

13 February 2023

By Email

Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg, Old Minto Road
New Delhi – 110 002

Kind Attn: Shri Anil Bharadwaj, Advisor (B&CS)

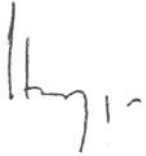
Subject: Tata Play's comments to TRAI's Consultation Paper dated 13 January 2023 on License Fee and Policy matters of DTH services

Dear Sir,

We thank you for the opportunity to express our views on the above captioned Consultation Paper. Tata Play's response to the same is enclosed for your ready reference.

Thanking you.

Yours sincerely,



Harit Nagpal
Managing Director and CEO

Enclosed: As above

TATA PLAY'S RESPONSE DATED 13 FEBRUARY 2023 TO TRAI'S CONSULTATION PAPER DATED 13 JANUARY 2023 ON LICENSE FEE AND POLICY MATTERS OF DTH SERVICES

License Fee:

Q1. Whether the existing definition of Gross Revenue and Adjusted Gross Revenue as prescribed in the extant DTH Guidelines needs any modification? If yes, please provide revised definition of the revenue on which license fee should be applicable. Provide your comments with proper justification.

TATA PLAY RESPONSE:

Before going into the definition and components of Gross Revenue (GR) and Adjusted Gross Revenue (AGR), we reiterate our long-standing request of level playing field.

Level playing field between content Distribution Platforms:

- Telecom Industry has Unified License Regime where all Licensees providing variety of telecom services pay uniform license fee, regardless of technology used by the platform.
- DTH platforms, which distribute both Pay and FTA channels, just as MSOs of Cable and HITS platforms do, pay License Fee at the rate of 8% of AGR, while the MSOs and HITS platform do not, despite being licensed by the MIB, regulated by the TRAI with respect to pricing and packaging.
- OTT platforms also carry most Pay and FTA channels, in addition to original content, go direct to home, yet they are neither required to be licensed, nor pay any license fee. Moreover, TRAI Regulations are also not being made applicable to them.
- There is thus a significant disparity between the treatment meted out to the DTH operators as against other operators, despite offering the same service.
- The imposition of License Fee does not seem linked to the chronology of the emergence of technologies. Cable came before DTH and OTT after. Yet DTH is the only one that is charged License Fee.
- Imposing License Fee on DTH industry while not imposing on others, seems like an attempt to discourage one particular platform while encouraging others.
- There has been a decline of the DTH Industry, and this point we request that DTH sector should not be burdened alone with the License Fee and the License Fee Regime must be uniform across all distribution platforms.
- We therefore request that License Fee should be done away for DTH. However, in case TRAI or MIB are unable to do away the License Fee for DTH then a uniform License Fee of say 4% may be imposed for all Content Distributors, Cable, MSOs, HITS, OTT and DTH. We believe that the perceived loss of revenue arising from the suggested reduction in rate from 8% to 4% for DTH operators, would be compensated by the fresh source of revenue of license fees, arising from the other platforms, such as Content Distributors, Cable, MSO's, HITS, OTT, etc.
- UK does not even impose license fee on DTH Operators. Moreover, even at the 4% level it will be higher versus what is paid in US (minimal amount per subscriber is paid as license fee) and in Singapore (2.5%). However, we could consider 4% as a step towards eventual rationalisation of License Fee.

International Practice:

- United Kingdom - There is no license for DTH services in the UK. There was license for DTH Operators but was subsequently done away with. Further, while there is a license fee paid by television channels and broadcasters to OFCOM, there is no such fees for platforms.
- Singapore – In Singapore as well license fee is levied at the rate of 2.5% of total revenue which also is much lesser than the 4% we are proposing for all Content Distributors.
- United States – Minimal License Fee is paid in the US, basis the number of basic subscriber base.

Request for exclusion of revenue from non-licensed activities for calculation AGR:

