

Response of Mr. Prasad Madhira , Status: Retail Consumer of DTH

It will be appropriate to look into the issues pertaining to the prayer of M/s Tata Sky first, as this is the primary driver forcing TRAI to bring out a settlement and solution as directed by the court, which carries much larger ramifications to all the stakeholders for which the consultation process has been initiated.

It is a well known fact that the Cable industry was virtually left to grow on its own in an unorganised fashion in India without any kind of regulation or control in the initial phase of their roll out in the last decade, marred with constant confrontation between the TV channel groups, MSOs and LCOs for revenue share and rampant under declaration of customers and lack of proper billing systems & acknowledgements, grievance redressal and inviting all kind of undesired elements and practices in a monopolistic environment. The scope for remedy and improvement to the people of India emerged only with the advent of CAS/DTH by established entities and subject to a good amount of both external and internal regulation, transparent taxation and accounting. However **lack of post-paid plans, physical or electronic billing systems and statements at customer end is a grey area as customers are at a big loss even today as they are not in a position to know in a transparent manner as to how their voucher balances are being appropriated. Infact they are even mis-appropriated by some DTH operators under the guise of unwritten and unpublicised terms of billing.**

Query 5.4.3 Comments may also be offered on the prayers made in the writ petition of M/s Tata Sky Ltd.

Response: Most of the issues raised by M/s Tata Sky in their petition are perfectly valid, though some issues like pricing the channels are extremely subjective and virtually impossible for the regulator to notify due to their dissimilarities and unique selling propositions. But this is really a big and valid issue which needs to be addressed sooner or later. The regulator needs to resolve this by alternate means like **A) making the TV/content providers to additionally list RETAIL LEVEL PRICE OF EACH AND EVERY CHANNEL on per customer/per month basis and empower customers to choose any channel of their choice** in addition to the DTH providers menu/bouquets and Starter pack (Basic tier) subscription so that the issue is addressed in a different plane. For the operational considerations of DTH providers, such al-a carte channels by choice which attract a listed tariff can be limited to 10-15 nos., chargeable in multiples of no. of months.

B) Another best and practical solution is to make STBs interoperable immediately, so that there can be much little grounds for dissatisfaction and grievance as alternate means are made available for market forces bring the equilibrium and indirect resolution. It may not have been implemented in many countries but India is a special case with diverse cultures, languages, tastes & preferences etc. Till now the issue of addressability has been set in favour of operators only as it brings mapping of users for revenue and tax considerations. Now the time has come for the customers to realise the benefits of addressability by enabling them choice in a true sense atleast to a limited extent which are hereto extended only for CAS subscribers. This is the major facet of 'Level playing field' demanded by M/s Tata Sky apart from the area of wholesale tariff relationships vis-a-vis CAS.

5.2 Tariff fixation for DTH services

5.2.1 Whether there is a need to fix tariff for DTH?

5.2.2 If yes, whether tariff regulation should be at wholesale level or at retail level or both, i.e., whether tariff should be regulated between broadcasters and DTH operators or between DTH operators and subscribers or at both the levels?

Response: It should be at both levels i.e., Retail level for A-la-carte subscription of choice channels in the true sense of addressability at consumer level & also at wholesale level for the DTH operators to repackage and sell at bouquet rates, as detailed at earlier response to 5.4.3

5.2.3 Whether tariff regulation for DTH at wholesale level should be in terms of laying down some relationship between the prices of channels/ bouquets for non-addressable platforms and the prices of such channels/ bouquets for DTH platform? If yes, then what should be the relationship between the prices of channels/ bouquets for non-addressable platforms and the prices of such channels/ bouquets for DTH platform? The basis for prescribing the relationship may also be explained.

Response: It should be at the same for all addressable systems, ideally and practically. However considering their limited area of operation and higher overheads, it should marginally be in favour of CAS. The reduction should be effected on the basis of a TRAI notification specifying percentage of discount purely to be

effected at wholesale invoice level. The basis of such deduction will be the ratio of overheads per customer for DTH, CAS & IPTV as per audited accounts made available from time to time. However TRAI shall fix the initial reduction as per the assessed figures and thereafter adjust it on a periodic basis.

