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*Analysing developments impacting business*

### A SILVER LINING FOR OTHER SERVICE PROVIDERS

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The Telecom Regulatory Authority of India (TRAI) has issued its recommendations relating to the regulatory terms and conditions for 'other service providers' (OSPs) on 21 October 2019. These recommendations are a culmination of a six-month long consultation process, which involved submissions by various stakeholders including multinational companies, industry bodies and associations, as well as detailed deliberations during the open house discussion, which were instrumental in highlighting the key concern areas of the industry.

#### Background

Since the liberalisation in 1990, outsourcing has played a crucial role in the growth of India's economy. The abundance of an educated work force and cost efficiency aspects have aided in propelling India as a leading hub of outsourcing services. The regulatory framework for the outsourcing industry, which is predominantly encapsulated under the existing 'Terms and Conditions for Other Service Provider (OSP) Category' (OSP Guidelines), has resulted in hinderances to the adoption of new and efficient technological solutions. TRAI's recommendations aim to address many of these gaps and have clarified many important aspects relating to operations of OSPs. Please see below our update on the key aspects of TRAI's recommendations.

#### Streamlining the definition of OSP

Under the existing framework, an OSP is any entity that provides 'Application Services'. The term 'Application Services' has been defined under OSP Guidelines to include services like call centre, tele-medicine, tele-trading, network operation centre, other IT enabled services (ITeS) etc. but does not lay down any principles or criteria for determining whether a service can be categorised as an Application Service or not. Notably, the definition of Application Services includes reference to ITeS which leaves a room for interpretation to be adopted and industry players have faced difficulty in understanding whether the registration requirement under the OSP Guidelines will be applicable or not.

TRAI has recommended that it is important that the applicability of OSP Guidelines is related to an element of 'outsourcing', i.e. where such services are provided on behalf of another entity, in the definition of OSP. Importantly, entities that provide such services for captive purposes (i.e. to their own customers or employees) or 'Captive Contact Centres' are proposed to be excluded from obtaining a full-fledged registration. In this case, merely an intimation to the Department of Telecommunications (DoT), followed by an acknowledgment by DoT, will suffice. Importantly, TRAI has recommended deletion of 'information technology enabled

services' in the definition Application Services, which was a major source of ambiguity due to its wide connotation.

## **Introduction of new categories of OSPs**

TRAI has recommended that in addition to 'Domestic' and 'International' OSPs, further sub-categories of 'voice-based OSP' and 'data/ internet-based OSPs' should be introduced. In TRAI's view, this will be helpful in drawing a distinction between OSPs that use voice-based services and OSPs who provide services purely based on data/ internet. Traditionally, the potential of misuse and revenue loss is higher in voice services and therefore, TRAI has recommended that data/ internet-based OSPs are only required to intimate DoT for statistical purposes. On the other hand, voice-based OSPs need to obtain a full-fledged registration.

## **Prescriptions regarding details of network diagram**

Currently, there is lack of consistency and clarity regarding the details which are required to be depicted in the network diagram, which is required to be submitted to DoT. TRAI has suggested details (e.g. name of telecom service provider, type of connectivity, details of the EPABX, details of CUG (if any), location of data centre/ point of presence of the OSP's client, etc.) that must necessarily be exhibited in a network diagram, which brings some certainty and uniformity regarding this aspect.

## **Sharing of telecom resources amongst different locations of same entity**

The OSP Guidelines currently make it difficult for OSPs to share telecom resources between different locations of the same company. Needless to say, this warrants significant expenditure and duplication of infrastructure, which is an impediment to achieving cost efficiencies. TRAI has recommended that if a company has multiple OSP centres, it can obtain internet connection at a centralised location for further distribution to other OSP centres in conjunction with an internet service provider (ISP). However, in this case, the ISP must be duly licensed by DoT to provide services in all relevant geographical jurisdictions. Also, the ISP must allocate a separate IP address to each OSP centre, which should not be changed by the OSP without prior intimation to the ISP.

## **Registration requirements for contact centre service providers**

In today's day and age, several technology service providers provide platforms (including over cloud) for EPABX, IVRS, call handling/administration, call recording, contact centre data analytics, customer relationship management etc. to OSPs. TRAI has recommended that such entities are required to register with DoT. Further, it will be necessary for such entities to be incorporated in India. Additionally, several other compliances and obligations have been prescribed for contact centre service providers. Importantly, if such entities are also engaged in reselling telecom services to OSPs, they are required to obtain the Unified License for Virtual Network Operators from DoT.

