



## **Response to Niti Aayog's Draft Guiding Principle for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India**

### **Background**

Consumer Unity & Trust Society (CUTS)<sup>1</sup> expresses its gratitude to Niti Aayog, for inviting comments and suggestions on the draft Guiding Principle for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India (draft principles).

### **About CUTS**

In its 35 years of existence, CUTS has come a long way from being a grassroots consumer centric organisation based in Jaipur to opening overseas Resource Centres in Vietnam, Africa, Switzerland, and most recently in the United States of America. It continues to remain an independent, non-partisan and non-profit economic policy research and advocacy group, while working on various programme areas, such as Trade, Economics & Environment; Consumer Action, Research & Training; Human Development; and Competition, Investment & Economic Regulation. It has been working towards enhancing the regulatory environment through evidence-backed policy and governance-related interventions across various sectors and national boundaries. For further details regarding CUTS, please visit: <http://cutsinternational.org/pdf/About-CUTS-2018.pdf>

CUTS has observed a few critical issues in the draft principles, which may impede the chase to their objectives. These have been discussed in the subsequent sections.

### **Analysis**

*Principle 1: OFSP operators should remain in compliance with all applicable laws, regulations and rules in force in India.*

Given the ambiguous regulatory landscape, multiple judicial decisions and state level bans, coupled with the lack of clarity in the definition of Online Fantasy Sports Platforms (OFSPs), it may be prudent for the guidelines to lay down the currently applicable, regulations and rules which OFSPs need to adhere to, till the draft policy is frozen and there is regulatory clarity for OFSPs.

*Principle 2: OFSP operators will be required to keep statistical data to track player/user performance on their platforms and submit the same to the self-regulatory organisation periodically to demonstrate that the formats deployed by the operator are skill predominant.*

Such statistical data may constitute Non-Personal Data (NPD) or business data. Presently, deliberations are on-going for framing the governance framework for NPD.<sup>2</sup> Also, such business data may be proprietary in nature. Accordingly, sharing the same may not be in the

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<sup>1</sup> Website: <https://cuts-international.org/>

<sup>2</sup> [https://static.mygov.in/rest/s3fs-public/mygov\\_160922880751553221.pdf](https://static.mygov.in/rest/s3fs-public/mygov_160922880751553221.pdf)

best interest for OFSPs. Therefore, it is suggested that this provision is removed from the list of guiding principles for the moment.

This suggestion is further substantiated, given that the paper itself classifies the principles as a uniform “regulatory sandbox”, which may be recalibrated moving forward, thereby giving opportunities in future for amending this requirement appropriately, once there is more clarity on the NPD governance framework.

*Principle 3: Pay-to-play formats of fantasy sports contests should not be offered by an OFSP operator to users who are less than 18 years old.*

While this principle is a welcome step, its enforcement remains questionable. It has been alleged, that the current mechanisms used by OFSPs and online gaming companies are insufficient for ensuring that underage users (i.e., those below 18 years of age) are not able to access pay-to-play formats on their platforms.

Although the general principles under the charter<sup>3</sup> of Federation of Indian Fantasy Sports (FIFS)<sup>4</sup> states that its member companies will not offer pay-to-play formats to underage users, it fails to explain the various mechanisms, if any, used by OFSPs to adequately enforce such age restrictions. In case of weak enforcement of age restrictions by OFSPs, different states may be unwilling to grant safe harbour provisions for OFSPs in their gambling/gaming statutes, which may cause harm to the industry.<sup>5</sup>

Accordingly, there is a need for the principles to propose mechanisms to be followed by OFSPs to adhere to the age restrictions for pay-to-play fantasy sports contests.

*Principle 4: A fantasy sports contest should generally relate to and emulate an entire real world officially sanctioned sports contest as closely as possible and not infuse elements of chance that are not present in the real-world contest, provided that this requirement may be waived by the independent evaluation committee in cases it deems fit.*

Providing for the waiver of the requirement of OFSPs to organise sports contests related to ‘emulate an entire real world officially sanctioned sports contest as closely as possible and not infuse elements of chance that are not present in the real-world contest’; should not be left at the discretion of the independent evaluation committee, since it may fuel risks of arbitrary exemptions being made by it.

