

RESPONSE TO CONSULTATION PAPER 07/2014 ON REGULATORY FRAMEWORK FOR PLATFORM SERVICES

2014

COMMENTS FROM MULTI SCREEN MEDIA PRIVATE LTD.

- In case of opening up of the broadcasting sector to the Platform owners, it would give rise to an important question as to whether broadcasting activities can be permitted for such Platform owners, particularly in view of the fact that the broadcasting activities to be undertaken by such bodies will be basically dictated by the broad objectives and functions of these organizations.
- The cable TV sector, as a distribution platform, is almost entirely in the hands of Platform owners including multi-system operators, DTH operators etc. In the distribution chain in Cable TV, there are entities functioning as Multi System Operators (MSOs) which mainly aggregate the contents from different broadcasters and then provide the signals for the same to last mile cable operators without seeking permission of the Broadcasters. Piracy is one of the major issues which has till date not been effectively addressed.
- Opening up the broadcasting sector to Platform Operators will give rise to vertical integration and there will be blackouts of popular pay channels just because they are not vertically integrated on the ground.
- It will discourage investment as the Broadcasters will pay for the content which will be utilized by the local channels to their commercial advantage.
- It will not be in the interest of the broadcasting sector and in the interest of the public at large to permit the Platform Operators to enter into broadcasting activities as some of the State Governments will also indirectly try to enter into this business via the Platform Operators. In this regard reference is made to the Supreme Court Judgment:

Hon'ble Supreme Court Judgment on airwaves:

The following observations of the Hon'ble Supreme Court in its judgment in the case of *Union of India v. Cricket Association of Bengal* dated 9.2.1995 (*AIR 1995 (SC) 1236:1995 (2) SCC 161*) are relevant herein:

(a) "Broadcasting media should be under the control of the public as distinct from Government. This is the command implicit in Article 19(1) (a). It should be operated by a public statutory corporation or corporations, as the case may be, whose constitution and composition must be such as to ensure its/their impartiality in political, economic and social matters and on all other public issues."(Justice Jeevan Reddy) (para 201)

(b) "Government control in effect means the control of the political party or parties in power for the time being. Such control is bound to colour and in some cases, may even distort the news, views and opinions expressed through the media. It is not conducive to free expression of contending view points and opinions which is essential for the growth of a healthy democracy". (Justice Jeevan Reddy) (para 199)

Having regard to the aforesaid observations, it is submitted that in order to ensure impartiality in political, economic and social matters and in other public issues, it is imperative not to permit the Government, political parties to indirectly enter into broadcasting activities via Platform Operators.

- There will be an inherent conflict of interest between the Broadcasters and Platform Operators .
- Credibility and Unjust Enrichment Issues: A state promoted Broadcasting mechanism/ institution also militates against the fundamental principles of a democracy such as India. Since the broadcast media is a powerful tool to formulate public opinion, by virtue of its enormous reach and impact, by allowing Platform Operators to enter into broadcasting activities will expose the citizens of India to the unbridled risk of distortion and tampering of public opinion by such entities. This dangerous tendency, therefore, must be avoided at any cost to preserve India's democratic institutions and culture.
- Monopolistic Trade Practices and Competition Issues: It is submitted that the entry of the Platform Owners into the broadcasting sector will also have to be carefully tested against the touchstone of India's Competition Laws. It is quite logical to suggest that owing to the enormous clout and power of these local entities, there is a real risk that their entry into this sector will pose serious issues of creating "State Monopolies" and distort and obstruct competition.
- It is submitted that in such an unlikely scenario where Platform Operators are granted permission, it will be impossible to enumerate and enforce any safeguards to ensure bonafide usage of the broadcasting permission granted to such Platform Owners and these safeguards will be merely on paper as they will prove ineffective in a scenario where such local entities are the prime mover.

Response to Issues for Consultation:

1. Definition of “Platform Services”

Currently the programming services provided by Platform Operators like DTH, IPTV and MSOs are what can be called “value added services” in the form of PPV, SVOD, AVOD, etc. These are usually provided on a standalone basis. However of late there is a trend of these Platform Operators entering into arrangements with third parties and providing country wide programming with an EPG to their subscribers, including subscribers of their affiliate networks. Primarily these services are movies on demand. However the manner and the technology with which such programs are offered often blurs the distinction between the channels that these operators carry and the programming services they offer. In short free of any regulation or oversight these operators can provide any form of programming to thousands of their subscribers whether on their own localized network or the network of their affiliates spread out all over the country.

Hence it is important to make a distinction between programs offered by Broadcasters i.e. channels which have been licensed under the Uplinking and Downlinking Guidelines of the Ministry of Information and Broadcasting and programmes offered by individual Platform Operators to their subscribers on a standalone basis. The differentiator here ought not to be whether these programs are offered by a broadcaster or a Platform Operator but on the spread and pervasiveness of the content that is being offered. A DTH operator can offer these kind of services to the entire area covered by his satellite footprint which could be the entire country. And if he can do this without any regulatory intervention, the question that arises is why should broadcasters face the kind of scrutiny they currently have to undergo to provide similar services?

Comparing Platform Operators to FM Radio broadcasters may not be appropriate given the mode of communication, reach, etc. Paragraph 1.9 of the CP which extracts the relevant portion of the Guidelines for FM Expansion sets out certain criteria all of which are primarily “information” providing guidelines. As long as this is the case i.e. the program services if not licensed will be restricted to provision of topical and current information only, it would be appropriate. For any program services in any other category which are being provided free and are not behind a pay wall, the Platform Operator must be prohibited from offering such services without there being a regulatory oversight.

