Analysing effect of regulation of Over-the-Top (OTT) Services on consumer interest and comparing international perspectives

1. Introduction

Over-the-top (OTT) services have been a recent disruptive innovation which has revolutionised every facet of consumers' lives, including ordering food, booking a cab or communicating with friends.[1] As a consequence, OTTs have been at the centre of debate between traditional players namely the telecom service providers (TSPs), which are the major Internet Service providers (ISPs) and OTT service providers. In India and in other jurisdictions, there is a debate around the effect of OTTs on the regulatory framework, impact on traditional telecom services and on investors. TSPs frequently raise concerns that OTT are a substitute for and a threat to traditional telecommunication services.[2]

The TSPs argue that they bear the burden of a higher load of data service, cost of maintenance and investment in telecom infrastructure, to ensure quality of experience for the consumers.[3] At the same time, experts suggest that OTTs also provide growth opportunities as internet adoption has drastically increased due to increased demand for OTT services. The regulators are concerned about and are examining the TSPs' claims of regulatory imbalance between OTT services and traditional telecom services and reviewing the current regulatory approaches to them.

However, the consumers are central to any regulatory approach to OTT services . There is significant penetration and wide usage of OTT communication services in India. India has the highest number of WhatsApp users, with 487.5 million users.[4]

1 Use Cases & Impact of OTT Services: Case Study of Rajasthan (500 Respondents)

2 LEVELLING THE PLAYING FIELD BETWEEN TRADITIONAL AND DIGITAL BUSINESSES

3 OTTs vs. Telco's: competition and investment – Research ICT Solutions

4 WhatsApp Statistics 2023 — How Many People Use WhatsApp. (February, 2023)

Another report puts India's broadcasting OTT user base at 423.8 million.[5] The report suggests that there has been a 20% growth of this user base in 2022, of which a large share has come from rural areas and smaller towns.[6] With growing internet penetration, these services will continue to influence the consumers socially as well as economically. It is therefore crucial to consider the effects of any alternative regulatory approach to OTT players on consumers[7]

Any regulatory change, if proposed or implemented, must be beneficial to the public at large. In the sense that it must foster competition, innovation, economic growth and increase consumer choice, accessibility, and quality of services. There are several implications of regulating OTT services over consumers which need to be explored and understood.[8] This paper explores these implications by looking at multiple jurisdictions which adopted different models of OTT regulations, in terms of the effects on the consumer interests.

2. Contours of the debate on OTT Regulation in India

In India, regulation of OTT services within the telecom regulation has been the issue of an ongoing debate between TSPs and OTT service providers. The telcos have argued that existing regulatory disparities give OTT players privileges but not responsibilities and that OTTs should be subject to similar rules as the telecom companies.[9] On the other hand, companies providing OTT services, have said that OTT communication services, broadcasting services and internet-based communication cannot be termed as telecommunication services and therefore, should not be brought under the licensing framework. According to them the licensing requirement and similarly regulating carriage and content, might result in over-regulation.[10]

5 India Records Nearly 423 Mn OTT Users, 65% Male Paid Subscribers: Report

6 Indian OTT users grew by 20% in 2022: Ormax report | Campaign India

7 OTT regulation should keep consumer interest in consideration: CUTS International; OTT vs TSPs: Who will foot the bill? Consumer welfare at stake in ongoing debate! says CUTS International

8 View: Consumers cannot be the collateral in OTT tussle - The Economic Times

9 Subhayan Chakraborty, 'OTT apps: COAI bats for 'same service, same rules' under draft telecom Bill | Business Standard News (business-standard.com)', Business Standards (October 2022)

10 A. Kulkarni, In pursuit of modern governance and regulatory framework, Communications Today (February 2023)

Moreover, potential risks related to OTT services are already regulated under existing and evolving regulatory frameworks around intermediary liability, consumer protection, privacy and data protection[11] Some experts believe that additional regulation of OTTs through means like licensing, would potentially stifle innovation and hinder economic growth,[12] and could also have implications for privacy and data protection of consumers.[13]

Therefore, the debate centres around two aspects. **First**, it is the presumptions regarding *'same service, same rules'*.[14] TSPs have demanded that OTT messaging services be regulated, and the government levy a licence fee on OTT communication apps on par with telcos[15] and that carriers should be compensated for all OTT data consumed on their networks.[16] TSPs argue that OTT communication services provide the same services as they do, without being subject to the same regulatory obligations, including licensing, interconnection, rollout obligations, consumer protection, quality of service compliances and other requirements.[17] Due to this, TSPs claim that they have incurred significant costs due to the over regulated telecom industry. These costs include licence fees, spectrum charges, telecom equipment and security apparatus. This makes the TSPs not be at an equal footing with OTT players. Thus, they demand a "level playing field".

