



FICCI's Response to TRAI Consultation Paper on "MIB back reference on TRAI's Recommendations dated 19.11.2014 on "Regulatory Framework for Platform Services" and MIB reference on TRAI's Recommendations on "Platform Services offered by DTH Operators" dated 13.11.2019"

Issue-wise response:

Issue 1: Legal Status of DPOs offering Platform Services (PS)

(a) TRAI's Recommendations dated 19.11.2014

Any person/ entity desirous of providing PS, or is already providing such services, must be incorporated as a company under the Indian Companies Act, 2013 and the rules framed thereunder.

(b) MIB's View vide its letter to TRAI dated 23.10.2020

This recommendation was not accepted by IMC in respect of MSOs/LCOs, since most of the MSOs/LCOs operated in small areas are either proprietorship or partnership firms which are not registered as companies. Making it obligatory for MSOs/LCOs to convert into companies may not be in line with the promotion of ease of doing business. IMC decided that anybody registered as a DPO, either with MIB or with post office, shall be eligible to carry PS channels.

(c) Summary of TRAI's Response in the current CP dated 07.12.2020

TRAI accepts MIB's view provided MIB is able to specify compliance structure to ensure that those providing platform services make full disclosure on ownership status and comply to content code and advertisement code while providing platform services.

FICCI's response:

It is important to assist the industry participants to have operational freedom so that they can organise their operating structure which is available to entities across various sectors. A blanket imposition may not be warranted and would also be against the principles of ease of doing business which is an important principle adopted by the Government of India towards reforming the manner in which businesses are required to operate. However, any DPO providing Platform Services should be subjected a compliance structure that ensures transparency and hygiene, including disclosure on ownership status, channel carrying capacity and compliance to content code and advertisement code.

Issue 3: Security Clearance of MSOs and LCOs

(a) TRAI's Recommendation dated 19.11.2014

The Authority notes that all DPOs, other than MSOs and LCOs operating in nonDAS areas, are already security cleared. For these MSOs and LCOs, the Authority recommends that at any time before the MIB obtains the security clearance, it is determined that the programming service offered on PS and which has been registered on the online system is inimical to India's national security or to the public interest, MIB may require the DPO to withdraw from distribution the PS Channel or the programming service and/ or cancel the registration.



(b) MIB's View vide its letter dated 23.10.2020

- (i) TRAI's assumption that all the DPOs operating in DAS areas are security cleared is not correct since security clearance for LCOs is not a pre-requisite for grant of registration. Further, with the completion of digitization process there is no distinction between the DAS and non-DAS areas. At present about 72% MSOs are not security cleared by MHA as during their registration period security clearance was not a pre-requisite. More so, none of the LCOs are security cleared.
- (ii) Taking note of this, it is recommended to extend TRAI recommendation for security clearance of MSOs/LCOs in non-DAS areas, to all MSOs / LCOs who are not security cleared and wish to offer PS to their subscribers.
- (iii) That is to say, MIB will obtain security clearance of all MSOs / LCOs, who wish to offer PS and were not MHA security cleared at the time of registration, while they run their PS. However, if at any time before the MIB obtains the security clearance, it is determined that the programming service offered on PS and which has been registered on the online system is inimical to India's national security or to the public interest, MIB may require the MSO / LCO to withdraw from distribution of the PS Channel or the programming service and / or cancel the registration.

(c) Summary of TRAI's Response in the current CP dated 07.12.2020

TRAI agrees with MIB's suggestion with a view that all the MSOs offering PS must be security cleared.

FICCI's response:

We note TRAI had inter-alia recommended that at any time before the MIB obtains the security clearance, it is determined that the programming service offered on PS and which has been registered on the online system is inimical to India's national security or to the *public interest*, MIB as a Registering Authority may require the DPO to withdraw from distribution the PS Channel or the programming service and/ or cancel the registration.

We would like to highlight that any restriction on freedom of speech & expression needs to come within the eight listed grounds under Article 19.2 of the Constitution of India and 'public interest' is not a ground available thereunder. In light of the above, we would like to submit that cardinal principles of the Constitution of India must be applied in letter and spirit while deciding the issues which relate to dissemination of content through PS.

Issue 4: Definition of Platform Services

(a) TRAI's Recommendation dated 13.11.2019

The Authority reiterates the definition of PS as recommended in 'Regulatory Framework for Platform Services' dated 19th November 2014. The definition of platform services (PS) for DTH operators shall be:

"Platform services (PS) are programs transmitted by Distribution Platform Operators (DPOs) exclusively to their own subscribers and does not include Doordarshan channels and registered TV channels. PS shall not include foreign TV channels that are not registered in India."



Registered TV channels or television channels means a channel, which has been granted downlinking permission by the Central Government under the policy guidelines issued or amended by it from time to time and reference to the term “channel” shall be constructed as a reference to “television channel”.

(d) MIB’s View vide its letter to TRAI dated 23.10.2020

It is proposed to adopt the above recommendations in respect of Platform Services offered by MSOs / LCOs also by appropriately replacing the word “DTH” with “MSO/LCO” wherever required

(b) Summary of TRAI’s Response in the current CP dated 07.12.2020

TRAI agrees with the views of MIB.

