FOCUS: OTT

THE INTERNATIONAL OTT CONUNDRUM

OTT Regulatory policies differ from every country. Indian OTT segment also faces roadblocks which will be eased out soon. This article focusses on OTT policies across the globe.

INTERNATIONAL PRACTICES

The regulatory practices in respect of OTT services followed in some countries are outlined below.

AUSTRALIA

In 2018, the Australian Competition and Consumer Commission (ACCC) conducted a study of the communication sector looking specifically at OTTs and the need for future access regulations.

The report concluded that, ‘there is no basis for requiring equivalent regulatory treatment of OTT and traditional voice services’. The ACCC reasoned that ‘the extent of substitution from traditional voice services to OTT voice services is limited by technical shortfalls (such as any-to-any connectivity) and consequently we do not consider OTT services to be full substitutes for voice services at this time.’

One of the findings of the report is that ‘the competitive relationship between OTT services and the traditional communications services they replicate is likely to be different for each type of service. To the extent that competition from OTT services acts as a constraint on pricing, there may be a case for reducing or removing existing economic regulation of traditional communications services.

In Australia, complete or nationwide internet shutdowns have not been reported. Certain websites or online platforms may be blocked or filtered to prevent access to illegal or harmful content, such as websites involved in the distribution of child pornography or extremist materials. The Australian government has also

2018 में, ऑस्ट्रेलियाई प्रतिष्ठान और उपभोक्ता आयोग (एसीसीसी) ने विभिन्न रूप में ऑटीटी और पारंपरिक वोयस सेवाओं के मामले में प्रतिस्पर्धा का नियंत्रण का कोई आधार नहीं है। एसीसीसी ने तर्क दिया कि पारंपरिक वोयस सेवाओं से ऑटीटी वोयस सेवाओं में प्रतिस्पर्धा की सीमा क़तनी कमी (जिसे किसी से कहीं भी कम) है। इसलिए चाहिए और पारंपरिक रूप से हम हम अभी ऑटीटी सेवाओं को वोयस सेवाओं के लिए पूर्ण विकल्प नहीं मानते हैं।
implemented measures to combat online piracy and copyright infringement, resulting in the blocking of specific websites. ISPs in Australia are required to comply with legal obligations and cooperate with law enforcement agencies when necessary.

**AUSTRIA**


The EECC introduced a new, broad definition of electronic communication services, which now includes:

(a) Number based interpersonal communication services (hereinafter NB-ICS).

(b) Number-independent interpersonal communication services (hereinafter NI-ICS) as defined in article 2 EECC.

The respective definitions in the Austrian TKG 2021 read as follows:

“Art 4 Definitions

‘number-based interpersonal communications service’ means an interpersonal communications service which connects with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which enables communication with a number or numbers in national or international numbering plans;

‘number-independent interpersonal communications service’ means an interpersonal communications service which does not connect with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which does not enable communication with a number or numbers in national or international numbering plans;”

With this new definition of “communications service” in the TKG 2021, many of the Internet-based services are in a direct competitive relationship with conventional telephony and SMS. Number-independent interpersonal communications services (NI-ICS) are now included in the
FOCUS: OTT

The scope of certain sector-specific regulations. The TKG 2021 places them on an equal footing with traditional communications services in some areas (keyword: "level playing field"), such as Security and integrity, Service Quality, Interoperability, Universal service fund, Objection procedures and procedural rules (Duty to notify contractual conditions), Information requirements and Monitoring of competition.

BANGLADESH

The Bangladesh Telecommunication Regulatory Commission (BTRC) has been empowered by the Government under the Bangladesh Telecommunication Regulation Act, 2001 (Act) to issue directives. Over-the-top (OTT) services are creating new dimensions in the entertainment industry and creating true substitution of the incumbent voice-based telecom services. As a consequence, this phenomenon is asking for the overhaul of the regulatory regime telecom sector. Consideration of the economic impact of OTTs is 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.

Internet Protocol Telephony Service Provider (IPTSP) operators’ OTT services shall be operated and regulated under the following existing policy, regulations and guideline:

(i) International Long Distance Telecommunications Services (ILDTS) Policy 2010;
(ii) IPTSP licensing Guidelines;
(iii) Interconnection Regulations, 2004;
(iv) Quality of service Regulations, 2018.

