

CUTS Submission to the Department of Telecommunications, Ministry of Communications, on the Draft Indian Telecommunication Bill, 2022

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1. Background

Consumer Unity & Trust Society (CUTS) expresses its gratitude to the Department of Telecommunications (DoT), Ministry of Communications (MoC), for inviting comments on the ‘Draft Indian Telecommunication Bill, 2022’ (draft bill).^{1, 2} This is pursuant to DoT inviting comments on a Consultation Paper titled ‘Need for a new legal framework governing telecommunication in India’ (consultation paper),³ a few months ago on which CUTS had submitted its comments.⁴ An Explanatory Note to the Bill (explanatory note) has also been released along with the draft bill.⁵

2. About CUTS

In its 39 years of existence, CUTS has come a long way from being a grassroots consumer-centric organisation headquartered in Jaipur,⁶ having centres in Delhi,⁷ and Kolkata,⁸ to now opening overseas Resource Centres in Vietnam,⁹ Kenya,¹⁰ Zambia,¹¹ Ghana,¹² Switzerland,¹³ and in the United States of America.¹⁴ It continues to remain an independent, non-partisan, and non-profit economic policy think tank while opening various programme centres, namely: Centre for International Trade, Economics & Environment (CITEE);¹⁵ Centre for Consumer Action, Research & Training (CART);¹⁶ Centre for Human Development (CHD);¹⁷ and Centre for Competition, Investment & Economic Regulation (CCIER).¹⁸

¹ Bill available at:

<https://dot.gov.in/sites/default/files/Draft%20Indian%20Telecommunication%20Bill%2C%202022.pdf>

² Press Release inviting comments, available at:

<https://dot.gov.in/sites/default/files/Inviting%20Comments%20on%20the%20draft%20Indian%20Telecommunication%20Bill%2C%202022.pdf>

³ Consultation paper available at:

<https://dot.gov.in/sites/default/files/Consultation%20Paper%20final%2023072022-1.pdf?download=1>

⁴ CUTS Submission on the Consultation Paper, available at: <https://cuts-ccier.org/pdf/submission-dot-consultation-paper-new-legal-framework-for-telecom-in-india.pdf>

⁵ Explanatory Note available at:

<https://dot.gov.in/sites/default/files/Explanatory%20Note%20to%20the%20draft%20Indian%20Telecommunication%20Bill%2C%202022.pdf>

⁶ CUTS International website: <https://cuts-international.org/>

⁷ CUTS Delhi Resource Centre website: <https://cuts-international.org/DRC/>

⁸ CUTS Calcutta Resource Centre website: <https://cuts-crc.org/>

⁹ CUTS Hanoi Research Centre website: <https://cuts-hrc.org/>

¹⁰ CUTS Nairobi Resource Centre website: <https://cuts-nairobi.org/>

¹¹ CUTS Lusaka Resource Centre website: <https://cuts-lusaka.org/>

¹² CUTS Accra Resource Centre website: <https://cuts-accra.org/>

¹³ CUTS Geneva Resource Centre website: <https://www.cuts-geneva.org/>

¹⁴ CUTS Washington Resource Centre website: <https://cuts-wdc.org/>

¹⁵ CUTS CITEE website: <https://cuts-citee.org/>

¹⁶ CUTS CART website: <https://cuts-cart.org/>

¹⁷ CUTS CHD website: <https://cuts-chd.org/>

¹⁸ CUTS CCIER website: <https://cuts-ccier.org/>

CUTS has been working towards improving the regulatory environment through evidence-based policy and governance-related interventions across sectors and national boundaries. It has conducted various studies and events on the telecommunications (telecom) sector, such as Demystifying Reality from Myth for 5G in India;¹⁹ Coding and Enforcing Mobile Internet Quality of Standards in India;²⁰ Consumer Broadband Labels for Greater Transparency & Informed Consumers;²¹ Towards Effective Choice: A Nation-Wide Survey of Indian TV Consumers;²² among many others. Currently, CUTS is undertaking studies on ‘Elements of Ethical Framework for 6G and Creating Opportunities for India and Australia,’²³ and ‘Bringing Forth a Consumer Perspective on Wi-Fi 6E’.

Based on such evidence-based studies, CUTS is pleased to submit its comments on the Consultation Paper, which have been discussed in subsequent sections.

3. Summary of Key Recommendations

Given below are the summarised recommendations on the draft bill.

1. Need for cross-jurisdictional analysis to learn from the experience of other countries which have undertaken regulatory reforms in the telecom sector.
2. Conducting Cost-Benefit Analysis (CBA), with due stakeholder consultation, to ascertain the least intrusive regulatory alternative to meet valid regulatory objectives, especially for clause 2(10), clause 4, clause 44, clause 23(a), and schedule 4, among others.
3. Deferred reforms, missed consumer-facing issues, and missed objectives of the National Digital Communications Policy 2018 (NDCP’18) must be incorporated in the draft bill.
4. It is imperative to clarify the draft bill’s jurisdictional scope, and incorporate a transitional period for service providers to comply with different provisions.
5. The definitions of telecommunication services (exclude Over The Top (OTT) services, consumer internet companies, and broadcasting services, and regulate them separately), telecommunication equipment (exclude consumer telecommunication equipment), and broadcasting services need to be reconsidered in line with the issues discussed in the subsequent section of the paper.

¹⁹ Report available at: <https://cuts-ccier.org/pdf/research-report-5g-in-india-demystifying-reality-from-myth.pdf>

²⁰ Details available at: <https://cuts-ccier.org/coding-and-enforcing-mobile-internet-quality-of-standards-in-india/>

²¹ Details available at: <https://cuts-ccier.org/project-launch-meeting-consumer-broadband-labels-for-greater-transparency-informed-consumers/>

²² Available at: <http://cuts-ccier.org/pdf/research-report-towards-effective-choice-a-nation-wide-survey-of-indian-tv-consumers.pdf>

²³ Details available at: <https://cuts-ccier.org/ethical-6g-identifying-elements-of-ethical-framework-for-6g-and-creating-opportunities-for-india-and-australia/>

6. Key terms which have been left undefined need to be appropriately defined. These include: ‘unauthorised access’ to a telecommunication network, intercepting a message ‘unlawfully’, wilful contravention that is detrimental to ‘national security’, the occurrence of any ‘public emergency’, in the interest of the ‘public safety’, what comprises of ‘public property’ etc.
7. The draft bill should not reinvent the wheel but focus on the optimal implementation of existing initiatives by learning from past mistakes and improving the prevailing mechanisms of Do Not Disturb (DND).
8. The Government of India (GOI) should partner with credible consumer organisations for – providing alternate grievance redress mechanisms; raise awareness and build the capacity of consumers on evolving telecom technologies and related issues; and explore ways to implement DND; among other issues.
9. Ensure regulatory harmonisation on issues such as the duty of users, which may be better dealt with under the Indian Penal Code (IPC); jurisdictional issues between the Telecom Regulatory Authority of India (TRAI) and the Competition Commission of India (CCI), as well as between different ministries – Ministry of Electronics and Information Technology (MeitY), MoC and Ministry of Information Broadcasting (MIB); different existing and upcoming legislation as a part of new digital governance architecture – Digital India Act, Data Protection Bill, Information Technology (IT) Act, and this draft bill.
10. Imposing criminal liability in case of various offences under the draft bill should be viewed with caution, given its likely adverse impact on Ease of Doing Business (EoDB).
11. Need for appropriate checks and balances in granting government powers to data access, internet shutdowns, and power-sharing with TRAI. These may include: incorporating principles of necessity, legality and proportionality; the need for reasoned orders; giving opportunities to be heard to different stakeholders; need for judicial oversight, among others, while exercising such powers.
12. Undertake a detailed analysis on whether to create a category of special creditors for DoT in case of insolvency and bankruptcy of a service provider.
13. Ensure harmonisation of domestic standards with international standards.

