

Subject: Direction under section 13 of the Telecom Regulatory Authority of India Act, 1997, read with clause (b) of sub section (1) and sub-section (2) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) and clause 4A of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004)

Whereas, the Telecom Regulatory Authority of India (hereinafter referred to as the Authority) had issued the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) dated the 1st October, 2004 (hereinafter referred to as the principal Tariff Order) which has been amended from time to time;

2. And whereas sub-clause (1) of clause 3C of the principal Tariff Order {as inserted by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 dated the 4th October, 2007 (3 of 2007)}, requires all the broadcasters to offer or cause to offer on non-discriminatory basis all its channels on a-la-carte basis to the multi system operator or the cable operator, as the case may be, and specify an a-la-carte rate and the said sub-clause (1) of clause 3C reads as under:-

“3C. Manner of offering channels by broadcasters.

(1)Every broadcaster shall offer or cause to offer on non-discriminatory basis all its channels on a-la-carte basis to the multi system operator or the cable operator, as the case may be, and specify an a-la-carte rate, subject to provisions of sub-clause (2) of this clause and clauses 3 and 3B, for each such pay channel offered by him.”;

3. And whereas clause 4 of the principal Tariff Order {as amended by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order (Eighth Amendment) Order, 2007 dated the 4th October 2007 (3 of 2007)}, requires every broadcaster to furnish within seven days from the 1st day of December, 2007, to the Telecom Regulatory Authority of India, *inter alia*, the name, a-la-carte rate, genre and language of each pay channel offered by the broadcaster and the said clause 4 reads as under:-

“4. Reporting requirement.

(1) Subject to the provisions of clause 3C, every broadcaster shall, within seven days from the 1st day of December, 2007, furnish the following information to the Authority, namely:-

(a) names, genre and language of all free to air channels offered by the broadcaster;

(b) name, a-la-carte rate, genre and language of each pay channel offered by the broadcaster;

(c) list of all bouquets offered by the broadcaster with prices of each bouquet, indicating the names of all the pay channels and free to air channels contained therein along with the names of owners of other channels in the bouquets;

(d) revenue share arrangement between owners of channels in the bouquet;

(e) target audience of all the pay channels and free to air channels (National or Regional, if Regional, state(s) must be specified);

(f) whether the pay channels are pay channels in whole of the country or only in part of the country. (States must be specified if a channel is a pay channel in part of the country);

(g) advertisement revenue for the last three years;

(h) any other information relevant to free to air channels, pay channels, a-la-carte rates and bouquets offered by a broadcaster.

(2) Every broadcaster who, after the 1st day of December, 2007,--

(a) introduces any new pay channel or free to air channel; or

(b) converts any pay channel into free to air channel; or

(c) converts any free to air channel into pay channel; or

(d) discontinues any free to air channel or pay channel; or

(e) introduces any new bouquet or discontinues any bouquet or modifies any bouquet,

shall, within seven days of such introduction or conversion or discontinuation, furnish to the Authority the information required in items (a) to (h) of sub-clause (1).

(3) Every broadcaster shall exhibit on its website the information furnished under sub-clauses (1) and (2) immediately except items (d) and (g) of sub-clause (1).”;

4. And whereas the first proviso to clause 3 of the principal Tariff Order {as amended by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 dated the 4th October 2007 (3 of 2007)}, specifies that the rates of new pay channel(s) as well as the channel(s) that were free to air as on the 1st day of December, 2007 and have subsequently converted to pay channel(s) must be similar to the rates of similar channels existing as on the 1st day of December, 2007 and/ or on the date of such launching of new channel or such conversion of free to air channel into a pay channel and the said first proviso to clause 3 of the principal Tariff Order reads as under:-

“Provided that if any new pay channel(s) that is/are launched after the 1st day of December, 2007 or any channel(s) that was/ were free to air channel on the 1st day of December, 2007 is/are converted to pay channel(s) subsequently, then the ceiling referred

to as above can be exceeded, but only if the new channel(s) are provided on a stand alone basis, either individually or as part of new, separate bouquet(s). The extent to which the ceilings referred to above can be exceeded would be limited to the rates for the new channels. For the new pay channel(s) as well as the channel(s) that were free to air as on the 1st day of December, 2007 and have subsequently converted to pay channel(s) the rates must be similar to the rates of similar channels existing as on the 1st day of December, 2007 and/ or on the date of such launching of new channel or such conversion of free to air channel into a pay channel ;”;

5. And whereas clause 4A of the principal Tariff Order {as inserted by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 dated the 4th October 2007 (3 of 2007)}, specifies that the Telecom Regulatory Authority of India may, by order or direction made or issued by it, intervene in order to secure compliance of the provisions of this Tariff Order, or protect the interests of subscribers and service providers of the broadcasting services and cable services, or promote and ensure orderly growth of the broadcasting services and cable services, or facilitate competition and promote efficiency in the operation of broadcasting services and cable services so as to facilitate growth in such services and the said clause 4A reads as under:-

“4A.Power of Authority to intervene.