In case such powers are to be conferred to the committee, the guiding principles must lay down appropriate considerations, instances and conditions which may be followed/satisfied by the committee while deciding whether or not to grant such a waiver. These may include: whether the game has to be played against other human players; whether the game is centred around amusement or competition; whether a skilled player has a higher likelihood to win against an unskilled player; whether skill can be acquired by through reading relevant literature, or being updated with current developments, or with more experience of playing the game etc. Also, it is important to take into account a consumer perspective while answering such questions.

*Principles 6 and 7: OFSPs should not offer or advertise gambling services or games of chance on their platform; and OFSPs should not represent or imply that winnings in a contest are ‘assured’ or ‘guaranteed’.*

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<sup>3</sup> Principle 1.3.6, available at: [https://fifs.in/wp-content/uploads/2020/09/1598963962796\\_FIFS.Charter.wef-01Sep2020.pdf](https://fifs.in/wp-content/uploads/2020/09/1598963962796_FIFS.Charter.wef-01Sep2020.pdf)

<sup>4</sup> FIFS is a self-regulatory organisation for OFSPs in India. Website: <https://fifs.in/>

<sup>5</sup> <https://inc42.com/buzz/are-fantasy-sports-platforms-ready-for-niti-aayogs-guiding-principles/>

Similar to our comment on principle 3, while this principle is also a welcome step, its enforcement remains questionable. Numerous instances of dubious advertising by some OFSPs have been observed. Accordingly, it is recommended that the guidelines also lay down possible enforcement measures to be taken by the self-regulation organisation, or the independent evaluation committee.

*Principle 8: The self-regulatory organisation should send a communication to all the States requesting them to consider granting to OFSPs immunity from criminal prosecution or sanction in respect of such formats of fantasy sports contests that are compliant with these guiding principles.*

The intention of Niti Aayog of having a central regulatory framework for OFSPs is laudable. However, the spirit of cooperative federalism must be upheld, and extensive consultations with all states must be undertaken before finalising these principles. This is especially important, given that many states may banned OFSPs from operating in their jurisdictions, in the interest of public good. It therefore becomes necessary to have inclusive state level consultations, while proposing a uniform national-level regulation for OFSPs.

#### *Other Broad Comments*

- The paper calls for creating a single self-regulatory organisation for the fantasy sports industry, which would be recognised by the Government, and would have membership of OFSPs who in aggregate have as their registered users at least 66% of the registered fantasy sports users in India. The rationale behind differentiating between OFSPs having more domestic/foreign users remains unclear. As the paper has rightfully recognised the potential of the sector in attracting Foreign Direct Investment (FDI) and contributing to economic growth, foreign players from more advanced sports fantasy markets must be allowed to operate and take membership of the self-regulatory organisation, and enjoy its benefits. The same may also contribute to the economic objectives, highlighted in the paper.
- Appointment of the members of the independent oversight board may not be appointed solely at the discretion of the self-regulatory organisation. A detailed procedure may be recommended in the principles to be adopted for selecting the members, in a transparent and unbiased manner.
- Awareness generation and capacity building of consumers: the guidelines may also prescribe setting up of the awareness generation fund by the OFSPs, which may be used to raise education of consumers of OFSPs on how to play safe, given instances of suicides being reported on account of losing money in the games. Awareness on how to distinguish between legitimate games of skills versus those of mere gambling may also be raised amongst consumers. OFSPs may be urged to support or partner with credible consumer groups for undertaking such awareness generation initiatives.

#### **The way forward**

CUTS' looks forward to Niti Aayog considering the proposed suggestions given above, and to assist Niti Aayog in its endeavours of promoting the OFSP industry. For any clarifications/further details, please feel free to contact Sidharth Narayan ([sid@cuts.org](mailto:sid@cuts.org)).

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