



Date: 11th May 2010

“without Prejudice”

Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg
New Delhi- 110002.

Sub: Response to Telecom Regulatory Authority of India consultation paper dated 6th April 2010 on issues for HITS services

Dear Sir,

We write with reference to the aforementioned Consultation Paper issued by TRAI on related issues for HITS services. We would like to reproduce below our earlier submission to TRAI on on Broadcast TV Content Pricing and Carriage Fee Regulation.

Broadcast TV Content Pricing and Carriage Fee Regulation

This paper seeks to analyze and give suggestions on the following issues:

- What should be the objectives of a fair regulation in the area of Broadcast TV content pricing
- Should Broadcast TV content pricing be regulated or controlled
- Should carriage be regulated or controlled
- How can competition be encouraged

Objectives of a fair regulation on pricing of Broadcast TV content

- Pricing regulation, if required should be equitable to all participants in Value Chain and to the consumers i.e. it should provide under normal competitive environment just rewards (commensurate with underlying risks) to all participants in the value chain at a cost to consumer which not exploitative or unreasonable.

The parties in the Value chain are i) producers and sellers of the Broadcast TV content (Broadcasters and their agents or re-sellers such as MSM discovery, Zee Turner, and Star Den etc) and ii) the distributors of content to the consumers – this would include the DTH service providers, Cable MSOs, Local Cable operators(LCOs) and potentially web based service providers.

- It should be platform neutral- platform being Cable (both addressable and analog), DTH, HITS, IPTV or Direct from Web¹. In other words, regulator should not seek to differentiate between the platforms on content pricing and allow consumers to choose the platform they prefer. However, adequate support should be provided to Cable during its transformation from a highly fragmented and unstructured environment to more competitive and technology intensive market place.
- It should encourage competition between the value chain participants so that consumers get a fair deal in the long term.
- It should be transparent, practical and implementable.

Should Broadcast TV content pricing be regulated or controlled?

Popular content is a natural monopoly. If not regulated, it can lead to a monopolistic or oligopolistic market. It is for this reason, regulators provide for safeguards such as i) delinking of ownership between content producers (and resellers or agents) on one side and content distributors (DTH, MSOs etc) on the other side and ii) a 'must connect' clause in favour of content distributors. However, without a fair and effective regulation of content pricing, 'must connect' clause will become a toothless provision. If we agree with this proposition, then there are probably the following alternatives:

- (a) Price Control: herein the regulator fixes the price at which the content is available to all content distributors. In India, we have been following a hybrid price control system whereby the content owner is free to fix price in the first instance with subsequent escalations being controlled by the regulator.

¹ Direct from Web: Broadcast TV content is increasingly being stored on Web from where it is streamed to the computers, laptops and TVs using a DRM software and Broadband connection.

- (b) Declared price with MFC clause: In this case the Content producer/ seller would be free to declare the price for content and will undertake the obligation of providing most favoured customer treatment to each one of the content distributors. In other words the content producers/sellers cannot give preferential treatment to any content distributor on terms of trade. The effective implementation of MFC clause will have to be supported by audits by the regulator.

Our suggestion is as follows:

- Keep the existing TV Channels exceeding a certain threshold of TRPs for each genre (defined as - dominant Channels – see infra) under price control as hitherto (option (a) above). All other channels and new channels should be allowed to declare their price after undertaking obligation of MFC clause (option (b) above).
-
- Based on the experience, and after plugging loopholes found during the actual implementation, all the channels should be allowed to move to option (b) in say 3 years with a firm commitment. However, the regulator should keep a watch on the pricing of dominant channels and intervene where the price premium of such channels is unreasonable with regard to that of other channels in the same genre.
- Going immediately for option (b) for existing TV Channels exceeding a certain threshold TRPs is not recommended on the consideration of practicability. In the immediate context, it may lead to unpredictable consequences including an increase in consumer prices leading to a potential backlash against this policy. A gradualism in movement from controlled pricing to free market is prudent and time tested.
- For an effective implementation of option (b) it is desirable that there is a separation in ownership of content producers/sellers on one side and content distributors on the other side.
- However, to help unstructured and fragmented cable business to smoothly transition into competitive market place, 'voluntary CAS' pricing should be allowed as an option for the addressable cable platforms for a period of 3 years.

Should carriage be regulated or controlled

Primary reason why carriage exists is because of inadequate capacity of analog system to carry TV channels. This can be addressed only by rapid increase in addressable system.

However the question arises if there should be a price regulation in the short term. Unfortunately in absence of any effective 'must carry', no price regulation is implementable. In any case the economic rationale for price regulation on carriage goes away once TV channel content pricing is freed as suggested above.

One of the easy but highly effective long term solutions for this is for the content owner to put in content on the web from where it can be streamed to computers, laptops and TVs. 'Direct from Web' can free the content provider from tyranny of chasing the limited distribution capacity that exists today. However, to make 'Direct from Web' successful, no channel should be allowed to deny its access on this platform

How can competition be encouraged?

As mentioned above, popular content is a natural monopoly. Regulators therefore have to take specific measures to encourage competition in this area. Suggestions (some of them already covered above) in this area are:

- Discourage 'dominance' in content production/reselling business and content distribution business (DTH, MSOs etc): In the case of TV Channels, dominance should be defined with reference to TRPs for each genre. In the case of content distributors, dominance can be defined in form of market share across platforms in defined geographical segments.