The Authority may, by order or direction made or issued by it, intervene in order to secure compliance of the provisions of this Tariff Order, or protect the interests of subscribers and service providers of the broadcasting services and cable services, or promote and ensure orderly growth of the broadcasting services and cable services, or facilitate competition and promote efficiency in the operation of broadcasting services and cable services so as to facilitate growth in such services.”;

6. And whereas the Broadcaster, being the M/s MSM Discovery Private Limited (formerly known as M/s Set Discovery Private Limited), having its office at Interface Building No 7, Third floor, Malad Link Road, Malad (West) Mumbai, (hereinafter referred to as the M/s MSM Discovery Private Limited), vide its letter dated the 24th December, 2007, reported to the Authority the a-la-carte rates and the genre of its Channels and the a-la-carte rates of following five of its channels(hereinafter referred to as the said reported channels) and their Genre , as reported are as follows:-

Name of Channel	Genre, as reported	A-la-carte Rate as reported
MAX	Entertainment (Hindi/English)	rupees twenty (Rs.20.00),
Discovery	Factual Entertainment(English/Hindi)	rupees twenty (Rs.20.00),
AXN	General Entertainment (English)	rupees seventeen (Rs.17.00),
MTV	Music(English/Hindi)	rupees eight(Rs.8.00),
NDTV 24x7	News current affairs and business programming (English)	rupees nine (Rs.9.00),

7. And whereas the Authority, in order to promote transparency and protect the interests of the service providers in the broadcasting services, promote and ensure orderly growth of the broadcasting services and cable services, to ensure effective interconnection between different service providers and regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication and broadcasting services has arrived at the maximum wholesale a-la-carte rates of different genres of channels (hereinafter referred to as ceilings for different genres) which should be permitted to be paid by multi system operators/local cable operators to broadcasters for the existing channels and the channels to be launched in future, based on the a-la-carte rates reported by the broadcasters which, *inter alia*, included a maximum rate of –

(a) rupees seventeen (Rs.17.00) for the “Movie” genre,

(b) rupees fifteen (Rs.15.00) for the infotainment genre,

(c) rupees fourteen and paise fifty (Rs.14.50) for the “general entertainment (English)” genre,

(d) rupees seven (Rs.7.00) for the “music” genre,

(e) rupees eight and paise fifty (Rs.8.50) for “news and current affairs” genre;

8. And whereas upon perusal of the said letter of M/s MSM Discovery Private Limited dated the 24th December, 2007, it was *inter alia* observed that ----

(a) while reporting the a-la-carte rates and the genres of the said reported channels the M/s MSM Discovery Private Limited had also included therein certain “Notes” which, *inter alia*, indicated that the said “Rate Card is for reporting purposes only and shall not be construed as conveying an offer to existing MSO’s/Cable Operators (“Affiliates”) to subscribe to TOA Channels on a-la-carte basis.” and also certain other conditions to be fulfilled by the multi system operator or the cable operator, as the case may be, for subscribing to the channels on a-la-carte basis, which were examined carefully by the Authority and found to be unreasonable and arbitrary imposition of conditions to be fulfilled by the multi system operator or the cable operator, as the case may be, and a tactic to circumvent the law relating to requirement of reporting the a-la-carte rates as specified in clause 4 of the principal tariff order as referred to in paragraph 3 above;

(b) the genre classification of two of the said reported channels, namely, ‘MAX’ and ‘Discovery’ as ‘Entertainment (Hindi)’, ‘Factual Entertainment(English/Hindi)’, respectively, are not found to be in order in so far as the first one, namely, ‘MAX’ contained only movies and some limited cricket content and no other entertainment content and thus was found to belong to the Movies channel genre instead of Entertainment (Hindi) as reported to the Authority’, and the other channel, namely, ‘Discovery’ was found to be belonging to ‘infotainment’ genre instead of Factual Entertainment(English/Hindi), as reported to the Authority,;

