

Direction under section 13 of the Telecom Regulatory Authority of India Act, 1997.

Whereas, the Telecom Regulatory Authority of India had issued the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) dated 1.10.2004 (hereinafter referred to as the principal Tariff Order) which has been amended from time to time;

2. And whereas clause 3B of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) dated 1.10.2004 {as inserted by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order (Sixth Amendment) Order, 2006 dated the 31st July 2006 (6 of 2006)}, inter alia, specifies genre and language, as the factors to be taken into account in determining the similarity of rates of similar channels;

3. And whereas clause 3 of the principal Tariff Order specifies that the charges, excluding taxes, payable by (a) Cable subscribers to cable operator; (b) Cable Operators to multi system operators / broadcasters (including their authorised distribution agencies); and (c) Multi System operators to broadcasters(including their authorised distribution agencies) prevalent as on the 26th December 2003 shall be the ceiling with respect to both free-to-air and pay channels;

4. And whereas clause 4 of the principal Tariff Order requires the broadcasters of new pay channels to furnish to the Telecom Regulatory Authority of India the information in respect of charges for the pay channels in accordance with the Schedule I of the principal Tariff Order;

5. And whereas sub paragraph (ii) of paragraph 6 of the Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff Order, 2006 (6 of 2006) requires that in CAS areas, the ceiling in respect of maximum retail prices (MRP) payable by a subscriber to multi system operator / cable operator shall be five rupees per pay channel per month (exclusive of taxes) and the maximum retail price for a pay channel within this ceiling shall be fixed by the broadcaster;

6. And whereas the Broadcaster, being the M/s Nimbus Sports Broadcast Private Limited, Nimbus Centre, Oberoi Complex, Andheri (West), Mumbai – 400 053 (hereinafter referred to as the M/s Nimbus Sports Broadcast Private Limited) in its letter dated 27.09.2006 reported the price of NEO SPORTS channel as Rs 49.50 per month and price of Rs 49.50 for NEO SPORTS PLUS (hereinafter referred to as the said sport channels) and if the said sport channels were offered as a bouquet , the bouquet price of the said sport channels was reported as Rs 58.50 as per clause 4 of the principal Tariff Order.

7. And whereas a complaint received from the Cable Operators Federation of India against the pricing of the said sport channel by the M/s Nimbus Sports Broadcast Private Limited, was forwarded to them by the Telecom Regulatory Authority of India asking them to furnish their comments on the said complaint and also calling upon them to clarify as to how the price have been worked out and such clarification should clearly bring out as to how a proposed price of Rs 49.50 per moth would meet the requirements of the clause 3B of the principal Tariff Order;

8. And whereas M/s Nimbus Sports Broadcast Private Limited, submitted the clarifications dated the 20th October 2006 and urged the Telecom Regulatory Authority of India to take note of the facts specified in their submissions and further submitted that comparing the prices of the said sports channels with that of the other sports channels simplicitor will not be the right yardstick and, inter alia, stated that the proposed price of their two said sports channels after 31.12.2006 in CAS areas will remain unchanged at least till 31.12.2007 at current levels;

9. And whereas the clarifications of M/s Nimbus Sports Broadcast Private Limited mentioned in the preceding paragraph were considered and examined by the Telecom Regulatory Authority of India;

10. And whereas the Telecom Regulatory Authority of India, having considered and examined the above contentions of M/s Nimbus Sports Broadcast Private Limited, is of the opinion that the contention of M/s Nimbus Sports Broadcast Private Limited, cannot be accepted, being in contravention of clause 3B of the principal Tariff Order, due to the following reasons, namely:-

(a) Clause 3B of the principal Tariff order (as mentioned at paragraph 2 above) provides, inter alia, for factors of language and genre to be taken into account for establishing similarity of rates of similar channel. The said channels, belong to the genre of sports channels and offered in English and regional language and same admitted by you to the extent that said sports channels are having substantial cricket content in them which is genre of sports;

(b) The dissimilarity in content and programming of the sports channels becomes irrelevant for the purposes of clause 3B of the principal Tariff Order when the channels belong to the same genre (which being sports) because:--

(i) The composition, content and structure of a sports channel, being business decision may undergo a change in view of changing perception of the market and other perceptions and such changes will not have a bearing on deciding the similarity of channels, as required under clause 3B, so long as the genre of the channel does not get altered on account of such changes;

(ii) the composition, content and structure of the said two sports channels as reported by M/s Nimbus Sports Broadcast Private Limited, vary but both the said sports channels are having the same price of rupees forty nine and paise fifty only per month in spite of the fact that the said two sports channel vary in composition, content and structure, which shows that the said broadcaster has not resorted to differential pricing even where composition, content and structure are different;

(iii) The revenue potential of the channels cannot be the relevant factor for determining the similarity between the channels when both the channels are of the same genre (that is sport channel) for the purposes of clause 3B of the principal Tariff Order;

11. And whereas the ESPN and Star Sports channel and the bouquet consisting of the ESPN channel and Star Sports are channels similar to the said sports channels of the M/s Nimbus Sports Broadcast Private Limited on the basis of genre and language;

12. And whereas the Telecom Regulatory Authority of India has analysed the information in respect of wholesale bouquet price and wholesale individual channel price of similar channels of the same genre as that of the said sport channels which is reported (as prevailing on 26.12.2003 plus an adjustment of seven percent for inflation) being the price per subscriber per month in Non-CAS Areas;

13. And whereas, it has been observed, on the basis of analysis of factors of determination specified in clause 3B of the principal Tariff order, that wholesale price of Rupees thirty seven and paise twenty five only for the bouquet of similar channels of the same genre worked out by calculating the average price from the interconnection agreements using the number of subscribers for each agreement as the weight is much lower than the proposed bouquet price to be charged by M/s Nimbus Sports Broadcast Private Limited for its said bouquet of sports channels, comprising Neo Sports and Neo Sports Plus of Nimbus;

14. And whereas the Telecom Regulatory Authority of India, on the basis of above, is of the opinion that the classification of channels on the basis of genre and language for determining the rates of channels specified in clause 3B of the principal Tariff order is a reasonable classification on the basis of which said channels and the other channels have been classified as of the same genre for the purpose of determining the rates of similar channels of the same genre;

15. And whereas the thrust of the arguments of M/s Nimbus does not bring out facts which would justify a higher price being charged by them for its said sports channels as compared with other similar channels of the same genre;

16. Now, therefore, in exercise of the powers conferred upon the Telecom Regulatory Authority of India under section 13 read with clause (b) of sub section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India hereby directs M/s Nimbus Sports Broadcast Private Limited -

(a) to reduce the price of the bouquet of the said Sports Channels from Rs.58.50 to the "Prevalent Price" of channels of the same genre i.e. Rs.37.25 as noticed by the Authority and stated in the para 13 of this direction and comply with the provisions of the clause – 3 and 3b of the Telecommunication (Broadcasting & Cable) services (Second) Tariff Order, 2004 (6 of 2004); and

(b) to adhere to the ceiling on maximum retail price of rupees five only per channel per subscriber per month in CAS Areas, as earlier mentioned in para 5 above.

(c) to furnish a report of compliance with in seven days from the date of receipt of this direction.

(R.N Choubey)
Advisor (B &CS-II)

To

M/s Nimbus Sports Broadcast Private Limited
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