Tata Sky's Response to the Draft Telecommunication (Broadcasting and Cable Services) (Eight) (Addressable Systems) Tariff Order, 2016 Issued on 10th October, 2016

TRAI has conducted the initial round of consultations on Tariff Order, Quality of Service (QoS) and Interconnection Regulations for the Broadcasting and Cable Services (B&CS) sector in which all aspects of the sector have been thrown open to change through more than 170 questions. This itself is a matter of great concern, because, there is clearly no market failure visible in the sector which calls for such a drastic over-haul.

The basic premise that the TRAI has used for justifying such a massive change is to usher in a common regulatory framework for all DPOs. However, from the currently published draft consultation, it is increasingly evident that DTH Operators have been severely restricted in the guise of bringing in a common framework. At the outset, since the Licensing conditions and regulatory levies are completely different across the different DPO platform, to align them all in a common framework actually leads to a non-level playing field.

Draft Regulations Treats Unequal as Equal

Technological differences

A DTH operator is required to incur huge costs for maintaining and operating its DTH platform. As compared to MSOs and LCOs, the DTH operators incur much higher costs in terms of maintaining its uplink center, servicing the Consumer Premise Equipment (CPE), as also for the proprietary machinery and ever evolving technology.

As per the Draft Tariff Order, for an LCO whose operations as compared to DTH are miniscule, the price prescribed as its distribution cost would still result in huge revenue because of its low input costs. However, for a DTH operator, due to higher input costs, it will only result in losses. This would destroy a DTH operator's business.

The Authority is aware that transponder's space on a satellite, apart from being extremely expensive, is also very limited. There are further technological constraints for a DTH operator like time period involved for grant of additional transponder capacity and limitations on account of satellite positioning. This technological requirement is not there in LCO/ MSO/ IP TV.

Financial differences

The license conditions for a DTH operator from the MIB are far more stringent as compared to an LCO or an MSO. Tata Sky being a DTH operator is required to pay 10% of its "Gross Revenue" as license fee irrespective of the nature of the revenue received by it. It additionally has paid 10 crores as entry fee and provided a bank guarantee of 40 crores.

As compared to an LCO/MSO, the DTH operator has a PAN India presence. They have a huge employee base and provides service to its millions of consumers through expensive business operations which includes call center, ISP, Distributors etc. One of the largest MSOs has only a coverage of approximately 120 cities whereas a DTH operator technologically has a reach in every millimeter of the entire country.

The initial capital expenditure of any DTH Operator like Tata Sky is exponentially higher than the capital expenditure incurred by LCO/MSO. The cost of setting up a broadcast center for a DTH operator is far in excess of the entire capital cost incurred by an LCO/MSO.

A DTH business is a capital intensive business. The establishment cost of such a business is to be monetized over a given period of time. Tata Sky after taking into account costs incurred by it on a year to year basis has priced its services to the consumer in a particular manner. Such radical change in the pricing would not only result in huge losses to Tata Sky but would be a regressive step because the technology march /innovation would immediately come to a halt.

SERVICE PROVISION DIFFERENCES

A DTH service being a satellite service directly available to the consumer has its inherent advantages of being uniform, continuous, uninterrupted with high technological data. Consequently, DTH services reaches remote and non-accessible areas, like Kashmir and the North East etc. This service coverage is unmatched as compared to LCOs/MSOs.

While in LCO/MSO a two way communication is possible between the consumer and the operator, no such two way communication is possible between a DTH operator and its consumers. Therefore, the LCO/MSO can upgrade their existing infrastructure to provide ISP services as well. This at present is not possible for the DTH operator.

LCO / MSO / IP TV / HITS are not equal to services provided by DTH operators either in respect of technology or financial obligations. Thus, treating un-equals as equals under the draft regulations order would not be in consonance with the statutory obligation of TRAI to provide a level playing field.

After having conducted a round of consultation (during the first half of 2016), since the approach taken by the Authority is of a complete overhaul, it was only natural for the Authority to announce another round of consultations (through draft regulations). Being a consultation process, there cannot and should not be any predetermined assumptions and the proposal is up for questioning, modification and even a complete rejection. However, we are disappointed to note that the Authority has indicated its position of being amenable to discuss on less contentious issues in the proposed framework but not open to any scope of change on all the significant and basic fundamentals.

With the presence of 6 Private DTH operators, 1 DD Free Dish DTH Operator, 2 HITS Operators and 800 MSOs (servicing more than 50,000 LCOs) in the country the distribution leg of the B&CS sector is thriving and cannot be said to be lacking in competition. Each customer in the country has an option to choose from at least 1 LCO (if not more) and 7 DTH operators. While it could be argued that there is a need for increased discipline amongst the LCOs (primarily due to the fact that lesser controls can be administered for non-National entities), on the other hand, the DTH operators performance has been exemplary and have furthered the cause of the national objective of digitization and addressable system.