(c) the a-la-carte rates, as reported by the M/s MSM Discovery Private Limited for the said reported channels has been found to be higher than the maximum wholesale a-la-carte rates as arrived at by the Authority (as referred to in the preceding paragraph 7) for

the respective genres to which such channels belonged and as per the right applicable genre;

9. And whereas in order to promote transparency and protect the interests of the service providers in the broadcasting services, promote and ensure orderly growth of the broadcasting services and cable services, to ensure effective interconnection between different service providers and regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication and broadcasting services and for the reasons mentioned in sub-paragraphs (a) to (c) of the preceding paragraph, the Authority invited the representatives of the said M/s MSM Discovery Private Limited for interactive discussions first on the 5th March, 2008 and subsequently again on the 7th April, 2008 and, during the course of these interactive discussions M/s MSM Discovery Private Limited was apprised of the a-la-carte rates as arrived by the Authority, as referred to in paragraph 7 above and therefore advised the representatives of the said M/s MSM Discovery Private Limited to reduce, in view of the reasons mentioned above, the a-la-carte rates of its said reported channels in line with the maximum wholesale a-la-carte rates arrived at by the Authority for different genres of channels as referred to in the paragraph 7 so that the a-la-carte rates are within the ceilings for the respective genres within which such channels fell, and which would have protected the interests of the subscribers and service providers of the broadcasting services and cable services and further advised M/s MSM Discovery Private Limited to withdraw the unreasonable conditions mentioned in their letter dated 24th December, 2007, for subscribing to the channels on a-la-carte basis;

10. And whereas the M/s MSM Discovery Private Limited did not report to the Authority the revised rates on the lines advised by the Authority during the interactive discussions on the 5th March, 2008 and subsequently again on the 7th April, 2008 and, therefore, the Authority had, while placing on its website the a-la-carte and bouquet rates as reported by the broadcasters for the information of the service providers and subscribers, through its press release dated the 18th April, 2008, indicated in the remarks column against the a-la-carte rates of said reported channels of M/s MSM Discovery Private Limited that revised reporting at the advised rates is awaited from the broadcaster for the said five channels;

11. And whereas the Authority, vide its notice dated the 8th May, 2008, gave an opportunity of being heard in terms of clause 4A of the principal Tariff Order to M/s MSM Discovery Private Limited on the issues of reducing the a-la-carte rates of the said reported channels to the advised rates and also to withdraw the unreasonable and arbitrary imposition of conditions to be fulfilled by the multi system operator or the cable operator, as the case may be, mentioned in their letter dated the 24th December, 2007 and further advised the said M/s MSM Discovery Private Limited that in case the said M/s MSM Discovery Private Limited wished to present their case personally, they were asked to be present for personal hearing on the 16th May, 2008;

12. And whereas, in pursuance of the notice dated the 8th May, 2008 of the Authority, the representatives of the M/s MSM Discovery Private Limited, participated in the personal hearing on the 16th May, 2008 and made the following submissions, namely

(i) that the channel 'Max' may be treated as "General Entertainment Channel" (GEC) because it has content other than movies and specially the sports content and that they have IPL rights and in the next 10 years they will be showing IPL matches;

(ii) that the Channel "Discovery" should also be treated at par with GEC;

(iii) that the broadcaster was not informed about the basis on which genres have been formed;

(iv) that while reporting the rates, conditions have been placed only to ensure protection of their judicial interests as they have moved to TDSAT against the tariff amendment order and that one more reason of putting the conditions is to have some idea of subscriber base in the area of affiliate;

(v) that if their request to treat the two channels, namely, 'Max' and 'Discovery' in 'general entertainment' (GEC) genre is accepted, then they will accept the advisory rates of other three channels;

13. And whereas the Authority has carefully considered the submissions made by M/s MSM Discovery Private Limited, as referred to in the preceding paragraph and, after such careful consideration, is of the view that the said submissions do not have merit and cannot be accepted for the following reasons, namely:-

(i) that by merely showing some cricket content for a few hours in a day and that too for a very limited period of only eight to ten weeks in a year, a channel cannot be classified under the Genre of 'general entertainment (Hindi)' instead of the 'Movies' genre, in particular of the facts prevailing in the broadcasting sector, that channels like "Sony", "Star Plus", "Zee", "Star One" and "9X" which fall in the Genre of 'general entertainment (Hindi)', are showing general entertainment contents for twenty-four hours a day and for three hundred and sixty five days in the year), and the channel "Max" of the M/s MSM Discovery Private Limited admittedly contains only movies and the limited cricket content, as mentioned above and contains no other general entertainment content;

