



Response to the Telecom Regulatory Authority of India Consultation Paper on “DTH Issues relating to Tariff Regulation and New Issues Under Reference”

April 9, 2009

The Cable and Satellite Broadcasting Association of Asia (CASBAA) is an industry-based trade association dedicated to the promotion of multi-channel television via cable, satellite, broadband and wireless video networks across the Asia-Pacific region. Member organizations include some 120 Asia-focused companies building, operating, and providing content for pay-TV systems, and include operators of cable, satellite, mobile and IPTV systems. Members are physically located in 15 jurisdictions in the Asia-Pacific region, and have broad experience in building a dynamic industry to meet the rapidly-growing demands of the region’s 3 billion people.

Our Association appreciates the opportunity offered by the Authority to contribute to a discussion of the important issues included in this Consultation Paper. The Authority has raised a number of important detailed questions, but we believe that the “big picture” is not addressed in the paper. For our part, we do not wish to enter into a discussion of the details of many of the regulatory proposals contained in the paper. Rather, we wish to point out the overall context and direction that these proposals represent.

Regulation of the DTH Sector

We recognize that the Authority believes it is obliged to consider extending aspects of the current cable TV regulatory regime to the DTH sector. It is understandable that players in various sectors of the pay-TV industry wish to feel themselves to be on a “level playing field” with other sectors.

However, the prevailing direction set for the still-nascent Indian market by regulators, the courts, and the government imposes additional heavy-handed regulation which removes most of the space for creative competition.

The possible advantages of creating a level playing field based on global best practice “light touch” regulation for the competitive forces which could play freely on that field --

to the advantage of Indian consumers, government, AND industry players – are being negated.

Industry (both domestic and international) has expressed this view previously, most recently in the context of the “interconnection” consultation, and it is equally true with regards to DTH regulation.

Firstly, we wish to emphasize that there is no need to regulate retail tariffs for DTH, as satellite platforms must necessarily compete with other addressable and non-addressable platforms. There is certainly an ample amount of competition in this industry.

Secondly, India’s DTH sector has grown quickly, but has still underperformed thanks to intrusive content supply regulation, most notably the “must provide” regulations which mean that virtually all content on all platforms is identical. Competitors of all kinds are hamstrung in their efforts to create new program offerings to the benefit of consumers.

In these circumstances the DTH sector cannot achieve its competitive potential by developing creative alternatives to the basic cable program lineup.

We understand that the proposed further intervention into the programming decisions of DTH operators -- including mandatory provision of a basic tier of FTA channels, as well as wholesale and retail rate regulations and even standard tariff packages of set top boxes -- are proposed in the name of restoring a level playing field with cable providers, principally in the CAS areas.

However, the proposals demonstrate the damaging logic of “part-regulation”, i.e. progressively imposing regulation beginning in one sector (e.g. “must-provide” and CAS pricing rules) and then extending the framework in the name of equity to encompass one previously competitive sector after another. This will ultimately sap the competitive dynamism of the industry.

A far better approach would be to re-examine the restrictions on the cable TV sector and, in light of the competitive forces from multiple DTH providers, liberalize the cable sector as an effective competitor, an oft-stated objective of TRAI and others. We believe that in a market which is not distorted by regulation, economic forces will set comparable wholesale prices for programming. Given their scale and efficiencies, DTH operators would thrive in such an environment. Cable, too, would be better able to compete, particularly in digitized areas.

This will not happen unless there is scope for competition. Strictly regulating all aspects of content supply and pricing removes the possibility of truly competitive offerings.

With regard to the paper’s section on “Comparison with CAS,” the extension of uniform channel pricing to the DTH sector has no basis in the commercial world.

With 448 licensed channels in the market there is a vast (and ever-growing) range of content available to Indian consumers, and the idea that all channels should be priced identically (at the wholesale *or* the retail level) is entirely without merit.

The cost of production (including content acquisition) of some channels is demonstrably much higher than the cost of other channels; within the context of CAS, the Authority's original decision that all channels should be priced identically was "anti-economic" and an extension of this principle to the DTH sector will further erode incentives for development of new viewing options for the Indian public.

It will lead to stagnation in program quality, and an ever-rising chorus of complaints from consumers over the coming five-year period.

New Issues

The Authority poses a series of questions concerning on-demand-type services. Central to the Authority's (and the government's) concerns is whether these services should be treated as channels for the purpose of bringing them into the existing regulatory framework.

We strongly oppose treating on-demand-type services as channels. These are new services, with new technical, commercial and social characteristics. Neither the way they are marketed by the industry nor the way they are received and perceived by consumers makes them similar to linear streams of channel programming, and they should not be treated as such.

Rather, the Authority and the Government should devise an appropriate, and "light touch" regulatory framework designed to govern these new services. In doing so, account should be taken of the very high degree of consumer choice involved in selecting content on these platforms – for most on-demand-type services, the consumer makes a conscious commercial decision to view the content, usually at a time of his own selection.

Therefore, imposition of rules governing content on streamed/linear channels – which are assumed to be freely available in homes and therefore require closer regulation to ensure protection of minors – is unwarranted. Such a regulatory environment will be counterproductive, as it risks hobbling the development of these new services by forcing them into an inappropriately restrictive regulatory framework.

Internationally, it is a widely-accepted principle that content regulation of these services (which involve a significant amount of choice by adult consumers) should not follow the tighter criteria deemed appropriate for free-to-air, widely distributed channels.

This is particularly so in India, which offers its citizens wide personal freedoms; a "one size fits all" approach to regulation of new services would be the wrong way to go.

We suggest that the Authority initiate a separate, deliberate, comprehensive consultation on possible regulatory frameworks for these new services.

This consultation should examine which parts of the Downlinking Guidelines, Programming Code and Advertisement Code should be applied to these services, and it may also consider specific consumer protection measures (e.g. pricing transparency) that might be warranted.

Simply labelling new services as “channels” for the purpose of allowing the present regulatory umbrella to govern them would have the virtue of administrative simplicity, but it is the wrong approach.