

# TMT LAW NEWSLETTER

July, August, September – 2021

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## Telecommunications

### 1. Union Cabinet introduces major reforms in the telecom sector.

The Union Cabinet, on September 15, 2021, approved several structural and process reforms in the telecom sector, with an objective to protect interests of consumers, to infuse liquidity, increase investment as well as to reduce regulatory burden on the telecom service providers ("TSPs").

- *Rationalization of adjusted gross revenue:* Now, non-telecom revenue will be excluded from the scope of adjusted gross revenue. This measure would prove to be a big relief to TSPs, as it will significantly reduce their monetary obligation to pay adjusted gross revenue. Previously, in 2019, in *Association of unified telecom service providers of India v. Union of India*, ("**AGR judgment**") the Supreme Court ("**SC**") included non-telecom based revenue in the scope of adjusted gross revenue, thereby, increasing the monetary liability of TSPs many folds.

Few other constructive steps suggested to be taken in that direction by Government of India are;

- Moratorium/deferment will be provided; of up to four years in annual payments of dues arising out of the AGR judgement, however, the new present value ("**NPV**") of the due amounts will remain protected.
- Moratorium/deferment will be provided, on due payments of spectrum purchased in past auctions (excluding the auction of

2021) for up to four years with NPV protected at the interest rate stipulated in the respective auctions.

- Option will be provided to the TSPs, to pay the interest amount arising due to the said deferment of payment by way of equity.

*100% foreign direct investment ("FDI"), allowed in telecom sector through automated route:* One of the most significant changes will be that 100% FDI will now be permitted in the telecom sector, through automatic route, i.e. without government approval. Presently, the consolidated FDI policy, 2020 allowed 49% FDI in telecom sector through automatic route and government approval route is mandatory for FDI beyond 49%. As a consequence of this change, the telecom sector will potentially get a huge boost to investment in the telecom sector.

- *Rationalization of bank guarantees:* Approximately 80% reduction in the bank guarantee requirements against license fee and other similar levies will be introduced. Moreover, there will be no requirement for multiple bank guarantees in different licensed service areas in the country. Instead, one bank guarantee will be enough for the purpose. Further, from now on, the auctions will not require bank guarantees to secure instalment payments.
- *Change in period of spectrum tenure:* In future auctions, tenure of spectrum will be increased from 20 to 30 years.

- *Reduced Penal interest rates on delayed fee payments and spectrum usage charge:* October 1, 2021 onwards delayed payments of license fee/spectrum usage charge will attract interest rate of State Bank of India's Marginal Cost of Funds Based ("**MCLR**") plus 2% instead of MCLR plus 4%; interest compounded annually instead of on monthly basis. Penalty and interest on penalty stand removed.
- *No Spectrum Usage Charge for spectrum acquired in future spectrum auctions:* There will be no requirement to pay spectrum usage charge for spectrum acquired through spectrum auctions.

*Replacement of paper Customer Application Form ("**CAF**") with digital storage of data:* Considering that nearly 300-400 crore paper CAFs are lying in various warehouses of TSPs at the moment, digitalization of process, will eliminate a lot of hassle at that front. Moreover, it will also eliminate the obligation of CAF's warehouse audit.

## 2. DoT amends the commercial VSAT license agreement.

Department of Telecommunications ("**DoT**") recently introduced some key amendments to the Commercial Very Small Aperture Terminal ("**VSAT**") License Agreement.

*Amendment in scope of services of the license:* While the intent of the license continues to not to grant long distance rights, certain exceptions to this have been granted for: (i) backhaul connectivity cellular mobile services through satellite using VSAT to access service providers, (ii)

backhaul connectivity using VSAT to access service providers for establishing Wifi hotspots. Further, the VSAT terminal of the commercial very small aperture terminal closed user group ("**VSAT CUG**") service which is used to provide mobile backhaul link or Wifi hotspot backhaul link, must be located in the area of the access service provider, where the backhaul link is used. However, the VSAT hub can be located anywhere in the country. The link from the hub station for the respective network element of the cellular mobile network can be provided through the terrestrial connectivity obtained from an authorized service provider.

*Public switched telephone network ("**PSTN**") connectivity:* Earlier the PSTN connectivity was not covered under the scope of the VSAT CUG license, however, the amendment introduced the abovementioned backhaul connectivity exceptions with respect to the PSTN connectivity as well.