Non addressable systems should be kept out of such price adjustments or even any sort of comparison for that matter as it is a different scheme of transactions and different ball game altogether.

5.2.4 Whether tariff regulation for DTH at wholesale level should be in terms of fixation of prices for different bouquets/ channels? If yes, then the prices for different bouquets/ channels may be suggested. The methodology adopted for arriving at the prices for such bouquets/ channels may also be elucidated. Further, the methodology to fix price for a new pay channel may also be given.

5.2.5 Whether retail regulation of DTH tariff should be in terms of maximum retail prices of various channels or is there any other way of regulating DTH tariff at retail level?

5.2.6 In case DTH tariff is to be regulated at both wholesale and retail levels, then what should be the relationship between the wholesale and retail tariff?

Response: (5.2.4 – 5.2.6) It should be at both levels i.e., Retail level for Al-a-carte subscription of choice channels in the true sense of addressability at consumer level & wholesale level for the DTH operators to repackage and sell at bouquet rates, as detailed at response to 5.4.3. To prevent any designs of skewed pricing by TV channels or any cartels, to discourage individual channel subscriptions, the price difference between Retail level rates and Wholesale rates should be limited to max. 20% or even less. The pricing and carriage fee aspect in case of a new channel is suggested at response to para 5.4.1 which follows shortly.

5.3 Comparison with CAS

5.3.1 Whether the basic features of tariff order dated 31st August, 2006 for cable services in CAS areas, namely fixing of ceiling for maximum retail prices of pay channels, at the level of the subscriber fixing of ceiling for basic service tier and standard tariff packages for renting of Set Top Boxes should be made applicable to DTH services also?

Response: *In the true sense of addressability at consumer level and level playing field between CAS & DTH, in addition to what is suggested at responses to 5.4.3 & 5.2.4-5.2.6 as above, the system of pricing of channels should be repealed all together. In place of that apart from the basic tier of channels notified at specified costs, CAS customers should be offered optional bouquets by their CAS operators similar to DTH. Additionally it should be supplemented by individual channel selections and pricing as suggested in earlier para responses as in case of DTH, which may be limited to 10-15 nos. if the operational requirements demand so ; and in case of no constraints all the channels will be priced by the content providers themselves at retail & wholesale levels. The only main difference will be the cost differential between the set of 30 FTA channels in case of CAS and the Basic tier starter pack as in case of DTH, which compare almost favourably in cost terms and the market forces will iron out any significant cost differential.*

The options for STB rental and ownership should also be offered to DTH customers along with free interoperability. To enable migration of existing DTH customers who were initially offered STBs on terms other than ownership, should be offered differential terms for conversion i.e, one time ownership migration cost for customer vintage of less than six months, vintages of 6-12 months, one year and above etc; and subscribers of two years and above should not be charged any migration fee.

5.3.2 Whether the ceiling for maximum retail prices of pay channels for DTH should be the same as laid down for cable services in CAS areas?

Response: *In line with earlier para responses there should not be any Price/MRP fixed by the regulator. However the TRAI should keep it as a reserve option in case the equation is skewed against consumer interests. Even then there should not be MRPs for channels, instead there can be indirect price controls like fixed minimum revenue guarantee for DTH operator on a monthly basis for providing a prescribed no. of channels of customer's choice out of a basic pool of various FTA/non FTA channels. Naturally all the DTH/CAS operators will have to be uniformly notified by TRAI whether a channel is placed as a basic pool channel or an exclusively paid channel, which will be as per choice exercised by the channels on an annual basis. And none of the basic pool channels should appear in any of the bouquets offered by DTH/CAS and the bouquets should also have*

mutually exclusive channels without any kind of repetitions. Though it is highly not advisable, in case repetitions are allowed in bouquets, there should be a parallel mechanism for reduction of tariff to the extent of repetition resulted as per the choices of the customer. The revenue a channel foregoes as higher pay subscription revenue by allowing itself to be placed under basic pool, will be gained in terms of higher viewership and advt. Revenue. And the channels have to workout the trade off for themselves to position the channel accordingly and also as to at what price points they should offer themselves in retail & wholesale categories subject to the max. Variation allowed.