The **second** is the issue draws from the above issue of levelling the playing field. The demand raised by the TSPs is that OTT services should contribute to developing digital telecom infrastructure in exchange for the use of these services.[18] This is proposed to

11 Regulation of OTT Communications Services: Justified Concern or Exaggerated Fear? — Esya Centre (January 31, 2023)

12 Letting go of a chance to democratise telecom services - The Hindu

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

14 G. Aulakh, Telcos seek level-playing field with web messaging services | Mint (livemint.com) (November 2022)

15 S.D. Gupta, 'Have OTT players pay telecom firms usage charges, COAI writes to DoT', Business Standard (November 2022)

16 "OTTs Eating Into Our Revenue": Telcos in India

17 OTTs should compensate telcos for using infra: COAI - The Economic Times

18 ET Bureau, 'OTTs should compensate telcos for using infra: COAI', Economic Times (November 2022)

be done through a revenue-sharing model, which has been met with significant opposition from the OTT providers.[19]

According to OTT players, they are responsible for more than 70 percent of the growth in data traffic on the telcos' networks in India.[20] TSPs have also benefited from increase in data usage and tariffs. Therefore, TSPs are potentially benefiting through the content provided by OTT players. In respect of the issue of infrastructure cost sharing, OTT service providers have made investments in setting up of data centres, cache servers, content hosting centres and content delivery networks.[21] They also help TSPs in efficient use of infrastructure.[22]

TSP/ISP Demands	OTT Providers' Arguments
I. Regulation of OTT Services at par with telecom Services	➔ OTT Services are not substitutes as they differ in their features, business model and fundamental technical and economic characteristics ➔ OTTs are regulated by other legal instruments
II. Mandatory Revenue Sharing Model	➔ OTTs have bought innovation in the market and contributed to increasing the market share of TSPs/IPSs ➔ OTT Providers have also invested in development of infrastructure and the industry

19 IAMAI Terms COAI's Revenue Sharing Plan For OTT Players A Death Knell For Digital Economy

20 FE Bureau, 'Telcos should compensate OTTs for driving network usage: BIF', Financial Express (December 2022)

21 C. Liu, E. Falcon & K. Trendacosta, 'Network usage fees will harm European Consumers and Businesses', Electronic Frontier Foundation (December 2022

22 R. Browne, 'U.S. tech giants face pressure from Europe's telcos to pay for building the internet', CNBC (October 2022)

There has been policy developments over this issue over the past few years. In 2018, TRAI released a consultation paper on regulatory framework for OTTs[23] and in its recommendations released in 2020[24], opined that there was no need to regulate OTT players and that market forces should be permitted to prevail. In September 2022, the Department of Telecom (DoT) introduced the Draft Indian Telecommunication Bill and invited public comments on the same.[25] A key change proposed in the Bill was to extend the scope of telecommunications services to include Over-the-top (OTT) services. Specifically, Clause 2(21) of the Bill expands the definition of 'telecommunication services' to include new-age communication services (Internet of things, OTT communication services, interpersonal communication services, internet, and broadband services) in its purview.[26]

TRAI again reiterated its earlier stance that no regulatory interventions are needed for OTT services.[27] Recently, TRAI has sought an overhaul of the norms of regulation of OTT.[28] It released a Consultation Paper (CP) on *'Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication Services'*[29]. Through this TRAI has consulted the stakeholders for convergence in regulation of telecommunication and OTT services. Furthermore, the CP argues that the recent increase in OTT media consumption has pushed TSPs to support more content, devices, and users and availability of higher quality content has created demand for larger bandwidth. [30] The CP suggests that TSPs incur heavy

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[23] Telecom Regulatory Authority of India Consultation Paper on Regulatory Framework for Over-The-Top (OTT) communication Services November 12, 2018

[24] Recommendations on Regulatory Framework for Over-The-Top (OTT) Communication Services

[25] Indian Telecommunication Bill, 2022 | Department of Telecommunications | Ministry of Communication | Government of India

