



We congratulate TRAI in coming up with this overdue consultation and hope the outcome will meet the existing regulatory framework and will take into account the observations by Hon'ble TDSAT in the historic judgement dated 7th Dec 2015. Broadcasters had raised the issue in Hon'ble HC of Delhi and Hon'ble Supreme court also but they also upheld the judgement of Hon'ble TDSAT. While observing that the RIO rates of channels and the actual offering in market have no relationship and the RIO rates are very high and this is creating a non level playing field in the wholesale market, Hon'ble TDSAT observed that:

"... A proper RIO, true to its nature as envisaged in the regulation, is meant to go a long way in introducing/ bringing about fairness, reasonableness and non-discrimination in interconnect arrangements between a broadcaster and distributors. But what is passed off by the Broadcasters as RIO, instead of doing away with non-discrimination actually becomes a device to perpetuate discrimination."

It was also mentioned during hearing given TDSAT by counsel of TRAI that all the agreements are not available and they are in the process of issuing notices to all broadcasters in this regard. In this background only Hon'ble TDSAT in its Judgment observed that: to make a serious effort in that direction, TRAI would be required to get hold of all the negotiated interconnect agreements between the broadcasters and the distributors of channels, which the broadcasters are in any event obliged to submit to TRAI. From analysis of such agreements only TRAI could get a clear picture of the market prices of the broadcasters' channels. It was also brought to the notice of court and agreed by Hon'ble TDSAT that comparison of the prices in the negotiated agreements and those shown in the current RIOs will then show how far the RIOs are removed from market realities.

For any regulated market to operate and prosper we prefer a light touch regulatory framework however the present broadcasting sector is still in nascent stage as even digitization is incomplete for phase III & phase IV is yet to start. In view of these observations we feel TRAI still needs to regulate this sector firmly and must ensure that TRAI has information regarding:

- All commercial deals done by Broadcasters with DPOs'.
- All payments made for carriage or placement services.
- Details of all subscription and advertisement related revenues.
- Details of all revenues received from same content to foreign countries as provided in Section 12 of TRAI Act.
- Auditing of accounts of Broadcasters if required as is done in Telecom through CAG.

Our views on various aspects are given below;



The question wise comments of NSTPL to the consultation paper are as under:

Q1. Which of the price models discussed in consultation paper would be suitable at wholesale level in broadcasting sector and why? You may also suggest a modified/ alternate model with detailed justifications.

NSTPL Comments: The operations of broadcasting in India is governed by Cable TV Regulation 1995 (as amended) and by TRAI under various regulations therefore all stakeholders should abide in letter and spirit with the intent and purpose of such Regulations. For any model to operate successfully it is imperative that all Regulations and rules are followed by all scrupulously.

We feel that Indian market is still not fully matured as digitization is still under implementation and there is greater need to regulate this market to ensure level playing field.

It may be noted that the top broadcasters have their own DPO arms that get special pricing and carriage and placement fees from these therefore rendering faux the non discriminatory operation. This is the reason that while sum of RIO rates of all channels of a broadcaster might be Rs 207 the average negotiated rate is Rs 23 for all 36 channels thus averaging to Rs 0.75 per channel and driver channel cost is around Rs 5.83. This shows clearly the discriminatory nature of using the present regulatory regime.

As mentioned in the Explanatory Memorandum Appendix A para 3 of Consultation Paper on Twin Conditions, DPO's are forced to take the entire bouquet offered by the Broadcasters, otherwise they are denied the popular channels due to the fact that RIO rates are very high so many unwanted channels are bundled. Ultimately these costs are usually passed on to the end-consumers. Hence to address this issue, TRAI in the Tariff order dated 4th October, 2007 mandated the Broadcasters to provide their channels on A-la-carte basis to the DPO's as per their requests. But in reality it is not being followed by broadcasters.

We feel that for present it should be Regulated RIO Model is the most suited model in the current scenario. But there should be a provision that if any discount or relief is given to any DPO it should be offered to all the DPOs which are going to enter into an agreement with the broadcaster subsequently, TRAI should also be informed of this and these rates shall be simultaneously available on their website. All dealings shall be regulated and overseen by TAI to ensure that wholesale offerings to various DPOs' are based on non discriminatory transparent disclosures. This however will need strict supervision by TRAI and shall continue till market is mature.



Q2. Which of the corresponding price models discussed in consultation paper would be suitable at retail level in broadcasting sector and why? You may also suggest a modified/ alternate model with detailed justifications.

NSTPL Comments: Price Forbearance Model is the most suitable model. This model is already operating successfully in field.

