

I Introduction

Indian Broadcasting Foundation (IBF) thanks the Telecom Regulatory Authority of India (TRAI) for accepting its response to the consultation paper on a regulatory framework for platform services. IBF endeavours to work closely with industry, policy makers, regulators and partners in order that television as a sector of the media and entertainment industry grows to its fullest potential. In this pursuit, IBF continuously seeks to align policy makers, regulators and partners to universally address industry opportunities in an equitable manner.

The world is witnessing its most unprecedented form of technological changes in voice, data and video communication and consequently this has a significant impact on broadcasting. In this whirlwind of change, policy makers and regulators must work closely with industry to find answers that help grow industry, especially, when several changes are being witnessed for the first time, and can destroy opportunity if changes are not aligned appropriately.

As the world's largest democracy goes past being a developing economy over the next decade, media and entertainment has the potential to become one of its most value-adding, investment-attracting and employment-generating industries. It is IBF's sincere desire that Government, Regulation and Industry work closely to evolve a policy and regulatory framework that can enable this projectile.

IBF's considered views are being provided as inputs to a critical consultation process. IBF sincerely requests TRAI to use its inputs on the backdrop of the vast technological changes the sector faces and the economic and business realities thereof.

II Preliminary Observations

Over the coming decade, television will find its rightful place in almost every home in the country. It will also form part of important social changes as colleagues and friends gather around large television screens in offices, restaurants and public places to watch events. Over 20 crore homes and lakhs of commercial establishments will become viewing grounds for linear television.

This vast landscape can help emancipate rural families by educating their women. It can ensure entertainment and information/news is available in the places and variety of forms that India's vast plural society wants to access.

a) Equity

Policy and regulation has to be equitable so that all participants are subject to the same set of laws. In the context of television broadcasting, it is accordingly important that all broadcasters in any format and all distributors of content in any format are subject to the same set of laws.

IBF is perplexed by the manner in which the Ministry of Information and Broadcasting (MIB) reference, and the said consultation paper consider legalising and regularising thousands of local channels broadcast by Distribution Platform Operators (DPOs) as an accomplished fact. Most questions elicit responses to “how” such a legitimising process can be completed. There is almost no reference to the fact that these channels have thus far existed under the radar of the law. As a consequence, no response is being elicited on “why” such a position ought to even be considered.

The perplexity is further exaggerated by the fundamental technological changes the world is undergoing in which the legitimisation of such channels makes them inherently capable of becoming national linear television offerings.

Contrast this with the excruciatingly long and arduous process broadcasters undergo to establish themselves as television content providers. The investments, the multiple screenings and approvals, the licensing and the compliances with the Cable Television Networks (Regulation) Act 1995 are all quite extensive. With one stroke, the consultation process is suggesting that what was under the radar thus far will now compete with what has taken two decades to establish and will be allowed to flourish by imposing significantly less legal restrictions on them.

IBF sincerely submits that policies, regulations and the law should apply equitably to all forms of broadcasting and any attempt to treat broadcast of any content differently will result in the economic erosion of an extremely important sector.

b) Roles

Broadcasters have been investing in the creation of content for over two decades. As a result, over 650 channels offer ten genres of television programming to inform, entertain and educate television viewers. Most of this programming is available in about fifteen languages.

The world’s largest democracy has comfortably accepted at least four platforms to distribute this content over – Multi-systems, Direct-to-Home, Head Ends in the Sky and Internet Provided television. These all coexist and while some are yet to establish substantive presence, their ubiquity is a competitive attempt in the making. The distribution of

television programming is an important part of the television broadcasting value chain. Distribution faces several challenges as platforms become more flexible and newer technologies change the way distribution will unfold. At the same time, they offer triple-play opportunity like never before. In view of these changes, it is extremely critical to ensure that distribution is focused on its success while broadcasting is focused on delivering ever-improving and differentiated content.

Accordingly, as has been recognised in the integration consultations, it is important for sector economics to distinguish and keep these two components of the value chain separate.

c) Sequence

Policies and regulations work best when they are sequenced to impact industry growth in a positive manner. IBF seeks to ensure that the policies emanating from the Cable Television Networks (Regulation) Act 1995, regulations on the conduct of business, regulations on taxation, policies on investment and policies on creating jobs are aligned for the sector to continually thrive.

