

11th March, 2016

Telecom Regulatory Authority of India
Mahanagar Door Sanchar Bhawan
Jawahar Lal Nehru Marg,
(Old Minto Road)
New Delhi – 110002

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for
11/3/16

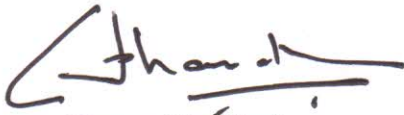
Subject: Response to the Consultation Paper on Tariff Issues related to TV Services ('Consultation Paper')

Kind Attn: Mr. S.K. Gupta, Pr. Advisor (B&CS)

Dear Sir,

We thank the TRAI for this opportunity to express our views on the above captioned Consultation Paper and attach Tata Sky's response to the same.

Yours faithfully,



Himavat Chaudhuri
Chief Legal and Regulatory Affairs Officer

Encl: As above

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दिनांक 11/3/16

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for collation & analysis & reply
SO-I(B&C)/RA(Sharma)

TATA SKY'S RESPONSE TO THE CONSULTATION PAPER ON TARIFF ISSUES
RELATED TO TV SERVICES DATED 29th JANUARY, 2016

ISSUES FOR CONSULTATION

QUERY

- Q1. Which of the price models discussed in consultation paper would be suitable at wholesale level in broadcasting sector and why? You may also suggest a modified/ alternate model with detailed justifications.
- Q2. Which of the corresponding price models discussed in consultation paper would be suitable at retail level in broadcasting sector and why? You may also suggest a modified/ alternate model with detailed justifications.
- Q3. How will the transparency and non-discrimination requirements be fulfilled in the suggested pair of models? Explain the methodology of functioning with adequate justification.
- Q4. How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested pair of models? Give your comments with detailed justifications.
- Q5. Which of the integrated distribution models discussed in consultation paper would be suitable and why? You may also suggest a modified/ alternate model with detailed justifications.
- Q6. How will the transparency and non-discrimination requirements be fulfilled in the suggested models? Explain the methodology of functioning with adequate justification.
- Q7. How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested integrated distribution models? Give your comments with detailed justifications.
- Q8. Is there a need to identify significant market powers?
- Q9. What should be the criteria for classifying an entity as a significant market power? Support your comments with justification.
- Q10. Should there be differential regulatory framework for the significant market power? If yes, what should be such framework and why? How would it regulate the sector?
- Q11. Is there a need to continue with the price freeze prescribed in 2004 and derive the price for digital platforms from analog prices? If not, what should be the basic pricing framework for pricing the channels at wholesale level in digital addressable platforms?
- Q12. Do you feel that list of the Genres proposed in the consultation paper (CP) are adequate and will serve the purpose to decide genre caps for pricing the channels? You may suggest addition/ deletion of genres with justification.

- Q13. Is there a need to create a common GEC genre for multiple GEC genre using different regional languages such as GEC (Hindi), GEC (English) and GEC (Regional language) etc? Give your suggestions with justification.
- Q14. What should be the measures to ensure that price of the broadcast channels at wholesale level is not distorted by significant market power?
- Q15. What should be the basis to derive the price cap for each genre?
- Q16. What percentage of discount should be considered on the average genre RIO prices in the given genre to determine the price cap?
- Q17. What should be the frequency to revisit genre ceilings prescribed by the Authority and why?
- Q18. What should be the criteria for providing the discounts to DPOs on the notified wholesale prices of the channels and why?
- Q19. What would be the maximum percentage of the cumulative discount that can be allowed on aggregated subscription revenue due to the broadcasters from a DPO based on the transparent criteria notified by the broadcasters?

TATA SKY RESPONSE

We remain concerned on this issue for consultation and would like to bring the following to the attention of the TRAI:

CURRENT SITUATION OF THE DTH INDUSTRY

It is over a decade since DTH services have been available in India. During this period, DTH operators have incurred substantial losses. One of the reasons for such losses is that DTH operators incur heavy taxes at multiple levels. Under the current laws, DTH operators are required to pay the following:

- An initial entry fee and an annual License Fee (which is 10% of its gross revenue in a financial year) payable to the Government of India in accordance with the Guidelines for DTH Broadcasting Services;
- Entertainment tax levied by the States which varies for each state and could range between 10% and 30%. When the Government opened up the DTH sector to private operators in India, entertainment tax was not levied on DTH services. Provision of DTH services was only subject to service tax. However, currently, there is a simultaneous levy of Central and State taxes, leading to double taxation. ; and
- Service tax at the rate of 14.5% levied by the Central Government and which is going to be increased to 15%.
- In addition, several import duties are also paid by the DTH operators.
- Despite the above, there continues to be a requirement for huge investment in the DTH industry which all operators need to continue to do to remain in business.