There is lot of competition in retail space and that keeps the prices and distribution prices in check, moreover there is clear regulatory intent as far as distribution of revenues between MSO & LCO is concerned.

We feel that if the RIO prices become transparent and non-discriminatory amongst the DPOs then DPOs can make their services more attractive for getting the consumer onboard and will be able to provide him more benefit like extra channels at the same cost, better quality of signals, value added services, improvements in last mile infrastructure etc..

There are more than 150 MSOs' in DAS regime, 7 DTH, 2 HITS players in retail market. However transparency in agreement at DPO level with Broadcaster will bring the real revolution and benefits to subscriber.

Q3. How will the transparency and non-discrimination requirements be fulfilled in the suggested pair of models? Explain the methodology of functioning with adequate justification.

NSTPL Comments: RIO price should be based on real operating level with a mark up of 10%. This should be basis of all interconnections. All agreements shall be standard multiyear agreements and the broadcaster must include all offers in its standard interconnects offer i.e. RIO. Only flexibility could be in the form of bulk discounted that shall be documented and available and updated on the site of Broadcaster or DPO.

Any agreement which broadcaster is going to sign must be based on the standard RIO. If any mutual negotiation happened with any DPO that should be offered to all the DPOs interconnect with the broadcaster subsequently.

There should be checks done by regulator to ensure proper operation of the model in field. All definitions shall be as per regulations and reporting requirements shall be such that all financial and other requisite data shall be available with regulator.

There has to be a correlation (Twin Condition) at the wholesale level between a-la-carte and bouquet prices. The Twin Conditions referred in Telecommunication (Broadcasting & Cable Services) Interconnection (4th Amendment) Regulation 2007, Clause No. 13.2A.12 shall become applicable in all deals and RIO prices regulated by that.

Q4. How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested pair of models? Give your comments with detailed justifications.



NSTPL Comments: The retail prices of the channels/ bouquets are already linked with the wholesale prices of the channels/ bouquets through twin conditions. The requirement is just to implement the same. Most of DPOs are not following the twin conditions set out by TRAI on their packages. If Broadcasters and DPOs started following the twin condition on the basis of RIO prices, on which they have signed agreement with the broadcaster, the consumer will be able to get the channels of their choice at much lower rates.

Transparecy at wholesale level will also help fill up the gap at retail level. Multiple bouquets offerd by the broadcasters also make it difficult for DPO to offer a la carte offer because of price differential. In our view price differential of a channel in a bouquet and a la carte should be limited to 10% only thiswill also check the malaise of bundling unwanted channels in a bouquet.

Q5. Which of the integrated distribution models discussed in consultation paper would be suitable and why? You may also suggest a modified/ alternate model with detailed justifications.

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Q6. How will the transparency and non-discrimination requirements be fulfilled in the suggested models? Explain the methodology of functioning with adequate justification. Q7. How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested integrated distribution models? Give your comments with detailed justifications.

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Q7. How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested integrated distribution models? Give your comments with detailed justifications.

NSTPL Comments: We feel **Distribution Network Model** with some modifications will be a good choice for reasons mentioned herein after. As Authority has observed in the consultation paper that this is hghly workable model however the success is dependant on pricing.

We feel that for success of this FTA should be made a seaparate pack and subscriber will have to opt for one of the FTA packs. The pricing could be such that this recovers part of fixed cost of DPO. This price can be regulated and revised if necessary by Authority every year.

All offerings from Broadcasters should be on a la carte or bouquet basis. The rate differential of a la carte rate and bouquet rate shall be such that the



differential pricing is not more than 10%. Twin conditions as they exist today shall need to be revised.

HD content will also be regulated as market has matured now and broadcasters have recovered their upgradation costs. The same content is available in HD and SD formats but most oftentimes the subscriber ends up paying for both the contents. This practice needs to be curbed and pricing fixed by TRAI based on today's market rates which are more than 90% discounted than the RIO rates.

This system alongwith twin conditions (after appropriate changes) if operated in a regulated manner can definitely ensure transparency as well offerings to subscriber that meet his requirements.

Since there is plurality in market the market forces will be able to get the equilibrium in market. There are more than 150 licensed MSOs in DAS regime with atleast 5 of them being major and having different affiliations with their broadcasting arms and DTH operators who again are having vertical integration with their Broadcasting arms besides the various other regional and state players.

We feel to ensure that vertical squeeze doesn't hamper the non discriminatory operation of the system there is need to have transpareacy of all dealing amongst all such players and there should be either no Carriage fee/ Placement fee or the same shall be availabe to all DPOs' to ensure level playing field to all. In fact in DAS regulation 2012 TRAI had tried to do so partially but had not tried to regulate the sme. If the same is done then all DPOs' get same treatment and opertaing conditions so the subscriber can get benefit of real competition.