It is important that fundamental changes to the Cable and Satellite Act in light of an addressable digital television world, changes to taxation, changes to regulation all keep two determining parameters in perspective – the sequence in which policy and regulatory changes are made, and the manner in which they are cascaded to serve industry growth appropriately. Policies on distribution competition, ownership, foreign investment, taxation, licensing and the like need to align before something as important and radical as regulation of platform services is addressed.

IBF submits that while this consultation is critical, it needs to be appropriately preceded by changes in the Act, regulations thereof and the sequencing and transition that needs to be established before the answers to this consultation can help in ensuring both equity and role-clarity that will grow the sector to its fullest potential.

III Views and opinions on the issues raised in the consultation paper

1 Do you agree with the following definition for Platform Services (PS)? If not, please suggest an alternative definition:

“Platform services (PS) are programs transmitted by Distribution Platform Operators (DPOs) exclusively to their own subscribers and does not include Doordarshan channels and TV channels permitted under downlinking guidelines.”

IBF View/Opinion:

It is critical to maintain the distinguishable difference between broadcasting and distribution to ensure each of these components plays its role in growing television broadcasting.

Accordingly, DPOs should not be allowed to air any content to its subscribers that can compete with linear broadcasting programming. While we strongly believe that DPOs should accordingly be restricted severely to offer select non-linear broadcasting services, we also believe that if a DPO offers even non-linear broadcasting as a service, that DPO should be subjected to the same set of policies, regulations and laws that broadcasters have to comply with.

DPOs may offer select non-linear services based on the platform’s interactivity and addressability features:

- The content offered and delivered should not comprise content on any linear channel.
- The content is not created by DPOs. The content may be procured from a third party as long as such content is offered only on a non-linear basis and cannot compete with the content provided by any linear channel.
- Such content cannot be procured “exclusively” by the DPO.
- Such content should be subject to the same censorship or self-regulatory boundaries that broadcast content would be subject to.
- DPOs should be comprehensively restricted from providing advertising spots on its non-linear channels.
- Such non-linear channels cannot carry any news or current affairs programming as this could result in severe security issues.
- However, content necessary to help local citizens on education, job opportunity, weather, calamities/dealing with Acts-of-God situations can be non-exclusively provided by DPOs

TRAI should revisit the definition of a platform service basis these aspects.

2 Kindly provide comments on the following aspects related to programs to be permitted on PS channels:

2.1 PS channels cannot transmit/include

2.1.1 Any news and/or current affairs programs

2.1.2 Coverage of political events of any nature

2.1.3 Any programme that is/has been transmitted by any Doordarshan channel or TV channel permitted under uplinking/downlinking guidelines, including serials and reality shows

2.1.4 International, National and State level sporting events/tournaments/games like IPL, Ranji trophy, etc.

IBF View/Opinion:

We substantially agree with these points and re-iterate that any programming content provided by DPOs must be non-linear, cannot compete with linear-programming or broadcaster channel content and may be offered “on demand”.

2.2 PS channels can transmit/include

2.2.1 Movie/Video on demand

2.2.2 Interactive games

2.2.3 Coverage of local cultural events and festivals, traffic, weather, educational/academic programmes (such as coaching classes), information regarding examinations, results, admissions, career counselling, availability of employment opportunities, job placement

2.2.4 Public announcements pertaining to civic amenities like electricity, water supply, natural calamities, health alerts etc. as provided by the local administration

2.2.5 Information pertaining to sporting events excluding live coverage

2.2.6 Live coverage of sporting events of local nature i.e. sporting events played by district level (and its sub-structure) teams and where no broadcasting rights are required

IBF View/Opinion:

IBF reiterates that non-linear, on-demand services can be provided by DPOs on a non-exclusive basis as long as the content does not compete with linear television programming or channels. Accordingly, non-exclusively providing movies on demand, non-exclusively providing interactive games, non-exclusively providing coaching and education, and non-exclusively providing information local to the district or its sub-structure will be both, helpful and create that differentiation distributors may seek to provide. However, any content that competes with linear television programming or channels including local sporting events

ought to be excluded as this would result in overlaps between what linear television channels provide and what DPOs end up providing.

