

TRAI CONSULTATION PAPER

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ON

DTH issues relating to Tariff Regulation and New issues under reference.

**RESPONSE FROM
NEO SPORTS BROADCAST PRIVATE LIMITED**

5.2 Tariff fixation for DTH services

5.2.1 Whether there is a need to fix tariff for DTH?

5.2.2 If yes, whether tariff regulation should be at wholesale level or at retail level or both, i.e., whether tariff should be regulated between broadcasters and DTH operators or between DTH operators and subscribers or at both the levels?

Our Reply :

We feel the need of fixation of the tariff for DTH Price, for the time being which may be 1-2 years, so as to bring parity and competition in the industry so that ultimately all the stake holders particularly the consumers should be benefited. Once the equilibrium is established then there should be complete forbearance of price.

The purpose can be achieved if the prices/tariff is fixed till consumer level. In our opinion fixation of tariff only at the broadcasters level will not achieve the purpose as there is no control on (Maximum Retail Price) MRP or the which can be fixed by the distributor at its sole discretion and thereby the consumers may not get the ultimate benefits. Fixation of tariff only at the broadcaster level will only benefit only the distributor i.e. DTH operator unless the same benefit is passed on to the Consumer.

The purpose of fixation of DTH price and its continuance was done with some objective so that the consumer is not fleeced. By not having a cap on the pricing to the consumer, the entire purpose of capping the price of a channel by TRAI is defeated.

We would like to place it on record that in no industry the (Maximum Retail Price) MRP is fixed by the dealer or distributor the MRP is always fixed by the manufacturer; in the same way in DTH services also the fixation of MRP should not be at the sole discretion of DTH Operators. Presently the whole sale price have already been frozen the MRP must be set by the broadcaster/authority to make it affordable to the consumers and have the standardized pricing across all DTH platforms, irrespective of the packaging the DTH operators wishes to make.

As in case of telecom industry the MRP is fixed by TRAI and all the players have to make available the services within the MRP, this has brought parity of the product and enhanced the competition with respect to the services being provided to the consumers.

In addition it needs to be considered that in case there is fixation of tariff at consumer level without fixation of tariff at broadcaster level then again the purpose may be mitigated. Therefore the tariff should be fixed at the broadcaster and DTH Operator level, but this should be subject to the rider as stated above.

It is worth mentioning that the Broadcasters have been contributing to the path of growth of DTH Industry and making their channels available at 50% rates of cable price. It is worth mentioning that despite the price freeze at all level the broadcasters have agreed to make their channels at 50% of cable price irrespective of the facts that there is increase in the content cost. As acknowledged by the Authority also that the broadcasters in their meeting on 18th April 2008, but the benefit of **reduction in price of all the channels** have not been passed on to the consumers and there exist various bouquets and top up packages whereby the consumers are ultimately landing up to pay the higher prices than cable.

We are of the view that a discount of 50% (of cable price) is a good buffer to meet the cost of taxes and levies as paid by the DTH Operators. We suggest that the MRP should be either fixed up by the mutual consent of both the parties within the MRP fixed by the Broadcaster/Authority and incase the MRP is not fixed mutually the MRP may be fixed up at the margin of 40% of whole sale price (considering 30% as stated in the Inter connect Regulation and 10% for other DTH Specific cost).

The above principal also helps in creating a fair price offer to the consumers which is consumer friendly and hence packaging and tiring will also becomes competitive and healthy competition breeds consumer satisfaction. Fixation on the MRP or maximum margins to DTH operators will limit the scope of indiscrimination between channels.

The Authority has rightly observed that high retail price would not only lead to a reduction in number of subscribers subscribing the channels and adversely affect the revenue of broadcasters but this will also lead to affect the consumers who will be forced to pay high price for the channels. The high margin will only go in the pocket of Distributor.

It is therefore suggested that the MRP should be decided with the mutual consent of both the parties failing of which a margin should be fixed up by the Authority on the whole sale price so as to arrive the MRP by the Distributor. We suggest a margin upto 40% on whole sale price depending upon the genres.