- License fee should be applicable to revenue generated by services provided under the scope of the license.
- As stated in the Consultation Paper, DoT's amendment dated 25 October 2021 modified the definition of AGR to remove non-telecom revenues while calculating License Fee. Applicable Gross Revenue (ApGR) has been introduced, which is arrived at by removing the non-telecom revenues earned by Telcos from their gross revenue such as property rents, dividends and interests and revenue from activities that are covered by MIB License (such as DTH), for the calculation of AGR.
- We request that following the letter and spirit of the DoT amendment, a similar corresponding amendment should also be made by MIB, by also excluding revenues arising from a license issued by DoT. It will also enable us to issue a single bill to our subscribers, availing more than one service.
- DTH operator's revenue be confined to (i) Distribution margin, (ii) Network Capacity Fee, (iii) Carriage Fee and (iv) revenue from Value Added Services.
- TRAI in its letter dated 8 January 2020 stated that the amount collected by the DTH operators for channel/bouquet subscription is broadcaster's revenue and the DTH operator's revenue is confined to (i) Distribution Margin, (ii) Network Capacity Fee and (iii) Carriage Fee and (iv) revenue from value added services they offer.
- We also request that License Fee should be made applicable only to revenue that accrues to the DTH operators since rates and pricing of the channels and the bouquets are determined by the Broadcasters as decided by TRAI. DTH Operators are merely carrying the same for carriage fee, 20% distribution margin, and Network Capacity Fee. Therefore, it would be unfair and unjust for DTH operators to suffer paying license fee to the government on revenue that is neither accrued to them nor earned by them.
- Therefore, we have requested the amendment of the definition of AGR by removing revenue not generated vide licensed activity as well as pass through items like content, for the calculation of License Fee and bring a uniform and Industry friendly licensing policy.

Suggested Definition of Gross Revenue:

- As stated in TRAI's letter dated 8 January 2020 the definition of Gross Revenue/ Adjusted Gross Revenue/ Applicable Gross Revenue should be confined to (i) Distribution Margin (ii) Network Capacity Fee and (iii) Carriage Fee and (iv) revenue from value added services offered.
- However, if exclusions are to be determined by the TRAI then they should be in line with DoT's amendment of 25 October 2021 and exclude the following from DTH Operator's revenue:
 - a. Goods and Service Tax, Entertainment Tax or any other tax accruing to the Government. (Since this is not a revenue per se, but a statutory levy on which the Government has a right, levying a License fee would be akin to tax on tax.)
 - b. Revenues from activities under a license/permission issued by other ministries such as the Department of Telecommunications.
 - c. Revenue from non – licensed operations such as OTT.

- d. Charges of pass-through nature, including content fee collected on behalf of Broadcasters.
- e. Further as stated in the Consultation Paper and in the DoT's Amendment of October 2021, list of other incomes to be excluded from Gross Revenue are:
 - i. Income from Dividends
 - ii. Income from Interest
 - iii. Capital Gains on account of profit of Sale of fixed assets and securities
 - iv. Gains from Foreign Exchange rates fluctuation
 - v. Income from property rent
 - vi. Insurance claims
 - vii. Bad Debts recovered
 - viii. Excess provisions written back.

Q2. Is there a need to exclude certain revenue components from the definition of Gross Revenue in the DTH Guidelines? If yes, what income heads should be excluded from Gross Revenue to arrive at Adjusted Gross Revenue? What mechanism should be adopted to ensure that the revenue excluded reflect true value, without compromising the revenue streams that entail payment of license fee?

TATA PLAY RESPONSE:

- Yes. As explained in our response to query no. 1 revenue components need to be limited to the revenue components described in TRAI's letter dated 8 January 2020 i.e. (i) Distribution Margin, (ii) Network Capacity Fee and (iii) Carriage Fee and (iv) revenue from value added services offered by the DTH Operator.
- Further, the exclusions should be in line with DoT's amendment dated of 25 October 2021. The exclusions pertinent to DTH Operators are already listed down on response of query no. 1.

Q3. Please provide comments on the list of possible income heads as per Form-D. Accordingly, apropos to Q2 above, provide a clear, precise and unambiguous format of Form-D containing:

- i. Exhaustive income heads forming part of Gross Revenue**
- ii. Exhaustive list of revenue components (income heads) to be excluded from Gross Revenue**

TATA PLAY RESPONSE

- As stated in our response to query 1 and 2, in our opinion Gross Revenue/ Adjusted Gross Revenue/ Applicable Gross Revenue for DTH Operators should only consist of the following revenue components (i) Distribution margin (ii) Network Capacity Fee (iii) Carriage Fee and (iv) Revenue from value added services offered.
- However, for a more detailed calculation, as determined by DoT in its amendment, the following revenue components need to be excluded from the calculation of Gross Revenue for a DTH Operator:
 - a. Goods and Service Tax, Entertainment Tax or any other tax accruing to the Government
 - b. Revenues from activities under a license/permission issued by other ministries such as the Department of Telecommunications
 - c. Revenue from non – licensed operations such as OTT
 - d. Charges of pass-through nature, including content fee collected on behalf of Broadcasters
 - e. List of other incomes to be excluded from Gross Revenue are:
 - (i) Income from Dividends
 - (ii) Income from Interest
 - (iii) Capital Gains on account of profit of Sale of fixed assets and securities

- (iv) Gains from Foreign Exchange rates fluctuation
- (v) Income from property rent
- (vi) Insurance claims
- (vii) Bad Debts recovered
- (viii) Excess provisions written back.