The government has already created a parallel free TV model (DD Free Dish), which is successful, and ensures that highly price sensitive consumers are served. Therefore, such a straitjacketed regulatory framework would take control and innovation out of the hands of industry players and consumer choice will suffer.

The policy of forbearance along with the existing set of regulations have worked well for the DTH operators. Any further regulation is not required and will lead to distortion in the market place and restrict operators from providing a rich and varied service offering and defeating the market driven principle.

It is an open fact that the balance sheets of all the DTH operators, even after so many years of operations continue to be under severe stress. Completely over-turning the rules of the game at this stage is unexpected from the sector regulator (despite no market failure) and lead us to an uncertain future. And uncertainty is the worst environment that any business can be subjected to.

The draft regulations have not shared any international case study where a similar framework is in place. The proposed framework has the potential to completely turn around the DTH business topsy-turvy and to push it into uncharted and uncertain territory.

The TRAI Act requires the Regulator to protect the interests of service providers and consumers and to promote and ensure orderly growth of the sector. However, we do not observe a balanced approached in the proposed framework and is completely skewed against DTH operators.

We therefore do not agree with the framework proposed in the draft regulations and we request the Authority to withdraw the same.

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

- We wish to submit that we stand by our earlier response to the consultation paper on Tariff Issues Related to TV Services dated 29th January, 2016. To maintain brevity in our current response, we are not repeating the earlier points and instead are attaching the same.

- We also note that while the consultation suggested a few tariff models which were providing limited details, the Draft Tariff Order has come up with a detailed model which is quite different from the discussion in the consultation paper.

TATA SKY RESPONSES:

COMMERCIAL FREEDOM TO NEGOTIATE

- The Draft Tariff Order paints a picture that the system is broken and needs an overhaul. This premise is not correct. It is pertinent to mention here that DTH operators, such as us, have been able to negotiate deals without ending up in litigation most of the time.

- There should be commercial freedom of negotiation between the parties, and at best some of the features of the Draft Tariff Order could be relied upon in the event of a break-down of commercial negotiation.

PRICING AND PACKAGING

- The Draft Tariff Order is based on the premise that a customer actually wants to watch only few channels (and customers do not want large number of channels and have been coercively pushed into these packages). This premise is incorrect.

- Customers want to be in control of large number of channels and even if the viewing time is small there is a demand for channel surfing. Therefore, customers' content choice should not be curtailed by restricting the packaging and pricing of content.

- Since DTH operators can buy a-la-carte channels to create bouquets, therefore to create bouquets identical to that being offered today to the customers, it would end up costing customers more than five times the cost of a bouquet.

- The Draft Tariff Order will severely constrain the customer's viewing experience. Hence, for an optimum viewer experience, it is important that the DTH operators are not divested of control of the retail pricing of content.

- We are conducting millions of transactions daily with our customer base (> 10 million) and therefore we are best placed to understand the customer's viewing choices and paying capacity.

- While on the one hand the broadcasters can count one HD channel three times that of SD channels when calculating the maximum retail price, the distributors are restricted to treat two SD channels for one HD. This will mean that the DPOs would have to provide more number of HD channels at a restricted price of Rs.130/-.

- The existing regulation mandates the availability of a basic tier package at Rs.150/- and DTH operators continue to follow this cap. However, the Draft Tariff Order has proposed to reduce the fee to Rs.130/- and with costs increasing, lowering of the price of the basic tier is unsustainable.

- The genre based distribution pattern as suggested for the mandatory 100 FTA pack is unnecessary and restrictive, and it also does not take into account regional contents.

- In addition, the DTH sector, as compared to the broadcasting sector, is a highly competitive market and there is no service provider/platform which is dominating the distribution space with respect to the services to the customers. Therefore, the market forces' role in maintaining not just the quality of delivering service but price reasonability should continue.

- One concern that we would like to highlight here is the introduction of commission system (of 20% distribution fee and 15% discount on the MRP of channels to distributors) which appears only in the explanatory memorandum and not as a clause in the Draft Tariff Order.

- Pricing flexibility should be permitted since the cost of content is highly subjective and can vary within genres.

No rationale for fixing Rs.130 for 100 SD Channels and Rs.20 for Every Incremental 25 Channels

- The explanatory memorandum along with the Draft Tariff Order seeks to fix Rs.130 for 100 SD channels on the basis that "cost" for establishment is Rs.80/- and "cost" for operation and maintenance is Rs.50/-. Thus, even as per the TRAI it is only the cost which is Rs.130 per subscriber which a distributor would achieve under the Draft Tariff Order. Such an exercise would interfere with the right to do business enshrined by the Constitution of the Country. However, the Draft Tariff Order completely ousts the concept of profits. Thus, the rationale of fixing Rs.130/- is clearly violative of the fundamental rights of the DTH operator. In any case, there is no explanation as to how and on what basis the two figures have been arrived at. Also, the business model and costing model of DTH operators and MSOs/LCOs are completely different. This paper does not share any successful international case study where this proposed model is in place. It comes as a surprise to introduce a completely new model which has not been implemented anywhere in the world. Accordingly, an omnibus fixation of costs is clearly irrational.

