

RESPONSE OF STAR INDIA PRIVATE LIMITED ON THE SUPPLEMENTARY CONSULTATION PAPER NO 7/2009 ON TARIFF RELATED ISSUES ON DTH SERVICES DATED DECEMBER 24, 2009, ISSUED BY THE TELECOM REGULATORY AUTHORITY OF INDIA (“Authority”).

At the outset we wish to humbly assert our submission and stress our belief, that the factor of market forces and fair competition shall operate as the finest form of regulation for an industry such as broadcasting. Legislative intervention in the form of tariff fixation should be stringently restricted to incidences of proven market failure or when public protections are absolutely necessary. We believe that the objective of assuring the consumer the best value for his money can be achieved only through the realization of a fair price point for content in a free market through competition forces that is conducive to all stakeholders while achieving affordability for the consumer.

ISSUES FOR CONSULTATION

4.1.2 Whether there is a need to differentiate various packages for the purpose of wholesale tariff determination?

Comments :

While we reiterate that the goal of every objective determination of tariff can fully be realized only through market forces, in the interim in the event the Authority decides to fix tariffs at the wholesale level, a distinction needs to be clearly drawn between the basic and add-on packages of any DTH operator for the purpose of wholesale tariff determination. As the TRAI has rightly indicated¹, the market as it exists in the DTH space today, is inundated with a plethora of basic and add-on packages as well as limited a-la-carte offerings making the mapping of subscriber base and realization of revenue for the stakeholders a decidedly qualified exercise. There is a clear need to differentiate various packages for the purpose of wholesale tariff determination for the following reasons:

- **Existing Regulations severely restrict Broadcasters from seeking any preferred placement of its channels from the DTH Operators:**

Globally the broadcasters and DTH operators negotiate on the placement of channels on different packages and accordingly decide on the License Fee. As regulation exists today under the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, (“Regulations”) broadcasters are barred from compelling any DTH operator to offer its entire bouquet or bouquets to any DTH operator in any package or scheme being offered by such DTH operator to its subscribers. This gives complete freedom to the DTH operators to decide the packaging and takes away the right of the broadcasters to negotiate the same.

¹ **Para.3.6**, TRAI Supplementary Paper ON TARIFF Related Issues for DTH Services dated December 24, 2009

- **The placement of channel/s in a package determines the subscriber base for the channel/s which thereby becomes solely a function of DTH Operators:**

It is pertinent to note here that the revenue earned by a broadcaster is directly linked to the placement of its channels in the various packages being offered by the DTH operator, since the placement of any channel in a basic package of an operator will correspondingly result in those channels being viewed by a larger subscriber base as compared to channels placed in add-on packages, which are not compulsorily provided to customers. With DTH operators having complete freedom to formulate the various basic and add-on packages irrespective of their acquisition from the broadcaster, the DTH operator is the sole unilateral authority on deciding the composition of the packages provided to the consumer. This places them in an advantageous position to drive the viewer ship and subscriber base of each of the channel. Interestingly, since the mandated “Must Provide” obligation under the Regulations unfortunately doesn’t imply an equitable duty to “Must Carry”, the DTH operators are free to demand huge amounts as carriage fee to carry a particular channel. In fact, the decision of the DTH operators on the composition of basic and add on packages is to a large extent driven by the carriage fee that they can get from the broadcasters; where for instance a DTH operator may demand higher carriage fee merely to carry a particular channel on a preferred entry level basic package.

Surprisingly, though the intention of the ‘must provide’ regulation was to ensure the non discriminatory access of all content to the consumer for his benefit, without a corresponding ‘must carry’ and exorbitant carriage fees, the very objective of the legislation is defeated. It is indeed an accepted tenet that where any public policy legislation fails to meet its objectives it should be either reviewed or modified to ensure that the same is achieved.

4.1.2 If yes, how to define a basic package and add-on package for the purpose of wholesale tariff differentiation in relation to DTH services? Please elaborate your comments with appropriate reasoning.

Comments :

We endorse TRAI’s precisely highlighted² basis for determination and definition of the basic and add-on packages. A basic package may be defined as a package which a subscriber has to subscribe from a DTH operator without having to subscribe to any other packages as a condition precedent for availing DTH services and has the largest number of subscribers to the DTH Platform. Conversely, an add-on package may be defined as a package which is offered by a

² **Para.3.4**, TRAI Supplementary Paper ON TARIFF Related Issues for DTH Services dated December 24, 2009

DTH operator to its subscribers only on the condition that the subscriber subscribes to a basic package.

