

Comments by Taj Group of Hotels (IHCL) on Issues Raised in  
TRAI Consultation Paper 2015

Q1. *Is there a need to define and differentiate between domestic subscribers and commercial subscribers for provision of TV signals?*

A1. There is no need to define and differentiate between domestic subscribers and commercial subscribers for provision of TV signals as the Hon'ble Supreme Court of India vide its Judgment dated 24<sup>th</sup> November, 2006 has categorically held "that Hotels are covered by the definition of "Consumer". The Hon'ble Court has further stated that the owners of the Hotels take TV signals for their customers/guests. While doing so, they inter-alia provide services to their customers. An owner of a Hotel provides various amenities to its customers such as beds, meals, fans, television etc. Making a provision for extending such facilities or amenities to the boarders would not constitute a sale by an owner to a guest. The owners of the hotels take TV signals from the Broadcasters in the same manner as they take supply of electrical energy from the licensees. A guest may use an electrical appliance. The same would not constitute the sale of electricity by the hotel to him. For the said purpose the 'Consumer' and 'Subscriber' would continue to be the hotel and its management. Similarly, if a television set is provided in all the rooms, as a part of the services rendered by the management by way of an amenity, wherefore the guest are not charged separately, the same would not convert the guest staying in the hotel into 'Consumers' or 'Subscribers'. They do not have privity of contract with broadcasters or cable operators. We, therefore, are of the opinion that the members of the appellat association are consumers.

We, therefore, are of the opinion that it would not be correct to contend that the commercial cable subscribers would be outside the purview of the regulatory jurisdiction of TRAI. If such a

contention is accepted, the purport and object for which the TRAI Act was enacted would be defeated.

If that is the interpretation given by the Hon'ble Supreme Court of India, therefore, there is no basis to classify subscribers of TV broadcasting services into different categories specially when after the remand of the matter to the TDSAT by the Supreme Court and TDSAT quashing the Notification dated 21.11.2006 and broadcasters challenging the same in the Supreme Court and Hon'ble Court by its judgment dated 16.04.2014 dismissed the Appeals filed by the broadcasters challenging the aforesaid quashment stating therein that "we see no reason to interfere with the said judgment and, therefore, confirm the same".

An exception could be carved out by TRAI if any consumers qua the hotels or such like institutions charge separately for exploiting TV signals then a separate tariff could be prescribed by the TRAI so as to make it equitable as has been done earlier by TRAI in the Notifications dated 16.07.2014 and 18.07.2014.

*Q2. In case such a classification of TV subscribers is needed, what should be the basis or criterion amongst either from those discussed above or otherwise? Please give detailed justification in support of your comments.*

*A2. According to us and as stated herein above, no classification is needed for separate TV subscribers except for those who commercially exploit TV signals by charging separate fee/entry fee. (excluding LCO, MSO and DTH) All others to be classified as "Ordinary Subscribers". The broadcasters in any case earn their revenue through advertisements and viewership.*

*Q3. Is there a need to review the existing tariff framework (both at wholesale and retail levels) to cater for commercial subscribers for TV services provided through addressable systems and non-addressable systems?*

A3. No. There is no need to review the existing tariff framework which has been devised keeping in view the Hon'ble Supreme Court judgment qua Article 14 of the Constitution of India i.e. equality before law. In case the existing tariff framework is reviewed it will only lead to complications and further litigations especially when the TV signal provided and the cost of its provision is the same.

TRAI may only prescribe separate tariff for institutions charging separately/commercially exploiting the TV signals.

Q4. *Is there a need to have a different tariff framework for commercial subscribers (both at wholesale and retail levels)? In case the answer to this question is in the positive, what should be the suggested tariff framework for commercial subscribers (both at wholesale and retail levels)? Please provide the rationale and justification with your reply.*

A4. No need to have a different tariff framework for commercial subscribers as same has been held by the Supreme Court as Consumers. As stated above, TRAI may only prescribe separate tariff for institutions charging separately or commercially exploiting the TV signals.

Q5. *Is the present framework adequate to ensure transparency and accountability in the value chain to effectively minimize disputes and conflicts among stakeholders?*

A5. No. Any amount of framework will not satisfy the broadcasters to minimize disputes. The only way is to treat all subscribers at par with ordinary subscribers as stated by the Hon'ble Supreme Court of India except only those who commercially gain from exploiting TV signals to share the revenue with broadcasters. In fact, the monopoly of the broadcasters should be brought to an end while treating all the subscribers/consumers at par.

Q6. *In case you perceive the present framework to be inadequate, what should be the practical and implementable mechanism so as to ensure transparency and accountability in the value chain?*

- A6. There is no practical implementable mechanism except treating all at par keeping in view the Supreme Court judgment.
- Q7. *Is there a need to enable engagement of broadcasters in the determination of retail tariffs for commercial subscribers on a case-to-case basis?*
- A7. Once TRAI keeping in view the Supreme Court judgment have classified commercial subscribers as ordinary subscribers except for those who separately charge or commercially exploit TV signals, there is no need to engage broadcasters as their role is defined by providing signals to LCOs, MSOs, DTH and moreover, they get their revenue through advertisement and viewership. The mighty's should be kept away from ordinary persons.
- Q8. *How can it be ensured that TV signal feed is not misused for commercial purposes wherein the signal has been provided for non-commercial purpose?*
- A8. Make it mandatory for all subscribers ordinary or commercial to inform the concerned Broadcasters through LCO/MSO/DTH operators that they are going to exploit TV signals for commercial purpose and they are willing to negotiate with them. Further, to exploit the event for commercial purpose, the same has to be advertized and broadcasters will come to know of the same.
- Q9. *Any other suggestion which you feel is relevant in this matter. Please provide your comments with full justification.*
- A9. TRAI vide its order dated 16.07.2014 and 18.07.2014 has done justice by implementing the Hon'ble Supreme Court guidelines in a fair and transparent manner and same should be uphold now as by doing this all the Consumers will be immensely benefitted and the monopolistic regime of broadcasters will come to an end. With the aforesaid orders TRAI has protected the dignity of ordinary subscribers qua the commercial subscribers. The unwarranted

threats by the broadcasters is/will come to an end and all the subscriber irrespective of category shall remain at peace. TRAI should not succumb to any pressure as their hands are strengthened by the Supreme Court and the Hon'ble Court decision is binding on all under Article 141 of the Constitution of India.

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