Fixation of MRP by the broadcasters will bring uniformity in the pricing across all DTH Platforms and will not creating confusion and differentiation among subscribers. As in all other industries the MRP is fixed by the manufacturer and not by the Dealers or Distributors. Same way the MRP of the channels should be decided by the Broadcasters

or the same should be fixed up the margin suggested by the Authority. Else this will bring confusion and non parity as one Platform selling the same channels at different price.

5.2.3 Whether tariff regulation for DTH at wholesale level should be in terms of laying down some relationship between the prices of channels/ bouquets for non-addressable platforms and the prices of such channels/ bouquets for DTH platform? If yes, then what should be the relationship between the prices of channels/ bouquets for non-addressable platforms and the prices of such channels/ bouquets for DTH platform? The basis for prescribing the relationship may also be explained.

Our Reply :

In our opinion there should not be any relationship between both the platform as both are different mode of delivery. We, however suggest that **for the time being in all the addressable platforms CAS, IPTV & DTH the existing (50% of cable) price should be continued till the above purpose is achieved** and thereafter the price for all delivery system should be the same and be dependent upon market forces.

However once the Whole sale price and the margin thereupon is fixed the disparity will automatically be removed.

5.2.4 Whether tariff regulation for DTH at wholesale level should be in terms of fixation of prices for different bouquets/ channels? If yes, then the prices for different bouquets/ channels may be suggested. The methodology adopted for arriving at the prices for such bouquets/ channels may also be elucidated. Further, the methodology to fix price for a new pay channel may also be given.

In our opinion the whole sale price limit of 50% (of cable rates) should be increased to 75% in case of sports and movie channels as the content cost is very high for the sports contents. For the other channels the limit should be varied as per the genres. In addition we are of the view that there need not be any tariff regulation for Bouquets but limit discount on the bouquet should not be more than 10% on the sum of the channels on a stand alone basis.

In addition for new Pay channels fixation of price be vested with the Broadcasters or the channel owner as the content cost (particularly for the sports broadcasters) are uncertain and will be very high, therefore market force need to drive the pricing.

5.2.5 Whether retail regulation of DTH tariff should be in terms of maximum retail prices of various channels or is there any other way of regulating DTH tariff at retail level?

OUR REPLY :

As suggested above the Retail Price should be mutually agreed by the broadcasters and the DTH Platform, however in case the price are not mutually decided

the MRP should be maintained with a margin on whole sale price which should be 40% of whole sale price (considering 30% as stated in the Inter connect Regulation and 10% for other miscellaneous cost).

5.2.6 In case DTH tariff is to be regulated at both wholesale and retail levels, then what should be the relationship between the wholesale and retail tariff?

OUR REPLY :

As stated above we suggest that for the time being Whole Sale Price may be varied as per Genres however considering the high acquisition cost the limit of whole sale price of 50% should be increased to 75% in case of Sports and Movies. For the other channels the limit should be varied as per the genres. Once the pricing and system is established (say after 2-3 years) the pricing should be left to market forces.

MRP by the broadcaster is important, as the DTH operators normally sells the basic package at huge discount and charge/recover the discount by overcharging the other specialized channels such as Sports, movies etc. which are usually packaged as top ups basis. Thus making the channels high in price and resulting in low off take when the MRP is higher.

We therefore suggest that MRP for the channels should be fixed with the mutual consent of broadcasters and DTH Operators however in case of non agreement the MRP should be fixed up with a mark upto 40% on Whole sale price. (40% of whole sale price is arrived at considering 30% as stated in the Inter connect Regulation and 10% for other miscellaneous cost).

5.3 Comparison with CAS

5.3.1 Whether the basic features of tariff order dated 31st August, 2006 for cable services in CAS areas, namely fixing of ceiling for maximum retail prices of pay channels, at the level of the subscriber fixing of ceiling for basic service tier and standard tariff packages for renting of Set Top Boxes should be made applicable to DTH services also?

OUR REPLY :

We refer to the explanatory statement issued by the Authority wherein it was stated the rupees five are being fixed for the time being in order to introduce and establish the CAS. It was imperative that the Authority would revise the said price, we therefore suggest to change and align the CAS pricing with DTH pricing. CAS is still under cloud – as it lacks transparency and the reports are unreliable and defies all logic. It is requested to change the price of CAS equivalent to 50% or Genre wise rates of cable rates for the time being.

