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PRIMUS RESEARCH

# Monthly Policy Brief

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## IN THIS ISSUE

# 01 Central Good and Services Tax (Amendment) Act, 2023

The CGST (Amendment) Bill 2023, was introduced in Parliament to give effect to the decisions taken in the 50th and 51st meetings of the GST Council held on 11 July and 2 August 2023, respectively. It made the following amendments to the CGST Act 2017.

The policy aims:

- Definitions of Online gaming and Online money gaming : The amendment introduced definitions for "online gaming" and "online money gaming." Online gaming refers to games available on the internet or electronic networks and includes online money gaming. Online money gaming refers to games where participants make payments or deposits, including virtual digital assets, with the expectation of winning money or digital assets, regardless of whether the outcome depends on skill or chance. This encompasses all types of online games, competitions, or activities, regardless of whether their outcomes are determined by skill, chance, or a combination of both. It includes online money games that any law may permit or prohibit.

- Introduction of Specific Actionable Claims : The amendment introduced the concept of "specified actionable claims." These claims are related to activities such as betting, casinos, gambling, horse racing, lottery, and online money gaming. It further introduced a provision where suppliers of specified actionable claims will now be subject to CGST. According to the amendment, any person who facilitates or organizes the provision of specified actionable claims will be considered their supplier.

- Mandatory Registration for Certain Online Money Gaming Suppliers : While the CGST Act mandates the Registration of specific suppliers, the amendment extends this requirement to persons supplying online money gaming services from outside India to individuals within India. These suppliers must also register under the Act. Thus, the GST framework now covers those providing online money gaming services from outside India.

## Our Take - Why is this Important?

The CGST (Amendment) Act 2023 introduces significant modifications to the CGST Act, making all suppliers of specified actionable claims subject to GST. Until now, transactions involving actionable claims (excluding those related to lottery, betting, and gambling) were not categorized as provision of goods or services under the GST framework. Consequently, they were not subject to taxation. These changes reflect a response to the evolving landscape of digital transactions and entertainment activities. The amendment's inclusion of definitions for online gaming and online money gaming demonstrates a forward-thinking approach to regulating this emerging sector. Moreover, the introduction of specified actionable claims highlights the Government's commitment to addressing various speculative activities comprehensively.

The central challenge pertaining to these amendments lies in their characterization as 'clarificatory' in nature, despite having introduced significant modifications to the CGST Act. By amending the definition of 'supplier', a term that is at the heart of the GST taxation paradigm, online gaming firms are now deemed to be suppliers of 'actionable claims in the nature of (providing a) chance to win. This characterization potentially opens the door for their retrospective application, as amendments categorized as clarificatory or explanatory, as opposed to substantive amendments, are typically applied retroactively. This possibility of retrospective application of tax on online gaming companies could serve as a deathly blow to a sunrise technology-driven industry that holds significant economic potential, both in terms of growth and employment.

