



By Email

Date: 21.12.2020

To,  
Sh. Anil Kumar Bhardwaj,  
Advisor (B&CS),  
Telecom Regulatory Authority of India  
Mahanagar Doorsanchar Bhawan,  
Jawahar Lal Nehru Marg,  
New Delhi - 110002

**Subject-** Comments on TRAI's "Consultation Paper on Ministry of Information and Broadcasting (MIB) back reference on TRAI's Recommendations dated 19.11.2014 on "Regulatory Framework for Platform Services" and MIB reference on TRAI's Recommendations on "Platform Services offered by DTH Operators" dated 13.11.2019" and consultation paper dated 7<sup>th</sup> December 2020.

**Kind Attention: Mr. Anil Kumar Bhardwaj**

Dear Sir,

We thank you for providing us an opportunity to express our views on the above captioned subject matter. Shemaroo Entertainment Limited's response is enclosed for your reference.

Thanking you,

For Shemaroo Entertainment Limited

Name: Ankita Malviya  
Designation : (GM Legal)

***Encl: As Above***

**OUR COMMENTS WITH REASONS, DATA AND JUSTIFICATIONS**

We, **SHEMAROO ENTERTAINMENT LIMITED**, are a public limited company and we are in the business of media and entertainment for the last five decades. We are a leading content house with global outreach and have been playing a decisive role in content ownership, aggregation and distribution. Amongst our other notable business models, we also provide content to various DPO's like DTH Operators, Cable Operators, etc. who exhibit the same on their Platform Services. We have always strived to provide varied and enriched content to as many subscribers as possible to enhance the customer's TV viewing experience.

**1. Chapter II of the Consultation Paper provides for Issue-Wise Proposed Views.**

With respect to Para 2.39, 2.52, 2.7 and 2.37 of the TRAI Recommendations dated 19.11.2014 does not merit our response.

**2. Para 2.16 of the TRAI's recommendations dated 19<sup>th</sup> November 2014**

<b>TRAI Recommendation</b>	<b>MIB View</b>	<b>TRAI Response</b>
(a) <i>The programme transmitted by the DTH operator as a platform service shall be exclusive and the same shall not be permitted to be shared directly or indirectly with any other Distribution Platform Operator (DPO).</i>	<i>It is proposed to adopt the above recommendations in respect of Platform Services offered by MSOs / LCOs also by appropriately replacing the word "DTH" with "MSO/LCO" wherever required.</i>	(a) <i>The programme transmitted by the Direct To Home (DTH) operator/ Multi Systems Operators (MSOs)/ Internet Protocol Television (IPTV)/ Head-End Into The Sky (HITS) operator as a platform service shall be exclusive and the same shall not be permitted to be shared directly or indirectly with any other Distribution Platform Operator (DPO).</i>
(b) <i>Programme transmitted by the DTH operator as a platform service shall not directly or indirectly include any registered TV</i>		(b) <i>Programme transmitted by the DTH operator/ MSOs/ IPTV/ HITS operator as a platform service shall not directly or indirectly include any registered TV channel or</i>

<p><i>channel or Doordarshan channel or foreign TV channel. Time-shift feed of registered TV channels (such as +1 services) shall not be allowed as a platform service.</i></p>		<p><i>Doordarshan channel or foreign TV channel. Time-shift feed of registered TV channels (such as +1 services) shall not be allowed as a platform service.</i></p>
<p><i>(c) DTH operator shall ensure and provide an undertaking to the Ministry in the format prescribed by the Ministry that the programme transmitted is exclusive to their platform and not shared directly or indirectly with any other DPO.</i></p>		<p><i>(c) DTH operator/ MSOs/ IPTV/ HITS operator shall ensure and provide an undertaking to the Ministry in the format prescribed by the Ministry that the programme transmitted is exclusive to their platform and not shared directly or indirectly with any other DPO.</i></p>
<p><i>(d) In case the same programme is found available on the PS of any other DPO, MIB/TRAI may issue direction to immediately stop the transmission of such programme. MIB also reserves the right for cancellation of registration of such PS of the DTH operator.</i></p>		<p><i>(d) In case the same programme is found available on the PS of any other DPO, MIB/TRAI may issue direction to immediately stop the transmission of such programme. MIB also reserves the right for cancellation of registration of such PS of the DTH operator/ MSOs/ IPTV/ HITS operator.</i></p>