4. Submission to DoT

The submission has been split into three parts. First, broader issues in the draft bill and the explanatory note. Second, specific comments on issues covered in the draft bill. Third, issues which could have been covered/ addressed in the draft bill.

4.1 Broad issues

- *Lack of cross-jurisdictional analysis*

The explanatory note mentions that the consultation paper highlighted the evolution of telecom laws in other countries.²⁴ However, it is to be noted that the consultation paper merely mentioned the years in which select countries had updated their telecom laws²⁵ without getting into a detailed comparative analysis of the provisions of laws in such countries. The same is still lacking, given that any cross-jurisdictional analysis conducted by DoT²⁶ has not been released in the public domain. **It is recommended that DoT releases the same in the public domain if conducted. Else, credible research organisations may be tasked with conducting a cross-jurisdictional comparative analysis.** This will help analyse and recommend international good practices and regulations wrt the telecom sector based on experiences from advanced as well as similarly placed countries.

- *Deferred reforms*

The DoT has addressed many issues in the draft bill, as listed in the consultation paper. However, it misses on framing appropriate provisions on procedures, licensing reforms, frequency assignment, and civil liability, among others. It proposes to take these up at a later stage.²⁷ The rationale for such deferred reforms remains to be clarified. There are a few other **issues which the draft bill fails to address adequately.** These have been covered in the subsequent sections of the submission. It is important for the draft bill to cover such issues.

- *Conduct Cost-Benefit Analysis and stakeholder consultation*

The government has been given many powers under the draft bill, such as issuing the National Frequency Allocation Plan (NFAP),²⁸ calculating licence charges,²⁹ making rules,³⁰ amending schedules, specifying penalties for breach of terms and conditions,³¹ waiving the fee, interest etc.,³² among others. These can have various direct and indirect consequences for different stakeholders – service providers, consumers, the TRAI etc., on parameters of Ease of Doing Business (EoDB) as well as Ease of Living (EoL), price of telecom services, compliance costs on service providers, consumer choice, competition etc., which impact the growth of the telecom sector.

²⁴ Page 3 of the explanatory note

²⁵ Clause 5 of the consultation paper

²⁶ Page 4 of the explanatory note

²⁷ Page 3 of the explanatory note

²⁸ Clause 2(10) of the draft bill

²⁹ Clause 4 of the draft bill

³⁰ Clauses 41(2) and 42(3) of the draft bill

³¹ Schedule 4 of the draft bill

³² Clause 22 of the draft bill

Conducting a Regulatory Impact Assessment (RIA) through mechanisms like Cost-Benefit Analysis (CBA) before enacting provisions on such issues would be useful.³³ To this end, it would be essential to identify the problem statement or objective which the legislation intends to address/ achieve. A CBA will then help in identifying different regulatory options to achieve the objective. Lastly, it will help in choosing the least intrusive regulatory option to achieve the objective, while also considering any implementation concerns.

Using consistent analytical methods, RIA systematically identifies and assesses regulatory proposals' direct and indirect impacts. It involves a participatory approach via a public consultation to assess such impact, determine costs and benefits, and select the most appropriate regulatory proposal. It also helps put checks and balances on the government while exercising its exclusive privilege to do things necessary in telecom. This becomes especially important for this draft bill, given that Clause 3 grants the GoI exclusive privileges for various decision-making and operations of the sector (which is on behalf of the citizens), which should be taken in the interest of citizens.

It is therefore recommended that the government engages with organisations experienced in conducting RIA before finalising such provisions in the draft law. **Conducting adequate stakeholder consultations would also be useful** in this regard. To this end, it becomes important to follow the principles of the Pre-Legislative Consultation Policy 2014 (i.e., along with the draft bill, a study on the social and financial costs of the bill must also be released in public domain, uploading feedback received from different stakeholders etc.),³⁴ as well as good regulatory practices of different regulators including TRAI in this regard.

4.2 Specific issues in the draft bill

- ***Extent and commencement of the bill***

The draft bill has included Over The Top (OTT) communications services within its scope. While the draft bill proposes to extend to India,³⁵ it fails to recognise that many OTT service providers are based out of India and may escape the provisions of this draft bill. **More clarity is required on the jurisdictional scope of the draft bill.**

³³ Details of RIA are available at: <https://cuts-ccier.org/regulatory-impact-assessment/>

³⁴ The need for a proper Pre- Legislative Consultation Policy, available at: <https://www.thehindu.com/news/national/the-need-for-a-proper-pre-legislative-consultation-policy/article37677558.ece>

³⁵ Clause 1(2) of the draft bill

Secondly, while the bill allows the government to appoint different dates for enforcing different provisions of the draft bill, it misses to **explicitly provide a transition period for entities to comply with the provisions as and when they come into force**. Notably, recently proposed legislation, such as the draft Data Protection Bill 2021, have provided for a transition period.

- ***Definitional issues***

Some of the definitions given under clause 2 of the draft bill lack clarity and are overly broad. Two such instances have been discussed below.

- Telecommunication service

OTT services

The definition explicitly includes OTT communication services.³⁶ This is likely to have various adverse implications on privacy, Ease of Doing Digital Business (EoDDB), and fuel jurisdictional issues with the MeitY and MIB.

Clause 24 of the draft bill empowers the Central Government, state governments, and any officers authorised by them to take temporary possession of any telecommunication services (without mentioning the minimum level of such officers, such as rank equivalent to that of a Gazetted Officer s mentioned in the draft Personal Data Protection Bill 2018)³⁷, or to intercept/ detain/ disclose any message from any person. This may threaten End to End (E2E) encryption³⁸ and have privacy implications, especially when done without any **judicial oversight, or giving service providers an ex-ante right to be heard, or exercising these powers without giving a reasoned order for it**.