OTT means an application accessed and delivered over the public internet that may be a direct technical/functional substitute for traditional calling (& messaging) services. OTT user shall specifically refer to a user who is using a mobile based application to make a call (and/or send message) either to another OTT user or to a conventional subscriber (with a number) in PLMN/PSTN/IPTSP network.

BANGLADESH

বাংলাদেশ দুরান্তর নিয়ন্ত্রক আইন (বিটিআরসি) কো নিদিষ্ট জারি করার জন্য, বাংলাদেশ দুরান্তর নিয়ন্ত্রক আইন, 2001 (আইনের বিভাজন) তথ্য সংশ্লেষণ ধারার তথ্য যা আসার জন্য করা হয় এবং মূল দায়িত্ব উদ্ধৃতি দুরান্তর সরঞ্জামের কার্যকরতা বাড়ানো করার জন্য হয়। পরিণামস্বরূপ এই ঘটনা নিয়ন্ত্রক ব্যবস্থা দুরান্তর ক্ষেত্রে অন্যান্য চূল পরিবর্তন করা হয়। পরিণামস্বরূপ এই ঘটনা নিয়ন্ত্রক ব্যবস্থা দুরান্তর ক্ষেত্রে অন্যান্য চূল পরিবর্তন করা হয়। ওটিটির কর্তিত প্রভাবের পর বিচার পার্থিক দুরান্তর আইন অন্তর্ভুক্ত ও ওটিটির বীর গুরুত্ব অন্তর্ভুক্ত করা হয়। পরিণামস্বরূপ এই ঘটনা নিয়ন্ত্রক ব্যবস্থা দুরান্তর ক্ষেত্রে অন্যান্য চূল পরিবর্তন করা হয়। ওটিটির কর্তিত প্রভাবের পর বিচার পার্থিক দুরান্তর আইন অন্তর্ভুক্ত ও ওটিটির বীর গুরুত্ব অন্তর্ভুক্ত করা হয়।

| 1 | অন্তর্ভুক্তিকর্তা সংবাদ দুর্গীতি (এলডিটিএইচ) নীতি | 2010 |
| 2 | আইপিটিএইচ লাইসেন্সিং ইন্টারনেট | 2004 |
| 3 | ইন্টারনেট নিয়ন্ত্রণ নিয়ন্ত্রণ | 2018 |
| 4 | নিয়ন্ত্রক ব্যবস্থা নিয়ন্ত্রণ | 2021 |

ওটিটির কর্তিত প্রভাবের পর বিচার পার্থিক ইন্টারনেট এগুলো এই নীতির নীতি যা অন্তর্ভুক্ত ও নিয়ন্ত্রক করা হয়।
OTT (mobile app) based calling service (offered by nationwide IPTSP) is allowed into the PLMN and PSTN network, in accordance with Directives83 on Mobile Applications Based (Over-the-Top, OTT) Calling Services of the IPTSP.

BTRC will decide the specific interconnection capacity for IPTSP operators offering app-based calling service. Based on the considerations of different factors, BTRC will approve the interconnection capacity for individual service providers. The modality (technology) of the interconnection shall be decided by BTRC. For either type of technology (circuit or IP based), the IPTSP operator will provide an appropriate traffic monitoring system to the concerned division of BTRC.

OTT providers are required to have commercial negotiation with the infrastructure providers, for their services to be allowed through incumbent network. These commercial negotiations consider how much of the network resources of the incumbents is used for the particular OTT and the cost of the network resources. It is also considered whether the service offered by the OTT is a substitution to the core service offered by incumbent.

**BRAZIL**

In the current framework, there are services that do not require a licence as they are classified as a value-added service (serviço de valor adicionado, SVA). These services “complement” and “assist” telecommunication activities, and are considered neither telecommunication nor broadcasting services.

Over-the-top services (OTTs) are considered as Value-added services in Brazil. OTT services are not covered under any license and are not regulated in the country.