[26] Section 2 (21): **"telecommunication services"** means service of any description (including broadcasting services, electronic mail, voice mail, voice, video and data 7 communication services, audiotext services, videotex services, fixed and mobile services, internet and broadband services, satellite based communication services, internet based communication services, in-flight and maritime connectivity services, interpersonal communications services, machine to machine communication services, over-the-top (OTT) communication services) which is made available to users by telecommunication, and includes any other service that the Central Government may notify to be telecommunication services;

[27] Draft telecom Bill: Trai opposed to regulation of OTT platforms

[28] TRAI Seeks Overhaul Of Existing Norms Around OTT, Other Broadcasting Platforms

[29] Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication services

[30] Unbundling the demand for a Network Usage Fee — Esya Centre

infrastructure costs, while internet companies, which are the OTT entities, do not bear any such costs.[31]

2.1 Recent developments in context of OTT Communication Services

On July 7, 2023, the TRAI released a detailed consultation paper concerning over-the-top (OTT) services.[32] This document incorporates a number of information from various jurisdictions as well as data from global telecom bodies. Public consultations based on this paper are presently ongoing, making a thorough analysis of the raised issues exceedingly vital. TRAI has requested stakeholders to discuss the technical challenges associated with selectively restricting specific OTT services and websites in certain regions of the country for defined time periods. They have also asked for suggestions about which types of OTT services should fall under such restrictions and the provisions needed to establish such a regulatory framework. The central issue of TRAI's consultation is the current regulatory disparity between the telecom operators and OTT services like WhatsApp. Since these entities provide similar services but are not subject to the same regulations, TRAI suggests to establish regulatory parity to ensure a fair and balanced digital ecosystem.[33]

3. Examining the merits of revenue sharing demand

The demand for a revenue sharing model seeks to get the edge companies, those who produce and send content to end users over the Internet, to shoulder a larger share of the cost to build and maintain ISPs' broadband network infrastructure. Such a policy may lead to harm to the industry and the internet users. Globally, policymakers are actively deliberating and, in some cases, executing such 'sending-party-network-pays' (SPNP) policies. These policy shifts appear to be appealing, especially when domestic telecommunications companies stand to benefit financially from the dominant tech giants.[34] However, such policies may have unintentional consequences on both the industry and consumers.

At the heart of this debate is the concept of a 'network usage fee' (NUF). This is the payment an application service provider makes to TSP in compensation for the

31 How TRAI consultation may make online streaming slower for Indians

32 TRAI releases Consultation Paper on Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services.

33 Ibid.

34 Consumers Are the Ones Who End Up Paying for Sending-Party-Pays Mandates | ITIF

bandwidth it uses on the operator's network. TSPs argue that this model is crucial for the development, maintenance, and upgrade of network infrastructure. They perceive a structural imbalance, asserting that OTT platforms extensively leverage telecom-funded networks without investing in their creation, operation, maintenance, or expansion.[35]

SPNP models come in many formulations, ranging from introducing a special tax on edge services to directly regulating rates in peering markets. All of these, however, are based on an idea of how the internet traffic functions and who bears the costs. Data, contrary to popular perception, does not necessarily flow through a single network. Instead, it traverses multiple networks to reach its destination. Policies regulating the market price, such as SPNP, distort internet interconnection markets which work on a settlement-free peering model.[36] Studies estimate that more than 99% of Internet peering agreements which are fixed, benefiting from economies of scale and are informal, and usually settlement-free.[37]

Consequently, this mandated price, NUF, fails to reflect the real network load and capacity, distorting market signals. The complexity is magnified when considering the roles of broadband providers and their business relationships with edge companies and end users. SPNP policy does not efficiently transfer money from edge companies to TSPs in a way that benefits consumers. The mandate charges essentially increase the edge company's operational costs, leading to higher prices for end consumers and potentially causing some to forgo the service. As such, while the money is transferred from the edge company to the broadband provider in accounting terms, the real cost, whether that be increased monetary expenditures or reductions in content quality, is borne by both the edge company and its customers.[38]

The SPNP models, which necessitates companies like Netflix to pay set prices for delivering their services to customers, tends to skew prices within the intricate market for peering services. This can lead to inefficient management of internet traffic. Moreover, the infrastructure of broadband is not a zero-sum game because edge companies not only use these resources but also contribute to their enhancement.