In addition we cannot compare the CAS and DTH, though there are similarity for giving option to the consumers but the mode of delivery and the area of operation is totally

different. The area and number of subscribers are confined and limited but the area of operation of DTH Operators are not confined to any notified area and there is no such limitations which enable the DTH Operators to increase its turn over by providing various other services. Broadcasters cannot afford to loose money for the rest of India and other mode of operations as they are loosing money and no gain in the CAS areas at a price of five Rupees, the broadcasters should not be punished for their co-operation for advancement of industry particularly CAS and DTH distribution.

5.3.2 Whether the ceiling for maximum retail prices of pay channels for DTH should be the same as laid down for cable services in CAS areas?

OUR REPLY :

Ceiling of MRP for DTH must not be the same as laid down for CAS Areas, this will lead to even winding up the business of small and/or new broadcasters as no broadcaster can afford to sell its channels at five rupees. So far as the small limited area is concerned a broadcaster can think of loosing of its revenue for some short time in order to establish itself in longer run. But in case the MRP for DTH is fixed in the similar way as of CAS the new and/or small broadcasters will start bleeding and will wind up their business which will lead to lesser competitions and monopolistic market.

The same will also affect even the business of big broadcasters and their quality of services. In addition the size of industry and content will shrink the impact of which can even seen in current scenario also.

We are of the opinion that MRP be fixed by the Broadcasters considering the market conditions, content other cost, mutually agreed by the Broadcasters and the DTH platform. In case the same could not be mutually decided the MRP should be finalized by keeping a margin of 40% on whole sale price.

5.3.3 Whether DTH operators should be mandated to provide a basic service tier of FTA channels and if so, what mechanism should be adopted by DTH operators to provide the service of unencrypted Basic Service Tier, which is available in CAS areas without having to invest in a Set Top Box?

OUR REPLY :

As suggested earlier the DTH Operator should treat all the channels equally and in non discriminatory manner. Since there is no regulation to protect the interest of the Broadcasters against discrimination; a few (new and /or Small) broadcasters are being treated discriminated by the DTH Operators with respect to packaging and pricing.

Presently the DTH Operators are forming the bouquet as per their own wish and commercial benefit without considering the interest of the Consumers and broadcasters, who so ever is paying the high placement fee their channels are placed in a better (basic) tier which is a clear discrimination and injustice to the small or new broadcasters who

cannot afford to pay the high placement fee but have the capability and good content with them.

We are of the view that the DTH Operators should not offer any basic package. **The DTH Operators should charge the price of STB and should offer 30 FTA along with the said STB which should be called as basic tier.** STB can be made available to the consumer of sale or lease basis The DTH Operators may offer the channels in a-la-carte mode in various packages but the options should be given to the Subscribers which channel/package it wants to subscribe and there should not be any compulsory bouquet along with the STB. The channels should also be available on a-la-carte mode. The relation between the a-la-carte price and bouquet should be based upon the existing formula suggested by the Authority.

Creating packages by the DTH Operators and particularly the concept of basic package do not offer flexibility to Subscribers to pick the channels of their choice, and unwanted channels are forced on them, which defeats the purpose of consumer choice and will be against the principal of fair packaging and fair pricing.

Considering above it is suggested that there should be only FTA package (basic package) should be made available along with the STB **and for the rest of the channels option should be given to the consumers to subscribe the same in a-la-carte mode or in various packages which should be made by the DTH operators in non discriminatory manner.**

5.3.4 Whether the DTH operators should be required to make available the pay channels on a-la-carte basis to the subscribers as the cable operators are required to do in the CAS areas?

OUR REPLY :

Yes the DTH operators MUST be required to make available the pay channels on a-la-carte basis to the subscribers failing of which the purpose of consumer choice is being defeated.

