



Telecom Regulatory Authority of India



Recommendations

On

Platform Services offered by DTH Operators

(Response to back reference dated 13th May 2020 received from Ministry of Information and Broadcasting (MIB) on TRAI's Recommendations dated 13th November 2019)

26th May 2020

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**Response to back reference dated 13th May 2020 received
from Ministry of Information and Broadcasting (MIB) on
TRAI's Recommendations dated 13th November 2019**

After considering the MIB views on various recommendations, the Authority has finalized its response. The TRAI recommendations dated 13.11.2019, views of MIB thereof and the response of the Authority are as follows:

(i) Para 2.29 of the Recommendations

A. TRAI Recommendation

The total number of permitted PS for a DTH operator shall be capped to 3% of the total channel carrying capacity of the DTH operator platform and subject to a maximum of 15 platform services channels.

B. MIB View

IMC noted that while it is necessary to restrict capacity of Platform Services (PS) channels by DTH operators as recommended by TRAI: there is a wide variation at present among the DTH operators in their channel carrying capacity and PS channels being offered. Taking note of this IMC recommended that the DTH Operators may be permitted to operate to a maximum 5% of its total channel carrying capacity as permitted PS channels without any limit on maximum number of PS channels which may vary as and when the channel carrying capacity of operator increases.

C. TRAI Response

The DTH operators being the distributors of the broadcasting value chain primarily have to carry the content produced by the broadcasters, and not to produce their own content. The domain and functioning of the DTH operators is different from that of the broadcasters. Moreover, with the presence of a large number of already available permitted satellite TV channels (900+) spread across multiple regional languages and genres, there is no pressing

requirement, for a large number of PS channels to be available specially on the DTH platforms as they have national presence and not limited to small area.

The DTH operators have pan India presence by the virtue of the technology and availability of satellite footprint. They don't have to cater to the requirements of any local audience or a particular demography. PS are generally meant for MSO for carrying some local community interest program. Besides, DTH services are provided through satellite which inherently has limited transponder capacity of carrying channels. Due to this very reason, in fact, DTH operators in some case are not able to serve the request of the broadcasters. By allowing more PS channels to DTH operators will block a large capacity for their own use which can seriously jeopardize the availability of channel not only for new broadcasters but also for government mandatory channels.

Therefore, the Authority is of the view that as such there is no need to change recommended cap of 3% of the total channel carrying capacity for the platform services. An upper limit of 15 channels is also important, so that even if the channel carrying capacity gets increased in future, it should be given to broadcasters to who is waiting for the channel capacity. As the broadcasters are not permitted to reach to consumers directly, they are dependent only on the distributors, allowing more channels as PS will put artificial restriction on the broadcasters to launch new channels and in turn, they will be discouraged to bring new channels in the sector which will adversely affect the public interest at large.

Therefore, in order to address all the above-mentioned issues, Authority reiterates that the total number of permitted PS channels offered by DTH operators to be capped at 3% of the total channel carrying capacity of the DTH operator and subject to a maximum of 15 platform services channels.

In view of the above, TRAI reiterates its earlier recommendations.



(ii) Para 2.16(d) of the Recommendations

A. TRAI Recommendation

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.

B. MIB View

This power may rest with the Ministry of Information & Broadcasting (MIB).

C. TRAI Response

The Authority has recommended that TRAI or the Ministry may issue Directions to stop the transmission of any such programme which is found available on the PS of any other DPO.

In this regard, your attention is invited to TRAI's recommendation 3.2 (c) (para 2.16(c)) which as conveyed by you has been accepted by the MIB. The said recommendation is reproduced below:

“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.”

Your attention is further invited to section 11(1) (b) (i) of the TRAI Act which read as under:

“
(i) ensure compliance of terms and conditions of license;”

As is obvious from above that once said recommendation 3.2 (c) (para 2.16(c)) becomes part of the license condition, it is mandate to TRAI to ensure such condition. Therefore, to ensure consistency between the TRAI Act and the DTH license, it will be prudent to make explicit provision in the DTH license/guidelines to issue such direction by TRAI.

In view of the above, TRAI reiterates its earlier recommendations.



(iii) Para 2.47 of the Recommendations

A. TRAI Recommendation

The Authority recommends that the DTH operator shall be bound by orders/directions/regulations issued by TRAI in respect of DTH services including platform services provided by the operator.

B. MIB View

IMC deliberated on powers of TRAI in respect of DTH Operators as recommended. IMC recommended that except in respect of powers being hitherto exercised by TRAI in respect of DPOs, the issues pertaining to DTH operators etc. as per licence should be regulated by MIB. However, it may be desirable that DTH Operators may also abide by orders/directions/regulations of TRAI issued by TRAI from time to time relating to Interconnection agreement / tariff / quality of service and also keeping in view the fact similar provision already exists under Article 21.1 of DTH guidelines.

C. TRAI Response

It is not correct to say that Service providers will be bound by the orders/directions/regulations of TRAI issued by TRAI from time to time only issues relating to Interconnection agreement/tariff/quality of service. Supreme court in CIVIL APPEAL NO. 5253 of 2010 upheld that the power vested in the Authority under Section 36(1) of the TRAI Act to make regulations is wide and pervasive. The exercise of this power is only subject to the provisions of the Act and the Rules framed under Section 35 thereof. There is no other limitation on the exercise of power by the Authority under Section 36(1) of the TRAI Act.

Therefore, MIB should not put any artificial restriction in the license condition. It is essential that DTH license should have one overarching clause clearly stating that DTH operator shall be bound by orders/ directions/regulations issued by TRAI in respect of DTH services.

Moreover, Article 21.1 of DTH guidelines states the following:

“Notwithstanding any clause anywhere else in the License, the License will be subject to the condition that as and when any regulatory authority to

regulate and monitor the Broadcast Services in the country is constituted, the Licensee's will have to adhere to the norms, rules and regulations prescribed by such authority."

Above article also does not put any restriction on TRAI's power to issue regulations. Further, TRAI has been entrusted to regulate broadcasting sector since 2004, such clauses should have become part of the DTH License conditions.

It may be further noted that the similar provisions are also a part of Unified License issued by Department of Telecom (DoT). The relevant clauses read as under:

"16. Other Conditions:

16.1 The Licensee shall be bound by the terms and conditions of this License Agreement as well as instructions as are issued by the Licensor and by such orders/directions/regulations of TRAI as per provisions of the TRAI Act, 1997 as amended from time to time.

16.2 The Licensee shall also be bound by the prevailing instructions/directions/orders issued in respect of a service by the Licensor/TRAI, if the same service is also being provided by the Licensee to its subscribers."

In view of the above, it is very important that DTH license should have explicit provision that DTH operator shall be bound by orders/directions/regulations issued by TRAI in respect of DTH services including platform services provided by the operator.

Hence, TRAI reiterates its recommendations.