Encryption is intrinsic and available by default in most popular instant messengers such as WhatsApp, Telegram, iMessage, among others. Notably, such features are also in synchronisation with the principle of privacy by design, as laid under the draft Data Protection Bill 2021 (DPB).³⁹ This also resonates with the TRAI's recommendations on the Regulatory Framework for OTT

³⁶ Clause 2(21) of the draft bill

³⁷ Clause 66(1) of the draft PDPB'18, available at:

https://www.meity.gov.in/writereaddata/files/Personal_Data_Protection_Bill,2018.pdf

³⁸ End-to-end encryption ensures only you and the person you are communicating with can read or listen to what is sent, and nobody in between, not even the service provider. This is because with end-to-end encryption, your messages are secured with a lock, and only the recipient and you have the special key needed to unlock and read them. Details available at:

https://faq.whatsapp.com/791574747982248/?locale=en_US

³⁹ Draft Data Protection Bill 2021. Available at:

http://164.100.47.193/lsscommittee/Joint%20Committee%20on%20the%20Personal%20Data%20Protection%20Bill,%202019/17_Joint_Committee_on_the_Personal_Data_Protection_Bill_2019_1.pdf

Communication Services, which highlighted the need for protecting encryption in the interest of user privacy.⁴⁰

CUTS survey highlighted the possible adverse effects of breaking encryption on consumers.⁴¹ The study revealed that consumers fear unauthorised access to their chats by government agencies, service providers, other private entities (advertisers), and suspicious third parties or malicious actors (cyber-criminals), etc. If encryption is removed, such perceived fears towards unauthorised access were found to increase, especially for advertisers and cyber criminals. Such perceived fears may result in the reduction in usage of instant messaging services by users., i.e., consumers claimed to reduce or completely stop exchanging certain kinds of information with different stakeholders like family, friends, office colleagues etc., on instant messengers if privacy is compromised or even perceived to be at risk (i.e., in case of encryption is removed).⁴²

Accordingly, **the draft bill must contain provisions upholding encryption.** This may be done by **exploring the least intrusive means of addressing valid concerns** of public safety issues and instances of public emergency. Such provisions may be inspired by Rule 4(2)⁴³ of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules). The government and service providers must work together in this regard. Service providers may be asked to take more responsibility for appropriately preventing, flagging and removing inappropriate content, especially related to terrorism.

The MeitY had assured stakeholders that the government has no intention of breaking encryption.⁴⁴ However, this draft bill proposed by the MoC goes against such commitment, fuelling the risks of a jurisdictional turf war between the two ministries. Notably, the government's powers to access consumer conversations on OTT services and the liability of service providers (intermediaries) have been

⁴⁰ TRAI Recommendations available at:

https://www.trai.gov.in/sites/default/files/Recommendation_14092020_0.pdf

⁴¹ CUTS survey findings available at: <https://cuts-ccier.org/pdf/survey-finding-understanding-consumers-perspective-on-encryption.pdf>

⁴² Understanding intermediary guidelines wrt encryption from the lens of consumer welfare, available at:

https://link.springer.com/epdf/10.1007/s40012-021-00339-2?sharing_token=Izv8nZ_sgPH6PtCPNWafPPE4RwIQNchNByi7wbcMAY5jNTKI-XquOirSVaoc3u5OXjx0HmD7gCQjD4CBwQjvYIE8kQcpT_WYlzXEQKXDVwNJNFvVbOVq0okd5eW2X-M_zi50NQ0KT8dmGolqFdOn8yOXT-vuQBAsDEu35tUz5RA%3D

⁴³ No order shall be passed in cases where other less intrusive means are effective in identifying the originator of the information

⁴⁴ The govt' has no intention of breaking encryption: Rakesh Maheshwari, Meity, available at: <https://cuts-ccier.org/the-govt-has-no-intention-of-breaking-encryption/>. Webinar's video recording is available at: <https://www.youtube.com/watch?v=WAV0coVqbVk>

dealt with under the IT rules,⁴⁵ as proposed jointly by the MeitY and the MIB, and were recently amended.⁴⁶

Ironing out such overlapping issues becomes more important in light of the envisioned new digital governance architecture, of which this bill will be a part. Notably, the Information Technology Act 2000 (IT Act)⁴⁷, including the IT Rules, are also proposed to be replaced with a new Digital India Act.⁴⁸

Also, clause 4(7) mandates telecom service providers to identify the person they provide services to through verifiable identification. This is an important issue, and many major service providers are already taking many voluntary initiatives, such as sending One Time Passwords (OTPs) to consumers' e-mail ids and SMS to verify their details. These are important not only for recovering lost accounts but also for blocking attempts of hacking and cyber-attacks.

However, given that OTT communication services have been proposed to be a part of it (thereby being applicable on select social media and significant social media intermediaries as well), the issue of identifiability of users, verification of OTT accounts, and possible linking of ID cards with OTT services once again comes to light. These issues may adversely affect consumers' fundamental rights to privacy and freedom of speech and expression. The government must be careful to not tread into such waters. When raised under the draft Data Protection Bill 2021 (DPB'21), and the IT rules, privacy rights activists,⁴⁹ consumer groups, civil society groups, academicians, and select members of the Joint Committee of Parliament on the DPB'21,⁵⁰ among other stakeholders, had criticised such provisions.

Clause 4(8) is on similar lines and requires rethinking. It may be useful to give a choice to the sender and recipient of messages to reveal each other's identity, given that anonymity has its benefits, particularly in tipping, donation, journalism, whistleblowing etc.

⁴⁵ IT Rules 2021, available at: https://www.meity.gov.in/writereaddata/files/Intermediary_Guidelines_and_Digital_Media_Ethics_Code_Rules-2021.pdf

⁴⁶ Amendment to the IT Rules available at: https://www.meity.gov.in/writereaddata/files/Gazette%20notification_IT%20Rules%20Amendment%202022_28Oct2022.pdf

⁴⁷ IT Act, available at: <https://www.meity.gov.in/writereaddata/files/itbill2000.pdf>

⁴⁸ Govt to bring in data protection law soon: Rajeev Chandrasekhar, available at: <https://www.livemint.com/news/india/india-to-replace-it-act-with-digital-india-act-11662552511520.html>

⁴⁹ Voluntary Social Media Verification, The Road to Data Maximization, available at: <https://internetfreedom.in/dataprotectiontop10-voluntary-social-media-verification/>

⁵⁰ Report of the Joint Committee of Parliament on the DPB'21, containing letters of dissent of select members, available at: http://164.100.47.193/lsscommittee/Joint%20Committee%20on%20the%20Personal%20Data%20Protection%20Bill,%202019/17_Joint_Committee_on_the_Personal_Data_Protection_Bill_2019_1.pdf

Furthermore, by including OTT communication services within the ambit of telecommunication services, the draft bill risks adding a heavy regulatory compliance burden on OTT service providers, akin to Telecom Service Providers (TSPs) and Internet Service Providers (ISPs). This may dent the government's ongoing efforts towards ensuring EoDDB in India. Accordingly, **it is suggested that OTT services are removed from the scope of the definition of telecommunication service and are defined/ regulated separately.**

Consumer Internet Companies

Also, the broad definition of telecommunication services has confused other consumer internet companies, such as food delivery platforms, cab aggregators, and gaming platforms, given that their services include chatting features. Given the definition of telecom services includes electronic mail, voice mail, voice, video and data communication services, these firms have reportedly met officials from the MietY to seek clarifications on the scope of the definition and whether even their services will fall within the ambit of the same. They have been advised to approach DoT in this regard.⁵¹ It further aggravates their anxiety, given that in case they classify as TSPs, they may have to comply with additional obligations related to the need for a licence, interception of communication made on these platforms by the government, government's power to take temporary possession of their services etc.

