

**Supplementary Consultation Paper dated November 14, 2013****“Issue related to New DTH Licenses”****Issues for Consultation**

**2.1 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 licensees to comply with the new provisions and the justification thereof.**

Comments:

*The issue of ‘Control’ in the DTH services becomes extremely significant considering the fact that cross holdings between broadcasters and service providers & amongst service providers themselves has become a serious and concerning competition issue. To add to it, there is no ‘Must Carry’ obligation upon DTH service providers considering their channel carrying capacity/ bandwidth challenge.*

*The Authority’s efforts are praiseworthy for examining the definition of ‘Control’ under various statutory & legal provisions viz. the Competition Act, 2002, SEBI’s Takeover Code & Income Tax Act, 1961. Thus, we are of the view that the interpretation taken by the Authority of the term ‘Control’ and the ancillary terms, therein is comprehensive and shall subserve for the purposes of DTH License/ Guidelines.*

*In view of the above, the definition of ‘control’ and its ancillary terms under the Competition Act, 2002, SEBI’s Takeover Code & Income Tax Act, 1961, as suggested by the Authority, should be adopted and the conditions pertaining to the cross-holdings in the DTH Guidelines may, therefore, be suitably modified.*

*A time period of three months would be adequate for the DTH licensees to comply with the new provisions.*

**2.2 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.**

Comments:

*We are aware of the commercial interoperability obligations for the DTH service providers under the TRAI's extant orders and regulations. However, so far the envisaged benefits of such regulations are yet to reach the consumer.*

*The present DTH license regime requires the DTH service providers to ensure technical compatibility and to adopt open architecture (non-proprietary) STBs for effective interoperability among different DTH service providers. It clearly spells out the government policy to provide flexibility to the consumer to choose between service providers. Such policy also aims to prevent the abuse of dominant position by a DTH Service Provider.*

*The 'technical compatibility and effective interoperability' in the DTH sphere propels competition **in** the market rather there being competition **for** the market that is not only beneficial to the consumers but also the economy as a whole.*

*Whilst we agree that delinking of 'technical compatibility and effective interoperability' from the compliance of BIS standards would remove ambiguity as specified by the Authority in the Consultation Paper, however, the obligation of ensuring 'technical compatibility and effective interoperability' upon the service providers should remain as a separate condition of the DTH license, even after the delinking from the compliance of BIS standards.*

**2.3 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.**

Comments:

*We are of the view that the license fee levied on DTH service provider is the key issue that should be considered to foster sustainability of the DTH service providers and overall growth of the DTH industry in the country. However, such reductions in License fee should have all-round effect and not just limited to the DTH service providers. What is also desirable from the said reduction is the increase in affordability of DTH service to the consumer, increase in number of channels on DTH platform and lessening of carriage fee burden on the broadcasters for DTH platform.*

**2.4 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 licencees on their migration to the new DTH licencing regime?**

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

**Do you agree with approach regarding migration of existing DTH licencees 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 licencing 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.**

*No Comments.*

**2.6 (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.**

*Comments:*

*Below are points related to DTH license and service that are relevant for the purpose of this consultation:*

1. *Mandatory allocation of certain percentage of available satellite bandwidth to carriage of channels:*

*The primary objective of DTH service is to carry as many channels as possible to the consumer. More and more DTH service providers are promoting and utilizing their satellite bandwidth for Value Added Services (VAS). Such VAS brings in extra revenue to the DTH service providers, whereas on the other hand it gobbles up the satellite bandwidth and creates bandwidth scarcity for carriage of channels. This in turn initiates a price competition amongst the broadcasters for the limited slots available for their channels on the DTH platform.*

*To marginalize the bandwidth scarcity and optimum usage of the available satellite bandwidth, allocation of certain percentage of available satellite bandwidth to carriage of channels should be prescribed in the DTH license conditions. Further, to ensure compliance of such condition, it should be obligatory for a DTH service provider to provide the details to the Authority regarding satellite bandwidth available to it and its usage, specifically the allocation of satellite bandwidth by the DTH service provider to carriage of channels, VOD service and other value add services.*

2. *Mandatory Reference Interconnect Offer (RIO) for carriage services.*

*A DTH operator may charge a fee for carriage of channels on its DTH service, however such fee should be reasonable, reasonable and non-discriminatory. For such purpose necessary disclosure of fee should be made by the DTH service provider in its RIO for carriage fee and made available to the broadcasters.*

3. *Non-discriminatory access:*

*Presently, there are myriad good quality channels that are popular but are denied platform access by the DTH service providers stating want of channel carrying capacity. While at the same time the same DTH service provider continues to launch multiple new channels of its group of affiliate companies on its DTH platform. This becomes discriminatory and abuse of last mile monopoly position by the DTH Service providers, considering the*

*fact that the DTH service is a public service that uses airwaves, a public resource.*

*Equal opportunity and non-discriminatory exposure to all channels would be in the prime interest of the consumers. This issue can be addressed some bit by redefining 'Control' under DTH License, as discussed above, however the situation demands a license condition or regulation that obligates upon DTH service providers to adopt a more open and transparent process of allowing access to channels on their DTH platform.*