DTH operators, besides offering a price benefit on bouquets created by them, should also offer Channels on a-la-carte basis so that consumers can opt for what they wish. The regulation by the Authority for broadcasters to offer channels a la carte to DTH operators is so that they the consumers can be benefited and they can opt for the channels of their choice. Absence of this option to the consumers will defeat the whole purpose of offering the channels to DTH Operators on a-la-carte basis.

5.3.5 Whether standard tariff packages for renting of Set Top Boxes should also be prescribed for DTH operators?

OUR REPLY :

To promote digital connectivity DTH operators must also give the options to the customers to buy out or take the STB on lease/hire purchase basis.

5.4 Other Relevant Issues

5.4.1 Whether the carriage fee charged by the DTH operators from the Broadcasters should also be regulated? If yes, then what should be the methodology of regulation?

OUR REPLY :

For a pay channel Carriage fees should be directly related to the off take of the Channels. It must be based on its subscription. It gives both the DTH platforms and the broadcaster to come to a logical conclusion. For example if the Channel is assured carriage/ placed on a basic package, and the subscriber number is 90-100% of the total subscribers of DTH Operator; the carriage fee may be not more than 10% of revenue of the Broadcaster, similarly if the subscriber base is 75-90% of the total subscribers of DTH Operator; the carriage fee may be not more than 5% of revenue and so on. Similar yard stick needs to be applied for FTA channels .

5.4.2 Whether any ceiling on carriage fee needs to be prescribed? If yes, then whether the ceiling should be linked with the subscriber base of the DTH operator or should it be same for all DTH operators?

OUR REPLY :

The above logic supports the point. There need to be a ceiling on FTA channels.

5.4.3 Comments may also be offered on the prayers made in the writ petition of M/s Tata Sky Ltd.

The issue raised by Tata Sky in the petition was comparison of CAS and DTH , which has been duly replied above.

CHAPTER VI:

NEW ISSUES ON DTH UNDER REFERENCE FROM MINISTRY OF INFORMATION AND BROADCASTING

6.1: Provisioning of new services on DTH platform

6.1.5 In view of the above situation, the following issues are posed for comments of the various stakeholders:

a) **Whether Movie-On-demand, Video-on-Demand, Pay-per-view or other Value added services such as Active Stories should be recognized as a broadcast TV channel?**

OUR REPLY :

Such services should not be recognized as a broadcast of a new TV channel, as the DTH Operators are not producing any new content, they only are distributing the same content with some time shift and with some breaks etc., therefore it should be nomenclature should be **“Inter Active Service”**.

It is suggested that the Inter-activity should only be allowed only for the existing channels or the content already been aired thereupon. There should not be any content which is different than the content aired by the existing channels, else the said services will be deemed to be a separate channel. However in case of movies the DTH operators, subject to their agreement with the broadcasters, may be allowed to show the movies which might be shown on the existing channels in next three months.

It is advised **that the rights of inter activity should be governed by a separate agreement to the executed by the Broadcasters and the DTH Operators. Such** rights of inter activity should be granted very cautiously considering the rights including Intellectual Property Rights of the broadcasters, as all the broadcasters may or may not have the above inter activity rights with them or may have limited inter active rights, in such circumstances the DTH Operators must take permission/ authorization from the concerned Broadcasters or content provider/ owner by executing a separate agreement, so that there should not be any violation of the rights including Intellectual property rights of broadcasters/content owners.

It is further suggested that there should not be any compulsion for must provide or must carry with respect to such services, however the broadcasters and DTH Operators should behave in non discrimination manner. However once the inter activity rights are granted to the DTH Operators the DTH Operator should treat the channels in non discriminatory manner.

In addition to above DTH operators **must** be restricted to insert the advertisements without obtaining the consent of the broadcasters so as to protect the interest of the broadcasters and of the sponsorer of a particular event, i.e. in case the main/live programme/event is sponsored by some competitor and the inter active service may be sponsored by the competitor this may prejudicially affect the broadcaster and the first sponsorer . For examples in case an Event (Main Event) is sponsored by Lakme the delayed services should not be allowed to be sponsored by Ponds or other competitor brand as the same may affect the interest of the earlier Brand prejudicially.

