

BY HAND/EMAIL

22<sup>nd</sup> November, 2013

Mr. Wasi Ahmad  
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Telecom Regulatory Authority of India  
Mahanagar Door Sanchar Bhawan  
Jawahar Lal Nehru Marg  
New Delhi – 110002

**Sub: Response to the Supplementary Consultation Paper No. 11/2013 on the Issue related to New DTH Licenses**

Dear Sir,

We thank you for issuing the Consultation Paper on several issues related to the DTH sector, and look forward to a speedy resolution of these issues to assist the DTH industry as it expands and serves customers on a pan India basis.

Please find enclosed Tata Sky Ltd.'s response to the Consultation Paper.

Yours sincerely,  
For Tata Sky Limited



Himavat Chaudhuri  
Chief Legal & Regulatory Affairs Officer

**TATA SKY LTD.'S RESPONSE TO THE SUPPLEMENTARY CONSULTATION PAPER ON ISSUE  
RELATED TO NEW DTH LICENSES (CONSULTATION PAPER NO. 11/2013)**

**ISSUES FOR CONSULTATION**

**QUERY**

1. Stakeholders are requested to give their views on the modification of clauses 1.4 and 1.5 of the DTH Guidelines, as mentioned in para 1.15, prescribing cross-holding/control restrictions. Stakeholders are welcome to suggest other options, if any, with justifications. Stakeholders are also requested to give their views on the timeframe to be given to the existing DTH licencees to comply with the new provisions and the justification thereof.

**TATA SKY RESPONSE**

We remain concerned on this issue for consultation and would like to bring the following to the attention of the TRAI:

**SIZE OF THE DTH INDUSTRY AND INVESTMENTS REQUIRED**

- In India, as in the rest of the world, the DTH industry is marked by a requirement for huge investment over a long period before any returns are seen from the venture.
- Commitments for such large investments required over several years can only be made by a stable strategic investor.
- Any financial investor will only seek shorter term returns, and therefore, we need to have the flexibility to have a strategic investor, familiar with the nature of the business, willing to invest in it.

**TECHNOLOGICAL ADVANCEMENT**

- The Involvement in the business of DTH by Indian and foreign strategic investors with prior experience in the business leads to easy and speedy implementation of technological advances from day one rather than the learning curve required in a greenfield venture.
- Tata Sky has benefited visibly from the technological end in terms of offering its customers high quality and high definition content, clear EPG, superior quality STBs, interactive services.

**IMPACT OF FDI AND SHAREHOLDING RESTRICTIONS**

- The DTH industry has been subject to FDI and Shareholding restrictions over the years which have not been imposed on similar players in the industry.
- Even with the enhancement of the FDI Limit to 74%, and no change in the sectoral cap, no foreign direct investment has flowed into the DTH industry.
- We therefore, thank the TRAI for its recommendation dated 22<sup>nd</sup> August, 2013 wherein it has recommended that FDI should be raised to 100% (upto 49% through the automatic route and beyond 49% through the FIPB route).
- Across the world, investment in the DTH industry is done by entities involved in some part of the value chain of the media industry. It is natural for businesses to expand in related business, and therefore, any restriction of either 20%, or any control will only retard the pace of growth of the DTH industry in India.
- Even within India, it is not surprising that the strategic investors in the DTH industry are from the media and technology space.

- Further, there is an absence of a sectoral cap and rightfully so, similar to the one for the DTH industry for MSOs, resulting in an uneven playing field.

#### NO RISK OF VERTICAL INTEGRATION, MONOPOLY

- We would request the TRAI to recognize that there is no platform, or any member of a platform, which is able to dominate the distribution space with respect to delivery of services to the consumer. In any given market today there are 7 DTH platforms (6 privately run, and 1 owned by Doordarshan) available for a consumer to choose from. In addition there are multiple MSOs/cable operators, IPTV platforms available to the consumer.
- The TRAI has already put in place regulations to ensure non discriminatory access, and platforms are offering a wide variety of content and channels based on consumer preferences.
- Then there are laws and regulations issued by the Competition Commission of India, as well as other government, regulatory and judicial bodies, which protect both business to business relationships, and business to consumer relationships, and there is no risk of any creation or abuse of a monopolistic position.
- In fact, due to the hyper competition that is playing out in the market place today, consumers have access to diversified content at the best possible prices.

#### TATA SKY SUBMISSION

**In light of the above, we therefore, urge the TRAI to recommend removing the sectoral cap of 20% imposed on the DTH industry.**

#### QUERY

2. **Do you agree with the approach discussed in para 1.25, on the aspect of technical compatibility and effective interoperability of STBs among different DTH service providers?**

**If not, an alternative approach may be suggested with justification.**

#### TATA SKY RESPONSE

We remain concerned on this issue for consultation and would like to bring the following to the attention of the TRAI:

#### TECHNICAL IMPOSSIBILITY

- We request the TRAI to recognize that different DTH service providers have adopted different combinations of operating standards and core technologies thus making interoperability of STBs technically impossible. 2 DTH operators have adopted MPEG 2 technology, whereas 4 DTH operators have adopted MPEG 4 technology therefore, technical interoperability is not possible.
- In view of the above we would also like to highlight that technology-neutral policy, as recommended by the TRAI recommendations dated 22/07/13 on 'Policy Issues relating to Uplinking / Downlinking of Television channels in India', remains essential to ensure flexible adoption of the most appropriate and DTH technology.

