any telecommunication service they intend to offer with local regulator and obtain prior approval before offering the service/price to end-users. While prior approval isn't a mandate for non-dominant operators need; however, they must publish the prices, terms and conditions for their standard telecommunication services for end-user's information. And, even this does not apply to OTT service providers.

However, many argues that it might not be suitable to apply this type of pricing application and publication requirement for OTT service providers because they do not charge consumers for using their services, and where consumers are already paying telecom service providers/owners a fee for using the broadband/data services over which they operate.

### TAXING REGULATIONS

Today, the telecom service providers and owners have to bear the burden of various tax provision imposed by national, regional, and local authorities. In several countries, for instance in India, taxes applied to telecommunication services are bigoted. In addition to the corporate taxes, they are also liable to pay Spectrum Usage Charge (SUC), License Fee (LF) and Universal Service Obligation Fund (USOF) on their Adjusted Gross Revenue (AGR). Also, many telecom operators/network owners are liable to pay taxes in every country they are operating. And, due to lack of regulations, OTT players are able to adopt innovative, flexible and agile business model, which are far more optimized. Moreover, unlike the telecom service providers, OTT players are only required to pay taxes to the country where their headquarter is located.

Furthermore, like few large multinational traditional MNOs, some of OTT service providers take advantage of different tax regimes. They establish themselves in low tax countries while providing their services to users in high tax countries; thus, making huge amounts of profit. A few OTTs that have offices in certain jurisdictions have recently been under scrutiny in various jurisdictions that are considered to be tax-haven countries.

### QUALITY OF SERVICE REGULATIONS

It is mandatory for telecom operators to comply with the stringent rules of

Quality of Service (QoS) obligations for the services they offer. Also, in some jurisdictions, it is obligatory for telecom service providers to provide customer care services and put mechanisms in place to address customer complaints. In the contrary, it is not mandatory for OTT service providers to provide any QoS guarantees, instead QoS issues are blamed on network providers. However, many argue in favor of OTT players that they make efforts towards the improvement of user experience by providing questionnaires at the end of VoIP calls where they ask about the quality of user experience as well as their investments in data compression and quality of service.

## INTERCONNECTION REGULATION

Numerous telecommunication operators have brought up concerns regarding the market share and power of major OTT service providers as gatekeepers to attract content, instead of the operators themselves. They have also claimed that by generating demand for bandwidth, OTT service providers generate expenses in (next generation) infrastructure investment; however, they haven't made any fair contribution to these expenses through the 'interconnection' arrangements which they make with telecom operators. In addition, the regulatory treatment of traditional voice services using national numbering plans to guarantee interconnection and interoperability differs considerably from that of OTTs (such as online voice services). The termination (completion) of voice calls to fixed or mobile networks is highly regulated in all most all developed countries owing to the supposed network operator market power over the telephone number. There are no obligations for communications applications running on the Internet such as VoIP and messaging applications to be interoperable. However, some argue that if OTT players convert to a standardized process using telephone numbers, it will throttle innovation, reduce existing product features, and result in additional costs being passed on to consumers.

## DATA PROTECTION AND PRIVACY

Certain jurisdictions impose regulatory requirements for law enforcement upon the telecom operators making them bound to offer data protection and security as well as the means to enable interception of data (such as browsing histories, online purchases, e-mail or messaging communications). Furthermore, the regulators strictly monitor privacy requirements and data protection of the telecom operators for the users. However, it is not the case with OTTs. OTTs regulation is practiced on limited or rather on a voluntary basis. Such service providers, unlike telecom service providers, face minimal regulatory constraints. The limits put on their business usually exist only to the extent of addressing the security and privacy concerns associated with user data.

Therefore, the lack of regulations in terms of data protection and privacy makes OTT services vulnerable. To top it up, several OTT communication solutions do not support encryption. And, this enables attackers to easily eavesdrop into an OTT service (such as VoIP conversation and IM services). In addition to the obvious problem of confidential information being accessed, the use of unencrypted VoIP and IM communication channels also facilitates identity theft or fraud. The other security threat is traffic analysis, which involves determining who is talking to whom. Such information can be beneficial to cyber criminals preparing an attack, e.g. for committing corporate espionage.

It can now be clearly deciphered that there are two sides of the debate - "whether OTT services should or should not be regulated". On one hand, there are multiple facets of OTT services that are common with existing telecom and broadcasting platforms. On the other there are many other scenarios and points of difference between them. Therefore, the best or perhaps to most appropriate negotiation considering the present state of OTT in India is a "light touch" approach to regulation. [W](#)



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