*Amendment in operating conditions:* The VSAT license now mandates that, the sharing of infrastructure (whether active or passive), shall be governed by the conditions of the license, as amended from time to time. The licensee will also be permitted to share infrastructure for providing other services authorized under any other telecom license issued by DoT. Also, an authorized gateway hub operated by the satellite provider itself will be permitted to be shared with the satellite bandwidth seeker. For the purpose of providing the VSAT services, the licensee shall be mandated to install equipment that is in compliance with the relevant interface requirement for VSAT network issued by Telecommunications engineering centre, from time to time.

### 3. TRAI released recommendations on Enabling Unbundling of Different Layers through differential Licensing.

On August 19, 2021, Telecom Regulatory Authority of India ("TRAI") released *recommendations on Enabling Unbundling of Different Layers Through Differential Licensing*.

#### Key Recommendations:

- Separate authorization under Unified License ("UL") should be created for Access Network Provider (network layer) to provide network services on wholesale basis. Under this authorization for Network layer only, the access network provider shall not be permitted to directly provide services to the end customers under the authorization.
- Scope of the Access Network Provider shall be to establish and maintain access network, including wireless and wireline access network, and selling the network services (capable of carrying voice and non-voice messages and data) on a wholesale basis to virtual network operator ("VNO") (service delivery operators) for retailing purpose.
- Like UL with access service authorization, the Access Network provider should also be permitted to acquire spectrum through spectrum auctions, subjected to the prescribed spectrum caps, enter into spectrum trading and spectrum sharing arrangement with the other Access Network providers and unified licensees with access service authorization. It should also have access to backhaul spectrum,

numbering resources and the right to interconnection.

- The license fee and spectrum usage charges applicable for the Access Network Provider Authorization should be the same as that applicable to the Access Service Authorization under Unified License.

In order to bring in transparency and accountability in the entire process for VNO(s) seeking and entering into an agreement with the Access Network provider or the Unified Licensee, a broad framework should be prescribed, including the definite process in respect of application filing, application processing, defined timelines, etc. The framework should provide the process to be followed for applying for wholesale capacity/network resources along with the detailed proposal, process of acceptance/rejection by the Unified Licensees (including Access Network Providers), along with defined timelines, etc.

### 4. TRAI issues recommendations on Roadmap to Promote Broadband Connectivity and Enhanced Broadband speed.

On August 31, 2021, TRAI released recommendations on 'Roadmap to Promote Broadband Connectivity and Enhanced Broadband Speed' pursuant to the DoT seeking recommendations on issues relating to the broadband speed and its categorizations, infrastructure creation and promoting broadband connectivity.

#### Key Recommendations:

- Definition of broadband has been reviewed and the minimum download speed for broadband connectivity has been revised upward from the 512Kbps to 2Mbps. Fixed broadband has been categorized into 3 categories, (i.e. basic, fast and super-fast) based on download speed.
- Creation of National Portal for Right of Way ("**RoW**") to expedite permissions rollout of telecom and other essential utilities infrastructure.
- Incentivize establishment of common ducts and posts for fiberisation of networks. In line with the BharatNet Project, to exempt RoW charges for the coming 5 years to expedite laying of common ducts and posts.
- A Centrally Sponsored Scheme to incentivize States/ Union Territory ("**UT**") for RoW reforms. Incentives to be linked to net improvement in the Broadband Readiness Index score of a State/ UT.
- To facilitate the sharing of passive infrastructure, the entire passive infrastructure should be mapped by each service provider and infrastructure provider using Geographic Information System ("**GIS**"). The Telecom Engineering Centre should notify the standards for this purpose. Further, an e-marketplace must be established on a common GIS platform to facilitate leasing and trading of passive infrastructure.
- Target linked incentive i.e. License Fee exemption on specified revenues to eligible licensees for the proliferation of fixed-line broadband services in urban and rural areas.

- A pilot Direct Benefit Transfer ("**DBT**") scheme in rural areas for the proliferation of fixed-line broadband subscribers to ascertaining the feasibility of DBT in accelerating growth of fixed-line broadband services.

The adoption of these recommendations by the government will boost the penetration and performance of broadband networks. Further, it will also incentivize investment in last-mile linkage for fixed-line broadband.

## 5. DoT amended the unified license for authorization of ILD service for security sensitive regions.

DoT released a circular dated August 25, 2021, that effectively amended the unified license ("**UL**") for authorization of international long distance ("**ILD**") service for security sensitive regions.