35 Ibid.

36 DrPeering International - Top 4 Motivations to Peer

37 https://www.internetsociety.org/blog/2022/05/old-rules-in-new-regulations-why-sender-pays-is-a-direct-threat-tothe-internet/

38 Consumers Are the Ones Who End Up Paying for Sending-Party-Pays Mandates | ITIF

They build delivery networks and cache content to enhance performance, making them more than mere consumers of bandwidth. Furthermore, users play a dual role: they are both creators and consumers of content, which adds to the inherent value of internet services.

4. Potential risks to consumers associated with OTT regulation

There are several implications for consumers which need to be explored and understood before considering the demands of TSPs and undertaking any regulatory change. One of the risks with the proposed cost-sharing framework between OTT players and telcos, is differential pricing for different sets of consumers. TSPs may discriminate between OTT services that pay them and those that do not and block or slow the content of OTT players which do not enter into cost-sharing arrangements with them.[39] This can impair consumer choice available to consumers for accessing services they desire.[40]

In addition, there is a substantial risk of increased cost to consumers if OTTs are required to share infrastructure cost, and should they wish to pass on the same, by imposing a usage fee on OTT services.[41] The consumers will face double whammy as they might need to pay the TSPs for the broadband access and to the OTT providers for access to content.

Moreover, there are risks of internet fragmentation and threat to net-neutrality. Demands for a mandatory cost-sharing framework may lead to distortion of competition putting smaller and medium-sized OTTs at a disadvantage, thus endangering the principles of net neutrality[42], and consequently adversely impact low and medium income consumers who might not be in a position to pay charges imposed by large OTTs. The possibility of adverse impact on employment of persons directly or indirectly engaged with the OTT industry also exists.

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39 M. Kalawatia, 'Why OTTs, telcos mustn't lock horns over infra cost-sharing (theprint.in)', The Print (August 2022)

40 L. Kabelka, 'Infrastructure costs: fair contribution versus net neutrality – EURACTIV.com', Euractiv (May 2022)

41 Mozilla, EU net neutrality letter – DRAFT (mofoprod.net)', Mozilla (June 2022)

42 Regulation of OTT Communications Services: Justified Concern or Exaggerated Fear? — Esya Centre (January 31, 2023)

Moreover, the principles of open internet which ensure a global playing field might get lost due to fragmentation, where certain content will be available on certain TSPs, resulting in parallel unconnected internets or 'splinternet'.[43] In such a scenario cross border service providers may need to negotiate the term of accessibility by navigating complex regulations, in each network.[44] There is a multitude of local and regional OTT content, which are provided by small and medium sized service providers. These have a significant presence, in terms of users, in certain regions of the country.[45] Such a mandatory revenue-sharing mechanism will force the OTT service providers to compete for better telco deals, which would hinder smaller OTT providers and have an indirect impact on the consumers.[46] The smaller OTT providers will be disadvantaged if the TSPs will receive a network fee proportional to the internet traffic generated by OTT players. This is because TSPs will not have an incentive to make the network available to the small OTT service providers. This could lead to denial or services for consumers, deterioration in quality of services, unavailability of customised/ local content, and challenges with grievance redress.

It has been argued that this could have a chilling effect on investment and entrepreneurship on an emerging sector.[47] It has been suggested that one of the ways to address concerns of TSPs could be to reduce the compliance burden and unnecessary regulation on them, which could further enable innovation and sustainability.

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43 A. Hetler, 'The splinternet explained: Everything you need to know (techtarget.com), Tech Target (June 2022)