Once the pricing of a la carte offering of channels is finalised and rate differential if agreed by TRAI implemented the margins of differentials shall be very small and consumer will be able to make his choice of channels even on a la carte basis. The limited differential in bouquets and a la carte at wholesale level will encourage broadcasters to offer content at proper price and with twin conditions operating at retail level the consumer will be benefitted and not forced to pay for unwanted channels.

Q8. Is there a need to identify significant market powers?

NSTPL Comments: Yes particularly those who are themselves or through sister concerns vertically integrated.

Q9. What should be the criteria for classifying an entity as a significant market power? Support your comments with justification.

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Q10. Should there be differential regulatory framework for the significant market power? If yes, what should be such framework and why? How would it regulate the sector?

NSTPL Comments: **NSTPL Comments:** We feel based on BARC report the top five channels in the list shall be used to identify SMP genrewise region wise, language wise.

That all vertically integrated companies and Broadcasters/ DPOs' should be classified as significant market power.

These SMPs' are known to exploit their advantage to get their weak channels to piggyback on the popular content and to discriminate between DPOs, which invariably favours the vertically integrated DPOs.

The must provide rule must continue and TRAI may consider reducing the response time from 60 to 30 days as 60 days is too long a period in this digital age that is being driven by the Authority.

Must provide provision shall be introduced for OTT services also as that is being exploited by the broadcasters in OTT services being given by them through their own sister concerns.

There is need that SMPs' shall be strictly monitored by TRAI for their various dealings to ensure transparency and level playing conditions for all operators.

Q11. Is there a need to continue with the price freeze prescribed in 2004 and derive the price for digital platforms from analog prices? If not, what should be the basic pricing framework for pricing the channels at wholesale level in digital addressable platforms?

NSTPL Comments: We feel that price freeze shall continue and should be made applicable on all newly launched TV channels also. Even with manipulation and price freeze Broadcasters have been making huge revenues and profits.

As stated above the channel price fixed by TRAI in 2004 was Rs 5 but even today the channels as a bouquet are available for Rs 1 or less. This shows that there has been a continuous exploitation of regulations by some of broadcasters having popular content.

Q12. Do you feel that list of the Genres proposed in the consultation paper (CP) are adequate and will serve the purpose to decide genre caps for pricing the channels? You may suggest addition/ deletion of genres with justification.

NSTPL Comments: Yes

Q13. Is there a need to create a common GEC genre for multiple GEC genre using different regional languages such as GEC (Hindi), GEC



(English) and GEC (Regional language) etc? Give your suggestions with justification.

NSTPL Comments: We feel that GEC list shall be one where if a DPO wants can classify them based on language or region.

Q14. What should be the measures to ensure that price of the broadcast channels at wholesale level is not distorted by significant market power?

NSTPL Comments: Please refer to our answers to Q3.4 & 7.

Transparent process of price fixation by TRAI at wholesale level coupled with Regulated RIO based approach with non discriminatory offerings to DPOs' can help that this price is not distorted. We feel that TRAI shall fix up a ceiling for pricing the contents of different genre of TV channels at wholesale level then the new and old channels shall also fall in this ceiling.

Most significant is the role of regulator in this context as they will need to monitor and look for strict compliances. Regulator could also outsource this work to such agencies who are competent and understand the regulatory framework as is done for QOS in Telecom sector.

Q15. What should be the basis to derive the price cap for each genre?

NSTPL Comments: Authority can drive that from the existing agreements filed with them for the present and accordingly take up this exercise on yearly basis. TRAI may use appropriate mark up and come out with price at whole sale level.

Authority then should ensure strict implementation of twin conditions at wholesale and retail level. TRAI should ask Broadcasters to refile their RIOs based on these discovered rates.

Q16. What percentage of discount should be considered on the average genre RIO prices in the given genre to determine the price cap?

NSTPL Comments: The discounts at wholesale level should operate from subscriber base as low as 10000 to any higher limit. The slabs shall be such that any octave change shall not result in more than 2% discount. This will ensure that price differentials at wholesale level are regulated.

Q17. What should be the frequency to revisit genre ceilings prescribed by the Authority and why?

NSTPL Comments: We feel these may be reviewed every 5 years. However authority may review after 5 years if there is any need to change this time period and take appropriate decision.

Q18. What should be the criteria for providing the discounts to DPOs on the notified wholesale prices of the channels and why?



NSTPL Comments: Please refer to our reply above and to Q16 . We feel transparent process needs to be followed and availability of discount is non discriminatory. The discount provided is to garner more subscribers to see their content but the same needs to be regulated. Our suggestion is in reply to Q 16.