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#### ECONOMIC UNVIABILITY OF INTEROPERABILITY NORMS

- Providing the option of an inter operable CAM is not commercially viable since it costs approximately USD 20 to 25, which is approximately the same cost to purchase a new STB in the market. Hence a consumer, wishing to migrate could do so by buying a new Set Top Box instead of attaching a CAM to his existing Box.
- Similarly, incorporating a Common Interface Slot in a STB results in an additional cost to DTH service providers of approximately USD 2 per STB, which, in the absence of effective interoperability, is an unnecessary expense on DTH operators, and drain on foreign exchange. This expense has already been incurred on the existing ~60 Mn STBs and the waste should be avoided in the future as we move towards Phases 3 & 4 of Digitisation.

#### COMPETITION LEADS TO THE BEST SCHEMES TO THE CONSUMER

- Given the large number of DTH players and MSOs competing for each customer's business thus leading to high subsidy on Customer Premise Equipment, the customer has already been assured low access costs to DTH service.

#### TATA SKY SUBMISSION

**In light of the above, we urge the TRAI to recommend removing the interoperability requirement imposed on the DTH industry.**

#### QUERY

3. **Do you agree that, in line with the Unified Licence, the licence fee for DTH services should be charged at the rate of 8% of the AGR where AGR be calculated by excluding Service Tax and Sales Tax actually paid to the Government, if Gross Revenue had included components of Sales Tax and Service Tax?**

**If not, an alternative formulation may be suggested along with justifications.**

#### TATA SKY RESPONSE

##### 8% OF AGR

- We thank the TRAI for recommending that the License Fee under the Unified License should be charged at the rate of 8% of the AGR. This is forward looking, and based on previous recommendations of the TRAI, and litigations filed by various broadcasters, all DTH players have been all along paying on this basis.
- The DTH industry has supported the government's mandated Digitisation schedule, underwritten costs of acquisition of STBs and customers, and at the same time paid considerable License Fees to the MIB which has not been paid by some other members of the Pay TV value chain, and therefore, a favourable consideration is required to minimize the losses of the industry

##### APPLICABLE TAXES

- We thank the TRAI for listing Service Tax and Sales Tax as taxes for exclusion of AGR, but would request that this be applicable to all taxes and duties levied on the DTH industry including entertainment tax, customs duty, etc., save for taxes paid for income profits made by companies. The calculation of AGR should also take into account the multiple litigations and judicial orders relating to deductions made by DTH operators on account of revenue from non license activity and pass through revenue.

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TO TAKE EFFECT FOR THE TERM OF THE LICENSE

We request the TRAI to make these provisions applicable from the inception of the Current License term to conclusion. This will also minimise all pending tax litigation.

TATA SKY SUBMISSION

In view of a much needed growth impetus for the DTH industry, we thank the TRAI for its recommendation to reduce the License Fee to 8% of AGR, and would request that in addition, all taxes and duties be excluded from the such calculation, and this position be accepted for the term of the Current License. In addition, revenue from all non license activity and pass through revenues should also be deducted.

QUERY

4. Do you agree with the approach discussed in para 1.39, for arriving at the quantum of migration fee to be charged from the existing DTH licensees on their migration to the new DTH licensing regime?

If not, an alternate formulation may be suggested along with justifications.

TATA SKY RESPONSE AND SUBMISSION

- We thank the TRAI for recommending the new DTH licensing regime and agree with the approach discussed in paragraph 1.39.
- In addition, we recommend that Rs. 1 crore be imposed as Transfer Fees for all existing DTH Licensees for migrating to the new regime.
- All new entrants to the DTH business should have to give a one time entry fee of Rs. 10 crores for the term of the License.
- Given the capital intensive nature of the industry we recommend that the term of the License should be for an initial period of 20 years, with an automatic renewal of 20 years, subject to compliance of all other terms and conditions by the DTH Licensees.

QUERY

5. Do you agree with approach regarding migration of existing DTH licensees to a new licensing regime, discussed in para 1.41?

If yes, how much time, after notification of the new DTH licensing regime, should be given to the existing DTH operators for migration to new DTH licensing regime?

If not, what should be the approach followed for migration of existing DTH operators to a new licensing regime?

Please elaborate your response with justifications.

TATA SKY RESPONSE AND SUBMISSION

- We agree with TRAI's approach regarding migration of existing DTH licensees to a new licensing regime and submit that this be done upon payment of a Transfer Fee of Rs. 1 crore, with immediate effect.

Query

6. (i) If any stakeholders has a view that any other provision of the DTH Guidelines requires any change or any provision is required to be added to these guidelines, the same be suggested along with justifications.
- (ii) In light of the fact that a new DTH licensing regime is being discussed, stakeholders may also give their modified views, if any, on the issues that have been discussed in the consultation paper dated 1st October 2013.

TATA SKY RESPONSE AND SUBMISSION

The DTH industry has been paying signification License Fees to the Government, brought in addressability, and a true declaration of subscriber numbers which has benefited both the Government and the Broadcasters. However, it is penalized with multiple and varying tax regimes from both, Central & State governments. As a result the industry pays ~33% of its gross revenue as License Fee, Service Tax & Entertainment Tax. We therefore, request the TRAI to consider a waiver on Service Tax till such time GST is implemented by the government.

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