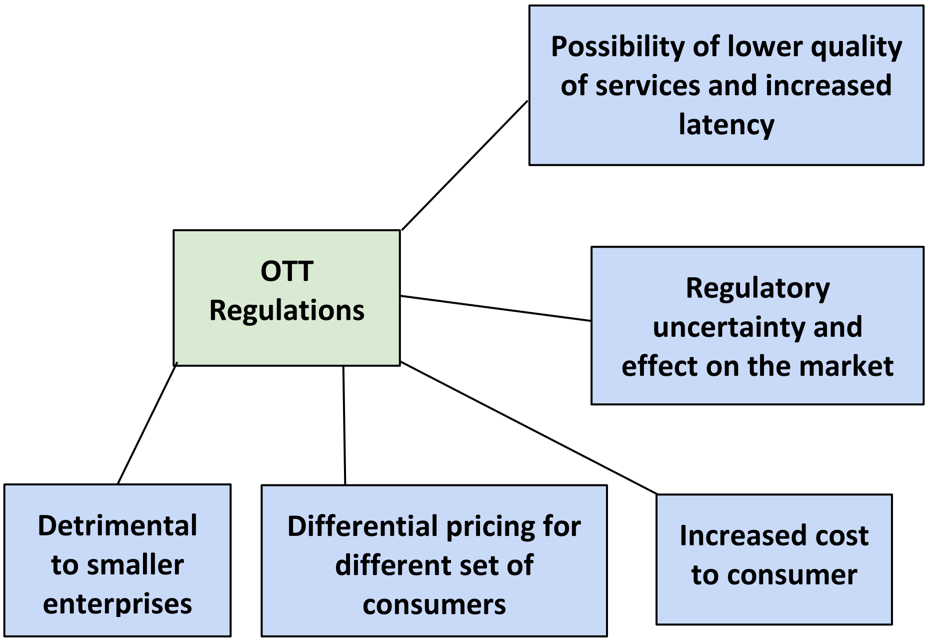
44 Regulation of OTT Communications Services: Justified Concern or Exaggerated Fear? — Esya Centre (January 31, 2023)

45 Finshots on Twitter: "Blume points out that regional OTT platform Stage (catering to Haryana & Regional OTT startup Stage raises Rs 40 crore in funding round led by Blume Ventures - The Economic Times

46 TRAI's OTT regulation agenda is confusing. It forgets consumers, serves telco interests

47 IAMAI slams COAI over revenue sharing demand that may dilute net neutrality | Business Standard News

Figure 1: The potential risks of OTT Regulation[48]



5. Analysis of the effect OTT Regulations in other jurisdictions

For TSPs to make OTTs pay for network usage would not be unique to India. Practical issues surrounding the revenue-sharing framework have been observed in jurisdictions where such regulations have been implemented. These real-world examples suggest that a revenue-sharing mechanism may not align with consumer interests.[49] Therefore, it's important to reconsider the simplistic view of broadband infrastructure as a one-way street and understand its complexity before introducing any regulations. The concerns regarding the revenue-sharing framework have been practically felt in jurisdictions which have implemented such regulatory frameworks.

a. South Korea

South Korea began the introduction of the sending-party-network-pays (SPNP) regime in 2016. It then expanded it to large content providers in 2020.[50] Under the Korean rules, the fees paid by the OTT content providers are regulated based on the volume

48 Source: Author's own

49 Ibid.

50 South Korea's Internet Traffic Tax: An Example for Europe To Follow? (Spoiler Alert: It Isn't, Here's Why)

of traffic sent to ISPs' customers when they request content.[51] Content providers of a certain size also must meet minimum thresholds for server capacity, uninterrupted connections, and notifications of traffic route changes.[52] The Korean policy framework has led to higher costs for a lower-quality Internet experience.[53]

The general consensus is that the arrangement has been a failure. Assessments by experts have concluded the SPNP rules have harmed users in South Korea and the networking model in Korea.[54] In the internet impact assessment done by the Internet Society[55], it was found that the existing "sender pays" rules created unnecessary costs and bottlenecks in South Korea's digital ecosystem. The result was inefficient traffic flows, higher costs of data transmission, and a more hierarchical, less resilient network topology. All of this has impacted the internet users in South Korea with lower quality of services.[56]

The policy has resulted in reduction in streaming quality of audiovisual content by OTT providers in order to preserve costs, as well as increase in subscription prices. Netflix has increased its price for its premium package by 17.2% and its standard plan by 12.5%.[57] The results also include exit of players from the market and increased data costs and latency. As per an OECD study the latency has gone from approximately 120 milliseconds in 2018 to 160 milliseconds in 2020.[58] More than a dozen civil society groups had appealed to the government of Korea to revoke the SPNP rule.[59]

Since the fees effectively penalise high traffic volume, ISPs are disincentivized from positioning themselves downstream of popular content platforms, or they pass those

51 South Korea's Interconnection Rules

52 Consumers Are the Ones Who End Up Paying for Sending-Party-Pays Mandates | ITIF

53 The Global Trend That Could Kill The Internet: Sender Party Network Pays | Techdirt

54 Sender Pays: What Lessons European Policy Makers Should Take From The Case of South Korea - Internet Society

55 South Korea's Interconnection Rules

56 https://thediplomat.com/2022/08/south-koreas-sender-pays-policy-is-a-threat-to-the-internet/