If this recommendation is accepted, entities providing platform for use by OSPs will also fall within the ambit of DoT and will have to allow physical inspection of its premises to DoT as may be required.

## **Relaxation of requirements to submit bank guarantees**

Under the existing regime, there are requirements to submit bank guarantees of hefty amounts and executing specific agreements and undertakings with DoT to avail certain additional facilities like sharing of infrastructure, sharing of agent positions and 'work from home' authorisation. TRAI has proposed doing away with these additional requirements, which will certainly bring some respite to entities. As an alternative, TRAI has recommended that penalties of equivalent amounts can be imposed in case the

OSP breaches the conditions prescribed for availing these additional facilities. Punitive action in accordance with provisions of the Indian Telegraph Act, 1885 may also be taken in such cases.

Specifically with respect to 'work from home', the requirement to procure PPVPN from a TSP is proposed to be discontinued, which means that entities would be able to explore more commercially viable means of enabling their workforce for providing services from a remote location.

### Respite to International OSPs

At present, International OSPs (i.e. OSPs that provide services to customers located outside India) are subject to certain additional regulatory conditions under the OSP Guidelines. For instance, International OSP's are not allowed public switched telephone network (PSTN) connectivity at India end. Further, the provisions pertaining to deployment of Electronic Public Automatic Branch Exchange (EPABX) outside India are unclear and there are also restrictions on providing services to certain customers within India (which requires them to obtain a Domestic OSP registration separately). TRAI has attempted to address these concerns of International OSPs and have permitting the above activities subject to fulfilment of certain conditions.

### Other administrative reliefs

TRAI has taken note of the concerns raised by the industry during the consultation process and attempted to address certain shortcomings in administrative processes by proposing the following:

- The registration process should be entirely paperless with no requirement to submit any documentation in physical form.
- DoT must scrutinize the application for grant of registration in a timebound manner. A period of one month has been prescribed in this regard.
- In case of 'Captive Contact Centres' and 'data/internet-based OSP', the acknowledgment of the intimation must be provided by DoT within 48 hours.
- If an entity has multiple OSP centres in a single licensed service area (e.g. a city), a single registration can be granted. However, a processing fee of INR 1,000/- is required to be paid and a separate network diagram is required to be submitted in respect of each OSP centre in this case.
- DoT must send periodic reminders for submission of annual returns to all registered OSPs, before putting them in the 'dormant' list or cancelling their registrations.
- The sharing of infrastructure permission should be co-terminus with the term of the registration so that multiple renewals are not necessary.

### Comment

Despite the fact that one of the main objectives of introducing the regulatory regime for OSPs was to provide dispensation to aid growth of the outsourcing sector, the draconian provisions of the OSP Guidelines have in many ways stifled the adoption of new technologies and stunted the expansion of the industry to its full potential. The regulations have failed to keep pace with time and have been a constant bone of contention for the industry and therefore, this consultation process came as a breath of fresh air.

It is commendable on part of TRAI for drawing up a comprehensive set of recommendations, after taking into consideration a majority of the issues raised during

the consultation process. The sensitivity displayed by TRAI to the concerns faced by the industry is exemplary and the recommendations reflect that TRAI is cognizant of the changing times and trends. Specifically, categorising OSPs to be mainly voice based and providing significant relaxation to data/internet based OSP along with captive contact centres is a much-desired change. Importantly, TRAI's recommendations on having internet at centralised location for further distribution to OSP centres, providing relevant suggestions on sharing of infrastructure, work from home and outlining the functioning of contact centre service provider address the crucial issues faced by industry today.

There are, however, certain aspects that have been left unaddressed. While TRAI has permitted international OSPs to connect to EPABX deployed outside India, it should have taken into account that many companies wish to connect to cloud based EPABX hosted outside India and clear provisions permitting this would have been helpful. TRAI has also recommended penalty in the range of Rupees fifty lacs to one crore in certain instances which appear to be unwarranted and excessive. Additionally, TRAI recommendation for punitive action in accordance with the provisions of Indian Telegraph Act appears to be inapt considering OSPs may not fall within the ambit of licensees as defined under the Indian Telegraph Act.

Nevertheless, the ball is now in DoT's court and it will have to be seen to what extent will DoT adopt these recommendations.

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