## 01 Central Good and Services Tax (Amendment) Act, 2023 (contd.)

### Expert Comments

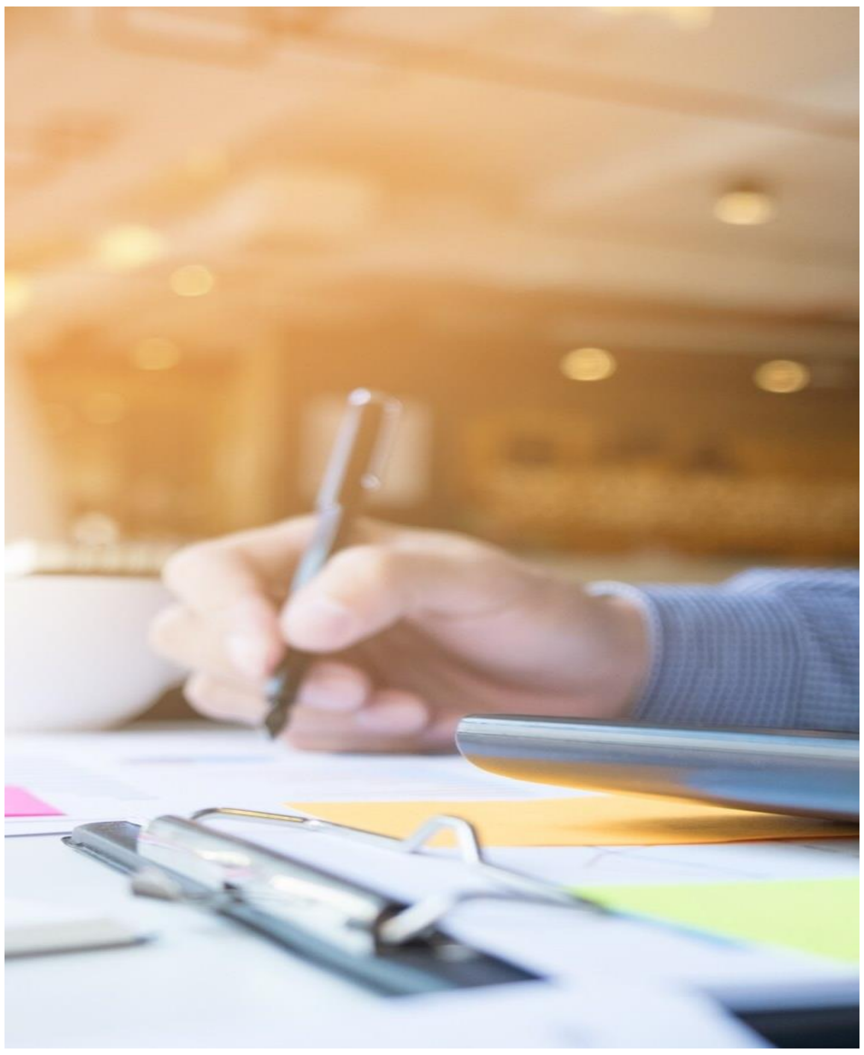
*"These rules fundamentally alter the way the value of supply is determined in these sectors.* ***Rule 31B*** *explicitly mandates that the value of supply is based on the total amount paid or payable by players to the supplier, encompassing various forms of payment, including virtual digital assets. Crucially, this rule ensures that any refunds or returned amounts are not deductible from the value of supply, thereby impacting the revenue calculation for online gaming companies. This could lead to increased tax liabilities for such businesses.* ***Rule 31C*** *pertains to casinos and introduces a similar approach as above.*

*Overall, these rules represent a significant shift in how the Government approaches the taxation of online gaming and casino activities. This would lead to higher tax burdens for gaming platforms, as refunds and returns are no longer deductible. Companies in the online gaming sector will need to carefully review their business models completely and relook at tax strategies to adapt to these changes and ensure compliance with the new regulations*

*While gamers themselves are not directly responsible for tax compliance, they may indirectly feel the effects of these rules. The increased tax burden on online gaming companies, potentially would lead to adjustments in the pricing and monetization strategies of online games. This might manifest in the form of altered in-game purchases, subscription fees, or other pricing structures. Ultimately, online gamers may experience changes in the cost of participating in their favourite games, which could influence their gaming behaviour and choices. It highlights the interconnected nature of tax regulations and how they can indirectly affect various stakeholders in the online gaming ecosystem. "* - Dr Srinath Sridharan, Policy Researcher & Corporate Advisor

*"The issue of GST in online gaming is twofold: Firstly, regarding taxation, the distinction between Games of Skill and Games of Chance has been negated by imposing a 28% tax on both. Secondly, the services and goods are clearly defined in the GST. Only lottery, betting, and gambling are considered as 'supplies' or goods, while Games of Skill, despite involving wagering to some extent, do not fall under these categories. On the contrary, in Games of Skill, players invest money, apply their knowledge, experience, and adhere to rules of the game to play. The outcome of the winner is based on these factors, rather than pure chance.*

*The imposition of GST then is on the service, meaning that the service provided is the platform for e-gaming, and it should not be applied to the money pooled and distributed among winners. However, TDS is applicable to the winners. These complexities call for a more in-depth examination and clarity in their interpretation."* – ***Dr Aruna Sharma, Former Secretary – MeiTY, GOI***



# 02 TRAI Recommends Overhaul of Entry Fees and Bank Guarantees in India Telecom Sector

As per the National Telecom Policy 1994 (NTP 94), the Department of Telecommunications (DoT) required service providers to provide both Performance Bank Guarantees (PBGs) and Financial Bank Guarantees (FBGs). A PBG of Rs 2 crore was needed before signing the license agreement and an FBG equal to 90% of the first year's license fee was also required.