**Note:** We have sent an email seeking clarification on **Para 2.16 “Exclusivity clause”** of the captioned Consultation Paper for which we had sought reply by 18<sup>th</sup> December 2020. For ease of reference, we are reiterating our query below:



**“Whether your proposed recommendations on Exclusivity clause, as set out in ‘Para 2.16 of the TRAI’s Recommendations dated 13.11.2019’, creates an obligation on parties like us (the content owner) to execute ‘exclusive license agreement’ for use of our content with only a single DPO and not with multiple DPOs as per our present prevalent practice?”**

Since we have not received any clarity on this query as requested, we would like you to refer to our email dated 18<sup>th</sup> December 2020 putting on record the telephonic communication between TRAI executive and us. We Shemaroo Entertainment Limited, reserve our rights to modify our comments on Para 2.16 till the time a clarificatory reply is been provided to us.

There has been an ambiguity on the point as to whether the term “programme” means the channel/ services or does it mean the content. If para 2.16 means the content provided by one Platform Service shall not be permitted with any other DPOs thereby restricting the rights to doing business of content producer, then it puts an unreasonable restriction on our business. Therefore, without prejudice to our rights, we hereby oppose and object to inclusion of proposed Para 2.16 (Exclusivity Clause) basis the following reasons:

We are of the opinion that the sharing of the programmes of the Platform Services (PS) with other DPOs should be allowed without any exclusivity. We hereby capitulate our reasons to substantiate our opinion:

- (i) Content creation and acquisition requires time and effort along with good monetary investment. We as content distributor strive for recouping the cost procured in acquisition and creation of the content. With the given Pandemic, most of the media industry and the content providers are facing huge losses. In such a scenario, making programmes of the PS exclusively available on a single DPO would be counterproductive as it would severely limit the number of avenues/sources for recouping the cost involved in content acquisition and creation. It will add-on to the efforts of the industry to revive themselves post the pandemic.
- (ii) Section 14 of The Copyright Act, 1957 entitles the copyright owner to seek maximum commercialisation of their content by “communicating the same to the public”. A restriction, like exclusivity of programmes on the PS of any one DPO limits the scope of exercise of rights of a Copyright owner and this negates the spirit of the Copyright law.
- (iii) The consumer’s preference and choice have been placed at forefront in the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 and

Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017. The exclusivity will deprive the subscribers of DPOs from the programme available on other Platform Services. This should be taken into account by the Authority and consumer's interest should be the pivotal point.

- (iv) Content in India especially on DPOs runs on the emotional sentiments of the viewers. We have witnessed that religious content had brought an upsurge in the viewership for Doordarshan at the beginning of the pandemic. This diversity gives birth to different preferences and content requirements for different set of people. We would like to highlight that unique content like local community festivals, sports events, devotional content like live feeds from temples is made available on PS for interested subscribers. These programmes promote and encourage creativity and support local events. The content being produced for these PS also boosts employment and provides a stage for upcoming talent. Such content is not readily available on other platforms/channels, and therefore, it should not be inhibited to one PS of DPOs.
- (v) In a scenario, where the broadcasting channels exhibit content with numerous advertisements, majority of the PS provide advertisement free content for their subscribers, enriching their TV viewing experience and the same are made available only on a consumer's demand basis. As a result, thereof, a considerable portion of DPO's PS revenue is generated only from subscription, unlike broadcasters who majorly generate their revenue through advertisements. Hence, the budget available with the DPOs to procure content for PS is very limited and making programmes of the PS exclusively available on a single DPO's network would drastically affect our source of revenue.
- (vi) While the idea should be to strike a balance between various players, such exclusivity calls for an unnecessary and uncalled competition amongst the players. Making PS exclusive to one DPO will be an anti-competitive practice as it will create a dominant position for that particular DPO in the market space distorting the level playing field for all other market players which is detrimental for the economic growth of the sector.
- (vii) We as content owners/distributors provide content on PS that cater to the specific demands of the subscribers in genres like devotion, fitness, lifestyle, comedy and others, which otherwise are available on a minimal basis on mainstream channels. Subscribers subscribe to PS only as per their will to access such specific genres of content. Mandating exclusivity for PS will either deprive the subscribers of other DPOs (who do not