The relevant circular amended the UL by adding an additional requirement for compliance of ILD license that *the cable landing stations can be permitted to be set up in security sensitive areas, only with prior security clearance, on a case to case basis.*

The security sensitive areas in this context would be Punjab, J&K, North-Eastern states, border areas of Rajasthan, Andaman & Nicobar Islands and coastal areas of Gujarat & Tamil Nadu (excluding Chennai).

## Intermediary Guidelines

### 6. Bombay High Court Stays IT Rules Provisions for Digital News Publishers.

Bombay High Court, in its judgment *Agij Promotion of Nineteenonea Media Pvt. Ltd. v. Union of India* (Writ Petition(L) NO.14172 of 2021), dated August 14, 2021, stayed the provisions of Intermediary Guidelines and Digital Media Ethics Code, 2021 ("**Intermediary Guidelines**"), namely Rule 9(1) and 9(3) of the Intermediary Guidelines.

Part III of the Intermediary Guidelines, Code of ethics and procedure and safeguards in relation to digital media, prescribes rules and compliances for publishers of online curated content and news and current affairs content and were challenged.

Rule 9(1) of the Intermediary Rules puts an obligation on the publishers of online curated content and news and current affairs content to subject themselves to rules mentioned in the Appendix of the Intermediary Guidelines. The Appendix subjects news and current affairs to Norms of Journalistic Conduct of the Press Council of India under the Press Council Act, 1978, and Programme Code under section 5 of the Cable Television Networks Regulation) Act, 1995, as well as lays down certain criteria for online curated content, such as rules for classification of online curated content, rules to restrict access to certain curated content to children, measures to improve accessibility of online curated content by persons with disabilities, etc..

Rule 9(3) of the Intermediary Guidelines makes it mandatory for the publishers of online curated content and news and

current affairs-based content, to subject themselves to a three-tier mechanism process. This mechanism includes a self-regulation mechanism by the self-regulating bodies of the publishers, as well as an oversight mechanism by the Central Government.

The High Court observed that the provisions amount to a prima facie intrusion into the fundamental right of freedom of speech under Article 19(1)(a) of the Constitution, by subjecting the publishers of news and current-affairs content and publishers of online curated content, to action under the statutory regime of the Press Council Act and the Cable TV Network (Regulation) Act, which provides for an independent mechanism for any violation of the provisions of such legislation. Observing that dissent in democracy is vital, and the Intermediary Guidelines, the High Court noted, can potentially have a chilling effect on the freedom of speech and expression, in digital media.

Further, the Hon'ble Court noted that the Intermediary Guidelines, relating to digital media are beyond the substantive powers of delegated legislation given to the Union Government by the Information Technology Act, 2000 ("**IT Act**"), under which the Intermediary Guidelines were issued.

## Artificial Intelligence

### 7. NITI Aayog released the approach paper on operationalizing principles for responsible artificial intelligence

NITI Aayog launched the second of two-part approach paper on "Operationalizing Principles for Responsible Artificial Intelligence ("**AI**"). The paper aims to



develop mechanisms for enforcement of the Principles of Responsible AI and broad governance structures and policies for the creation of a responsible AI ecosystem in India.

In accordance with the recommendations of the National Strategy for Artificial Intelligence, NITI Aayog had, in February 2021 launched the first of its two-part approach paper on the "Principles for Responsible AI".

- A risk-based regulatory approach is recommended to boost the adoption of AI in India. The underlying principle of the approach is that the greater the potential for harm, the more stringent the requirements and the more far-reaching the extent of regulatory intervention.
- In AI cases which have the potential to violate fundamental rights, the government may mandate compliance with responsible AI principles whereas there should be an effort to minimize regulatory burden in low-risk AI use cases. Additionally, in AI use cases where the risk is unclear, regulatory mechanisms such as policy sandboxes must be deployed to closely monitor the impact of the harm caused.
- It is recommended to set up an independent, multidisciplinary, and highly participatory apex-level advisory body named Council for Ethics and Technology ("**CET**") to provide overall guidance and uniformity to the government. Further, the scope of the CET may go beyond AI and cover the entire digital space as AI exists in an ecosystem of other emerging technologies.

- Self-regulatory mechanisms such as internal ethics boards, self-assessment guides and external audits etc. are recommended for implementing the principles of responsible AI across the private sector.

