

30 March 2009

Telecom Regulatory Authority of India (**TRAI**)
Mahanagar Door Sanchar Bhawan
Jawahar Lal Nehru Marg
Next to Dr. Zakir Hussain College
New Delhi. 110 002

Sir,

I am writing to register our views with respect to certain issues relating to tariff regulation on DTH raised in the Consultation Paper No. 4 of 2009 issued on March 6, 2009.

1. Tariff fixation for DTH services

1.1 Whether there is a need to fix tariff for DTH services?

In our view, fixing of tariff in an industry which is awash with a multitude of service providers would be counter productive. Television in general and DTH specifically is distributed in a highly competitive marketplace. There is serious competition among pay-TV delivery systems. With thousands of cable operators, five operating DTH systems (and more coming) and IPTV offerings, India is already one of the most diverse and competitive pay-TV markets in the world. With almost ten million subscribers now and tens of thousands being added every week, India's DTH sector is already the largest in Asia outside Japan and it may overtake Japan within five years to be the largest in the Eastern Hemisphere.

In a market place where analogue cable, digital cable, IPTV and DTH co-exist and compete for eyeballs and consumer rupees, it should be borne in mind that DTH (or even IPTV) is a discretionary expenditure (indeed a luxury, in many households). If tariff is fixed, DTH players will not be able to compete in the market place as it will not allow them to offer diverse content, offer better interactive features and investment in infrastructure. As such for this type of product, strict regulation of rates is counterproductive, in terms of the dynamism, diversity and economic contribution of the industry. Without investment, the industry will not be able to keep pace with technological developments, to the detriment of consumers.

Further, the setting of prices does not adequately take into account the rapidly escalating costs of sourcing content.

The TRAI has itself noted in *Consultation Paper on Issues relating to Broadcasting and Distribution of TV Channels*, 2004 that although a primary objective of regulation is to protect consumer interests, "at the same time it is apprehended that over-regulation in a sector that is growing rapidly might have unforeseen consequences."¹ The TRAI and the government have over the last few years accepted that once greater competitiveness is achieved in the pay-TV industry, the regulation of tariff even in cable will be dismantled as it was always intended to be a temporary measure. We strongly believe that the time has come where there is effective competition and that accordingly any further regulation of tariff is not warranted.

Further TRAI has stated on many occasions that until the impact of the CAS roll-out can be assessed, "it would be premature to initiate the consultation process on DTH

¹ Telecom Regulatory Authority of India, *Consultation Paper on Issues relating to Broadcasting and Distribution of TV Channels*, 2004

tariff issues both at the retail level and at the wholesale level.”² The TRAI has maintained this position to date and we agree that such an assessment is required before moving on to price regulation of the DTH platform.

For these reasons, we do not support price regulation/fixation for DTH.

1.2 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?

1.3 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.

For the reasons stated above we are not in favour of tariff fixation on DTH. However, without prejudice to our views above we wish to submit the following:

1. As an interim measure:
 - (a) retail tariff i.e. between DTH operator and subscribers, may not be fixed or regulated;
 - (b) wholesale tariff i.e. between broadcasters and DTH operators may be fixed at 50% discount on non-CAS rate if such channel(s) is made a part of entry level or basic tier of the channels on DTH and is given wide distribution. The discount offered by the broadcaster will scale down if the DTH platform places the channel in a higher or buy through tier; and
 - (c) tariff of channels which are not distributed on cable may not be fixed or regulated in any manner.
2. If TRAI does decide to introduce interim tariffs, it should also nominate a “sunset date” for the removal of the tariffs.

1.4 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 response to this query we reiterate our submissions in para 1.1 and 1.3 above.

1.5 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?

1.6 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?

In response to this query we reiterate our submissions in para 1.3 above.

² Telecom Regulatory Authority of India, *Consultation Paper on Issues relating to DTH*, 2004.

2 Comparison with CAS

- 2.1 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?
- 2.2 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?