Q4. What method of verification should be adopted by the licensor to verify the deductions claimed, if any, for the purpose of calculation of the license fee payable by the DTH operators?

TATA PLAY RESPONSE

- The current regulatory regime has in built checks and balances to ensure transparency in its operations.
- DTH Operators maintain CAS and SMS and the subscriber number of each channel is reported to the broadcasters. Each year the DTH Operators go through an audit by TRAI empaneled auditors. Broadcasters can also audit the SMS and CAS to check the veracity of the report.
- Also, clause 3.1.2 of the DTH guidelines require the DTH Operator to maintain separate financial accounts which shall be audited by the Statutory Auditors.
- At the end of each financial year, the company provides the statement of gross revenue forming part of the final accounts of the licensee as per the format in Form D, duly certificate by the Statutory Auditors.
- Moreover, the MIB can also verify the License Fee declaration from the Annual Accounts of the DTH Operator, rather than only relying on the Form D submitted.
- Further clause 3.1.3 of the DTH guidelines gives the provision to MIB to get the accounts audited by the CAG or any other professional auditor.

Q5. Alternatively, should the license fee be levied on Gross Revenue in place of Adjusted Gross Revenue, or any other base be used? If yes, what should be the percentage/quantum of such base? Please support your response with proper reasoning.

TATA PLAY RESPONSE

- We reiterate that License Fee should be done away for DTH or uniform License Fee of about 4%, only on the revenue generated from licensed activity, may be levied for all Content Distributors, Cable, MSOs, HITS, OTT or DTH. This will bring about a level playing field while not being too harsh a levy on Cable. It would also be revenue neutral for the exchequer.
- Else Gross Revenue must be calculated on the basis of the revenue heads provided by us and exclusions given by us in response to question 3.

Bank Guarantee:

Q6. Is there any need to review the initial Bank Guarantee for the first two quarters, especially since the Bank Guarantee has already been reduced for the first two quarters vide amendments in DTH Guidelines notified on 30th December 2020?

TATA PLAY RESPONSE

- We have no comments to offer since this is applicable to the new entrants and not applicable to Tata Play.

Q7. Whether the amendments made by DoT in Unified License Agreement w.r.t. rationalization of Bank Guarantees should be extended for existing DTH licensees also? If yes, what should be the percentage of License Fee for the two quarters to be submitted as Bank Guarantee to the licensor?

TATA PLAY RESPONSE

- As per the DoT amendments in Unified License Agreement dated 6 October 2021, the Financial Bank Guarantee requirement for a UL licensee is equal to 20% of estimated sum payable equivalent to License fee for two quarters. The same was 100% earlier.
- In line with the aforesaid amendments, we recommend that Bank Guarantee requirement for DTH licensees should also be equal to 20% of estimated sum payable equivalent to License fee for two quarters, instead of 100% currently.
- This will significantly reduce the financial burden put upon the DTH Industry.
- Further, we request that for a level playing field Bank Guarantee requirement may either be uniformly imposed on all Content Distributors (Cable, MSOs, HITS and OTT) or no longer be imposed on DTH Operators.

Q8. Whether any alternate method should be adopted instead of Bank Guarantee for securitizing license fee and ensuring compliance of the DTH license conditions. If yes, please specify the details thereof.

TATA PLAY RESPONSE

No Comments

Any Other Issue

Q9. Stakeholders are requested to provide any other comments, if any, relevant to DTH policy matter.

TATA PLAY RESPONSE

We would request the TRAI and MIB to take into account the following aspects when looking at the DTH industry vis-à-vis other platforms:

- DTH is the only platform, which has been paying License Fees to the Government, as opposed to Cable, Content Broadcasters, OTT Players, etc.
- DTH is the only platform, where the level of transparency and compliances have been of the highest order, as compared to the others, as they are either not regulated or their regulatory requirements are not of the same rigour as those applicable to the DTH industry.
- In the pre-GST regime, DTH is the only platform, which was subject to entertainment tax, which none of the other platforms were subject to.
- DTH is the only platform, where a license fee is imposed on taxes collected, which are not even the revenue of the Company. Even Income tax excludes all such indirect taxes while computing the taxable income.
- DTH sector is thus being singled out, despite being a tax paying and transparent platform. We request parity to be brought amongst all operators.