Multiplicity of DPOs and Broadcasters

We would request the TRAI to recognize that there is no platform, or any member of a platform, which is able to dominate the distribution space with respect to delivery of services to the consumer. In any given market today there are 7 DTH platforms (6 privately run, and 1 owned by Doordarshan) available for a consumer to choose from.

In addition, in each of those markets, there are multiple MSOs/cable operators, IPTV platforms available to the consumer.

Likewise there are over 800 broadcasters approved by the MIB for broadcast in India. There are several broadcasters competing within each genre to get the eyeballs of the viewer offering multiple options. At points in time one channel is popular, and other points in time, other channels are popular, therefore, no one channel really has significant market power, especially after the TRAI has regulated the functioning of channel aggregators.

The TRAI has already put in place regulations to ensure non-discriminatory access, including, a must carry obligation, and platforms are offering a wide variety of content and channels based on consumer preferences. DPOs as well may be focussed on different geographic or socio economic segments, and will therefore be willing to pay a higher or lower amount for channels according to their targeted customer base.

In fact, due to the hyper competition that is playing out in the market place today consumers have access to diversified content at the best possible prices.

Further, there are sufficient laws that already provide safeguards against monopolies.

In light of the above, it is necessary that the DTH Industry is not further burdened with onerous tariff obligations and regulations as otherwise it will affect the economic viability of the DPO's operations.

We therefore, urge the TRAI to allow the Price Forbearance Models at the wholesale and the retail level. Further, the channel pricing framework and methodologies should also be left to the parties involved, allowing the market forces and negotiation between the parties to decide the same.

We would request the TRAI to consider also:

- It should be kept in mind that in the past, attempts to regulate tariff have resulted not in simplification or ease of business, but have only resulted in multiplicity of litigation, as a result of which the industry is in a state of constant uncertainty.
- Further, the industry is operating on a completely different footing as compared to other industries. Across industries, parties have the right to negotiate commercials with various members of the value chain. However, in a regulated tariff system all scope for commercial negotiation is wiped out, and instead parties are litigating around regulation.
- In our view, it would be best for the DPO to have the freedom to decide whether or not to carry a costly channel and the flexibility to package the same. This will also automatically

allow the market to even out any price and packaging irregularities, on the basis of demand, as is the case of other industries.

- It should be noted that as specified in the Consultation Paper, other countries also follow an unregulated approach for this industry.

QUERY

- Q20. What should be parameters for categorization of channels under the “Niche Channel Genre”?
- Q21. Do you agree that niche channels need to be given complete forbearance in fixation of the price of the channel? Give your comments with justification.
- Q22. What should the maximum gestation period permitted for a niche channel and why?
- Q23. How misuse in the name of “Niche Channel Genre” can be controlled?
- Q24. Can a channel under “Niche Channel Genre” continue in perpetuity? If not, what should be the criteria for a niche channel to cease to continue under the “Niche Channel Genre”?
- Q25. How should the price of the HD channel be regulated to protect the interest of subscribers?
- Q26. Should there be a linkage of HD channel price with its SD format? If so, what should be the formula to link HD format price with SD format price and why?
- Q27. Should similar content in different formats (HD and SD) in a given bouquet be pushed to the subscribers? How this issue can be addressed?
- Q28. Do you agree that separation of FTA and pay channel bouquets will provide more flexibility in selection of channels to subscribers and will be more user friendly? Justify your comments.

TATA SKY RESPONSE

We remain concerned on this issue for consultation and would like to bring the following to the attention of the TRAI:

PRICING AND PACKAGING

DPOs such as Tata Sky invest heavily on infrastructure and technology and wait for several years to recover investments. This period for recovery of investments extends well beyond even the terms of the License of 10 years granted by the MIB. Additionally, DPOs such as Tata Sky need to incur extra expenses on bandwidth and technology to carry Niche channels which may be watched by a lesser number of consumers, or HD channels which require greater bandwidth, and therefore, need pricing and packaging flexibility to make the business of carriage of these channels viable. Freedom to price HD channels is an important source of revenues for DPOs to recover such costs. Consumers are also willing to pay a higher price for HD content given the better audio visual viewing experience.