We do not support an extension of the ceiling maximum retail price (**MRP**) for pay channels for CAS areas to DTH. As TRAI itself has noted in its Consultation Paper No. 15/2008 on Interconnection Issues relating to Broadcasting & Cable Services, the roll-out of addressable systems for non-CAS areas such as DTH and IPTV is market driven, as distinct from the roll out-of CAS on account of judicial intervention in CAS notified areas. In imposing price restrictions on pay channels in CAS areas, TRAI was attempting to deal with a legacy situation that had developed over a number of years as basic analogue systems were deployed. As much as we do not support the price controls in CAS areas, there is nonetheless the legacy situation affecting consumers to take into account. The same considerations do not apply to DTH which is a new service offering alternatives to consumers. Thus legacy and historical considerations that TRAI may have taken into account in imposing "temporary" price restrictions on pay channels in CAS areas are not germane in dealing with DTH services.

As noted by TRAI, the objective of fixing a ceiling on the MRP for pay channels in CAS areas was to ensure the smooth transition of CAS in notified areas. TRAI also stated that the ceiling was only for a limited period and that it would be revisiting the price related decision and consider deregulation of CAS.³ However, now, after more than 2 years of successful roll out of CAS we are still waiting for TRAI to lift the arbitrary ceiling on channels' MRP for CAS areas. In the absence of any justification, such as that underpinning the imposition of the temporary ceiling on the MRP for pay channels in CAS notified areas, TRAI should not consider any extension of the same arbitrary ceiling to DTH.

In particular, the ceiling fixed for CAS areas did not take into consideration the rising cost of content and differences between different genres of program content. A uniform price for all channels irrespective of their genre and content cost is prejudicial to the interest of broadcasters and industry in general.

Fixing a ceiling on MRP as low Rs. 5.00 (now Rs. 5.35) per channel per month for CAS areas for the so called smooth transition of CAS has not been able to foster subscriber growth in CAS areas. As at the end of March 2008, there were around 6,07,883 CAS subscribers⁴. By comparison, DTH operators are minimally regulated and yet subscriber numbers have now reached over 10 million after only three years, according to TRAI.⁵ Such data provides a compelling argument for not regulating DTH in line with CAS.

We very strongly support deregulation. However, If TRAI still decides to regulate DTH Tariff at wholesale level, we submit that such regulation should be on the basis suggested in Clause 1.3 above and that TRAI set a "sunset" date for any such limited regulation.

³ Counter Affidavit filed by TRAI before Supreme Court of India in Civil Appeal 2327 of 2007 (*ESPN STAR Sports & Another v. TRAI*)

⁴ TRAI Annual Report 2007-08

⁵ Telecom Regulatory Authority of India, *Consultation Paper on DTH Issues relating to Tariff Regulation and new issues under reference*, 2009.

- 2.3 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?

As TRAI has noted, it would be premature to regulate such matters in the absence of a review of the CAS rollout.

- 2.4 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?

We do not support any requirement that broadcasters or operators make available pay channels on a-la-carte basis.

Consumer choice is actually *reduced* by such a requirement because it discourages investment in new or niche channels. If broadcasters can't secure wide distribution (and hence, exposure) through a bouquet arrangement, they will be less likely to take the commercial risk involved in launching such channels.

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

As TRAI has noted, it would be premature to regulate such matters in the absence of a review of the CAS rollout.

3. **Provisioning of new services on DTH platform**

We disagree with TRAI approach to the extent that TRAI is proposing to extend its regulation of 24 hour, linear services to video on demand and other non-linear services as if these services were the same. There is, as you know, a fundamental difference between linear and non-linear channels, in as much as linear channels are widely available and programmed without direct input from the viewer, and non-linear or "on demand" services have more limited availability and are designed to address niche interests. Non linear services and make available programming solely as selected and requested by the viewer. Therefore, trying to treat these services in the same manner as a linear channel is a case of treating apples as oranges, and would significantly reduce the incentive of program providers and channel suppliers to make such content available to Indian viewers.

Thank you for the opportunity to make our views known. We would be happy to discuss any of these points further at your convenience.

Regards

Anshuman Misra
Managing Director