5.3.3 Whether DTH operators should be mandated to provide a basic service tier of FTA channels and if so, what mechanism should be adopted by DTH operators to provide the service of unencrypted Basic Service Tier, which is available in CAS areas without having to invest in a Set Top Box?

Response: This is a highly valid concern, considering the practical potential of DTH in penetrating into the remote corners of the country. Apart from facilitating both ownership and rental, the basic tier un-encrypted FTA channels should be made available exclusively for Rural Indian customers since currently most of the DTH operators have not achieved the break even. Over a period of time the facility can be made available for all.

5.3.4 Whether the DTH operators should be required to make available the pay channels on a-la-carte basis to the subscribers as the cable operators are required to do in the CAS areas?

Response: ABSOLUTELY YES. in the true sense of addressability at consumer level .As detailed earlier at response to 5.4.3 and 5.2.6

5.3.5 Whether standard tariff packages for renting of Set Top Boxes should also be prescribed for DTH operators?

Response: As per response to 5.3.1 furnished earlier

5.4 Other Relevant Issues

5.4.1 Whether the carriage fee charged by the DTH operators from the Broadcasters should also be regulated? If yes, then what should be the methodology of regulation?

Response: *In case of new pay channel the price of the channel will be left to the broadcaster themselves to survive in the market; however to enable it survive the new channel will be subject to a max carriage fee to be fixed by the regulator for a period of 6 months and thereafter as per formula based on subscriptions or viewer minutes generated for a specific DTH/CAS operator. The carriage fee should be regulated by a formula and should be inversely proportional to the subscriptions or viewer minutes generated. i.e., lesser burden of carriage fee for more popular channels. However the formula worked out should be suitably moderated and indexed to the average price of the channels in similar genre.*

5.4.2 Whether any ceiling on carriage fee needs to be prescribed? If yes, then whether the ceiling should be linked with the subscriber base of the DTH operator or should it be same for all DTH operators?

Response: *There should be a ceiling per subscriber/month considering the costs involved in carriage for a channel for a specific DTH provider. However as suggested earlier at response to 5.4.1., there should be a formula which should be DTH operator specific.*

5.4.3 Comments may also be offered on the prayers made in the writ petition of M/s Tata Sky Ltd.

Response: *Addressed in the initial part of the response itself for clarity*

CHAPTER VI: NEW ISSUES ON DTH UNDER REFERENCE FROM MINISTRY OF INFORMATION AND BROADCASTING

6.1: Provisioning of new services on DTH platform

6.1.5 In view of the above situation, the following issues are posed for comments of the various stakeholders:

- a) Whether Movie-On-demand, Video-on-Demand, Pay-per-view or other Value added services such as Active Stories should be recognized as a broadcast TV channel?**

Response: No. *They should not be categorised as TV channels. A separate category should be introduced for such VAS channels; and such feed can be on a paid basis also without tariff control but no commercial advertisements should be allowed unlike TV channels*

- b) In case these are termed as broadcast TV channels, then how could the apparent violation of DTH license provision (Article 6.7, Article 10 and Article 1.4), Uplinking and Downlinking guidelines be dealt with so that availability of new content to consumer does not suffer for want of supporting regulatory provisions?**

Response: *Not applicable as per earlier response. Necessary regulatory provisions may need to be amended accordingly*

- c) What should be the regulatory approach in order to introduce these services or channels while keeping the subscriber interest and suggested alterations in DTH service operations and business model?**

Response: *They should not be categorised as TV channels a separate category should be introduced for such VAS channels; and such feed can be also on a paid basis without tariff control but no commercial advertisements should be allowed unlike TV channels. A separate procedure for permission for transmission of such feed may be introduced. It should be left to the consumer market forces for evolution of an equilibrium regarding rates, patronage and business model. However as a matter of caution a liberal upper limit for rates may be imposed on all 'running feed' excluding pay per view (PPV) content which is made available for a limited window of time period / no. of times of viewing, to ensure operators do not price them way out of the market.*