57 Afterword: Korea's Challenge to the Standard Internet Interconnection Model - The Korean Way With Data: How the World's Most Wired Country Is Forging a Third Way

58 Broadband networks of the future | OECD Digital Economy Papers

59 Civil society to South Korea: protect online freedom of speech - Access Now

added costs to the content providers.[60] At the same time, edge companies have reduced the quality of certain high-bandwidth traffic, such as 4K video, to minimise costs even as applications in other countries improve in quality.[61]

Another report summed up the effects of this regime of South Korea as *"Market observers report a decline in diversity of online content and expect rising prices for end users for content, as well as lower network infrastructure investments. Quality for end users is declining."*[62] The price of internet data has also risen steeply. The price in Seoul is over eight times higher than they are in Paris and almost five times higher than in New York.[63] While India has one of the lowest cost of data, Korea is amongst the highest in the world.[64]

This regulatory model has also resulted in disputes being taken to the judicial system. After a surge in traffic due to popular Netflix television shows such as *Squid Game* in 2021, South Korean ISP SK Broadband sued Netflix to pay a network usage fee for the increased traffic volume, and Netflix appealed.[65] Significant time and resources have been spent in such disputes, and this regulatory uncertainty has made South Korea less appealing to international investments.

Similarly, Korean ISP Korea Telecom initially hosted Facebook's domestic cache server to provide cheaper and faster access to the content inside. With the introduction of the SPNP regime, Korea Telecom had been inundated with fees from the traffic sent from its server to other ISPs' customers. In response, Korea Telecom tried to push that added cost to Facebook, which instead disabled the cache server altogether, forcing customers' data to be transmitted through the original, longer route.[66]

60 Consumers Are the Ones Who End Up Paying for Sending-Party-Pays Mandates | ITIF

61 Afterword: Korea's Challenge to the Standard Internet Interconnection Model - The Korean Way With Data: How the World's Most Wired Country Is Forging a Third Way

62 Competitive conditions on transit and peering markets - Implications for European digital sovereignty

63 2021 Global Pricing Trends in 20 Minutes

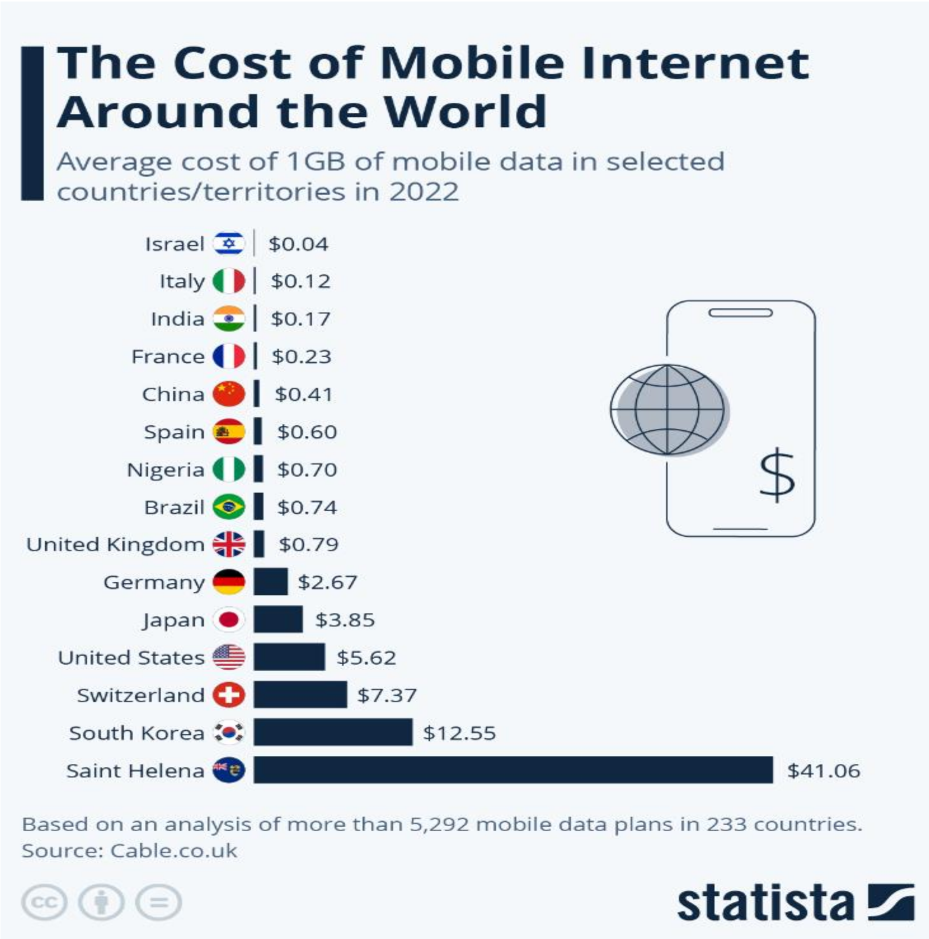
64 What Does 1GB of Mobile Data Cost in Every Country?