come in the purview of exclusivity) from accessing the content or it may so happen that subscriber switches to another DPO altogether where such exclusive PS are available. In either of the above scenarios, it will not only result in increasing cost of subscriber for switching from one DPO to another but also affect the revenue of the DPOs on whose Platform PS services are not available.

- (viii) Additionally, platform services uptake less than 5% of the Platform base of the DPOs and hence we earnestly request not to impose any guidelines for PS for DPOs and not to treat these PS as services on par with broadcasting channels. A distinction between the two is critical for the growth of this specialized subsector.

We maintain our firm belief (also communicated to TRAI by our comments submitted for the Consultation Paper on the Regulatory Framework of Platform Services) and in our opinion there should be no exclusivity of programmes available on one single DPO's network for PS channels.

3. **Para 2.45 of the TRAI's recommendations dated 19<sup>th</sup> November 2014**

<b>TRAI Recommendation</b>	<b>MIB View</b>	<b>TRAI Response</b>
<i>A maximum number of 5 PS channels may be offered by the cable operators in non-DAS areas. In DAS areas and for all other platforms, a maximum of 15 PS channels may be offered by the DPOs.</i>	<i>MSOs may be permitted to operate to a maximum of 5%, and LCOs to a maximum of 1%, of the total permitted satellite channel being carried by them as permitted PS channels without any upper limit.</i>	<i>It is not desirable to separately specify the limit on number of PS channels that may be offered by the MSOs and LCOs. This may be left to the mutual arrangement among MSOs and LCOs. An MSO may remain responsible for all the platform service channels being offered on its platform; the Authority reiterates its recommendations.</i>

**Shemaroo's Comments:**

Rather than putting a number cap on the numerical cap like "5 PS Channels" as suggested by TRAI, we support the MIB view of putting a total percentage cap on total permitted satellite channels. When a DPO launches any PS, it takes into account various factors such as:

- a. target audience,

- b. demand and
- c. quality of content,

requirements of the subscribers and its sustainability therefore there is no rationale for fixing any limit on the number of PS. Such a decision is commercial in nature which should be left to the best economic interests of the DPO, putting such capping will be counterproductive and may lead to creation of monopolistic market which will be detrimental to the interest of consumers.

In order to second our above opinion, we hereby list down in brief our reasons thereof:

- PS provides a much required platform and opportunity for exhibition/display of local talent and content usually not preferred by mainstream platforms/ broadcasters and there is a clear social and economic merit in the provision of such services;
- PS provides substantial opportunities to local talents and performers to reach out to the community and showcase their talent. Such opportunity will only lead in promotion of local art forms and cultural activities. Limiting the number of PS channel region wise would only end in restricting reach of and promotion of local talents, local art forms and cultural activities.
- PS services are indicators and evidence of evolving technology and increased competition and should be incentivized;
- In the pandemic hit world, we need to be conscious of the fact the daily hit wage earners are still struggling for their livelihood. Content provided on such PS encourage and provide immense scope of employment opportunities for small scale performers, artists and Producers thereby helping them to earn their livelihood;
- Fosters significant economic growth and commercial avenues which is the need of the hour for the industry;
- Since, PS cater to consumer specific content, with limitation on the number of PS, the consumer's entertainment is at stake. PS also target at audience specific content taking in to account various age groups and limiting the number of PS channels will significantly compromise with quality and reach of the content;
- Presence of unique services like Interactive services would be arbitrarily limited.
- Helps in reaching the local content to the local population faster;
- Helpful in emergency situation such as Natural Disaster, calamities, COVID, Emergency etc.

In view of the above reasoning, we support the MIB view as it will be in the larger interest of the industry players.