(ii) that-----

(A) the channel "Discovery" is a channel comparable with other channels like "National Geographic Channel", "Animal Planet" and "The History" which fall under 'infotainment' Genre and, therefore, the request of M/s MSM Discovery Private Limited for treating this channel as General Entertainment channel has been found to be untenable and unreasonable;

(B) even if the request of M/s MSM Discovery Private Limited is acceded to, then channel "Discovery" is predominantly in English language and the genre ceiling (Rs.14.50) for 'general entertainment(English)' is even less than the arrived/advised rate of Rs.15.00 which is as per the genre ceiling for 'infotainment' Genre channels;

(iii) that the broadcasters were informed during the interactive discussions about the basis on which genres have been formed and such genres are similar to those prevalent in the broadcasting sector;

(iv) that the contention of M/s MSM Discovery Private Limited that the conditions in the RIO have been inserted to protect the judicial interests of M/s MSM Discovery Private Limited are found to be not acceptable for the following reasons, namely:-

(A) that the contention of M/s MSM Discovery Private Limited, that while reporting the rates, conditions have been placed only to ensure protection of their judicial interests as they have moved to TDSAT against the tariff amendment order and that one more reason of putting the conditions is to have some idea of subscriber base in the area of affiliate can not be accepted for the reason that the scope of issues covered in any proceedings before the Judicial or Quasi Judicial Authorities cannot be unilaterally addressed by any party to such proceedings without leave of such Judicial or Quasi Judicial Authorities and any such addressing of issues cannot be allowed by the Authority;

(B) that conditions referred to in the preceding sub-paragraph, amounts to a tactic to circumvent the law relating to requirement of reporting the a-la-carte rates as specified in clause 4 of the principal tariff order as referred to in paragraph 3 above and in effect, amount to denial of effective a-la-carte choice as compared to bouquets, thus defeating the very purpose of the tariff order mandating a-la-carte offering of channels;

(v) that the submission of the M/s MSM Discovery Private Limited that if their request to treat the two channels, namely, 'Max' and 'Discovery' in 'general entertainment' (GEC) genre is accepted, then they will accept the advisory rates of other three channels has not been found acceptable for the reason that the regulatory intervention by the Authority has been found necessary in the present case to promote transparency and protect the interests of the service providers in the broadcasting services, promote and ensure orderly growth of the broadcasting services and cable services, to ensure effective interconnection between different service providers and regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication and broadcasting services, and therefore, condition or restrictions cannot be allowed to be imposed by the M/s MSM Discovery Private Limited, being the service provider, for compliance with regulatory interventions made by the Authority;

14. And whereas other broadcasters have already revised the rates of their channels on the basis of similar interactive discussion to conform to the maximum wholesale a-la-carte rates of different genres of channels as arrived at by the Authority as referred to in paragraph 7 above and M/s MSM Discovery Private Limited failed to do so;

15. Now, therefore, in exercise of the powers conferred upon the Telecom Regulatory Authority of India **under section 13 of the Telecom Regulatory Authority of India Act, 1997, read with** clause (b) of sub section (1) and sub-section (2) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) and **clause 4A of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004)**, in order to promote transparency and protect the interests of the service providers in the broadcasting services, promote and ensure orderly growth of the

broadcasting services and cable services, to ensure effective interconnection between different service providers and regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication and broadcasting services, and for the reasons mentioned in the preceding paragraphs, the Telecom Regulatory Authority of India hereby directs that the M/s MSM Discovery Private Limited shall, within seven days from the date of this Direction:

(a) bring a-la-carte rates of its channels, namely, “MAX”, “Discovery”, “AXN”, “MTV” and “NDTV 24x7” in conformity with the maximum a-la-carte rates arrived at by the Authority, as referred to in sub-paragraphs (a) to (e) of paragraph 7 above and already intimated to M/s MSM Discovery Private Limited;

(b) withdraw the conditions for subscribing to the “TOA Channels on a-la-carte basis” as contained in the letter of M/s MSM Discovery Private Limited dated 24th December, 2007 as referred to in sub-paragraph (a) of paragraph 8 above for the reasons indicated therein and other paragraphs of this Direction ;

(c) submit a report to the Authority regarding compliance with the directions contained in sub-paragraphs (a) and (b) above.

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To

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