65 S.Korea broadband firm sues Netflix after traffic surge from 'Squid Game' | Reuters

66 http://www.opennetkorea.org/en/wp/3122?ckattempt=1

Therefore, the unsuccessful experience and policy failure of South Korea is a befitting real-world example of an SPNP policy that has resulted in wasting resources without benefits to consumers. The example can serve as a cautionary tale and useful predictor of the consequences of thid regulatory shift. [67]

Figure 2[68]



b. Europe

There have been demands and proposals for a revenue sharing SPNP model akin to South Korea, in Europe as well. In 2012, ETNO (European Telecommunications Network Operators), the European Union's telecom lobbying group, pushed for an SPNP system similar to Korea's, wherein fees would be mandated based on the volume of traffic sent

67 South Korea "Sender Pays" Is a Warning, Not a Model, or Why (Almost) Everyone Keeps Telling the EU This Is a VERY Bad Idea

68 How much does 1GB of data cost across the world?

over an operator's network.[69] France, Italy and Spain have been exerting pressure on the European Commission to formalise legislation that would require OTT players to partly finance their telecommunications infrastructure.[70]

In 2012, the EU electronic communications regulatory body BEREC (Body of European Regulators for Electronic Communications) opposed these requests over fears that such a system would put too much control over traffic in the hands of providers, and ultimately no such system was implemented.[71] With such demands resurfacing, BEREC in 2022 undertook a study and reiterated that a "direct compensation" scheme for broadband providers from content providers is not justified.[72] The study found that "there is no evidence of free riding by OTTs" and that "ultimately, it is a success of the CAPs which lies at the heart of the recent increases in demand for broadband access or, from a different perspective, traffic growth beneficial to ISPs." Most recently, BEREC has announced that it will study the implications of the South Korean model on network connections and content producers.[73]

The Dutch Government has echoed that data growth is not related to network costs upon telcos.[74] Global tech association ITI is also urging the European Commission to consider the negative consequences that network fees will have on the entire internet ecosystem, including inhibiting connectivity for Europeans.[75] It submitted its comments to the Commission, wherein it stressed that because of technical improvements and cooperation between network operators and content providers, internet traffic costs are not growing exponentially.[76]

The argument that a few companies are responsible for the majority of the internet traffic and thus should make a "fair contribution" for the upkeep and upgrades to the

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69 What's Old is New Again: Is Retrograde Telecom Policy Returning to Europe? - CEPA

70 France, Italy and Spain reportedly repeat calls for big tech to pay for EU networks - Telecoms.com

71 BEREC's comments on the ETNO proposal for ITU/WCIT or similar initiatives along these lines

72 BEREC preliminary assessment of the underlying assumptions of payments from large CAPs to ISPs

73 EU telecom regulators to study South Korea's 'sender pays' network rules, Berec chief says | MLex Market Insight

74 Internet data growth has not pushed up telcos' network costs, Dutch government says | Reuters

75 ITI Urges European Commission to Evaluate Negative Consequences of Network Usage Fees - Information Technology Industry Council

76 https://www.itic.org/documents/europe/FINALEUExploratoryConsultation_supplementarypaper.pdf

infrastructure, still continues in Europe.[77] This view that OTT services are responsible for a decline in TSP revenues is based on a simplistic understanding of the source of telecom revenues.[78]

There are some examples of disputes due to the SPNP-type arrangement in Europe as well. In 2013 there was a dispute over fees between French telecom providers and Google backbone partner Cogent that broadly decreased quality for consumers attempting to use YouTube.[79] The proposals in Europe will likely have the same effects for users as seen in South Korea. This explains why such proposals have been rejected by European regulators in the past.