It is an aspirational step towards India's AI policy. This will encourage the responsible adoption of AI technology among the AI services providers. The AI technology has application across sectors such as healthcare, education, finance, agriculture *et al.*

## FinTech

### 8. The RBI issues updated Master Direction on Pre-Paid Payment Instruments

The Reserve Bank of India ("**RBI**") in continuing with its proactive regulatory role to further facilitate accessibility and inter-operability in the digital payments ecosystem issued another Master Direction on Pre-Paid Payment Instruments dated August 27, 2021 ("**2021 PPI Master Direction**"). Amongst other things, the 2021 PPI Master Direction, creates a simpler classification for PPIs into two categories, 'small PPIs' and 'full KYC PPIs' from the erstwhile categories of closed system, semi-closed and open PPIs.

In relation to the above, 'Small PPIs' are issued by banks and non-banks after getting minimum details of the PPI holder, and is to be utilised only for the purchase of goods and services with a group of pre-identified merchants. On the other hand, 'Full KYC PPIs' require the KYC process of PPI holders to be completed, but don't have merchant based restrictions and can be used for fund transfers and cash withdrawals.

Further, interoperability has now been mandated for all full-KYC PPIs by March 31, 2022 on similar standards as mandated for card networks and for the UPI, with a few exceptions on interoperability carved out for PPIs used in mass rapid transit systems and for gift PPI issuers.

Further, non-bank PPI issuers are now required to maintain an escrow account with any Scheduled Commercial Bank with restrictions on permissible debits and credits from that escrow account. Separately, security measures to protect against financial fraud and for ensuring informational security have also been adopted, which include but are not limited to, compulsory two-factor authentication, transaction alerts for online and offline transactions and baseline technological standards as well as its notification on e-mandates for recurring transactions.

## 9. Reserve Bank of India notifies Tokenisation Framework

RBI notified circular CO.DPSS.POLC.No.S-516/02-14-003/2021-22 ("**CoFT Circular**") on September 8, 2021, revised the existing framework on tokenization. The revised framework permits Card-on-file Tokenisation and now allows card issuers to offer tokenisation services.

### What is Tokenisation?

Tokenisation is the process of replacing credit or debit card details with a unique set of characters or a 'token' which enables payments to be processed without exposing any sensitive account details that could potentially breach security and privacy of the consumers.

RBI had notified the Tokenisation-Card Transaction master direction in January

2019, which mandated tokenisation of card information as part of its efforts to improve safety and security of card transactions and permitted card payment networks ("**Card Networks**") to offer card tokenisation to third party application providers.

The extant framework permitted Card Networks to offer tokenisation for all use cases (like near field communication/magnetic secure transmission based contactless transactions, in-app payments, QR code-based payments). But the framework only permitted tokenisation service on registered and verified devices – originally, mobile phones and tablets and more recently, Internet of Thing devices and wearables, this linked the issued token against the actual card to a specific device. The device specific approach limited the use of token, as the transaction have to be carried out on the trusted device or the device had to be carried to the place of transaction. The stakeholders in the payments industry have repeatedly urged RBI to create a more permissive tokenisation framework that looks beyond device-based tokenisation.

The revised framework waives the reliance on use of trusted devices and allows for cloud based tokenisation, whereby tokens are not linked to a particular device. It also allows issuing banks to provide tokenisation services in addition to Card Networks and can act as Token service providers ("**ToSP**"). ToSPs are permitted to offer tokenisation facility only for the cards issued by them or affiliated to them. The CoFT Circular has clarified that, no entity in the card transaction / payment chain, other than the card issuers and / or card networks, shall store the actual card data with effect from January 1, 2022. RBI has further clarified that non ToSPs are permitted to store limited data i.e. last four



digits of actual card number and card issuer's name, exclusively for the purpose of transaction tracking/ or reconciliation purposes i.e. in compliance with applicable standard. The CoFT Circular is a security and safety measure by RBI for preventing data breach, information leaks and cyber frauds.

#### 10. Reserve Bank of India Announces Opening of Third Cohort under the Regulatory Sandbox

The RBI has announced MSME lending as the theme for the 3<sup>rd</sup> cohort of the Regulatory Sandbox scheme.

It is to be noted that the theme for the previous cohort(s) was retail payments and cross-border payments. The applications for the 3<sup>rd</sup> cohort open from October 1, 2021 to November 14, 2021. This initiative comes at an important time as the Account Aggregator ecosystem has gone live with many banks already on-board the system.

