

**RESPONSE OF ZEE ENTERTAINMENT ENTERPRISES LIMITED
TO THE CONSULTATION PAPER
ON
ISSUES RELATED TO INTERCONNECT REGULATION, 2017
ISSUED BY
THE TELECOM REGULATORY AUTHORITY OF INDIA (“TRAI”)
ON 25TH SEPTEMBER 2019**



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Introduction: At the outset, we welcome the Authority’s initiative for coming out with a Consultation Paper on Issues relating to the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulation 2017 (“Interconnect Regulation”) as set out in the Consultation Paper issued by the Authority on 25th September 2019.

Before we proceed to provide our response to the questions posed in the Consultation paper, we would like emphasis that the Authority should restrict itself from venturing into Contracts between the DPOs and the Broadcaster which are not forming part of the Interconnection Agreement. For instance, requirement of an Interconnect Agreement is that it should contain (i) Technical Terms, (ii) Commercial terms and (iii) conditions enumerating conditions for distribution of television channels. Therefore, any Agreement/Arrangement between a Broadcaster and a DPO that is not conditional for distribution of television channels of a Broadcaster on the DPO’s platform cannot be deemed or treated as an Interconnect Agreement.

It is further submitted that Interconnection Regulation basically deals with Subscription of channels, carriage of channels, listing of channels on DPO’s EPG as well prohibition in changing of channel listings on EPG. It is pertinent to point out that a broadcaster is always striving to be number one among the multiple channels available in the market and to achieve this end, a broadcaster is always making substantial investment in improving his content. Not only the investment in the content is important but it is also essential that the marketing of the channel(s) is done in a manner in order to ensure that maximum eyeballs watch the content available on a particular channel. This may give rise to certain genuine commercial arrangements/agreements between the broadcaster and the DPO which obviously are not governed by the requirement prescribed under the Interconnection Agreement. Therefore, Marketing or promotion of Advertisement sales of an upcoming television program on a DPO’s website cannot be equated to an Interconnection Agreement. Hence, it is suggested that no further enquiries are required in the commercial arrangements entered between a Broadcaster and a DPO. Moreover, any Marketing, Promotion of ad sales arrangement/agreement

cannot be compared with an Interconnection Agreement by any logic whatsoever. However, the Authority may have soft touch regulation to have certain checks and balances to ensure level playing field for all the stakeholders.

We will now proceed to submit our response without prejudice to the various questions listed out in the Consultation paper for your kind consideration.

Ques No. 1: Do you think that the flexibility of defining the target market is being misused by the distribution platform operators for determining carriage fee? Provide requisite details and facts supported by documents/ data. If yes, please provide your comments on possible solution to address this issue?

Response: Presently we do not have any inputs on misuse of flexibility with respect to DPOs defining their Target Markets. We are not in the knowhow about the basis and justification as to how DPOs ascertain and declare their respective Target Markets. It is our understanding that the same is done in accordance with the DPOs' business models. It is mandatory for the DPOs to define its Target Market for each distribution network/head-end as per the current Interconnect Regulations.

India is a country of diverse cultures and multiple languages. It is worthwhile to note that demand for a regional channel comes from primarily within a state/region. Therefore, one must keep in mind that the scope of the Target Market for purpose of determining carriage fee applicable for a particular channel needs to be restricted to a particular state where language of such channel is predominantly spoken. This will ensure that the requirements pertaining to declaration of Target Market are not misused by the DPOs.

In our view, the Target Market should always be decided by demand side rather than supply side economics. To elaborate further, Target Market should be decided based on the demand for such channel from its consumers (i.e. demand side) rather than where all channel can be supplied by the DPOs (supply side). Therefore it should be left to broadcasters to declare the Target Market, as they know about the demand side. This methodology in fact will ensure that broadcasters who pay carriage fees for their channels, will not find themselves being forced by DPOs on the pretext that offtake of such channels is less than 5% in a much larger territory and therefore, the channel ought to be dropped on DPO's distribution network. It is

common knowledge that, broadcaster is the best judge to determine its channel's Target Market, since he is instrumental in producing varied content being programmed for its multiple TV channels. Therefore, it would be appropriate if DPOs declare its active subscriber base in a particular Target Market which is actually declared by the broadcasters for a particular TV channel. This will ensure transparent way of calculating carriage fee payable by the broadcasters vis-à-vis the subscriber base in the Target Market.