Where the Authority intends to determine tariffs through a differentiation between “basic” and “add on” packages, it will be unavoidable to determine the methodology for fixation of subscriber base and the consequential rate, in the case where the DTH Operator acquires channels on a bouquet basis from the broadcasters and differentially places some channels of the bouquet in the Basic Package and some channels in the Add on package.

4.1.3 Whether there is a need for different wholesale price formulation for a TV channel/bouquet depending upon its inclusion in different packages offered to the subscribers by the DTH operators. You may also suggest any other option for differential wholesale price formulation. Please elaborate your comments with appropriate reasoning.

4.1.4 If the wholesale price is to be linked with packaging of the TV channels then what should be the relationship between wholesale prices of a TV channel/bouquet offered by a broadcaster to a DTH operator, if the channel/bouquet is packaged as a part of a basic package, or as a part of add-on-package or both by a DTH operator? Please elaborate your comments with appropriate reasoning.

Comments:

We submit that any price determination whether wholesale or retail should solely form part of negotiations between parties, governed by market forces of demand and supply. It is important to bring to the notice of the Authority, to realize the marked distinction between different types of content offerings catering to varied tastes and requirements such as sports, news, education, niche content etc. each of which entails a differential cost for the content. The generic classification of all content to be regulated by an averaged out tariff dispensation is unrealizable and unsustainable for all stakeholders including the consumer, who will be bereft of quality programming since low returns on niche content will mean reduced investment in creation and acquisition of quality content.

Further, given the numerous packages that are offered by different DTH operators, it is immensely impractical to design a ready made wholesale price structure for all the packages. Hence, broadcasters should be permitted to negotiate the whole sale price with DTH operators basis the manner in which the DTH operator subscribes for the channels i.e a-la-carte or bouquet, in addition to the package in which DTH Operator intends to place the channels. This will also enable the broadcasters to design a reasonable discount structure after reviewing the subscriber base trend of each of the retail packages of the DTH operators and the subscriber base for each of the channels.

4.1.5 Why should not a DTH operator extend *a-la-carte* mode of service provisioning of a TV channel at the level of subscriber?

We are of the view that, to derive the benefit of the mandate given by regulations for the broadcasters to extend a-la-carte option to DTH operators at the wholesale level, the DTH operator must also further extend a-la-carte mode of service at the level of subscribers.

4.1.6 Can the DTH operator offer a-la-carte option as one of the entry level options for subscribers?

We are in agreement with the position that a DTH Operator be allowed to offer a-la-carte as one of the entry level options for the subscribers. If the same can be offered as “Add-on”, it can be also be offered at the entry level as well.

4.1.7 If the DTH operators are required to make available the channels on *a-la-carte* basis to the subscriber, then what could be the minimum number of channels and/or minimum subscription price and/or minimum subscription period for subscribing to the channels?

Please elaborate your comments with appropriate reasoning

DTH Operators must make available all the channels on a-la-carte basis. The subscription price should be left to market forces at both wholesale and retail level. However, if the subscription price is fixed at the wholesale level, it should be fixed at the retail level also.

4.1.8 In case of *a-la-carte* provision to the subscribers, should there be a maximum permitted time frame for servicing request of a DTH subscriber? If so what should be such time frame? Please elaborate your comments with appropriate reasoning.

A minimum period of 6 months should be prescribed for servicing a request for a-la-carte provision of channels to subscribers. In addition to keeping exigencies of DTH infrastructure and hardware/software provisioning and transition, the consumer is provided ample time to sample to channel offering/s. A corollary may also be drawn from the fact that under the mandated CAS regime a minimum period of 4 months is prescribed.

4.1.9 In case of *a-la-carte* offering of any TV channel by a DTH operator, whether there is a need to identify relationship between wholesale and retail price of that channel? Please elaborate your comments with appropriate reasoning.

While we endorse forbearance in the matter, in the event the Authority intends to fix the prices at both wholesale and retail level, there has to be a relationship between wholesale and retail price in case of a-la-carte offering.