The New Telecom Policy 1999 (NTP 99) introduced the practice of UASL (Unified Access Service Licence) licensees needing to submit both PBGs and FBGs before License Agreements, categorized by service area and subject to periodic renewal. NTP 99 also introduced Entry Fees for Cellular Mobile Service Providers and Fixed Service Providers under a migration package, equal to the license fees owed by existing licensees up to 31 July, 1999.

Currently, there are varying entry fees and two separate bank guarantees (Financial Bank Guarantee - FBG and Performance Bank Guarantee - PBG) for each service authorization. DoT aims to standardize and reduce entry fees and merge FBG and PBG into a single bank guarantee per authorization. Entry fees represent non-refundable costs for market entry, while bank guarantees ensure compliance with license terms and financial obligations. FBG covers unsecured dues, while PBG addresses license condition violations and ensures performance adherence.

The DoT has requested recommendations from TRAI regarding rationalizing entry fees and bank guarantees in the Indian Telecom sector. Earlier TRAI had issued a Consultation Paper in 2022.

TRAI Recommendations:

The TRAI has proposed a series of recommendations related to entry fees and bank guarantees in telecom licenses. These recommendations aim to foster a more competitive and accessible telecom market in India:

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1. Reduction in Entry Fees: TRAI suggests reducing entry fees for both Unified License (UL) and Unified License (Virtual Network Operators) (UL-VNO) licenses, making it more affordable for companies to enter the telecom market. This includes reducing entry fees for various authorizations within these licenses and across different licenses, except for UL and UL-VNO.
2. Exemptions: TRAI recommends exempting entry fees for specific services, such as M2M authorizations and audio conferencing, to encourage the growth of these services.
3. License-specific recommendations: The authority proposes different entry fee levels for various authorizations, such as PMRTS, GMPCS, VSAT, access services, NLD, ILD, and different categories of ISPs. These recommendations vary depending on the scope and type of service.
4. Removal of Entry fee ceilings: TRAI suggests removing existing entry fee ceilings for both UL and UL-VNO authorizations, allowing more flexibility for businesses entering the market.
5. UL-VNO specific changes: For UL-VNO, TRAI recommends varying entry fees based on service authorizations and eliminating entry fees for Access Service Category B. They also recommend reducing entry fees for MNP and Captive VSAT licenses.
6. Bank Guarantee changes: TRAI recommends merging Financial Bank Guarantee (FBG) and Performance Bank Guarantee (PBG) into a single bank guarantee for UL licenses, with periodic reviews and flexibility for both existing and new entrants. Similar recommendations are made for MNP, CMRTS, and Captive VSAT licenses.
7. Electronic Bank guarantee submissions: To enhance the ease of doing business, TRAI suggests adopting electronic bank guarantee submission processes across various licenses and authorizations.

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## Our Take – Why is this Important?

The recommendations by TRAI aim at facilitating growth and ease of doing business in this critical industry segment. It may also help attract new service providers and increase investment and competition in this space, further enhancing the customer experience

# 03 TRAI recommendations on "License Fee and Policy Matters of DTH Services

The issue of License Fee and Policy Matters regarding DTH Services was under consideration of TRAI. Based on the requests and representations from DTH associations and DTH operators, Ministry of Information and Broadcasting (MIB) had requested TRAI to examine the same from policy angle and furnish recommendations. Accordingly, post review of the issue, TRAI has put forward its recommendations on the matter of License Fee and other policy issues. The key highlights are -

Definition of Gross Revenue (GR): The recommendations propose that Gross Revenue for DTH License should include all revenue accruing to the licensed entity from various operations and activities, without any set-off for related expenses. This definition aims to ensure transparency and prevent concealment of revenue.