Ques No. 2: Should there be a cap on the amount of carriage fee that a broadcaster may be required to pay to a DPO? If yes, what should be the amount of this cap and the basis of arriving at the same?

Response: DPOs are already charging Network Capacity Fee (“NCF”) from the consumers to recover the infrastructure and other related costs. Hence, further carriage fees to recover the cost for carrying channels is not warranted. Even in the current context, without accounting for carriage fees, DPOs are getting to retain 65% of the consumer spend. This is more than adequate to take care of all operational expenses.

Particulars	Share (Rs.)	Share (%)
Network Capacity Fee – DPO	130	54%
Fixed discount to DPO (20% of broadcaster MRP)	15	6%
KPI based additional max discount to DPO (15% of broadcaster MRP)	11	5%
Max Possible DPO share (Sum of three above)	156	65%
GST (18% mark-up on Broadcaster + DPO share)	37	15%
Grand Total (Consumer MRP)	240	100%

It is respectfully submitted that any increase in cost structure would end up burdening the consumer price, even further.

Ques No. 3: How should cost of carrying a channel may be determined both for DTH platform and MSO platform? Please provide detailed justification and facts supported by documents/ data.

Response: The cost of carrying a channel may be determined by the infrastructure cost associated for setting up the head-end and related systems at the DPOs' end. Channel carrying capacity depends on the infrastructure created by the DPO. Once the infrastructure is established, the DPO incurs cost which is attributable only

towards the maintenance of the infrastructure. for distribution of all the channels. It may be relevant to note that there is no separate cost for carrying each channel.

Ques No. 4: Do you think that the right granted to the DPO to decline to carry a channel having a subscriber base less than 5% in the immediately preceding six months is likely to be misused? If yes, what can be done to prevent such misuse?

Response: Each channel has its unique audience and the viewers should have the flexibility and opportunity to watch the channel of their choice. It may so happen with a DPO that, given the nature of its subscriber base, a particular region may represent a lower percentage within a large Target Market. Hence, even if the most popular regional channel is subscribed and viewed by all the subscribers in that region, the penetration of such channel may not exceed 5% within the defined Target Market. If a DPO decides to drop such a popular channel only basis the penetration criteria, it would be unjust to the channel and its viewers. Therefore, the criteria of 5% to decide whether a channel continued to be carried on DPO’s platform, should be done away with.

To illustrate, in case of a DTH platform, total subscriber base in Odisha state may not contribute to 5% of its Target Market, which is all India under current Regulations. Hence, even if the most popular Odia channel is subscribed by all the subscribers in Odisha, its penetration may remain below 5% of the DTH platform’s total subscriber base. In such a scenario, the channel remains in a precarious situation of being discontinued from that DTH platform, despite being subscribed by the entire intended audience base. Therefore, the criteria of 5% may act detrimental to orderly growth of the channels and viewers being able to watch their favourite shows & movies.

However, if the Target Market is defined basis regional states, this criteria of 5% may be continued. To summarize, below table explains our viewpoint:

Target Market	Criteria for discontinuation of channel if penetration is below 5% in Target Market
All India	Should not apply
Head-end wise	Should not apply
State wise	May continue

As explained above, Target Market should be decided based on the demand for such channel from its consumers (i.e. demand side) rather than where the channel can be supplied by the DPOs (supply side).

Ques No. 5: Should there be a well defined framework for Interconnection Agreements for placement? Should placement fee be regulated? If yes, what should be the parameters for regulating such fee? Support your answer with industry data/reasons.

Response: Currently, revenue arrangements between a broadcaster and a DPO are clearly outlined in the Regulations in transparent and non-discriminatory manner, including provision of incentives based on certain performance criteria. This is not the case as far as placement (by whichever nomenclature be it is addressed) is concerned. To ensure a level-playing field amongst stakeholders and to ensure transparent and non-discriminatory arrangements between broadcasters and DPOs, there is need to cover placement/marketing/any other arrangements under the Regulations. The objective should be that, all business arrangements between a DPO and a broadcaster should be transparent and non-discriminatory.