FICCI’s response:

Content on platform service channels, like any other TV channel is copyright protected. Access to creative content is facilitated through commercial negotiation followed by licensing on fair and reasonable terms. Any regulation on platform services should be mindful of this. It is urged that issues such as the exclusivity of content on PS channels must be decided by market forces, following principles recognised under the Copyright Act.

Issue 5: Restrictions on Programmes that can be transmitted on PS

(a) TRAI’s Recommendation dated 13.11.2019

The Authority recommends that:

- (i) The programme transmitted by the DTH operator as a platform service shall be exclusive and the same shall not be permitted to be shared directly or indirectly with any other Distribution Platform Operator (DPO).
- (ii) Programme transmitted by the DTH operator as a platform service shall not directly or indirectly include any registered TV channel or Doordarshan channel or foreign TV channel. Time-shift feed of registered TV channels (such as +1 services) shall not be allowed as a platform service.
- (iii) DTH operator shall ensure and provide an undertaking to the Ministry in the format prescribed by the Ministry that the programme transmitted is exclusive to their platform and not shared directly or indirectly with any other DPO.
- (iv) In case the same programme is found available on the PS of any other DPO, MIB/TRAI may issue direction to immediately stop the transmission of such programme. MIB also reserves the right for cancellation of registration of such PS of the DTH operator.

(b) MIB’s View vide its letter to TRAI dated 23.10.2020

It is proposed to adopt the above recommendations in respect of Platform Services offered by MSOs / LCOs also by appropriately replacing the word “DTH” with “MSO/LCO” wherever required

(c) Summary of TRAI’s Response in the current CP dated 07.12.2020

TRAI agrees with the MIB’s view as this would ensure uniformity of guidelines of DTH and MSOs.



FICCI's response:

As submitted in the preceding section, there is no basis to demand such exclusivity of programmes and content, and neither does any such exclusivity prevail for the content and programming on MIB TV Channels.

The 'exclusivity of content' is a matter concerned with the licensing and sub-licensing of content, which issues are clearly subject to and governed by The Copyright Act.

Aside from the Copyright Act, which inter alia provides for the licensing and sub-licensing of content, there is no statute or law grounded in any reasonable rationale that empowers the authority or the MIB to, prescribe terms or conditions that impact the licensing of content or, unreasonably restrict the business, trade or profession of the content licensor or the content licensee.

Therefore, the only condition that may be included is that the programmes available on PS are in adherence with the stipulations of the Programme code found in the Cable Television Network Act, provisions of Article 19 (2) of the constitution of India.

Issue 6: Activation/deactivation of PS offered by DPOs

(a) TRAI's Recommendations dated 13.11.2019

The Authority recommends that the DTH operators shall provide an option of activation/deactivation of platform services as prescribed in the orders/directions/regulations issued by TRAI from time-to-time.

(b) MIB's View vide its letter to TRAI dated 23.10.2020

It is proposed to adopt the above recommendations in respect of Platform Services offered by MSOs / LCOs also by appropriately replacing the word "DTH" with "MSO/LCO" wherever required

(c) Summary of TRAI's Response in the current CP dated 07.12.2020

TRAI agrees with the views of MIB as this help the consumers in exercising choice.

FICCI's response:

In agreement with MIB recommendation. However, it is noted that TRAI's recommendation dated 13.11.2019 refers to *orders/directions/regulations issued by TRAI from time-to-time* to be extended to Platform Services. It becomes important to underscore that TRAI doesn't have legislative basis to bring platform services under its regulatory ambit. In this regard, it may also be important to emphasise that Platform Services are not broadcasters' registered TV channels that requires downlinking permission from MIB. Hence, they cannot be subjected to TRAI's regulatory frameworks.



Issue 7: Separate categorisation of “Platform Services” in the EPG

(a) TRAI’s Recommendations dated 13.11.2019

The Authority recommends that:

- (i) The platform services channels shall be categorized under the genre ‘Platform Services’ in the Electronic Programmable Guide (EPG) subject to orders/directions/regulations issued by TRAI from time-to-time.
- (ii) The respective maximum retail price (MRP) of the platform service shall be displayed in the EPG against each platform service subject to orders/directions/regulations issued by TRAI from time-to-time.
- (iii) A provision for putting a caption as ‘Platform Services’ may be required to distinguish the platform services from the linear channels. Government may decide the caption in a size which is visually readable by the consumers.

(b) MIB’s View vide its letter to TRAI dated 23.10.2020

It is proposed to adopt the above recommendations in respect of Platform Services offered by MSOs / LCOs also by appropriately replacing the word “DTH” with “MSO/LCO” wherever required.

(c) Summary of TRAI’s Response in the current CP dated 07.12.2020

TRAI agrees with the views of MIB as it will assist the consumers in getting explicit information on their TV screen.

FICCI’s response:

Please refer our comment to the preceding issue channels.