License Fee Calculation:

- DTH operators should calculate Applicable Gross Revenue (ApGR) for arriving at the revenue calculations for license fee.
- Adjusted Gross Revenue (AGR) is calculated by excluding from the Applicable Gross Revenue (ApGR), Goods and Services Tax (GST) paid to the Government if the ApGR had included as component of GST.
- DTH Licensee should pay an annual license fee equivalent to 3% of AGR.
- However, License Fee for DTH Licensees should be brought down to zero in next three years. DTH Licensees should not be charged any License Fee after the end of the financial year 2026-2027.

- Reg. Bank Guarantee:
  - The Licensee should submit an Initial Bank Guarantee of Rs. 5 crore for the first two quarters.
  - Thereafter, the Licensee should submit a Bank Guarantee (covering Financial and Performance Bank Guarantee) for an amount equivalent to the Initial Bank Guarantee (i.e., Rs. 5 crore) or 20% of the estimated sum payable, equivalent to License Fee for two quarters and other dues not otherwise securitized, whichever is higher.
  - Once the license fee becomes zero, the Licensee should submit a Bank Guarantee (Performance Bank Guarantee) for a fixed amount equivalent to the initial Bank Guarantee (i.e., Rs. 5 crore) which should be valid for a minimum of one year and renewed every year
  - Electronic Bank Guarantee should be encouraged and permitted

## 03 TRAI recommendations on "License Fee and Policy Matters of DTH Services (contd.)

### Our Take - Why is this Important?

Television distribution in India comprises television services delivered by Direct to Home (DTH) service providers, cable television (TV) services provided by Multi-System Operators (MSOs) (and its linked Local Cable Operators (LCOs)), Internet Protocol Television (IPTV) service providers and Headend-in-the-Sky (HITS) service providers. Among these distribution platforms, DTH services are governed by the policy guidelines for obtaining licenses for DTH broadcasting services in India.

Data suggests that the DTH sector is facing severe competition from other sectors, and trends show declining subscribers over the years. In order to bring parity with other distribution sectors, recommendations such as a reduction in license fee and to be brought down to zero in 3 years will lead to attract more investment and improve competition in the sector. Changes in license fee calculation have made accounting easy (and thus auditing too), encouraging transparency and compliance. The recommendation to MIB to develop a robust mechanism for deduction verification process through single window portal would help in ease of doing business.

The recommendations, including the various definitions being taken up prospectively is a welcome guideline which leaves no ambiguity. These recommendations are a significant step forward and quick implementation of these recommendations will help the sector and enable all-round growth.

# 04 Draft Telecommunication Mobile Number Portability (Ninth Amendment) Regulations, 2023

Draft Telecommunication Mobile Number Portability (Ninth Amendment) Regulations, 2023 has been released by TRAI and is placed on its website. The Stakeholders can submit the written comments on the draft by 25 October 2023 via email to advmn@trai.gov.in

The draft has listed 4 issues for consultation by stakeholders as highlighted below –

- Is it appropriate to introduce an additional criterion for rejecting the request for allocation of Unique Porting Code (UPC) in respect of any mobile connection, which has undergone the process of SIM swap/ replacement/ upgradation?
- If the above is affirmative, provide detailed inputs on the draft amendment regulations above.
- Stakeholders are requested to provide detailed inputs with justification on the DoT's proposal that –