The Authority in Regulation 18 of the Interconnection Regulations, 2017 already has in place provisions to control and regulate any menace sought to be conducted by way of arbitrary placement of channels. As per the present regulatory framework, every DPO is required to display all channels available on its platform in the electronic program guide (EPG) and each channel should be listed under the respective genre of the channel as declared by the broadcaster and one channel shall appear at one place only. Also, the unique channel number assigned to a channel by the DPO cannot change for a period of at least one year from the date of such assignment.

To place the channels in a particular logical sequence within the genre, the broadcasters are providing incentives to the DPOs through respective RIOs. These incentives are available transparently and any DPO can avail these after meeting the stipulated criteria. Therefore, no further fees are required to be paid to the DPOs under placement fee.

To ensure a fair and transparent distribution margin, the Authority should ensure that the total pay-out from broadcaster to DPO (under any head including distribution fee, incentives, placement, marketing or any other arrangements)

should not exceed 35% of the MRP. Otherwise, the MRP to consumers will be illusory.

Ques No. 6: Do you think that the forbearance provided to the service providers for agreements related to placement, marketing or any other agreement is favouring DPOs? Does such forbearance allow the service providers to distort the level playing field? Please provide facts and supporting data/ documents for your answer(s).

Response: It is indeed a fact that the forbearance provided to the service providers for agreements related to placement, marketing or any other agreement, is heavily distorting a level-playing field. There are incidences whereby certain broadcasters are paying between 50% - 90% of the MRP as fees (placement/marketing/any other) to the DPOs.

To illustrate, for a channel which is priced at MRP of Rs. 10 and which is offering 80% as placement/marketing fees to the DPOs, consumer ends up paying Rs. 10 for the channel, whereas the effective distribution margin is Rs. 8 which makes the MRP illusory for the consumers. It would be much more beneficial and transparent for all stakeholders including consumers if the total pay-out from broadcaster to DPO (under any head including distribution fee, incentives, placement, marketing or any other arrangements) remains within 35%. In such a case, this channel would end up revising the MRP to a more realistic Rs. 3 which would be in the larger consumers' interest.

As explained above, this is creating a situation whereby consumers end up paying significantly higher cost due to very high distribution margin.

As explained above, even without accounting for carriage fees, DPOs are getting to retain 66% of the consumer spend. This is more than adequate to take care of all operational expenses. It is respectfully submitted that any increase in cost structure would end up burdening the consumer price, even further.

Ques No. 7: Do you think that the Authority should intervene and regulate the interconnection agreements such as placement, marketing or other agreement in any name? Support your answer with justification?

Response: While we believe that, forbearance should be allowed in the Regulations, the current situation is leading to market distortion in certain cases. To prevent

such distortion, there may be merit in ensuring that placement/marketing/any other arrangements are regulated.

As mentioned earlier, to ensure a fair and transparent distribution margin, the Authority should ensure that the total pay-out from broadcaster to DPO (under any head including distribution fee, incentives, placement, marketing or any other arrangements) should not exceed 35% of the MRP. Otherwise, the MRP to consumers will be illusory.

Ques No. 8: How can possibility of misuse of flexibility presently given to DPOs to enter into agreements such as marketing, placement or in any other name be curbed? Give your suggestions with justification.

Response: Same as response provided to Question no. 7.

Ques No. 9: Any other issue related to this consultation paper? Give your suggestion with justification.

Response: In addition to our above, we would also like to state that the Industry has matured over the years and in all fairness, it would be prudent to allow the stakeholders to evolve a self-regulated mechanism to address the industry issues without any regulatory directions. In our view the dynamic environment of this Industry warrants a forbearance regime which will ensure that the channels which are acceptable to the masses, the market forces will decide on the MRP of a channel as well as work around the commercial arrangement/agreement to ensure fair returns to each of the constituents in the value chain. Alternatively, the Authority may continue with soft touch regulations for a while and gradually phase out regulations to bring in an era of forbearance.