It is also important to distinguish between services offered by Broadcasters and DPOs/Platform Operators on the basis of their eligibility for measurement of viewership ratings. Programming Services offered by DPOs/Platform Operators should not be part of the audience measurement

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ratings to be carried out by agencies accredited with the Ministry of Information and Broadcasting. In fact these Guidelines must be amended to specifically exclude Programming Services offered by DPOs/Platform Operators. In the absence of such differentiation, PS will become another channel exploited by advertisers to advertise their products and services and the distinctiveness of PS as a niche offering to subscribers for which they pay a specific fee, will be lost.

2. Programs to be permitted on PS channels:

We are in agreement with paragraph 2.1 regarding the programs that cannot be provided on PS channels with the following caveats:

- a. Movies/VoD- PS channels should not be permitted to offer movies or other audiovisual content until a cooling off period of 12 months from the date of their first telecast on the broadcaster channels or their premier in India or abroad whichever is later. This measure is required to prevent piracy which is a huge issue for broadcasters.
- b. PS channels will be solely responsible to ensure the content they put on air on their platforms have been duly acquired with a proper copyright license and with the consent of the owner of the copyright.

3. Periodicity of Review:

The periodicity should be annual as it is for broadcasters if the Platform Operator wishes to offer his own programming services.

4. Eligibility Criteria for registration:

In order to be able to provide oversight it is recommended that PS channels should only be offered by operators who are registered under the Companies Act, 2013 either as private or public companies or as a "One Person Company" or as a "Limited Liability Partnership". Also such entities ought to obtain in their name registration with the relevant tax authorities (PAN, TAN, Service Tax registration, etc.).

5. FDI Limit in PS channels:

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FDI must be encouraged subject to the extant guidelines which require lower thresholds for “news” and higher thresholds for “non- news”.

6. Net worth of DPO

There must be certain eligibility criteria for DPOs to be able to offer programming services on their own. While these may not be comparable with limits set for broadcasters which is on a “per channel” basis, it is suggested that a net worth of at least 2.5 crores may be considered as a threshold. This threshold should be increased as and when thresholds for broadcasters are increased.

However, in the case the DPO is not offering a separate channel but only value added services described as such in its EPG and behind a pay wall, this threshold may be relaxed to some extent.

7. Security clearance:

Security clearance must be linked to the programming services being offered. If the programming services comprise only VAS without any standalone programming, there ought not to be need for any security clearance. It is only if programming services are offered independent of VAS and on a pan India basis that security clearance must be stipulated. At the same time it is pertinent to note that MIB EMMC at present covers only satellite broadcast channels and PS offered by DPOs will not be covered.

8. Registration of PS Channels:

All programming services if they are covered under the ambit of the Cable Television Rules, 1995 or the parent Act must be treated alike and regulated accordingly. There should not be any discretionary bias which leads the authorities to make any distinction and allow unlicensed programming services to be offered by DPOs/Platform Operators.

The period of registration ought to be consistent for all entities offering programming services irrespective of size or structure. However where DPOs/Platform Operators are offering programming services in the nature of VAS and to their own paying subscribers contained within a separate pay wall, the requirement of registration can be dispensed with and a periodic

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reporting mechanism can be introduced. A reasonable fee also should be charged to ensure only genuine operators offer such services.

9. Cap on number of PS channels:

There is a need to introduce a “must carry” provision for DPOs in the post digitalization era given there are no longer any band with constraints affecting these operators. Only after fulfilling their “must carry” obligations should a DPO/Platform Operator be permitted to offer programming services.

10. Other obligations of DPO:

Again, if a DPO offers services akin to that offered by a broadcaster, it must be regulated on the same criteria to ensure a level playing field. But if it only offers limited services as a VAS, the need for such regulation may not be required.

It is important that DPOs should not be allowed to retransmit PS offered by other DPOs. If such sharing or retransmission is allowed it places the DPO on an even higher footing than a broadcaster which is permitted only to transmit its own channels or channels for which it has obtained a downlinking permission.

DPOs in any event are required to comply with the QoS stipulated by TRAI.

11. Re-transmission of Radio Channels:

Since radio channels are subject to licensing and content norms, there is no reason to restrict their retransmission by DPOs. As long as DPOs first fulfill their primary responsibility and duty to offer television channels on a “must carry” basis, there ought not to be any restriction on what they do with their spare capacity.

12. Monitoring mechanism:

The DPOs may be brought under the self regulatory content review mechanism now implemented by the Indian Broadcasting Foundation. The self regulatory guidelines of the IBF in the form of the Broadcast Content Complaints Council should be given statutory recognition so that its orders can be enforced in a timebound manner.

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13. Penal Provisions:

The provisions of paragraph 6.1 of MIB's policy guidelines on Downlinking/Uplinking of television channels are much too harsh. Suspension of transmission and withdrawal of the broadcasting licence are extraordinary measures to be used only in cases of a national emergency as they amount to a violation of the constitutional protection to free speech. The IBF has already submitted its proposals to the MIB and the MIB would be well advised to consider these proposals to establish a more conducive and collaborative business environment.

14. New Regulatory Framework:

The current laws on cable networks were promulgated in 1994/95. More than 20 years have passed and more importantly technology has evolved manifold in this time with the internet, social media, mobile applications, etc., becoming the primary means of communication. The relevance of the Cable Networks Regulation Act and Rules needs to be re-evaluated in this context as the paradigm has changed. The emphasis has to move from regulation to creating a framework to encourages innovation and the growth of all forms of media.