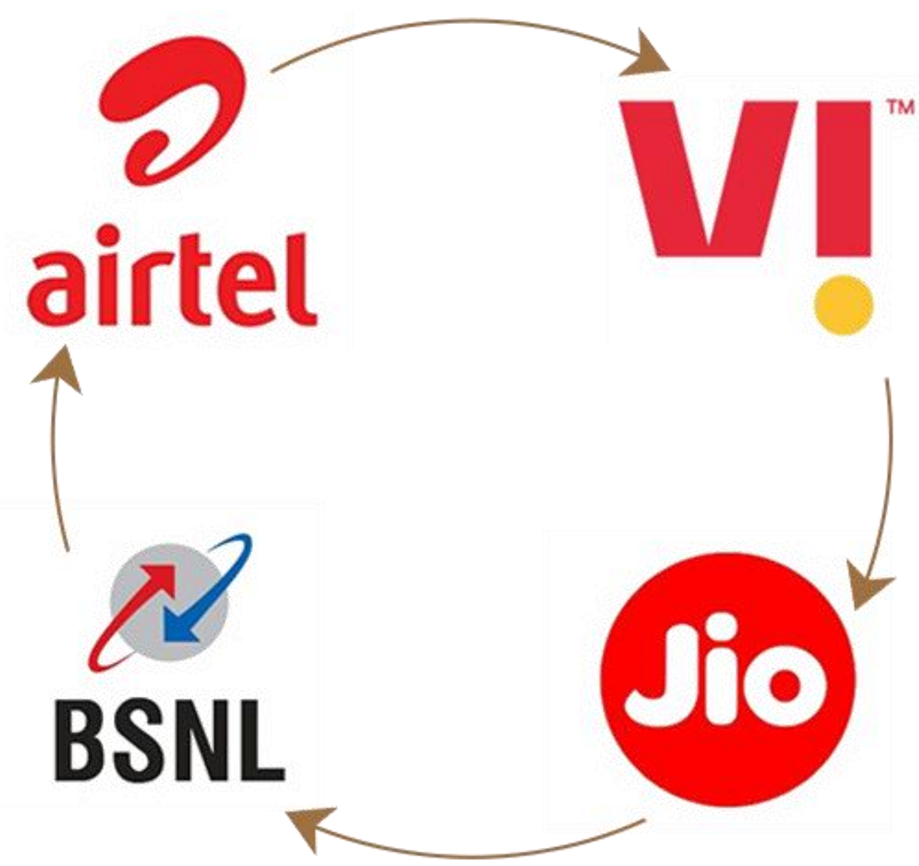
a) after the generation of UPC code, at an appropriate stage, the demographic details of the subscriber such as Name, Gender, Date of Birth and Photograph, etc., or scanned copy of Customer Application Form (CAF)/ Digital CAF may be transferred from Donor Operator to Recipient Operator. To avoid time delays, such transfers may preferably be done through electronic means; and

b) the recipient operator should match the demographic details of the subscriber with those details received from Donor Operator. If the subscriber's demographic details match, then only further steps in MNP process may be allowed otherwise, the porting process may be terminated.

o Are there any suggestions /comments on any other issues for improving the process of porting of mobile numbers?

## Our Take - Why is this Important?

Mobile Number Portability (MNP) is generally seen in a positive light by consumers and the telecommunications industry. The step taken by TRAI and DoT in releasing the draft Telecommunication Mobile Number Portability (Ninth Amendment) Regulations, 2023, is a step in the right direction. Care should be taken to look at the feedback and input received from stakeholders and then release the final policy in a time-bound manner. The dedicated focus of the Government of India in preventing fraud during the MNP process will help citizens enjoy secure services movement between operators

# 05 Key Amendments to Cable Television Network Rules, 1994

The Cable Television Network Rules, 1994, established by the Government of India, are a set of regulations governing the operation and management of cable television networks in the country. These rules prescribe guidelines for cable operators, ensuring the proper distribution of television channels, addressing content standards, and safeguarding consumers' interests. They aim to maintain the integrity of cable television services while promoting fair competition and adherence to broadcasting standards, ultimately enhancing the quality of television broadcasting for viewers across India.

Need for Amendment: One of the shortfalls of the Cable Television Network Rules was the unavailability of renewal of the Multi-System Operator (MSO) Registration mechanism, and therefore uncertainty to operators to continue their services. Only fresh MSO registrations were granted earlier under the Cable Television Networks Rules, 1994. Also, the Rules did not specify the validity period for MSO registrations, nor did they recognize the mandatory filing of online applications.