Broadcasting Services

Also, the definition of telecommunication service specifically includes broadcasting services, which may come under the purview of the MIB.⁵² This becomes especially important in light of many OTT services providing broadcasting features in their services. A good example is WhatsApp, which allows consumers to send a single message to multiple contacts in one go. It remains to be clarified whether such features would be classified as broadcasting services or not, given that the definition of broadcasting services includes 'telecommunication service intended to be received by the general public *either directly or indirectly*'. Considering the above, it is recommended that **and**

⁵¹ Consumer internet firms seek clarity from government on new telecom bill, available at: https://economictimes.indiatimes.com/tech/technology/consumer-internet-firms-petition-govt-for-clarity-on-new-telecom-bill/articleshow/94818736.cms?utm_source=newsletter&utm_medium=email&utm_campaign=update&ncode=3b3c88d3c7570e337deb0738b529a6f596fad9b7a0fa35df12428374e69e665bf2ae3f709c04ae79bdf0150c72d09850e4ef15054b4b26cdc2b6ebf0248b3e2ff1fc6ad4ad78580664dea4aad6d1797

⁵² Clause 2(4) of the draft bill

broadcasting services be removed from the definition of telecommunication service.

Clarity in terms used

Lastly, other key terms such as ‘internet-based communication services’, ‘interpersonal communication services’, and ‘machine-to-machine communication services’, which also fall under the definition of telecommunication services, have not been defined. It is imperative to have definitional clarity of these terms, under this draft bill.

Caution needs to be maintained from adopting a one size fits all approach for different types of communication exchanges (written, audio, video etc.), communicators (person to person, person to service provider, government to person, person to persons, service providers to persons etc.), nature of communication (personal, broadcast, commercial) mode of transmission of communication (telecom network or internet network), among other considerations. There is a need to ensure that regulations are proportionate and correspond to the risk posed by such different considerations.

- Telecommunication equipment

The definition under clause 2(18) seems overly broad, including customer equipment. The definition of customer equipment is unclear,⁵³ given that it includes ‘*equipment used by such a person for accessing telecommunication services*’. It remains to be clarified if the same will include Television (TV) set-top boxes, mobile phones, earphones (also used as radio antennas in mobile phones), home radios etc.

Furthermore, telecommunication equipment has also included ‘software that is integral to such equipment’, within its ambit. Such a broad definition could also include OTT communication services applications within its ambit, which may be detrimental for service providers since they may be using proprietary and confidential software. Consumers also stand to lose based on the parameters discussed above, i.e., privacy and trust in service providers. Accordingly, it is recommended that **software and customer equipment is excluded from the definition of telecommunication equipment.**

- Key terms related to offences or specific instances

⁵³ Clause 2(5) of the draft bill

Terms such as ‘unauthorised access’ to a telecommunication network, intercepting a message ‘unlawfully’, wilful contravention that is detrimental to ‘national security’, occurrence of any ‘public emergency’, in the interest of the ‘public safety’, have not been defined under the draft bill. Such terms could be interpreted broadly and have profound impacts on consumers and service providers alike, on issues of internet shutdowns, government’s access to data, arbitrary executive discretion etc., which have been discussed in subsequent sections of the submission.

Notably, the government acknowledged the lack of a specific definition of public safety and public emergency last year to the Parliament’s Standing Committee on Communications and Information Technology. These terms were not defined under the Indian Telegraph Act, which this draft bill seeks to replace, and have not found an adequate explanation in this draft bill as well.⁵⁴ Accordingly, **such terms must be appropriately defined in the draft bill.**

Again, the terms ‘public interest’, and ‘specific announcements’ have also been left ambiguous under clause 26 of the draft bill. No criteria are prescribed on the nature of such messages and under what circumstances such messages would need to be announced. The draft bill may **give specific instances and examples of these terms to better explain the scope of the clause.**

Alternatively, it has been seen that many legislations have a provision along the lines of ‘terms not defined in this act, will have meanings assigned to them under some other act or The General Clauses Act’. The draft bill misses out on such a provision, which could have provided much-needed clarity in key terms.

- ***Exclusive privilege of the government***

Clause 3(2) provides that the GoI can exercise its exclusive privilege in the manner as may be prescribed, i.e., by the executive, through rules. It must ensure that such privilege is exercised appropriately, for which the draft bill should provide principles and process of framing rules, or else this may result in excessive delegation.

Similarly, the exemptions provided under clause 3(3) *wrt* public interest needs to be guided by principles. Also, the use of such privilege needs to be guided by the preamble of the draft bill, which states that ‘*it is necessary to ensure availability of affordable, reliable, secure and universal telecommunication services*’. The draft bill

⁵⁴ ‘No clear public safety, emergency definition: Net ban being used for routine policing’, available at: <https://indianexpress.com/article/technology/no-clear-public-safety-emergency-definition-net-ban-being-used-for-routine-policing-7651616/>

needs to ensure that there is no trade-off between these principles while chasing other objectives through exercising exclusive privileges by the GoI.

- ***Good, but can be better***

Clause 7(2) wrt ‘breach of terms ad conditions’, is forward-looking and is a welcome move by the GoI. However, it should also include provisions on considering a consumer perspective and assessing its possible impact on consumer interests. Furthermore, conducting an economic impact (direct and indirect) assessment of the decision would also be useful. Lastly, having judicial oversight or the right to judicial recourse against such decisions taken by the GoI would help.

Another good step taken by the government pertains to clause 8 of the draft bill, which provides for voluntary undertakings towards breach of any terms and conditions, given that it promotes specific performance over the revocation of the contract. However, it remains to be ascertained whether the incentive of the bar on proceedings under clause 8(3) would be an adequate incentive for service providers to opt for voluntary undertakings. Also, such provisions should not lead to abuse of discretion, an uneven playing field between service providers, or result in distortion of competition. Accordingly, transparency is needed, providing an opportunity to be heard, and giving reasoned orders.

Similarly, clause 32, which provides for a regulatory sandbox, appears to be a step in the right direction. However, it should provide for adequate consumer protection mandates/ mechanisms to be implemented. Simialrly, schedule 4 seems to be innovative and worth pursuing. However, the categorisation of breach of terms is not clear, and there is a need to lay down principles based on which such categorisation would be done.

- ***Utilisation of the Telecommunication Development Fund***

While the draft bill lists various important objectives for which the Telecommunication Development Fund (TDF) will be utilised, it misses out on objectives pertaining to consumer welfare, i.e., awareness generation and capacity building, grievance redress etc.

The role of consumer organisations is important for providing effective and timely grievance redress to consumers. A good practice worth adopting in this regard is supporting Consumer Support Centres (CSCs), commonly known as Grahak Sewa/Suvidha/Sahayata Kendras (GSK). A quick overview of the quarterly analysis of consumer grievances received by CUTS GSK in Rajasthan reveals numerous

grievances in the telecom sector.⁵⁵ Notably, the Department of Consumer Affairs provided financial support to such CSCs. However, the same has stopped in the past few years. The funds available under the TDF may be utilised to restart and propagate CSCs, in the interest of providing consumers with adequate grievance redress avenues.