- DTH operators are competing amongst themselves as also are in competition with other distributors thus the price chargeable by a DTH operator from the consumer is self-regulated in view of the market dynamics. There is no mention or even an allegation of cartelization amongst DTH operators.

- Uniformizing the price chargeable by a DTH operator from its consumer disrespects the costs involved of each operator which ultimately would make such a DTH operator uncompetitive and result in deterioration of its services.

- The above is the basic reason as to why the TRAI has always maintained "forbearance" as its guiding principles when it comes to pricing of services to the consumer. This is also because there is no exclusivity in the hands of the DTH operator which would allow the DTH operator to dictate prices.

Burden on Customers

- The Draft Tariff Order is said to be customer oriented and focus' on empowering the customers, by giving them the option to choose their own channels from FTA, pay channel(s), premium channel(s) or bouquet(s) of channels offered by the broadcasters or bouquet(s) of channels offered by the distributor of television channels. However, on a closer look of the regulation it instead appears to be a burden on the customer.

- The Draft Tariff Order mandates that a customer can add additional channels within the 100 SD channels stipulated. This would mean that a customer would be required to call the DPO's or log on to their website for making their selections on channels. There may be number of customers who are not technologically advanced or are in remote areas with limited or no access to internet service to log in and make the changes. It will be an inconvenience for customers to call the call centers to make such selections either from urban or rural areas as these calls take significant amount of time and come with a significant amount of cost.

- The customer will be forced to subscribe to numerous bouquets of different broadcasters, and at the same time end up subscribing to a-la-carte channels bringing the customers' subscription cost much higher than it would currently be.

- The cost of management of a-la-carte selection of channels by consumers is not only impossible to manage but it is also an operational nightmare causing a huge financial burden. Therefore, any cost associated with handling such calls from customers seeking a-la-carte channels should be charged back to the customers.

BUSINESS UNCERTAINTY

- The Draft Tariff Order if implemented will lead to complete uncertainty over the revenue model across the value chain and the stressed balance sheet of the DTH operators does not provide any comfort for conducting such experiments.

DISCRIMINATION VIS-À-VIS DOORDARSHAN

- While the TRAI has brought about different regulations advocating equality amongst all the players in the broadcasting sector, we believe that such equal treatment should be applied across the industry, including Doordarshan.

- While the DTH operators are required to carry mandatory channels on their platform for which there is no compensatory carriage fee mechanism, on the other hand Doordarshan DTH Free Dish carries channels for which it auctions carriage fee slots, in excess of Rs.4 crores per channel, for those players wishing to use the slots.

- Mention may be made of the Ministry of Human Resource and Development's proposal to introduce 32 channels which the DTH operators are being requested to carry on their platform with no carriage fee. We expect other ministries/government departments to make similar requests in the future.

- On one hand the Draft Tariff Order will curb the DTH operators' ability to earn revenues, and at the same time there is increasing pressure from government department to carry channels for free.

Reporting Requirement

- The requirement placed upon the DPOs to provide 90 days' prior notice for any modification (introduction or conversion or discontinuation or change) of channels, whether FTA or pay or premium channels, is unreasonable and against optimal utilization of resources. This would mean that until the agreements are concluded between the parties, DPOs would have to wait for 90 days before they can launch any channels to the customers, thereby depriving them.

- It restricts a DPO from providing uninterrupted and speedy service to its customers and thereby increase customer dissatisfaction and complaints.

Appointment of Compliance Officer

- We disagree with the requirement placed on the appointment of compliance officer. Telecom industry is not imposed with such a requirement. Therefore, mandating it in the DTH industry comes as a surprise considering there is no security obligation/threat as compared to the telecom industry.

- Moreover, the Draft Tariff Order in regards to the compliance officer is discriminatory. TRAI seems to suggest that certain DPOs do not need to comply with this requirement and in so doing it is institutionalizing discrimination. It seems the asymmetric regulation has been suggested on grounds of exempting smaller players. However, it may be stated here that it is the smaller players that require monitoring instead of the big, organized DPOs. Therefore, if at all asymmetric regulation is to be brought in, it should be so for the smaller players and not on the DPOs who have always been in compliance.

- The TRAI Act have sufficient provisions in placed for enforcing compliance amongst licensees. Therefore, the requirement of compliance officer in unnecessary as it signals a step back towards license raj era.

Channel visibility on Electronic Program Guide (EPG)

- While there is no specific provision on EPG in the Draft Tariff Order, the same appears only in the explanatory memorandum wherein the Authority has opined that details of channels and their MRP are to be displayed on EPG. We fail to understand the reason for discussing this in the Draft Tariff Order when the actual provision has been set out in the draft QoS Regulation.

- Displaying such information is unnecessary as it will clutter EPG, and moreover consumers have all the information readily available through other sources.

The present response is without prejudice to the rights and contentions of Tata Sky and may not be construed as either an admission, or a waiver of the rights, otherwise available to Tata Sky under law.