The Ministry of Information and Broadcasting issued a notification amending the Cable Television Network Rules, 1994 on 27 September 2023. The amendment can be divided into two parts:

1. Introduction of a procedure for the renewal of Multi-System Operator (MSO) Registrations

a. MSOs shall apply for the Registration or renewal of Registration online at the Broadcast Seva Portal of MIB.

b. MSO registrations shall be granted or renewed for a period of ten years;

c. The processing fee of Rs. One lakh is kept for the renewal of Registration;

d. The application for renewal of Registration shall be within a window of seven to two months before the registration expiry.

2. Enabling provision for the sharing of infrastructure by the Cable Operators with Broadband Service providers

Intended Implications: The renewal procedure aligns with the Government's commitment to ease of doing business as it will provide certainty to cable operators to continue their services without interruption, making the sector attractive for foreign investment. The inclusion of a provision related to the sharing of infrastructure by Cable Operators with broadband service providers will provide the benefit of enhanced internet penetration and efficient utilization of resources. It will also reduce the need for additional infrastructure for broadband services.

Jan Vishwas (Amendment of Provisions) Act, 2023: In a further push to make the sector more business-friendly and boost investor confidence, the Ministry of Information and Broadcasting has notified amendments in the Cable Television Networks Rules, 1994 on 5 October 2023 thereby providing the operational mechanism for implementation of the decriminalized provisions of the Cable Television Networks (Regulation) Act, 1995.

Section 16 of the Cable Television Networks (Regulation) Act, 1995 dealt with the punishment for contraventions under any of its provisions. This section had provision for imprisonment which might extend up to 2 years, in case of first instance and 5 years for every subsequent offence.

### Amendments in 2023

To make the Act more business-friendly and boost investor confidence in the sector, punishments specified under Section 16 were re-examined and decriminalized through the Jan Vishwas (Amendment of Provision) Act, 2023. The imprisonment provisions have been now replaced with monetary penalties and other non-monetary measures like Advisory, Warning and Censure. These measures will be enforced through the "designated officer" defined in the rules notified today. Moreover, Section 16 now introduces an appeal mechanism against the order made by the designated officer

# 06 Thinking Ahead of Time : Green Hydrogen Standards for India

The Ministry of New and Renewable Energy announced the Green Hydrogen standards for India on 18 August 2023.

### De-Mystifying the colour of Hydrogen

Hydrogen is a clean burning fuel; it combines with oxygen to release energy and water. There are no emissions at the time it is being consumed for energy. Hydrogen can be produced in many ways and typically has to be compressed and liquified for transportation and storage. Commercial production methods for Hydrogen are described according to associated carbon emissions:

- Black / Brown – Transforming coal into gas. This process is significantly polluting.
- Grey – Natural gas steam reforming with substantial emissions. This accounts for most production today.
- Blue - Natural gas steam reforming with carbon capture and low emissions.
- Purple / Pink – Electrolysis of water using Nuclear energy
- Green – Electrolysis of water using renewable energy

### Green Hydrogen – How Green

To be classified as Green, the electricity source for producing, storing and transporting Hydrogen must be from renewable sources like wind or solar. However, in practical situations, renewable energy is not continuously available e.g. solar / wind energy is available only when sun/wind are strong enough. For the rest of time, another source of electricity has to be used, which might have a high carbon footprint. Hydrogen typically has to be compressed and liquified for transportation and storage, which is also energy-intensive. Hence, even Green Hydrogen may have a carbon footprint.

### Setting the Standard

The standard set for "Green Hydrogen" is non-biogenic greenhouse gas emissions shall not be greater than 2 kilograms of Carbon dioxide equivalent taken as an average over last 12-month period. The detailed methodology of measurement, reporting, monitoring etc, will be specified soon & The Bureau of Energy Efficiency shall be the Nodal Authority for implementation.

## Our Take – Why is this Important ?

There are two points which are worth highlighting about the latest standards for Green Hydrogen –

1. *Technology Agnostic:* Framing the standard in this way allows many technologies to be used.