It is stated that DTH Operators getting into selling Advertisements may violate the rights of the Broadcasters and can lead to unhealthy ambushing tactics for Brands choosing to be on DTH to counter any particular Brand sponsoring a event or advertising on a particular channel. In addition there should be sharing of advertisement revenue between the broadcasters and DTH Operators as per the terms of the Agreement once the operators are allowed to insert advertisement in the content.

Further in order to protect the content of the broadcasters the logo of particular channel/broadcaster must be shown on the content being shown in the inter active services. to establish the owner ship of the Channel – and hence the content is regulated as per the code laid down by the Authority.

b) In case these are termed as broadcast TV channels, then how could the apparent violation of DTH license provision (Article 6.7, Article 10 and Article 1.4) Up-linking and Down-linking guidelines be dealt with so that availability of new content to consumer does not suffer for want of supporting regulatory provisions?

OUR REPLY :

It is suggested that inter active services should be allowed only for those channels which are registered in India and have got permission to be up linked and down linked from India as per the **Up-linking and Down-linking guidelines**.

Other conditions including of Article 10, 1.4 may be allowed as it is.

In addition Programming Code and Advertisement Code should be the same as of the normal DTH service.

c) What should be the regulatory approach in order to introduce these services or channels while keeping the subscriber interest and suggested alterations in DTH service operations and business model?

OUR REPLY :

As stated above the such services should be treated only as value added services. In such a manner all the existing statute such as up linking and down linking policies, advertisement and programme codes will automatically be complied with.

Considering the consumer interest – the quality of services for such content should not inferior to the main content and also the pricing should be fairly reasonable.

- d) In case these are not termed as broadcast TV channels, then how could such a channel be prevented from assuming the role of a traditional TV channel? How could by-passing of regulatory provisions: Up-linking/Down-linking, Programme Code, and Advertisement Code be prevented?**

OUR REPLY:

It is reiterated that once the inter active services be treated only as value added services all the existing statute such as up linking and down linking policies, advertisement and programme codes will automatically be complied with.

However in case DTH Operators are allowed to insert the advertisement the existing Advertisement code must allowed on them.

- e) Whether it should be made mandatory for each case of a new Value added service to seek permission before distribution of such value added service to subscribers? Or whether automatic permission be granted for new services on the basis that the services may be asked to be discontinued if so becomes necessary in the subscribers' interest or in general public interest or upon other considerations such as security of state, public order, etc.?**

OUR REPLY :

We are of the opinion that in the beginning of the services (say for 2-3 years) there should be stringent controls with respect to the content and usage of the same and every services to be started with the permission of the broadcaster/Authority, so that the industry practice could be established in planned manner. However minor addition with respect to operational / process activities may be allowed without permission but they should intimated within 7 days of such modification and major addition and quality and content modification must be only with the permissions.

In such services there could be various issues such as which feed should be given to the DTH Operators, whether it should unclean feed of clean feed. In case of unclean feed the Operators should not be allowed to insert their own advertisements or be partly allowed to insert the advertisements. The broadcasters are required to process some activities which involves some more cost in addition which advertisements should be allowed so that the same should not affect the Broadcasters and the sponsorer. In addition what is the nature of work to be done by each player with the content, what could be pricing for the same and there may be certain other issues which cannot be elaborated in the reply,

considering this it is suggested that so far as the commercials are concerned the same should be mutually decided between the parties.

f) In view of above, what amendments shall be required in the present DTH license conditions and Uplink/ Downlink guidelines?

OUR REPLY :

There should not be any must provide or must carry clause, however non discrimination should prevail. Also only the content of existing channels should be available for inter activity on the terms mutually agreed between the parties. It is further suggested that the whole sale and Maximum Retail price should be decided by the Broadcasters.

g) How could the selling of advertisement space on DTH channels or Electronic Program Guide (EPG) or with Value added Service by DTH operators be regulated so that cross-holding restrictions are not violated. In this view, a DTH operator may become a broadcaster technically once the DTH operator independently transmits advertisement content which is not provided by any broadcaster. How could the broadcaster level responsibility for adherence to Program code and Advertisement Code be shifted to a DTH operator, in case the operator executes the sale and carriage of advertisements?