- d) In case these are not termed as broadcast TV channels, then how could such a channel be prevented from assuming the role of a traditional TV channel? How could bypassing of regulatory provisions- Uplinking/ Downlinking, Programme Code, and Advertisement Code be prevented?**

Response: No. *As such content is limited to the benefit of subscribers of their own DTH/CAS network and since no commercial advertisement is allowed, such feed cannot assume the role of traditional channels. However they will be governed by the usual Program/content code. These broad guidelines are sufficient to define such VAS channel even if we consider immediate future trends.*

- e) Whether it should be made mandatory for each case of a new Value added service to seek permission before distribution of such value added service to subscribers? Or whether automatic permission be granted for new services on the basis that the services may be asked to be discontinued if so becomes necessary in the subscribers' interest or in general public interest or upon other considerations such as security of state, public order, etc.?**

Response: *There should only be a system of intimation of intent to commence/change VAS to be filed by DTH/CAS operators prior to commencement, backed by a confirmation on commencement. Any objections by the regulator in public or state interests will be conveyed in due course of time for rectification.*

- f) In view of above, what amendments shall be required in the present DTH license conditions and Uplink/ Downlink guidelines?**

Response: *No comments as this is to be worked out by the regulator and the domain experts*

- g) How could the selling of advertisement space on DTH channels or Electronic Program Guide (EPG) or with Value added Service by DTH operators be regulated so that cross-holding restrictions are not violated. In this view, a DTH operator may become a broadcaster technically once the DTH operator independently transmits advertisement content which is not provided by any broadcaster. How could the broadcaster level responsibility for**

adherence to Program code and Advertisement Code be shifted to a DTH operator, in case the operator executes the sale and carriage of advertisements?

Response: *Not applicable as per earlier response*

h) Traditionally advertisements as well as program content fall in the domain of the Broadcasters. In case, DTH operator shares the right to create, sale and carry the advertisement on his platform, then the channels are necessarily distinguished on the basis of who has provided the advertisement with the same program feed. In what way any potential demand to supply clean feed without advertisement by a DTH operator be attended to (by a broadcaster)? Should 'must provide' provision of the Interconnect Regulation be reviewed, in case supply of clean feed is considered necessary?

Response: *Not applicable as per earlier response. There should be no change in the existing regime of 'must provide' for all TV channels and DTH/CAS shall not have the commercial advertisement rights. However non-commercial advertisements may be allowed with some code of practice.*

6.2: Radio channels on DTH services

6.2.4

a. Whether carriage of radio channels by a DTH operator be permitted? Should such permission cover all kind of radio channels to be carried?

Response: *DTH is doing an excellent job in providing such radio services mostly traditional/modern music genre which may not otherwise be possible for distant listeners to listen, and there should not be restriction on any kind of such radio feed except those which come under the ambit of Group or sectarian propaganda (though religious feed is to be allowed) which are against national interests. Many DTH viewers at specific times in a day/night prefer listening to their choice of radio feed instead of the usual TV content, aired from another region of the country, which in any case not available to them through traditional terrestrial radio. This is a big encouragement to (low cost/paid) radio services which many would not be ready to subscribe as a separate service buying a separate receiver.*

Further there can also be bouquets of paid radio services on DTH/CAS similar to Worldspace radio, in addition to FTA services as existing currently, without any kind of price limits. However DTH/CAS operators shall not have the commercial advertisement rights.

- b. In case this is permitted, whether DTH license, Uplink/ Downlink guidelines, Conflict of business interests conditions with existing radio system operators, should be amended keeping in view, the incumbent or new DTH operators?**

Response: *It will be taken care of by the above suggested code of advertisement along with a bare minimum carriage fee with an upper limit*

- c. If so, what changes are needed in the existing regulatory provisions so that the general policy of must provide and a non-discriminatory offering of channels be extended to between radio channels and DTH operators?**

For b) & c) above:

Response: *The 'must provide' stipulation should not be made applicable for Radio services. It should be left between the channels and DTH/CAS providers with the suggested upper limit on carriage fee, as the market will decide an equilibrium in this regard also.*