Furthermore, in addition to objectives mentioned in clause 29 of the draft bill, the TDF may also be used to support credible grass root level consumer organisations in undertaking various awareness generation and capacity-building initiatives for consumers. Inclusion of awareness and capacity-building initiatives are important as they may pertain to helping consumers in choosing appropriate TV channel packs and internet plans (studies have shown this to be a challenge for consumers, as detailed in subsequent sections of the submission); explaining to consumers the features, benefits and risks of upcoming telecom technologies like 5G and beyond, or Wi-Fi 6 and 6E; ensure that consumer voices and perspectives are heard in policy and regulation making etc.

- ***Implementing DND***

Protection of users from specific messages⁵⁶ is a laudable provision incorporated in the draft bill. However, it is to be noted that the proposed DND register, was introduced by TRAI in 2016 to help consumers manage Unsolicited Commercial Communications (UCC).⁵⁷ However, even after six years of implementation, the initiative remained sub-optimal in meeting its objectives.⁵⁸ Consumer surveys have shown that 74 percent of consumers registered with DND still get unwanted SMS.⁵⁹ Accordingly, it is suggested that **the draft bill should not reinvent the wheel. Instead, it should focuss on the optimal implementation of existing initiatives by learning from past mistakes and improving the prevailing mechanisms.**

Partnering with consumer organisations and service providers to identify violating entities would also be useful. This could be done via various initiatives, including labelling commercial calls before they are answered by consumers, opt-in options for consumers to accept commercial communication related to specific subjects etc.

⁵⁵ Consumer Support Centre (Grahak Sahayta Kendra), available at: <https://cuts-cart.org/consumer-supportcentre-grahak-sahayta-kendra/>

⁵⁶ Clause 33(2) of the draft bill

⁵⁷ TRAI launches new Do Not Disturb (DND) application, available at: <https://www.indiatoday.in/education-today/gk-current-affairs/story/tra-ai-launches-new-do-not-disturb-dnd-application-12870-2016-06-07>

⁵⁸ DND: Indian telecom's grand failure, available at: <https://www.fortuneindia.com/opinion/dnd-indian-telecoms-grand-failure/108625>

⁵⁹ 74% of people in Trai's DND list still getting pesky messages: Survey, available at: <https://www.livemint.com/industry/telecom/74-of-people-in-tra-ai-s-dnd-list-still-getting-pesky-messages-survey-11626009987213.html>

- ***IPC a better remedy for enforcing the duty of consumers***

The draft bill has laudably prohibited consumers from furnishing any false particulars, suppressing any material information (remains to be appropriately defined in the draft bill) or impersonating another person while establishing an identity for availing telecommunication services.⁶⁰ However, it is to be noted that the IPC⁶¹ already deals with such issues. Sections 419 (cheating by impersonation), 420 (cheating), 467 (forgery), 468 (forgery for cheating), and 471 (fraudulently or dishonestly using a genuine document) are notable in this regard.⁶² Given that such issues are dealt with by Law Enforcement Agencies (LEAs), under the IPC, the need for having such provisions under this draft bill remains unclear.

Furthermore, it has often been alleged that SIM card dealers sometimes create fake Aadhaar cards to sell more SIM cards and earn commissions from telecom companies. Such SIM cards may then be used to carry out various illegal activities.⁶³

The draft bill should also place liability on such dealers, instead of solely holding consumers responsible.

- ***Criminal liability should be viewed with caution***

The draft bill places criminal liability (imposing jail term) in case of various offences.⁶⁴ It is to be noted that the GOI has shown intent on reducing criminal provisions in different laws.⁶⁵ Examples include The Companies Act of 2013, The Limited Liability Partnership Act of 2008, Payment and Settlement Systems Act, of 2007, among others.⁶⁶

A recently released report highlighted 26,134 ways of going to jail for doing business in India.⁶⁷ This number is alarming because such provisions may allegedly deter new

⁶⁰ Clause 34 of the draft bill

⁶¹ The Indian Penal Code, available at: <https://legislative.gov.in/sites/default/files/A1860-45.pdf>

⁶² 5 held for selling SIMs issued on fake IDs, available at:

http://timesofindia.indiatimes.com/articleshow/94492504.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

⁶³ 14 sim cards issued on fake Aadhaar cards, 3 booked, available at:

http://timesofindia.indiatimes.com/articleshow/92400515.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

⁶⁴ Clause 47 of the draft bill

⁶⁵ Making business easy: A template to ramp-up state capacity, Available at:

https://economictimes.indiatimes.com/small-biz/sme-sector/making-business-easy-a-template-to-ramp-up-state-capacity/articleshow/83598085.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

⁶⁶ Impact of Criminalising Provisions on Ease of Doing Digital Business in India, available at:

<https://cutsccier.org/pdf/dp-impact-of-criminalising-provisions-on-ease-of-doing-digital-business-in-india.pdf>

⁶⁷ Jailed for Doing Business, available at: <https://www.orfonline.org/jailed-for-doing-business/#:~:text=The%20report%20offers%20ten%20recommendations,also%20recommends%20rationalising%20imprisonment%20clauses>

businesses from entering the market in India and possibly impact their operations and day-to-day functioning, thus making it difficult for businesses to operate. As businesses aid the economy to grow, criminalising provisions harms the country's economy, which the government is trying to improve.

Also, schedule 3 of the draft bill, which lays down offences and penalties, has various definitional ambiguities which have been discussed previously. Accordingly, imposing jail terms for offences under the draft bill must be cautiously viewed.

- ***Excessive powers of the government***

The excessive powers are likely to cause a conflict of interest for the government since it will act as a regulator, a service provider, and a lawmaker.⁶⁸ The draft bill grants blanket powers to the GOI over a series of regulatory actions related to telecom services, including OTT communications services. These include provisions for public emergency or public safety,⁶⁹ provisions of national security, external relations or war,⁷⁰ power of search⁷¹ and waiving of fee etc.,⁷² supply of information to authorised officers,⁷³ the framework governing defaults in payment by licensees etc.,⁷⁴ among others. This significantly increases GoI's executive power, especially given that it comes without any judicial oversight, need for reasoned order, or compliance with the principles laid down under the Puttaswamy judgement. This may have various unintended adverse consequences on consumers and service providers alike.

- Internet shutdowns

Clause 25(1)(f) empowers the GOI to suspend telecom services in the interest of national security, external relations or war. We have seen in the past that such power has been used frequently by the government, vide the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017.⁷⁵ Notably, the United Nations Human Rights Council (UNHRC) passed a resolution in 2016 condemning network disruptions and measures resorted by

⁶⁸ Draft Telecom Bill 2022: Will The Provisions Create A Regulatory Overlap? Available at: <https://www.medianama.com/2022/10/223-telecom-bill-2022-provisions-create-regulatory-overlap/>

⁶⁹ Clause 24 of the draft bill

⁷⁰ Clause 25 of the draft bill

⁷¹ Clause 50 of the draft bill

⁷² Clause 22 of the draft bill

⁷³ Clause 51 of the draft bill

⁷⁴ Clause 21 of the draft bill

⁷⁵ Suspension Rules, Department of Telecom, available at: <https://dot.gov.in/sites/default/files/Suspension%20Rules.pdf>

states to curb online access and/or dissemination of information.⁷⁶ Most recently, a UNHRC report documented the ‘dramatic real-life effects of Internet shutdowns on people’s lives and human rights.’⁷⁷

Further, the Standing Committee on Communications and Information Technology (IT) had given several recommendations in its recent report on the shutdown of telecommunication and internet services in India.⁷⁸ These include the appointment of a Review Committee, which will review the decision of selective banning of services. Also, the Supreme Court (SC) has previously expressed displeasure over arbitrary internet shutdowns, declaring access to information a fundamental right.⁷⁹ No review mechanism has been proposed in the draft bill. The SC recently issued notice to the GoI, seeking a response from the MeitY regarding the protocol for internet shutdowns.⁸⁰

Accordingly, the draft bill must **incorporate appropriate recommendations of the Standing Committee and the SC** and analyse the merits of having judicial oversight on such decisions. Such checks will ensure the government does not misuse its power to restrict free expression or curb the right to access information.