3 What should be periodicity of review to ensure that the PS is not trespassing into the domain of regular TV broadcasters?

IBF View/Opinion:

The substantial challenges DPOs providing non-linear on-demand content, some of which could be as a result of past practices in select instances, would include content piracy, content not appropriately certified or self-regulated and content that directly competes with linear channels. As the number of such DPO channels may pose a challenge, regular spot-audits would initially be necessary. In addition, we suggest that quarterly audits be also conducted to ensure compliance.

4 Should it be mandatory for all DPOs to be registered as Companies under the Companies Act to be allowed to operate PS? If not, how to ensure uniform legal status for all DPOs?

IBF View/Opinion:

As was established in our Preliminary Observations, equity requires that DPOs be subject to the Companies Act and should accordingly be registered with the Registrar of Companies. In fact, we believe that every policy, regulation and law that broadcasters are subjected to should apply to DPOs endeavouring to offer platform services restricted by the suggestions we have made above.

We would also like to suggest that DPOs ought to separate their non-linear on-demand service from their distribution efforts by creating separate legal entities for such activities.

5 Views, if any, on FDI limits?

IBF View/Opinion:

DPOs are currently allowed 74% foreign direct investment. IBF believes this ought to be increased to 100%. Ensuring comprehensive compliance with the aforesaid recommendations, IBF believes that separate DPO entities responsible for non-linear, on-demand content broadcast ought to also be allowed the same kind of foreign direct investment as the DPOs themselves. In fact, this would align with the related stipulations for broadcasters.

6 Should there be any minimum net-worth requirement for offering PS channels? If yes, then what should it be?

IBF View/Opinion:

In order to ensure the seriousness and commitment necessary to manage such a business, the suggested separate entity that provides non-linear, on-demand content ought to be subject to a minimum net worth exceeding Rs5 crore.

While the DPO landscape has emerged to become competitive and increasingly professional, select elements may tarnish their effort in this direction. To ensure a level playing field amongst DPOs, we suggest that DPOs are subject to a set of strict measures that deters errant players.

7 Do you agree that PS channels should also be subjected to same security clearances/ conditions, as applicable for private satellite TV channels?

IBF View/Opinion:

To reiterate, IBF strongly believes that any participant in the sector ought to be subject to the same set of policies, regulations and laws. While such non-linear, on-demand content and DPO entity will be providing television content, it ought to be subject to the same set of clearances and conditions necessary for companies providing cable and satellite services. This is even more necessary in light of the technological changes the sector is faced with, and the security concerns such channels could pose to industry and Government.

8 For the PS channels to be registered with MIB through an online process, what should be the period of validity of registration and annual fee per channel?

IBF View/Opinion:

To ensure that such non-linear, on-demand providing DPOs are able to fulfil compliance, IBF suggests a transition process – registration validity of a year for three years after which it is the same as broadcasters.

9 What is your proposal for renewal of permission?

IBF View/Opinion:

To reiterate, DPOs have emerged as strong, competitive professional players. However, select local cable operators may be continuing errant practices in some areas that ends up tarnishing the entire broadcast distribution sector. A transitory process of annual renewal for three years followed by renewal processes aligned with broadcasters would be ideal.

10 Should there be any limits in terms of geographical area for PS channels? If yes what should be these limits.

IBF View/Opinion:

IBF believes the industry would evolve to having less than 20 DPOs in the next five years. Most of these DPOs will have national presence. As the conduits for distribution and technology availability would allow for a channel, e.g., airing to viewers in Salem District, Tamil Nadu reach viewers in Dispur, Assam seamlessly. As DPOs will be subject to stringent can and cannot do criteria, geographic limits may actually pose a carriage challenge to linear channels and accordingly, ought to be avoided.

11 Should there be a limit on the number of PS channels, which can be operated by a DPO? If yes, then what should be the limit?

IBF View/Opinion:

As DAS takes effect over the next year, Indian viewers would have access to 500 channels. However, DPOs may not invest in commensurate head end capacities until such time they become economically viable. As this would impose a short-term restriction on how many channels broadcasters would be able to air to a part of the country, DPOs should be restricted to 10% of channels being aired to a region/location until such time, 500+ channel networks become ubiquitously available across the country.