#### 11. E-RUPI launched

On August 2, 2021, e-RUPI, a cashless and contactless person-specific and purpose-specific digital payment instrument developed by National Payments Corporation of India ("**NPCI**") was launched.

The unique feature of e-RUPI is that it is essentially like a pre-paid voucher that will be redeemable at the end of the service provider and connects the sponsors and the beneficiaries on a digital platform without any physical interface. It is a QR code or SMS string based e-Voucher built on NPCI's UPI platform. Any corporate or government agency ("**service provider**") will have to approach partner banks, which are both private and public sector

lenders ("**issuing entities**"), with the details of specific persons and the purpose for the payments. Further the beneficiary will be identified using their mobile number and a voucher allocated by a partner bank issuing entity. Thereafter, the beneficiaries of this seamless one-time payment mechanism will be able to redeem the voucher without a card, digital payments application, or internet banking access at specific accepting centers.

#### 12. RBI's Outsourcing Framework For Payment And Settlement Activities

RBI notified the Framework for Outsourcing of Payment and Settlement-related Activities by Payment System Operators ("**PSOs**") on August 3, 2021 ("**Framework**").

The Framework is only applicable to non-bank PSOs in relation to their payment and / or settlement-related activities. It does not cover internal administration, housekeeping or similar functions. RBI has previously notified outsourcing guidelines for Banks and NBFCs from time to time, however, those were not applicable on non-bank PSOs. The regulations apply to Indian and foreign "service providers", including vendors, payment gateways, agents, consultants, and/or their representatives.

Framework seeks to put in place minimum standards to manage risks in outsourcing of payments and / or settlement-related activities including other incidental activities like on-boarding customers, IT based services, etc. PSOs are required to ensure that all their outsourcing arrangements are in compliance with this framework by 31 March 2022.

The PSOs are expressly prohibited from outsourcing certain “Core Management Functions” like management of payment system operations, transaction management, management of customer data, risk management, information technology and information security management. They are also prohibited from outsourcing compliance and decision-making functions, including determining compliance with KYC norms. These restrictions are largely in line with regulations presently applicable to Banks and NBFCs, and prevent PSOs from operating as shell entities and relying on intra-group entity outsourcing for its day to day operations. The extent of outsourcing arrangements is a crucial factor vis-a-vis the rights of the customer and requires that PSOs consider all applicable laws when conducting due diligence. The PSO shall regularly review and monitor the security practices and control processes of the service provider and require the service provider to disclose security breaches, such security breach has to be reported to RBI.

The Framework clarifies that the ultimate responsibility for all outsourced activity and to address any grievances of the customer resides with PSOs, against the services provided by PSOs or the service provider. The outsourcing arrangement shall not reduce obligations or accountability of PSOs towards RBI, payment system participants or customers.

### **13. RBI permits Non-Banking Institutions to carry out Authentication of Aadhar through e-KYC facility provided by UIDAI**

The RBI in its circular dated 13<sup>th</sup> September, 2021 has allowed Non-banking entities including NBFCs, Payment

System Providers and Payment System Participants, to carry out authentication of their clients using Aadhar number through e-KYC service provided by UIDAI. The circular amongst other things, states that the permission may only be given after UIDAI has consulted the appropriate regulator. As per the sanction provided under Section 11A of the Prevention of Money Laundering Act, 2002, the Department of Revenue, under the Ministry of Finance has laid down a detailed procedure which has to be followed for authentication of Aadhar by Non-banking entities. The circular issued by RBI will potentially give a fillip to Aadhar enrolment and authentication in the coming months as an increasing number of services are allowed to avail of e-KYC services.

### **14. Account Aggregator launched with major Banks**

Eight Banks have joined India’s new Account Aggregator (“AA”) ecosystem put together under supervision of the RBI to enable easy and safe sharing of information between customers and banks so as to facilitate efficient delivery of banking and financial services. Account Aggregator ecosystem introduces a shift towards consent-based data sharing mechanism, that allows customers to avail various financial services from a host of providers on a single portal based on a consent method, under which the consumers can choose what financial data to share and with which entity.

Account aggregators address the issue of scattered data across financial institutions and provide a platform for sharing data with customers consent and in a data-blind manner. This would help banks and financial institutions reduce transaction

costs, help in prevention of fraud, enable faster processing of financial products and help in developing innovative tailored products for customers. Account Aggregator shall not request or store customer credentials (like passwords, PINs, private keys) which may be used for authenticating customers to the FIPs.