Also, Clause 25(1)(g), which empowers the government to ‘take any other action’ in the interest of national security, seems overbroad and gives excessive power to the government, especially due to a lack of having – clear definitions; guiding principles to keep in mind before exercising powers; procedural safeguards; reasoned orders, judicial oversight etc. Instead of such a clause, in the interest of strengthening national cyber security, it is recommended that government update its National Cyber Security Policy 2013,⁸¹ at the earliest, consultation on which had been initiated in 2020. This becomes crucial in light of emerging mobile

⁷⁶ U.N. passes landmark resolution condemning internet shutdowns, Access Now, available at: <https://www.accessnow.org/un-passes-resolution-condemning-internet-shutdowns/>

⁷⁷ Internet shutdowns: UN report details ‘dramatic’ impact on people’s lives and human rights, OHCHR, available at: <https://www.ohchr.org/en/press-releases/2022/06/internet-shutdowns-un-report-details-dramatic-impact-peoples-lives-and-human>

⁷⁸ Suspension of Telecom Services/Internet and its Impact, Standing Committee on Communication and IT, available at: http://164.100.47.193/lssccommittee/Communications%20and%20Information%20Technology/17_Communications_and_Information_Technology_26.pdf

⁷⁹ The tag of the world’s Internet shutdown capital stems from a lack of compliance with Supreme Court guidelines, available at: <https://www.thehindu.com/opinion/op-ed/behind-the-great-indian-internet-shutdown/article62105487.ece>

⁸⁰ Supreme Court Seeks Centre's Response On Protocol For Internet Shutdowns, available at: <https://www.livewlaw.in/top-stories/internet-shutdwon-protocol-supreme-court-slf-208809>

⁸¹ National Cyber Security Policy -2013, Ministry of Electronics and IT, available at: https://www.meity.gov.in/writereaddata/files/downloads/National_cyber_security_policy-2013%281%29.pdf

communication technologies like 5G and 6G, which are poised to bring new-age cyber-security challenges.

- Government's access to data

Another issue requiring attention is the central and state government's power to access any information, document, or record in possession of a consumer or service provider under clause 51 of the draft bill. While the clause clarifies that such information must be necessary to be furnished in relation to any pending or apprehended civil or criminal proceeding, the same lacks judicial oversight, i.e., an order from the authority wherein such proceedings are ongoing. Furthermore, clause 24(2)(a) empowers the government to intercept or detain any message or class of consumer messages in the interest of public safety.

These give excessive discretion to the executive to access a broad range of information on consumers, which could be detrimental to their privacy in the absence of adequate checks and balances. As discussed, these also risk breaking privacy-preserving technologies like encryption (implications discussed previously).

Apart from privacy concerns, such access to data also disproportionately increases the government's ability to undertake surveillance of dissenters/critics, whistle-blowers, and media personnel, among others, in the garb of public emergency and safety. Its dangers and ill effects have been seen in the Pegasus case, wherein it has been alleged that the government used sophisticated spyware to monitor key individuals.⁸² International experts have given testimony in court on its adverse implications on the fundamental rights of such individuals, including rights to privacy and freedom of expression.⁸³

The provisions under this draft bill, give legality to such government surveillance. Therefore, to balance out such powers of the government, there is a need to ensure judicial oversight accompanied with reasoned orders for sanctioning such powers. Also, while exercising powers, the importance of adopting principles of necessity, proportionality, and legality, as laid down by the Puttaswamy judgement,⁸⁴ cannot be overemphasised. Incorporating such

⁸² Growing evidence that the Indian State bought Pegasus spyware, the technical committee told, available at: <https://www.nationalheraldindia.com/india/growing-evidence-that-the-indian-state-bought-pegasus-spyware-the-technical-committee-told>

⁸³ Professor Kaye Testifies Before Indian Supreme Court Committee on the Threats to Human Rights Posed by Pegasus Spyware, available at: <https://www.law.uci.edu/news/in-the-news/2022/kaye-pegasus-spyware-testimony.html>

⁸⁴ Justice K.S. Puttaswamy (Retd) vs Union of India and Ors. on 24 August, 2017, available at: <https://indiankanoon.org/doc/91938676/>

safeguards in the draft bill is vital, especially given that India currently lacks a personal data protection/ privacy law.

- Reduced powers of TRAI

The draft bill dilutes the TRAI's powers in several ways. It reduces it from being a regulator to now a recommendatory body. The TRAI was set up to perform the role of an independent regulator of telecom services and frame policies. Both these roles will be effectively taken over by the DoT, with TRAI effectively carrying out only what the government tells it to do.⁸⁵

Under the proposed draft, the government is not required to seek recommendations from the TRAI before issuing licences. It also misses giving the TRAI the power to request information from the government necessary to make such recommendations. Furthermore, the draft bill now empowers the GOI to regulate telecom tariffs along with the regulator, a power which previously rested exclusively with the TRAI. Even in resolving disputes, the government has now proposed Alternate Dispute Resolution (ADR) mechanisms to resolve disputes between telecom operators, the government, and the TRAI. This was previously the role of the Telecom Dispute Settlement and Appellate Tribunal (TDSAT).

Experts have argued that removing such powers is not in sync with international practices, wherein telecom regulators are given greater independence and powers.⁸⁶ Notably, TRAI's regulatory powers are already far less than those of its global counterparts like the US, UK, Europe, and Pakistan.⁸⁷ Media reports suggest that the TRAI is considering approaching the Prime Minister's Office (PMO) against such a reduction of powers. It may lead to a weakened regulatory environment, greater government interference in policy making, reduced EoDB, hurt investor confidence,⁸⁸ hurt consumer interests and even lead to a decline in the quality of telecom service.