OUR REPLY :

We reiterate that DTH operators **must** be restricted to insert the advertisements without obtaining the consent of the broadcasters so as to protect the interest of the broadcasters and of the sponsorer of a particular event, i.e. in case the main/live programme/event is sponsored by some competitor and the inter active service may be sponsored by the competitor this may prejudicially affect the broadcaster and the first sponsorer . For examples in case an Event (Main Event) is sponsored by Lakme the delayed services should not be allowed to be sponsored by Ponds or other competitor brand as the same may affect the interest of the earlier Brand prejudicially.

As stated above DTH Operators getting into selling Advertisements may violate the rights of the Broadcasters and can lead to unhealthy ambushing tactics for Brands choosing to be on DTH to counter any particular Brand sponsoring a event or advertising on a particular channel. In addition there should be sharing of advertisement revenue between the broadcasters and DTH Operators as per the terms of the Agreement once the operators are allowed to insert advertisement in the content.

Further in order to protect the content of the broadcasters the logo of particular channel/broadcaster must be shown on the content being shown in the inter active services.

It is however suggested that DTH operators may be allowed to insert some promotional advertisements of their service or Brand on EPG which is available only on the DTH platform subject to terms of the agreement signed between the parties.

- h) Traditionally advertisements as well as program content fall in the domain of the Broadcasters. In case, DTH operator shares the right to create, sale and carry the advertisement on his platform, then the channels are necessarily distinguished on the basis of who has provided the advertisement with the same program feed. In what way any potential demand to supply clean feed without advertisement by a DTH operator be attended to (by a broadcaster)? Should 'must provide' provision of the Interconnect Regulation be reviewed, in case supply of clean feed is considered necessary?**

OUR REPLY :

It is reiterated that DTH operators **should be allowed** to insert the advertisements only with the consent of the broadcasters of the competitors and only promotional advertisements for the DTH Services should be allowed.

Inserting of advertisement by the DTH Operators may affect the agreement with the Broadcasters and the Original Sponsorer , i.e. in case the main/live programme/event is sponsored by one sponsorer the DTH Service provider may insert the advertisement of the competitor. For examples in case an Event (Main Event) is sponsored by Lakme the delayed services should not be allowed to be sponsored by Ponds or other competitor brand as the same may affect the interest of the earlier Brand prejudicially.

It is stated that DTH Operators getting into selling Advertisements will violate the rights of the Broadcasters and can lead to unhealthy ambushing tactics for Brands choosing to be on DTH to counter any particular Brand sponsoring an event or advertising on a particular channel. However promotional advertisement of the DTH Services may be allowed to be inserted with the permission of the Broadcasters and subject to Advertisement code.

It is suggested that sharing a Clean Feed (with out Advertisement) may be allowed to a DTH platform by Broadcasters only with the mutual consent of both the parties and subject to the Interactive Agreement executed between DTH Platform and the Broadcasters. Such interactive service with clean feed can be a collaborated effort to offer the subscriber an advertisement free event which can be subscribed at a premium rate. The same can be a add on service provided the normal feed is also available to the subscribers providing them option to choose between the two feed depending on how much they wish to pay for. We are of the strong opinion that there should not be any must provide or must carry for content (be it clean or unclean). Let this be the result of market forces, as no broadcaster and DTH Operator would deny the extra source of revenue, but carrying inter activity should not be source of killing competition.

6.2: Radio channels on DTH services

6.2.4 In view of the above, the following issues may be posed for consultation:

- a. Whether carriage of radio channels by a DTH operator be permitted? Should such permission cover all kind of radio channels to be carried?**

- b. In case this is permitted, whether DTH license, Uplink/ Downlink guidelines, Conflict of business interests conditions with existing radio system operators, should be amended keeping in view, the incumbent or new DTH operators?**

- c. If so, what changes are needed in the existing regulatory provisions so that the general policy of must provide and a non-discriminatory offering of channels be extended to between radio channels and DTH operators?**

Our Reply :

Radio – should not be allowed as Radios are license to be operated on specified cities . Making it available it is carried across the country which defeats the purpose of the Radio licensing.

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