2. *Comprehensive:* The standard covers a large part of the Hydrogen value chain, including production, purification, drying, compression etc. and hence is comprehensive. Allowing flexibility and tight overall objectives is a great step in balancing industry challenges and environmental goals.

The Hydrogen value chain is nascent now and requires huge amounts of investment and efforts. By providing the standards, the Government has brought in clarity for investors and stakeholders. This allows them greater confidence in putting in investments and efforts.

# 07 TRAI's Visionary Consultation Paper Sets the Stage for India's Digital Revolution through 5G Ecosystem

The Telecom Regulatory Authority of India (TRAI) has released a Consultation Paper on "Digital Transformation through 5G Ecosystem" to address policy challenges and recommend a framework for effectively utilizing 5G technology in India's development.

1. The consultation paper has been placed on TRAI website and written comments are invited from the stakeholders (to be submitted by 30 October 2023) and counter-comments, if any, by 13 November 2023.

2. India is experiencing a significant digital transformation reshaping its economy and society. Mobile communication technologies, including 5G, are playing a vital role in achieving the objectives of the Digital India program and boosting the economy. The deployment of 5G services began in India on 1 October, 2022, with telecom service providers actively expanding the network infrastructure. The Government has initiated various projects to support 5G infrastructure development and research and development (R&D) efforts.

3. TRAI has made recommendations to expedite the deployment of 5G networks and services in the country, and cross-sectoral collaborations are underway to facilitate rapid rollout.

4. The integration of 5G with technologies such as Artificial Intelligence (AI), Internet of Things (IoT), Augmented/Virtual Reality (AR/VR), and the Metaverse holds immense potential for growth and innovation in India.

5. The combination of 5G, AI, XR, and IoT is expected to unlock significant benefits for businesses and society, paving the way for technological advancements in various sectors.

6. The consultation paper aims to identify policy challenges and propose a suitable policy framework to promote the holistic and sustainable development of India's economy through the 5G ecosystem, emphasizing the need for the development and deployment of new use cases for consumers and enterprises.

## Our Take – Why is this Important ?

The concept of a Digital Revolution through the 5G Ecosystem, as presented in the consultation paper, is undeniably promising and has the potential to reshape India's technological landscape. It recognizes the transformative power of 5G technology and its synergy with other emerging technologies like AI, IoT, and AR/VR. This alignment opens up a world of opportunities across various sectors, from healthcare to agriculture and beyond.

While the vision is undoubtedly inspiring, it is important to acknowledge the challenges ahead. The need for extensive infrastructure upgrades, especially in remote areas, and the requirement for substantial R&D investments to create India-specific use cases are some of the hurdles. Nevertheless, the proactive approach taken by the Telecom Regulatory Authority of India (TRAI) and the Government's commitment to 5G deployment provide a strong foundation.

The successful launch of 5G services in October 2022 and the ongoing deployment efforts by telecom providers underscore significant advancements in this technology. Additionally, the consultation paper's focus on policy frameworks to address these challenges shows a dedication to finding solutions.


**PASSION**

for providing solutions to help clients achieve their goals

**RESPECT**

for all and alternate viewpoints

**INTEGRITY**

of thoughts and actions

**MASTERY**

of our chosen subject to drive innovative and insightful solutions

**US**

representing the Primus collective, where each individual matters

**STEWARDSHIP**

for building a better tomorrow

# About Primus Partners

Primus Partners has been set up to partner with clients in 'navigating' India, by experts with decades of experience in doing so for large global firms. Set up on the principle of 'Idea Realization', it brings to bear 'experience in action'. 'Idea Realization'— a unique approach to examine futuristic ideas required for the growth of an organization or a sector or geography, from the perspective of assured on ground implementability. Our core strength comes from our founding partners, who are goal-oriented, with extensive hands-on experience and subject-matter expertise, which is well recognized in the industry. Our core founders form a diverse cohort of leaders from both genders with experience across industries (Public Sector, Healthcare, Transport, Education, etc.), and with varied specialization (engineers, lawyers, tax professionals, management, etc.).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