⁸⁵ New telecom law will expand Centre's policing powers, available at: <https://www.nationalheraldindia.com/opinion/telecom-bill-aims-to-expand-centres-policing-powers-reward-corporates>

⁸⁶ Explained | The draft Telecommunication Bill, 2022, available at: <https://www.thehindu.com/business/Industry/explained-the-draft-telecommunication-bill-2022/article65952169.ece>

⁸⁷ New telecom bill may further dilute regulator's power, fear ex-officials, available at: <https://telecom.economictimes.indiatimes.com/news/new-telecom-bill-may-further-dilute-regulators-power-fear-ex-officials/94442342>

⁸⁸ Draft Telecom Bill cannot be allowed to dilute TRAI's power, available at: https://www.communicationstoday.co.in/draft-telecom-bill-cannot-be-allowed-to-dilute-trais-power/?utm_source=newsletter&utm_medium=email&utm_campaign=17October2022

A weak regulator would be detrimental to consumer interests, as it won't be able to ensure either fairness in tariff regulation, or enforce quality of service parameters effectively, especially in light of emerging telecom technologies like 5G and 6G. Transferring power from TRAI to GOI will allow the government to exercise disproportionate control over the telecom sector without meaningful oversight. To enable efficient governance of the telecom sector, it is recommended that **policy objectives should be jointly decided by the GOI and a strong independent TRAI. However, the TRAI should be empowered to issue regulations to achieve them.**

- *Insolvency and bankruptcy of licensees or assignees*

An issue requiring further study is whether Guideline 11 of 'Guidelines for Access Spectrum Trading for Access Service Providers',⁸⁹ and new clauses 20 (2), (3) and (5) of the draft bill,⁹⁰ can override provisions of the Insolvency and Bankruptcy Code, 2016 ('IBC').

Notably, the National Company Law Appellate Tribunal (NCLAT) feels so and has stated that the DoT must be paid all its past license dues if the licenses are to be transferred under the IBC.⁹¹ The NCLAT, in its order in the case of Union of India v. Vijaykumar V Iyer,⁹² ensured that such operational dues to the DoT are cleared in preference to all other financial and operational creditors, arguably creating a new class of 'preferred' operational creditors. Experts opine this to be contrary to the IBC, which treats the DoT, or any other government licensor of land, mineral rights, intellectual property etc., as any other operational creditor.⁹³ **A detailed analysis may need to be conducted before framing provisions on the issues.**

⁸⁹ The seller shall clear all its dues prior to concluding any agreement for spectrum trading. Thereafter, any dues recoverable up to the effective date of trade shall be the liability of the buyer. The government shall, at its discretion, be entitled to recover the amount, if any, found recoverable subsequent to the effective date of the trade, which was not known to the parties at the time of the effective date of trade, from the buyer or seller, jointly or severally. The demands, if any, relating to licenses of seller, stayed by the Court of Law, shall be subject to outcome of decision of such litigation. Guidelines for Trading of Access Spectrum by Access Service, TRAI, available at: https://dot.gov.in/sites/default/files/2015_10_13%20Trading-WPC_0.pdf

⁹⁰ In the event the licensee, or assignee that has become subject to insolvency proceeding, fails to comply with the conditions stated in sub-section (2), then the spectrum, if any, assigned to such entity shall revert to the control of the Central Government, and the Central Government may take such further action, as may be prescribed, which may include allowing such licensee, or assignee to continue to use the spectrum, subject to placing the revenue of such entity in a separate designated account with license fee and charges applicable being paid first in priority during such period.

⁹¹ NCLAT disposes of DoT petition against Videocon resolution plan, The Economic Times, available at: <https://telecom.economictimes.indiatimes.com/news/nclat-disposes-of-dot-petition-against-videocon-resolution-plan/88844711>; and How will you recover AGR dues from telecom companies facing insolvency, SC asks DoT, The Print, available at: <https://theprint.in/judiciary/how-will-you-recover-agr-dues-from-telecom-companies-facing-insolvency-sc-asks-dot/479012/>

⁹² Union of India v. Vijaykumar V Iyer, Judgment dated 13 April 2021 in CA (AT) (Ins.) No. 1410/2019

⁹³ License dues trump the Insolvency and Bankruptcy Code? Lakshmi Sri, available at: <https://www.lakshmisri.com/insights/articles/license-dues-trump-the-insolvency-and-bankruptcy-code/#>

Furthermore, it is also recommended that decisions *wrt* clauses 20(2) and 20(5) be taken in consultation with the Insolvency and Bankruptcy Board of India (IBBI). Lastly, as discussed previously, the terms mentioned in clause 20(5) are undefined and could be misused. Apart from defining them clearly, it is also necessary to lay down principles based on which such a decision would be taken.

- ***Harmonisation of standards***

The draft bill empowers the government to issue standards for telecom equipment, telecom services, telecom network and telecom infrastructure.⁹⁴ However, it misses mentioning that such standards must harmonise with global standards/practices. A recent example of the government pushing national standards was seen in the case of 5G, wherein India pushed for its 5Gi technology to be incorporated as a national standard.

The Telecommunications Standards Development Society, India (TSDSI) has developed an indigenous 5G mobile communication technology. The technology was sent to the International Telecommunications Union (ITU) for evaluation to be adopted as a standard. Notably, there was a lack of harmonisation between India's proposed standards, with the ones being finalised by the global Standard Setting Organisation (SSO), i.e., the 3rd Generation Partnership Project (3GPP), of which TSDSI is also a member.⁹⁵

The deviation risked the fragmentation of 5G technology, having the potential to lead to various unintended consequences:⁹⁶ delay in 5G technology being made available in India by nearly two years since chipset makers will have to develop two variants of the same technology to comply with two sets of standards; increase in costs of 5G enabled devices for Indian consumers, due to increase in costs of production (development, testing and implementation) of fragmented 5G technology; deviation from global standards hampering interoperability; and isolation of India from Global Value Chains (GVCs).

The imperative of having harmonised/ collaborative standards instead of national/ unilateral standards, has been well documented,⁹⁷ and the same is recommended.

⁹⁴ Clause 23(a) of the draft bill.

⁹⁵ A Middle Ground – 5Gi to Merge with Global 5G Standards, available at:

<https://www.voicendata.com/middle-ground-5gi-merge-global-5g-standards/>

⁹⁶ Avoid fragmentation of 5G technology standards while bridging the digital divide, The Economic Times, available at: <https://telecom.economictimes.indiatimes.com/tele-talk/avoid-fragmentation-of-5g-technology-standards-while-bridging-the-digital-divide/4322>

⁹⁷ Standards Development and the 5G Opportunity – Mapping the way forward for India's telecommunications industry, CUTS International, available at: [https://cuts-ccier.org/pdf/Report-Design in India to Maximize 5G Opportunities.pdf](https://cuts-ccier.org/pdf/Report-Design%20in%20India%20to%20Maximize%205G%20Opportunities.pdf)

Accordingly, The **government should strive for early participation in global discussions on standards, while parallelly building domestic knowledge and capacity to contribute to global standards, in line with India's interests.** Furthermore, the process of issuance of standards should be transparent, participative, and follow a CBA since it can have wider direct and indirect consequences on consumers and the industry.

Also, the government had previously proposed to mandate local hardware testing of telecom equipment, which may have adverse implications on India's participation and contribution to GVCs, due to inadequate testing lab infrastructure and human resources, leading to delays and costs on the industry.⁹⁸ Consequently, stakeholders had raised concerns over implementing the Mandatory Testing and Certification of Telecom Equipment (MTCTE),⁹⁹ which requires all equipment to be tested at local labs before they can be installed in network rollout.¹⁰⁰

Such requirements are likely to continue under clause 23 of the draft bill. There is, therefore, a need for revisiting such provisions. Notable **recommendations in this regard would be mutual recognition of certification with different countries and strengthening internal capacity to meet the objectives of the provision, i.e., ensure reliable telecom services to the public.**

- *Jurisdictional issues between the TRAI and the CCI*

Apart from the turf wars between the TRAI, the DoT, the MeitY, and the MIB (as discussed previously), there are risks of similar jurisdictional issues cropping up between the TRAI and the CCI.