**EUROPEAN UNION**

The European Union (EU) has adopted the new European Electronic Communications Code (EECC) on the 11th of December 2018. The EECC is revising the framework to clearly regulate these new services. There are now two new regimes: one for number-independent service providers (such as instant messaging), the other for number-based service providers (such as VoIP). On the one hand, if OTT services offer access to publicly assigned numbering

आईपीटीएसपी एप्स के मोबाइल एप्सकेजन आधारित (ओवर-डे-टॉप, ओटीटी) कॉलिंग सेवाओं पर निर्भरों के अनुशार पी-टॉल एप्स और पीपीटीएसपी नेटवर्क में ओटीटी (मोबाइल एप्स) आधारित कॉलिंग सेवाओं (द्वारा प्राप्त आई पीटीएसपी द्वारा प्रदान की जाने वाली) की अनुमति है।

ब्राजीली एप्स आधारित कॉलिंग सेवाओं प्रदान करने वाले आईपीटीएसपी ऑपरेटरों के लिए विभिन्न इंटरकनेक्शन क्षमता तथा करेगा। विभिन्न कारकों के विचार के आधार पर, ब्राजीलियन व्यक्तिगत सेवाएँ प्रदाताओं के लिए इंटरकनेक्शन क्षमता की मंजूरी देगा। इंटरकनेक्शन की पसंद (तकनीकी) ब्राजीलियन द्वारा तथा जानी गई। किसी भी प्रकार की तकनीकी (सर्विस किट या आईपी आधारित) के लिए आई पीटीएसपी ऑपरेटर ब्राजीलियन के संबंधित प्रमाण की उचित ड्राफ्ट निर्माण प्रणाली प्रदान करेगा।

अंतर्राष्ट्रीय पदाताओं को मैजुडा नेटवर्क के माध्यम से अपनी सेवाओं की अनुमति के लिए दूरींची द्वारा पदाताओं के साथ वाणिज्यिक बातचीत करने की आवश्यकता होती है। ये वाणिज्यिक बातचीत इस बात पर विचार करती है कि परिस्थितियों के नेटवर्क संबंधियों का कितना उपयोग विशेष ओटीटी और नेटवर्क संबंधियों की लागत के लिए किया जाता है। यह भी विचार किया जाता है कि किसी ओटीटी द्वारा दी जाने वाली सेवा मैजुडा द्वारा दी जाने वाली मूल्य शेयर का प्रतिशत है।

ब्राजील

ब्राजील में ऐसी सेवाओं की जिनके लिए लाइसेंस की आवश्यकता नहीं है, वे अनेक मूल्य वर्धित सेवा (सर्विस्क्रिप्ट के वेलोर एडिशनलों, एसवीएस) के रूप में विकसित किए गए हैं। ये सेवायें दूरसंचार गतिविधियों को "पूर्त" करने और "सहायता" करती हैं और इस से न तो दूरसंचार और न ही प्रमाण प्राप्त होता जाता है।

ब्राजील में ओवर-डे-टॉप (आईपीटीएसपी) सेवाओं के मूल्य वर्धित सेवाओं के रूप में माना जाता है। ओटीटी सेवाओं किसी भी लाइसेंस के अंतर्गत नहीं आती है और देश में विनियमित नहीं है।

यूरोपीय संघ

यूरोपीय संघ (ईस्कु) ने 11 दिसंबर 2018 को नये यूरोपीय इलेक्ट्रॉनिक संचार कोड (ईस्कु) को अपनाया है। इसके साथ नये सेवाओं को स्पष्ट रूप से विनियमित करने के लिए दूरींची को संयोजन कर रहा है। अब दो साल बाद सेवायें हैं: एक संचार क्वालिटी सेवा पदाताओं (जैसे नकाल सेटिंग) के लिए, दूसरी संख्या आधारित सेवा पदाताओं (जैसे ओवरआईपीएस) के लिए। एक और यह ओटीटी सेवायें सार्वजनिक
resources, they are subject to similar rules as the traditional telecommunications operators. On the other hand, if they only offer “number-independent interpersonal communications services”, they will be subject to a new and lighter regime.

At first, this new set of obligations was supposed to be implemented in every EU country before the 21.12.2020. However, by October 2021 only eight countries (Finland, Hungary, Denmark, Greece, Bulgaria, France, Germany, and Italy) implemented the new framework in their national law.

The European Commission decided in April 2022 to refer Spain, Croatia, Latvia, Lithuania, Ireland, Poland, Portugal, Romania, Slovenia and Sweden to the Court of Justice of the European Union over their failure to fully transpose and communicate to the Commission how national measures transpose the EU Electronic Communications Code.