Our endeavour remains to provide the best quality services at the best prices while simultaneously balancing the varied viewing interests of consumers on an all India basis.

Any restriction in the freedom to price and package content at the retail level will adversely impact customer interests, as it will force DPOs to drastically change the bouquet composition to continue to remain viable and this would inhibit the flexibility of adding new channels, as price would be the primary, determining factor.

This would invariably result in a bouquet channel composition which is based on the price of the channels, instead of the genre and consumers would miss out on high content value channels, which are currently part of the genre based bouquets.

Further, segregation of bouquets could result in price increases in bouquet rates offered to consumers. For example segregating FTA channels and Pay channels into individual types of bouquets may result in the retail price of FTA channels increasing and also in the consumer having to subscribe to additional bouquets as compared to the current situation.

In light of the above, we urge the TRAI to consider the following suggestions in this regard:

- **All new content should be allowed to be introduced based on the availability and channel pricing and packaging by the DPOs, should continue at forbearance. In fact any regulation leads to pricing aberrations.**
- **Any segregation in price and packaging of channels would lead to additional bouquet subscription and higher prices, which would become a deterrent to a consumer to opt for such content.**
- **If the consumer is unhappy with such content, pricing or packaging then the consumer has the option to not subscribe to such content as DPOs are after all addressable platforms. Thus, the market should be allowed to continue to determine the acceptability of such content, including pricing and packaging of such channels.**
- **Therefore, the DPOs should continue to have the freedom to package channels in various bouquets and any restrictions in this respect would curtail the consumers' choice in content, while also resulting in increased prices.**

QUERY

- Q29. How channel subscription process can be simplified and made user friendly so that subscribers can choose channels and bouquets of their choice easily? Give your suggestions with justification.
- Q30. How can the activation time be minimized for subscribing to additional channels/bouquets?
- Q37. Can EPG include details of the program of the channels not subscribed by the customer so that customer can take a decision to subscribe such channels?

Q38. Can Electronic Program Guide (EPG) include the preview of channels, say picture in picture (PIP) for channels available on the platform of DPOs but not subscribed by the customers at no additional cost to subscribers? Justify your comments.

TATA SKY RESPONSE

Tata Sky customers have benefited visibly from the innovative technology which has been offered by Tata Sky including a consumer friendly EPG, high quality and high definition content, superior quality STBs, interactive services etc. all at par with global standards.

A consumer is today already able to choose his set of channels, a la carte, or bouquet by calling the call centre or selecting them on the website of Tata Sky. We can add SMS based activation of channels as well as a feature.

Tata Sky's EPG does in fact provide the option of providing details of the channel programs even though the same is unsubscribed. However, the PIP function is only provided for subscribed content.

In view of the above we would like to highlight that:

- **Our EPG is very consumer friendly and provides a ready reference of genre based offerings.**
- **We are continuously trying to introduce new technology for the benefit of our consumers and remain open to exploring app based/other subscription options in addition to the already existing physical, call centre, or web based activation.**
- **any event, once the customer makes the request though the website, or via the call centre, the activation process is virtually real time so long as the customer has sufficient balance in the account.**

QUERY

Q31. Should the carriage fee be regulated? If yes, what should be the basis to regulate carriage fee?

Q32. Under what circumstances, carriage fee be permitted and why?

Q33. Is there a need to prescribe cap on maximum carriage fee to be charged by distribution platform operators per channel per subscriber? If so, what should be the "price Cap" and how is it to be calculated?

Q34. Should the carriage fee be reduced with increase in the number of subscribers for the TV channel? If so, what should be the criteria and why?

Q35. Should the practice of payment of placement and marketing fees amongst stakeholders be brought under the ambit of regulation? If yes, suggest the framework and its workability?

TATA SKY RESPONSE

Satellite bandwidth is a scarce resource which is monitored and allocated by various government departments.

As in the case of pricing of channels, our view at Tata Sky remains that regulation should be avoided, and forbearance should be followed and pricing flexibility should be retained by the service provider.

However, if a channel wants to be placed at a particular EPG number, or in a particular positioning vis a vis another channel this is in the nature of a placement fee which is common across all industries. Placement fee is a miniscule portion of our revenue, and such detailed regulation around it is not required or expected. It is common for FMCG companies to pay placement / display fees at points of sale to the retailers.

In fact any restrictions around this would lead to the inability of any new channel to promote itself vis a vis established channels, and therefore, deprive viewers of content which may be meaningful to them.

In view of the above, we urge the TRAI to not regulate such fees and allow mutual negotiations and business factors to determine the same.