Q19. What would be the maximum percentage of the cumulative discount that can be allowed on aggregated subscription revenue due to the broadcasters from a DPO based on the transparent criteria notified by the broadcasters?

NSTPL Comments: Maximum cumulative discount should not be more than 20%.

Q20. What should be parameters for categorization of channels under the “Niche Channel Genre”?

NSTPL Comments: Only those channels that have viewership of less than 0.5% of all channels in that language may be considered as niche channels. Those channels that can't be covered by existing category may also be considered as niche channels.

Q21. Do you agree that niche channels need to be given complete forbearance in fixation of the price of the channel? Give your comments with justification.

NSTPL Comments: We feel there is need to regulate all pricing even for niche channels as in name of niche they are being priced exorbitantly and these should also be under ceiling as mentioned in response to Q11 & 14. However it may be ensured that there are no advertisements in these channels and they are not made part of any bouquet.

Q22. What should the maximum gestation period permitted for a niche channel and why?

NSTPL Comments: Gestation period shall be 2 years or 0.5% viewership.

Q23. How misuse in the name of “Niche Channel Genre” can be controlled?

NSTPL Comments: They should take permission from TRAI in case they want to name it as a niche channel. TRAI should internally formulate their policy for the same and only after their permission it should be allowed to be named as niche channel.

The channel could approach TRAI only if they feel that it doesn't fall in the existing categories.



Q24. Can a channel under “Niche Channel Genre” continue in perpetuity? If not, what should be the criteria for a niche channel to cease to continue under the “Niche Channel Genre”?

NSTPL Comments: Refer to our reply to Q22.

Q25. How should the price of the HD channel be regulated to protect the interest of subscribers?

NSTPL Comments: HD content now should be priced at 1.25 times the SD content and forebearance shall be taken away. Most of the popular content is now produced in HD and is downgraded to SD for transmission. In fact the subscriber in many cases is paying for SD and HD content of same channel. Most of the HD and SD content of popular channels is simulcasted. Production and transmission of HD channel is now stabilised and most of the content in SD and HD is same so the need to regulate the price and limit the same @1.25 times the SD content cost.

Q26. Should there be a linkage of HD channel price with its SD format? If so, what should be the formula to link HD format price with SD format price and why?

NSTPL Comments: Same as above.

Q27. Should similar content in different formats (HD and SD) in a given bouquet be pushed to the subscribers? How this issue can be addressed?

NSTPL Comments: WE feel HD should be different bouquet as there could be misuse of this by significant market powers as they being vertically integrated offer these to their own DPOs' as attractive bouquets and get marketing advantage as most of smaller and medium type MSOs' still use SD delivery mode. However for subscriber subscribing to HD the content in SD shall be free both from Broadcaster and DPO.

Q28. Do you agree that separation of FTA and pay channel bouquets will provide more flexibility in selection of channels to subscribers and will be more user friendly? Justify your comments.

NSTPL Comments: We agree that FTA and pay channels should be allowed to be offered in separate bouquets as this is subscriber friendly. This will also help create pay only bouquets or a la carte offering viable for subscriber.

Q29. How channel subscription process can be simplified and made user friendly so that subscribers can choose channels and bouquets of their choice easily? Give your suggestions with justification.

NSTPL Comments: We feel strict implementation and overseeing by TRAI will help fill this gap.



The website should be user friendly have all details in regional language for such channels and have all details of offerings for subscribers at all levels.

Q30. How can the activation time be minimized for subscribing to additional channels/bouquets?

NSTPL Comments: We feel by giving rights to LCOs' to activate by creating a subscriber it can be reduced. In fact TRAI has already started a welcome step of eCAF. We feel all STB's shall be available with FTA and same shall be immediately activated on the STB and post their choice of content same shall be activated in 3 hours time, if request received between 10am to 5pm.

Q31. Should the carriage fee be regulated? If yes, what should be the basis to regulate carriage fee?

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Q32. Under what circumstances, carriage fee be permitted and why?

NSTPL Comments: We feel that in digital scenario there should be no carriage fee or placement fee. However if after consultation TRAI decidedes to allow the same shall be regulated and made part of agreement and shall again be available to all DPOs' so that market is not skewed in favor of favorite few. The rates of carriage fee and placement shall be clearly made part of RIO and same shall be available to all in non discriminatory manner.

Carriage fee or placement fee paid in any manner be as advertisement promotion, marketing or sales shall be applicable to all DPOs'. TRAI must seek report from all Broadcasters regarding payment of carriage fee in a prescribed format. No carriage or placement fee shall be paid without entering into a proper agreement.