In July 2021, the European Union Agency for Cybersecurity (ENISA) published its ‘Guideline on Security Measures Under the EECC’ (4th Edition), confirming that the security provisions in the EECC for number-independent interpersonal communication services (NI-ICS) are the same as for the number-based services. The said guideline mentioned, inter alia, as below:

“SUPERVISION REGIME FOR NI-ICS PROVIDERS
In general, the security provisions in the EECC for NI-ICS are the same as for the number based services. Both are subject to (normal) ex-ante, supervision, and are required to provide information, submit to security audits and be subjected to investigation of non-compliance by the competent authorities. However, because these providers do not normally exercise actual control over the transmission networks, there may be different risks for these providers, and certain security measures may not be needed, if justified on the basis of a risk assessment.”

FRANCE
France has implemented the EECC via an Ordinance published on the 26.05.2021 and two subsequent decrees issued in September and October 2021. As a result, it is now compulsory for VoIP and OTT operators to respect the obligations set out in the EECC.
FOCUS: OTT

A press release by the French Regulator (ARCEP) in July 2022 mentioned that the transposition of the European Electronic Communications Code in May 2021 gave ARCEP newfound powers, including the regulation of new over-the-top (OTT) providers, which provide calling and instant messaging services, and updating the universal electronic communications service, to keep pace with the population’s changing consumption habits.

GERMANY

In 2019, there was a proposal for a new regulatory framework to monitor content on online platforms. A fully modernized Telecommunications Act (Telekommunikationsgesetz, TKG) has come into force in Germany on 1st December 2021. OTT-I providers are regulated under telecommunications law for the first time. OTT-I services facilitate individual and group communication in the form of language, images, videos, or other data using the internet protocol only over the open internet, without offering content.

In contrast, OTT-II services do not fall within the scope of Telecommunications Act. OTT-II services include content elements, ranging from search engines and on-demand platforms to information portals.

INDONESIA

To enhance legal certainty, especially with the rapidly developing digital platforms, the Ministry of Communication, and Informatics of the Republic of Indonesia (MOCI) has issued the Regulation regarding Private Electronic System Provider (Regulation) on 16th November 2020, which was promulgated and effective since 24th November 2020.

This Regulation is aimed to complete a regulatory framework regarding the management and supervision of electronic system providers by private entities (private ESPs). This Regulation provides clarification on the terms and requirements for registration, and most importantly removing data localization.
The Regulation introduces an obligation (Article 3 (1) and (2) of the regulation) for private TSPs to be registered with the MOCI through the Online Single Submission (OSS) system. This obligation extends to all private TSPs that operate internet portals, websites, and applications used for specific purposes.

**SINGAPORE**

Infocomm Media Development Authority (IMDA) has taken a two-pronged approach to telecom licensing:

(a) Facilities-based operators (FBO), which refers to the deployment and/or operations of telecom networks.

(b) Service-based operators (SBO), which refers to utilizing telecom network elements from an FBO to provide telecom services.

(i) Individual SBO license, where individual licensing is required (Managed Data Network Service, MVNO, IX, IP Telephony, M2M etc).

(ii) Class SBO license, where only registration with IMDA is required (Interconnected VOIP, International Calling Cards, Call-back services etc).

Internet based Voice and Data Services (communications OTT service provider) must obtain a Service-Based Operating (SBO) licence that prescribes only a minimum quality of service standards. In contrast, TSPs require a Facilities-Based Operations licence, which have far greater regulatory obligations to fulfill than SBO licensees. They are required to pay higher licence fees and have roll out obligations to fulfill as per the license. They are also required to implement and support number portability; provide interconnection; pay for the use of radio frequencies and comply with the IMDA’s Quality of Service standards.

The government has implemented measures to regulate online content and combat illegal activities, such as:

- **Fines** for non-compliance with regulations
- **Suspension** of services
- **Blocking** of websites

**Regulatory Obligations**

- **Facilities-Based Operations**
  - Payment of license fees
  - Rollout obligations
  - Implementation of number portability
  - Compliance with Quality of Service standards

- **Service-Based Operations**
  - Registration with IMDA
  - Compliance with quality of service requirements

**Example Policies**

- **Facilities-Based Operators**
  - Payment of license fees
  - Rollout obligations
  - Implementation of number portability

- **Service-Based Operators**
  - Registration with IMDA
  - Compliance with quality of service requirements

**Key Considerations**

- **Regulatory Environment**
  - Compliance with regulations
  - Regulatory requirements

- **Operational Challenges**
  - Implementing regulatory requirements
  - Compliance with quality of service standards

**Conclusion**

The IMDA’s approach to telecom licensing has been effective in ensuring compliance with regulations and maintaining quality of service. Further, the government continues to implement measures to regulate online content and combat illegal activities.
as the spread of fake news, hate speech, or online scams. These measures involve targeted actions against specific websites or online platforms that violate local laws or regulations. In some cases, access to certain websites or content may be restricted or blocked temporarily. Singapore has strict regulations in place to maintain social harmony and national security, which may involve monitoring or restricting certain online activities. However, complete or nationwide internet shutdowns have not been reported in Singapore.