Clause 46(k) seeks to amend the TRAI Act, 1997, to empower the authority to direct a licensee or class of licensees to abstain from predatory pricing that is harmful to the health and long-term development of the telecom sector, and competition therein. Similarly, the draft bill has provisions related to mergers, demergers and acquisitions.¹⁰¹

Given that these provisions are aimed at curbing anti-competitive issues in the telecom sector, the proposed law must be harmonised with The Competition Act

⁹⁸ Mandatory equipment check: Improper lab infra might delay telecom gear testing, Financial Express, available at: <https://www.financialexpress.com/industry/mandatory-equipment-check-improper-lab-infra-might-delay-telecom-gear-testing/2557386/>

⁹⁹ As given under the The Indian Telegraph (Amendment) Rules, 2017, Department of Telecom, available at: <https://dot.gov.in/sites/default/files/06Sept.pdf?download=1>

¹⁰⁰ Mandatory equipment check: Improper lab infra might delay telecom gear testing, Financial Express, available at: <https://www.financialexpress.com/industry/mandatory-equipment-check-improper-lab-infra-might-delay-telecom-gear-testing/2557386/>

¹⁰¹ Clause 19 of the draft bill

2002.¹⁰² This becomes especially important considering the introduction of the competition amendment bill in parliament¹⁰³ and the Expert Committee on Company Law report, which also dealt with issues related to mergers and acquisitions.¹⁰⁴

It is to be noted that the SC in CCI v. Bharti Airtel had injuncted the CCI from proceeding on the matter until TRAI had determined any violation of telecom regulations. The SC opined that TRAI being a sectoral regulator, is better equipped to deal with any issues falling within the domain of the TRAI Act in the first instance. The CCI was permitted to investigate any anti-competitive practices once TRAI had made its decision on the matter.¹⁰⁵

However, expanding the scope of the TRAI act, which ventures into competition-related aspects, may require concurrent investigations by the TRAI and the CCI. Accordingly, **the sector regulator – TRAI, and the DoT will need to work closely with the market regulator – CCI on competition issues in the sector and consider the findings from its market study on the telecom sector in India, conducted in 2021.**¹⁰⁶ Mandating consultation and creating a forum for cooperation would be useful in this regard, which may also include any upcoming data regulator and Central Consumer Protection Authority.

4.3 Issues which could have been covered in the draft bill

- *Consumer facing issues*

The draft bill misses out on adequately addressing consumer-facing issues on awareness generation and capacity building, enabling effective consumer choice, and providing consumer grievance redress avenues. In its submission of the consultation paper, CUTS had flagged such issues. The same has again been given below.

There is a need to focus on enabling effective consumer choice while choosing different telecom and internet services. It has often been the case that consumers are not fully aware of or capacitated to understand the details/ specifications of their

¹⁰² Available at: https://www.mca.gov.in/Ministry/actsbills/pdf/The_competition_Act_2002.pdf

¹⁰³ Over Rs 2,000-cr M&As may come under Competition Commission's purview, Business Standard, available at: https://www.business-standard.com/article/companies/over-rs-2-000-cr-of-m-as-may-come-under-competition-commission-s-purview-122080401489_1.html

¹⁰⁴ Report Of the Expert Committee on Company Law, Ministry of Corporate Affairs, available at: <http://reports.mca.gov.in/MinistryV2/mergers+and+acquisitions.html>

¹⁰⁵ CCI Investigations and Bharti Airtel: Interpretations Galore, available at: <https://indiacorplaw.in/2022/02/ci-investigations-and-bharti-airtel-interpretations-galore.html#:~:text=In%20Bharti%20Airtel%2C%20the%20Supreme,to%20Reliance%20Jio%20Infocom%20Ltd.>

¹⁰⁶ Market Study on the Telecom Sector in India, Competition Commission of India, available at: <https://dipa.co.in/reports/CCI%20Report%20-%20Market-Study%20on%20the%20Telecom%20Sector-In-India.pdf>

subscriptions. Consumers have often complained about low broadband speeds than advertised at the time of sale and a lack of information about the speed of their connection and bandwidth when signing up for the service.¹⁰⁷ **Mandating service providers to provide consumer labels, which can provide such key details of the service offering in an easy infographic format, becomes useful in this regard.**¹⁰⁸ This becomes more important in light of upcoming next-generation mobile communication technologies – 5G and 6G, which are set to unlock novel use cases of telecom services.

Similar issues can also be seen in the TV market. The studies have shown that consumers cannot exercise choice in subscribing to channels they want to watch, and instead end up subscribing to channels they do not want to watch due to a lack of awareness and capacity constraints. Consumers have also claimed to be dissatisfied with the quality of TV service and excessively reliant on last-mile service providers. With the TRAI expected to revisit regulations in this regard, it becomes important for the regulator to consider a consumer perspective and engage with credible consumer organisations while framing regulations.¹⁰⁹

- ***Objectives of the NDCP'18***

The draft bill misses the opportunity of realising the vision of the NDCP'18. Though it comes with its shortcomings,¹¹⁰ there is a need to frame laws which enable achieving the vision of NDCP'18 for the following, among others:

- Explore setting up a national fibre authority;
- Accord optic fibre cables the status of public utility;
- Making telecom installations and associated cabling and in-building solutions mandatory in all commercial, residential and office spaces by amending the National Building Code of India (NBC), through the Bureau of Indian Standards (BIS);
- Establishing Common Service Ducts and utility corridors in all new city and highway road projects and related elements;
- Extending incentives and exemptions for the construction of telecom towers;
- Promoting and incentivising deployment of solar and green energy for telecom towers;

¹⁰⁷ Consumer rights activists propose 'broadband labels', available at: http://timesofindia.indiatimes.com/articleshow/58200372.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

¹⁰⁸ Consumer Broadband Labels for Greater Transparency & Informed Consumers, CUTS International, available at: <https://cuts-ccier.org/project-launch-meeting-consumer-broadband-labels-for-greatertransparency-informed-consumers/>

¹⁰⁹ Effective Consumer Choice key for Indian TV Viewers: BIF-CUTS Survey, available at: <https://cutsccier.org/effective-consumer-choice-key-for-indian-tv-viewers-bif-cuts-survey/>

¹¹⁰ CUTS' Comments on the draft National Digital Communications Policy 2018, available at: https://cutsccier.org/pdf/CUTS_Comments_on_Draft_National_Digital_Communication_Policy2018.pdf

- Enabling Infrastructure Convergence of IT, telecom and broadcasting; and
- Accord telecom infrastructure is the status of critical and essential infrastructure.

5. The Way Forward

CUTS congratulates the DoT and the MoC for their forward thinking and for holding a public consultation on the draft bill. It looks forward to the DoT considering the suggestions given above and assisting DoT in developing a legal framework in tune with evolving telecom technology. For any clarifications/ further details, please feel free to contact Sidharth Narayan (sid@cuts.org), and/ or Ritaja Das (rda@cuts.org).