QUERY

Q36. Is there a need to regulate variant or cloned channels i.e. creation of multiple channels from similar content, to protect consumers' interest? If yes, how should variant channels be defined and regulated?

TATA SKY RESPONSE

Creation of multiple channels or variants is a common feature anywhere in the world. The fact remains that while there may be similarity of content, there are differences in content or packaging of the channel which make it meaningful for a consumer to subscribe to it.

There are consumers for example who want channels today with a time difference, for example a +1 hour feed, or a +2 hour feed, and would be willing to pay an addition fee for the same.

In view of the above, there is no need to regulate either the creation or pricing of such channels.

QUERY

Q39. Is the option of Pay-per-program viewing by subscribers feasible to implement? If so, should the tariff of such viewing be regulated? Give your comments with justification.

Q40. Will there be any additional implementation cost to subscriber for pay-per-view service?

TATA SKY RESPONSE

As mentioned above, Tata Sky endeavors to provide the latest technology to its consumers and has already provided the pay per view option which provides content such as latest movies.

This is at par with what is being offered at the global level and besides contributing to ARPU, also provides consumers with a wider choice of content.

However, such content is sourced on mutually acceptable terms and conditions from content owners, who may not be common across DPOs.

The charges for such content depends on the popularity of the content and the market should be allowed to determine whether such content should be offered and its price.

In view of the above, there is no need to regulate price tariff of such content and the DPOs should continue to be allowed the flexibility of carrying content from different content owners, on mutually accepted terms and conditions.

QUERY

Q41. Do you agree with the approach suggested in para 5.8.6 for setting up of a central facility? If yes, please suggest detailed guidelines for setting up and operation of such entity. If no, please suggest alternative approach(s) to streamline the process of periodic reporting to broadcasters and audit of DPOs with justification.

5.8.6 *The strengths of ICTs can be harnessed to set up an online facility for collecting information automatically from the SMS of all the DPOs in the pre-defined format. This information can be pulled by the central server or can be pushed by the SMS of the DPOs in real time. Such information exchanged can be automated using web services. The infrastructure for creation of such central facility can both be installed and managed by the industry body or a third party. The requirements of generation of different reports for broadcasters can be met by automated report generation system. Such reports can easily be sent periodically electronically to all concerned stakeholders. The checks and balances can be introduced in the system to ensure the protection and integrity of the data collection and data processing. If despite of all precautions, some broadcasters have concerns regarding correctness of the data captured by central facility, then he can opt for the physical audit of SMS of the concerned DPO also. Such audits may be conducted by domain experts on behalf of broadcasters. In order to ensure that such physical audit are not resorted frequently, the broadcasters may pay some fee (to be mutually decided in agreements) for conduction of the audit to DPOs. DPOs will be obliged to get such audit conducted within a week of such notification. Penal provision can be made in case the audit team of broadcasters finds that information has been tempered with or manipulated at DPO level. Such penal provisions will be part of agreement between DPOs and broadcasters. The proposed online facility is suggested to have following features:*

- a) The central facility can be set up and maintained either by the industry body or any third party.*
- b) The central facility can provide the requisite data or reports to the broadcasters on payments basis to meet its operational expenses.*
- c) The central facility will standardize the parameters, data, forms, formats, and reports to be shared amongst the stakeholders.*
- d) The central facility will lay down the mechanism for checking the integrity of the SMS of DPOs.*
- e) The Server of the central facility will access and retrieve the requisite information from the SMS of DPOs.*
- f) The broadcasters will not have direct access to the SMS of DPOs. However, broadcasters will have option for the audit. DPOs will be obliged to get such audit conducted in time bound manner.*
- g) The central facility will provide requisite information as may be needed to regulatory/ statutory agencies.*
- h) Adequate safeguards will be built in to prevent abuse of the system.*

TATA SKY RESPONSE

Please note that Tata Sky being an addressable platform has been transparent right from its inception, unlike other platforms which may have been opaque leading to under declaration of subscribers and loss to the Government.

Our subscriber information is submitted both to the MIB and the TRAI.

We have always been open to broadcaster audits based on the mandatory audit conditions under the Telecommunication (Broadcasting and Cable Services) interconnection Regulations, 2004, and in fact broadcasters have carried out such audits several times at Tata Sky. No such audit has disclosed any under declaration of subscribers

As audits cover sensitive business information, we would rather maintain the same in our database.

In view of the above, there is no need for such a centralized data collection system maintained by external entities.