TRINIDAD AND TOBAGO

The topic of OTTs was first considered by the Telecommunications Authority of Trinidad and Tobago (TATT) in its consultative document, “Towards the Treatment of Over-the-Top (OTT) Services” in June 2015. In addition to evaluating the impact of OTT voice over Internet Protocol (VoIP) services within the industry, the document also aimed to engage the public on pertinent issues relating to OTTs. At that time, the TATT Authority took the decision to subsume previous discussions on OTT issues and net neutrality into one document addressing both topics.

In July 2018, the TATT Authority began public stakeholder discussions on the topics of net neutrality and OTT regulation through its consultative document Discussion Paper on Net Neutrality and OTT Services in Trinidad and Tobago (the Discussion Paper). The Authority sought feedback on the document from stakeholders with respect to the proposed guiding principles and regulatory approaches to net neutrality and the treatment of OTT services in Trinidad and Tobago.

In October 2021, the Authority published the decisions on recommendations (DORs) and the final version of the Discussion Paper. Based on feedback from that consultation process, and considering the dynamism of the industry, TATT indicated that future consultations on both topics would continue in separate frameworks on net neutrality and OTTs.

TATT has signaled some interest in introducing regulations to explicitly govern OTT services, particularly those which function equivalently or similarly to the traditional services and use numbering resources to connect to the PSTN.

TATT published “Framework on Over-the-Top Services” in which it outlined the measures in place to address the spread of fake news, hate speech, or online scams. These measures involve targeted actions against specific websites or online platforms that violate local laws or regulations. In some cases, access to certain websites or content may be restricted or blocked temporarily. Singapore has strict regulations in place to maintain social harmony and national security, which may involve monitoring or restricting certain online activities. However, complete or nationwide internet shutdowns have not been reported in Singapore.

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FOCUS: OTT
Services (OTTs) in Trinidad and Tobago” in August 2022 for a first round of consultation. In the proposed framework, TATT defines Over the Top Services as “Content, service or application, accessed by the public via the Internet, that may be a direct substitute for, and/or may compete with a public telecommunications and/or broadcasting service.” and that the scope of the proposed Framework is limited to OTT communications (voice and messaging) and OTT media services. This Framework presents TATT’s recommendations on the treatment of OTT services accessed in Trinidad and Tobago.

TURKEY

Within the scope of the Mobile Call Termination market, it was evaluated that in Turkey, OTT messaging services, generally put some degree of competitive strain on mostly SMS/MMS services. In this regard, the tariff control obligation on SMS/MMS termination was lifted for mobile network operators. The licenced operators in Turkey complain about the OTTs that these providers are not regulated and should be regulated like licensed operators.

The amending law, passed and published on 13 October 2022 defines OTT services and OTT service provider as below:

“Over the top service: electronic communication services between persons within the scope of auditory, written, visual communication that are provided through a publicly available software independent of operators or the internet service provided to subscribers and users who have internet access.

Over the top service provider: Natural persons or legal entities providing services that are covered by the definition of over the top services.”

The law gives a clear power to The Information and Communication Technologies Authority (ICTA) (Turkish: Bilgi Teknolojileri ve İletişim Kurumu (BTK)) to regulate and authorize OTT service providers considering the

[FULL TEXT]
characteristics of the OTTs. However, currently BTK is closely monitoring the practices of the other countries, and possible regulation proposals will be evaluated in the near future.

**UNITED STATES OF AMERICA**

Non-interconnected OTT communications apps are not regulated as telecommunications services under US communications Act.

The US distinguishes between ‘telecommunications services’ (e.g. voice telephony) and ‘information services’ (e.g. text messaging). Telecommunications services are regulated more heavily than information services.

The US Congress has found that the ‘Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation’.

Under US law, the policy of the US is ‘to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.’

While the United States has not experienced a complete internet shutdown, there have been instances where specific websites or online services have been temporarily restricted or blocked. These actions are usually taken for reasons related to national security or during periods of emergency.