c. Thailand

A model like SPNP was attempted to be established in Thailand, but was rolled back due to the concerns.[80] The regulator initially sided with telcos but backtracked after consumers and industry experts said it would increase costs and hinder economic growth. Industry experts warned that OTT services would have to pass on costs to consumers, and several players would exit the market if the regulator implemented the mechanism.[81]

d. Brazil

Recently, the Brazilian Telecommunications Agency (ANATEL) has initiated public consultations for regulation of OTT providers. Currently, OTT platforms are classified as Value Added Services (VAS), and not as telecommunication services. Furthermore, the regulator has also raised questions on the impact of the innovative business models on the digital ecosystem of telecommunications networks and services.[82] The

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77 Europe's internet ecosystem: socio-economic benefits of a fairer balance between tech giants and telecom operators ; Joint EU and National telecom sector statement on "fair contribution"

78 Network cost contribution debate https://www.europarl.europa.eu/RegData/etudes/ATAG/2023/745710/EPRS_ATA(2023)745710_EN.pdf

79 France Telecom Accused Of Holding YouTube Videos Hostage Unless It Gets More Money | Techdirt

80 Relationship of Over-the-top (OTT) Communications and Traditional Telecommunications Services: the Case of Thailand

81 NBTC flees from OTT surcharge plan

82 ANATEL initiates Request for Comments to address a future regulation of digital platforms and the need for "fair share" - Demarest

contribution of OTT platforms towards improvement, expansion and maintenance of the network infrastructure has been highlighted as an issue. The same has been kept open ended in the consultation paper, to gather the pros and cons of establishing a "network fee" for the "fair share" for the use of telecom networks.[83] Therefore, Brazil is in a similar situation as India, and must consider the examples of the other jurisdictions, in regard to the impact of the revenue share model on the end users and consumers.

6. Conclusion and Recommendations

In a country like India, the impact of potential regulatory changes could be considerable due to the existing digital divide and the less-than-optimal quality of services. A study conducted post-pandemic indicated that inadequate connectivity was a significant obstacle, with 80% of school-going children lacking access to education during school closures.[84] Considering that only 3.74% of the country's total internet subscribers are wired internet users, any additional increase in tariffs could substantially undermine India's digital potential. With discussions around fair share revenue models gaining momentum in regions such as the European Union and Brazil, Indian telecommunications companies are reviving their demand for OTT fees. However, it is critical for India's regulatory bodies, including the TRAI and policymakers, to approach this matter thoughtfully. Preserving an open, fair, and accessible internet where innovation and creativity can flourish should remain the ultimate goal, deterring any initiatives that may disrupt this equilibrium.

India, with its rapidly expanding OTT/CAPs market, stands at a crucial juncture in digital evolution due to the facilitative nature of current policies and regulations. It is paramount to sustain an environment that fosters growth and innovation, providing quality and accessible services to consumers. It is noteworthy that rural India, despite its internet connectivity hovering around 40%, is a significant contributor to OTT consumption, accounting for over 70% of video consumption.[85] Consequently, any regulation must cater to nurturing this vibrant sector, acknowledging its vast potential to benefit the public.

83 ibid.

84 Repeated school closures due to COVID-19 leading to learning loss and widening inequities in South Asia, UNICEF research shows

85 Don't kill the golden goose | The Financial Express

The country's impressive OTT market growth, propelled by minimal regulation and market-driven forces, has been a primary catalyst for investment and sector development, significantly bolstering the Indian economy.[86] Hence, the introduction of heavy-handed regulations could potentially dampen innovation and creativity in the OTT industry, and consumer interests should guard against such impositions. An over-regulated OTT landscape could limit the accessibility of global OTT apps for Indian consumers and impede the growth of Indian businesses that rely on the worldwide reach of these apps. Instead, the focus should be on reducing existing regulations such as licence fees, spectrum usage charges, and other levies and taxes borne by the telecom industry.

Taking into account the impact of potential regulatory changes, particularly considering India's digital divide and less-than-optimal service quality, policymakers, including the TRAI, need to approach this matter with care. The ultimate goal should be to maintain an open, fair, and accessible internet that nurtures innovation and creativity. This perspective will prove beneficial for Indian consumers, the industry, and the country's economy in the long term. A thoughtful regulatory approach is even more crucial considering the current digital climate, where even a slight increase in tariffs could significantly undermine India's digital potential.

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86 https://broadbandindiaforum.in/wp-content/uploads/2023/06/Research-paper-on-THE-ECONOMIC-VALUE-OF-THE-APP-ECONOMY-IN-INDIA.pdf