12 Do you have any comments on the following obligations/restrictions on DPOs:

12.1 Non-transferability of registration for PS without prior approval of MIB

IBF View/Opinion:

As has been repeatedly responded to, platform services should remain non-transferable to ensure equity of policy, regulation and consequent law.

12.2 Prohibition from interconnecting with other distribution networks for re-transmission of PS i.e. cannot share or allow the re-transmission of the PS channel to another DPO

IBF View/Opinion:

IBF agrees with this position and believes it ought to be strictly enforced.

12.3 Compliance with the Programme & Advertisement Code and TRAI's Regulations pertaining to QoS and complaint redressal

IBF View/Opinion:

As was clearly stated earlier, DPOs should be restricted from advertising, should comprehensively follow TRAI's QoS regulations and complaint addressing process.

13 What other obligations/restrictions need to be imposed on DPOs for offering PS?

IBF View/Opinion:

IBF would like to reiterate that DPOs ought to separate their distribution entity from their non-linear, on-demand platform services.

14 Should DPO be permitted to re-transmit already permitted and operational FM radio channels under suitable arrangement with FM operator? If yes, then should there be any restrictions including on the number of FM radio channels that may be re-transmitted by a DPO?

IBF View/Opinion:

Subject to commercially negotiated arrangements between DPOs and FM radio channels, all FM non-news channels ought to be allowed to be broadcast by DPOs anywhere they have jurisdiction with no restrictions to number of FM radio channels. IBF does realise that this will make Manipuri FM radio from Ukhrui available to residents of Bangalore. Its implications ought to get considered in the commercial arrangements thereof.

15 Please suggest the mechanism for monitoring of PS channel.

IBF View/Opinion:

IBF suggests that the same monitoring mechanisms that broadcasters use – such as viewership measurement and content self-regulation ought to be used. In addition, spot/quarterly audits ought to ensue. MIB ought to help create cells necessary to pursue and complete such audits keeping governance in perspective.

16 Do you agree that similar penal provisions as imposed on TV Broadcasters for violation of the terms and conditions of their permissions may also be imposed on PS? If not, please suggest alternative provisions.

IBF View/Opinion:

To ensure equity, we agree that the same penal provisions for violations of permissions should be imposed on DPOs.

17 What amendments and additional terms & conditions are required in the existing registration/ guidelines/ permission/ license agreements w.r.t. DPOs for regulating the PS channels?

IBF View/Opinion:

IBF believes that DPOs that will provide differentiated non-linear and on demand services as restricted by the recommendations above ought to be provided with a level playing field. While the sector is evolving to consolidate in a few players, errant DPOs may blemish serious professional participants. Strict adherence to an organised DPO play in such services requires for appropriate measures to dissuade the few errant players from continuing to tarnish fair play.

18 What should be the time limit that should be granted to DPOs for registration of the existing PS channels and bring them in conformity with the proposed regulatory framework once it is notified by MIB?

IBF View/Opinion:

IBF believes that DPOs will have to be trained to provide non-linear, on demand broadcasters that are significantly different from the way local channels have operated thus far. IBF believes this will be a yearlong process. Accordingly, DPOs ought to be certified through an established process to be allowed to provide non-linear, on-demand services after which, they ought to be given up to three months to complete registration related processes.

19 Stakeholders may also provide their comments on any other issue relevant to the present consultation including any changes required in the existing regulatory framework.

IBF View/Opinion:

IBF strongly believes that the onset of technological changes the sector is faced with will be substantial over the next five years and will severally and critically affect the economics of the industry as these changes unfold.

Several of these changes will impact distribution in ways we may not fathom today. Accordingly, it will be extremely important to keep a watch on sector and technology dynamics and keep an open dialogue with broadcasters and distributors to ensure that such changes do not impose severe economic challenges for the sector and are dealt with in a timely manner.

IBF would like to reiterate the three fundamental tenets that sectorial policy, regulation and law should align with: equity (for all forms and formats of broadcasting and for distribution), role clarity between broadcasting and distribution and an industry-aligned think-through on the sequence of policy and regulation changes to help the industry grow to its fullest potential.