## HealthTech

### 15. Ayushman Bharat Digital Health Mission launched by the Prime Minister

On September 29, 2021, the Ayushman Bharat Digital Health Mission ("ABDHM") was launched with the aim of bridging the gap between various stakeholders in the healthcare ecosystem through digital means and ensuring better access to healthcare services in the country. The official launch was preceded by an announcement made by the Prime Minister on August 15, 2020, for the creation of a National Digital Health Mission ("NDHM") as was envisaged under the National Health Policy, 2017 and the National Digital Health Blueprint, 2020.

The ABDHM has four key components, a health ID, health facility registry, digital health records and healthcare professionals' registry. The NHA has launched the NDHM Sandbox to encourage private players including technology platforms to play a major role in developing the ABDHM across its four key components. This will allow private entities to be part of the National Digital Health ecosystem as health information providers or health information users and gives them access to the health ID application programming interface ("API") for it to integrate the software it is developing onto the API and process

health data consent requests by utilizing the services of a consent manager.

The significance of this initiative is to streamline the use of health IDs across hospitals and make them inter-operable and house the health data including medical history of patients under a single platform. It will also allow easy identification of the available doctors, diagnostic laboratories, and chemists as they will also be on-boarded on the ABDHM platform.

## Online Gaming

### 16. Supreme Court upholds fantasy sport, "Dream 11".

The Supreme Court, in *Avinash Malhotra v. the State of Rajasthan*, upheld a Rajasthan High Court order, dismissing a PIL that sought a ban of fantasy sport, "Dream 11". The Apex Court held that the matter is no longer *res integra*, i.e. a matter which has not been examined already. The Apex Court further noted that Special Leave Petitions from the Punjab & Haryana High Court in the past on similar subject matter were already dismissed by the court as early as in the year 2017.

The Supreme Court, through its aforementioned judgment has upheld the view expressed by the Rajasthan High Court, in the month of October 2020, in the landmark judgment *Ravindra Singh Chaudhary v. Union of India*. The Rajasthan High Court held that Dream11 was a game of skill and not gambling. The Court had held that:

*"the first issue as to whether the online fantasy sports games offered on Dream-11 platform are gambling/betting is decided against the PIL petitioner. Since*

*the result of fantasy game depends on skill of participant and not sheer chance, and winning or losing of virtual team created by the participant is also independent of outcome of the game or event in the real world, we hold that the format of online fantasy game offered by respondent is a game of mere skill and their business has protection under Article 19(1)(g) of the Constitution of India, as repeatedly held by various Courts and affirmed by the Hon'ble Supreme Court".*

The Apex Court [further] elaborated that gambling is not a trade, hence it is not protected by Article 19(1)(g) of Constitution of India. Fantasy games on the other hand, involve substantial skills is nothing but are business activities thus, they have the protection granted by Article 19 (1)(g) of Constitution of India

Even though the debate around game of skill versus game of chance is a highly contentious issue in India, the position around fantasy sports being a game of skill and not game of chance or gambling, seems to be settled by different Indian courts. This paves the way for more opportunities for different fantasy sports in India and growth of business due to the same, provided the legal requirements as identified by the courts are fulfilled.

### 17. Karnataka notifies law banning online betting games

The Karnataka government notified the Karnataka Police (Amendment) Act, 2021 ("**Karnataka Act**") banning all forms of gambling in the state, including online gambling. The Karnataka Act includes the use of cyberspace including computer resources or any communication device as defined in the Information Technology Act,

2000 in the process of gaming to curb the menace of gambling through the internet, mobile apps etc. Further, it enhances the punishment for gambling from 1 year to 3 years.

#### The significant features of the Act

- The Karnataka Act provides for an inclusive definition of gaming and stipulates that: "*gaming means and includes online games, involving all forms of wagering or betting, including in the form of tokens valued in terms of money paid before or after issue of it, or electronic means and virtual currency, electronic transfer of funds in connection with any game of chance, but does not include a lottery or wagering or betting on horse race run*".
- The ambit of 'wagering and betting' has been increased to include "any act or risking money, or otherwise on the unknown result of an event including on a game of skill".

Karnataka's ban is a setback for the online gaming community and has resulted in intensifying the concerns of publishers and developers of the online gaming industry in Karnataka.