Q33. Is there a need to prescribe cap on maximum carriage fee to be charged by distribution platform operators per channel per subscriber? If so, what should be the "price Cap" and how is it to be calculated?

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Q34. Should the carriage fee be reduced with increase in the number of subscribers for the TV channel? If so, what should be the criteria and why?

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Q35. Should the practice of payment of placement and marketing fees amongst stakeholders be brought under the ambit of regulation? If yes, suggest the framework and its workability?



NSTPL Comments: There is no need to regulate the same if a transparent and non discriminatory regime is followed and pre-approved by TRAI. However in case there is a view in TRAI after consultation that there is a need to regulate then there are many methods available e.g it could be based on DD's Free Dish service or can be based on TRPs of the channels provided by BARC or TAM or any other agency, whichever the Authority feels authentic. Alternately the Authority should ask the DPOs about the previous three years carriage charges taken by them. The pattern of carriage charges received by DPOs could itself provide the basis of regulation.

There should not be any practice of placement or marketing fees charged by the broadcasters. The channels in EPG should be in the alphabetical order. The positioning of channels will again promote the under table arrangements between broadcasters and DPOs.

Q36. Is there a need to regulate variant or cloned channels i.e. creation of multiple channels from similar content, to protect consumers' interest? If yes, how should variant channels be defined and regulated?

NSTPL Comments: This does need a regulation as subscriber mostly unknowingly pays for both content. Enough number of technologies are available to transmit different audio on same channel. Therefore having same content as two or more different channels is an ethically wrong practice. Broadcaster gets more revenue for the same content but it is subscriber S who have to pay for these.

There should not be any variant cloned channels. Nowadays the broadcasters are creating the similar content with different languages. This practice of the broadcasters is unnecessarily the quantity of channels, but consumer is not getting multiple options of the quality content as the number indicates.

Broadcasters must ensure that they don't put their content on any other channel of different genre and within the same genre, they should clearly define the content that can be telecasted & consumer shall be allowed to choose freely. Moreover Broadcasters telecast many channels in such a way that same content is simulcast in SD/HD/ Genres/OTT etc..

Q37. Can EPG include details of the program of the channels not subscribed by the customer so that customer can take a decision to subscribe such channels?

NSTPL Comments: Yes we prefer EPG to include details of even unsubscribed channels.



Q38. Can Electronic Program Guide (EPG) include the preview of channels, say picture in picture (PIP) for channels available on the platform of DPOs but not subscribed by the customers at no additional cost to subscribers? Justify your comments.

NSTPL Comments: Yes if the same can be technically done.

Q39. Is the option of Pay-per-program viewing by subscribers feasible to implement? If so, should the tariff of such viewing be regulated? Give your comments with justification.

NSTPL Comments: Yes it is a very much feasible option to implement. Consumer will pay only for the content which he wants to watch on TV. However these options are presently not available from the broadcaster side but DPOs' are offering these services presently. We are of opinion that this tariff could be foreborne initially and Authority may intervene if there is a need of same.

Q40. Will there be any additional implementation cost to subscriber for pay-per-view service?

NSTPL Comments: There will be some upgradation fee required at DPO end the same shall be borne ultimately by subscriber.

Q41. Do you agree with the approach suggested in para 5.8.6 for setting up of a central facility? If yes, please suggest detailed guidelines for setting up and operation of such entity. If no, please suggest alternative approach(s) to streamline the process of periodic reporting to broadcasters and audit of DPOs with justification.

NSTPL Comments: No, we don't agree with the approach suggested in para 5.8.6 for setting up of a central facility. The broadcasters are very big conglomerates who have the physical or political hands in the country to control and temper the situations according to their will. They are also vertically integrated and may use this to disadvantage of independent DPOs'. We strongly disagree with the approach suggested. The process of periodic reporting to broadcasters is very well streamlined by TRAI in its regulation. So there is no need to rethink for the streamlining of the periodic reporting to broadcasters.

Q42. Stakeholders may also provide their comments on any other issue relevant to the present consultation.

NSTPL Comments:



1. When the rules were framed technology and distribution technologies were limited to cable, later on rules for IPTV,DTH & HITS have been made. These are still inconsistent with march of technology and there are no rules for those services like OTT etc..
2. We request the authority that, for level playing field Cross holding restriction for Broadcaster rule of not holding more than 20% on any distribution platform may not be violated by Broadcasters.
3. Broadcasters shall also be governed by some specific act in case they prepare content for Broadcasting, except for must provide there is no other specific act regulating them so they exploit and offer content to other OTT platform owned by them for free, this shall be regulated.