### 18. Kerala High Court Quashes State Government's Ban on Online Rummy.

The Kerala High Court on September 27, 2021 in *Gameskraft Technologies Pvt. Ltd. v. State of Kerala* quashed the notification dated February 23, 2021 issued by the Kerala state government banning online rummy involving stakes. The Kerala Gaming Act, 1960 ("**Act**") exempts lotteries and games of skill from the scope of betting or wagering. Further, the Act empowers the state government to

exempt a game of skill from all of any provisions of the law, if they are satisfied that the element of skill is predominant over the element of chance. 'Rummy' was exempted under this provision in 1976.

The court ruled that *"The notification is arbitrary, illegal and in violation of Articles 14 and 19(1) (g) of the Constitution of India, since the notification has been issued in relation to a game which already stands exempted from the provisions of the Act under Section 14 of the Kerala Act and since the game does not come within the meaning of 'gambling' or 'gaming', providing a platform for playing the game, which is in the nature of business cannot be curtailed."* Further, the court noted that, *"notification is in effect a prohibition of Online Rummy played for stakes and not a reasonable restriction under Article 19(6) of the Constitution of India."*

## E-Commerce

### 19. Ministry of Commerce & Industry has set up a nine-member advisory council for Open Network for Digital Commerce.

The Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry vide press release dated July 5, 2021 initiated a project on Open Network for Digital Commerce ("ONDC"). The project is launched to promote open network development on open-source methods, using open specifications and network protocols independent of any specific platform. The project aims to democratise digital commerce, moving it from a platform-centric model to an open-network. As UPI is to the digital payment domain, ONDC is to e-commerce in India. It will enable buyers and sellers to be digitally visible and transact through an

open network irrespective of the platform/application they use.

To this end, an advisory council was constituted on July 5, 2021 and its first meeting was convened on July 16, 2021 where the council adopted its role to guide and mentor design, implementation and national rollout of ONDC in addition to the scope of the erstwhile steering committee. It was recommended by the advisory council members that in addition to establishing ONDC to manage the open network, the government may also consider establishing an independent regulatory authority for e-Commerce (such as SEBI for Capital Market).

This initiative will act as a catalyst to India's digital revolution as the initiative aims to bring together all e-commerce platforms on a common network. Notably, it will not only provide a level playing field for small and large businesses but will also encourage local e-commerce. Further, it will immensely benefit the customers in large as quality products will be offered for competitive prices.

## Drones

### 20. Government notifies new Drone Rules, 2021:

The Unmanned Aircraft System Rules, 2021 ("UAS Rules") notified in March 2021 were replaced by the Drone Rules, 2021 promulgated on 25<sup>th</sup> August, 2021 by the Ministry of Civil Aviation.

The UAS Rules were complicated, required more approvals and forms to be filled for usage, and there was more scope for human interface and discretion. Further there were restrictions on foreign companies operating drones (which now

stand removed) and weight of drones covered under the extant rules was limited to 300 kgs (as against 500 kgs now).

The promulgation of the Drone Rules, eases compliance with the regulatory requirement of operating drones in India.

Rule 3(k), permits drone operations only within defined airspace (geo-fencing). The airspace map on the Digital Sky Platform (Platform) will follow a dynamic nature of zoning and may be updated from time to time by the Central Government (Rule 23). Drone operations unless exempt by the Drone Rules, are permitted in case the drone conforms to a type certificate issued by the DGCA or an entity authorised by the DGCA (Rule 7), further the rules also provide for acceptance of approvals granted by States which are party to the Chicago Convention. The rules allow operation of drones after registering and obtaining a unique identification number from the Platform. Nodal officers of state and Central governments and law enforcement agencies shall be provided direct access to the Platform (Rule 25).

Public safety and security shall be not be endangered by drone operations and there is a prohibition on carrying of arms, ammunitions, explosives and dangerous goods by drones (note: the Drone Rules do not apply to the armed forces of India)

The liberalisation in the rules allow for the proliferation of the drone sector and its allied usage, by government and private parties alike. An instance of the government using drones is the Telangana governments 'Medicine from Sky' scheme to deliver medicine to remote areas and the same may be used in other last mile delivery schemes as well. In the private sector, drone have immense potential for

use in agriculture (spraying pesticides to swarm off wards of locusts), oil and gas explorations, mining and quarrying, urban and transportation planning, drone taxis and in providing adequate support to our security personnel to name a few.



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