Once a channel is declared as dominant, then the regulator needs to review its pricing and ensure that the premium it charges is reasonable given the price of other content in the same genre. Also no more consolidation through alliances (reselling arrangements) or mergers should be allowed for the same.

Dominant content distributors should be prevented from further consolidation through M&A and also be reviewed for their restrictive trade practices in terms of not carrying content even when consumers ask for it.

- Ensure MFC clause in favour of content Distributers: One of the way of creating dominance in the content business is to prefer one Content distributor over the other by giving it better terms of trade. MFC in favour of content distributors wherein a content seller cannot differentiate on terms of trade can be a useful safeguard against such practices. Non- adherence to this should be made anti competitive agreement as per Competition Act 2002. In reality MFC can be circumvented in a variety of ways and the regulator should implement it after studying such issues thoroughly so as to ensure a robust implementation. In any case it should be subject to an audit from the regulator.
- Delinking of ownership: For encouraging competition it is desirable that there is a separation in ownership of content producers/sellers on one side and content distributors on the other side since this can otherwise lead to cross subsidies. The cross holding between distributors and broadcasters could also be capped at 10% to ensure that pricing by and large remains at arm's length and is not influenced by the ownership of the selling or purchasing entity(ies).
- Availability of content on multiple platforms: TV channel content should be made available on all the platforms such as Cable, DTH, HITS, IPTV or Direct from Web. It is important that content sellers should not have flexibility to deny access to consumers to any of the above or new emerging platforms.
- A very effective system of must connect: in today's distribution system, must connect lost its original intent as a broadcaster takes anywhere between 3 – 9 months time, causing excessive pressure on the downlink distribution system. There should be a mechanism of mandated provisioning of must connect within 24 hours of the prescribed indenting by the MSO.

Consistent with our earlier suggestions, we are submitting the following responses to the consultation paper:

1. Are the proposed amendments to the Interconnect Regulations to implement HITS policy in order?

In our view, competition should be promoted by completely segregating the HITS and DTH platforms. Since DTH works on Ku Band HITS should be allowed only on C band.

2. What further amendments are required to implement HITS policy?

No Comments

3. Can the tariff model for HITS services be based on CAS model?

No, the Tariff model for HITS services should not be based on CAS model. The Authority has a statutory obligation to regulate content tariff in the interests of all platforms and through the exercise of its powers under S. 11(2) of the TRAI Act, to ensure non-discriminatory treatment and equality in access to content. The tariff model based on CAS model will bring in discriminatory pricing and will go against the need for a level playing field among similar platforms and enhance effective competition in the content distribution space. Such a model if based on CAS model will provide incomparable offerings, discriminatory terms and unreasonable price fluctuations across similar platforms. This will create Discrimination and unreasonable market distortions against consumers in non Cas Areas.

4. Can the tariff model for HITS services be based on DTH and /or Non-CAS model? If yes,
 - a. Should the wholesale tariff (i.e. Broadcaster to HITS operator) be a percentage of the wholesale tariff in non-CAS areas? If yes, what should be the percentage and why?

The wholesale tariff for HITS services should be the same as that DTH model since both models work with addressable systems, thus providing a level playing field for all platforms in non-CAS areas.

5. How should the retail tariff in this model be regulated? Should it be affordability linked as in Non-CAS or forbearance as in DTH or any other method?

The retail price regulation should be based on DTH model if pricing for other platforms continue without change. We have expressed our suggestion on pricing changes that can be made across all platforms in response to your next question.

6. Would you like to suggest any other model to regulate the tariff for HITS service? If yes, please give details.

We draw your attention to the following suggestion made by us in the above-reproduced paper which can be implemented across all platforms:

Popular content is a natural monopoly. If not regulated, it can lead to a monopolistic or oligopolistic market. It is for this reason, regulators provide for safeguards such as i) delinking of ownership between content producers (and resellers or agents) on one side and content distributors (DTH, MSOs etc) on the other side and ii) a 'must connect' clause in favour of content distributors. However, without a fair and effective regulation of content pricing, 'must connect' clause will become a toothless provision. If we agree with this proposition, then there are probably the following alternatives:

- (a) Price Control: herein the regulator fixes the price at which the content is available to all content distributors. In India, we have been following a hybrid price control system whereby the content owner is free to fix price in the first instance with subsequent escalations being controlled by the regulator.
- (b) Declared price with MFC clause: In this case the Content producer/ seller would be free to declare the price for content and will undertake the obligation of providing most favoured customer treatment to each one of the content distributors. In other words the content producers/sellers cannot give preferential treatment to any content distributor on

terms of trade. The effective implementation of MFC clause will have be supported by audits by the regulator.

Our suggestion is as follows:

- Keep the existing TV Channels exceeding a certain threshold of TRPs for each genre (defined as - dominant Channels – see infra) under price control as hitherto (option (a) above). All other channels and new channels should be allowed to declare their price after undertaking obligation of MFC clause (option (b) above).
- Based on the experience, and after plugging loopholes found during the actual implementation, all the channels should be allowed to move to option (b) in say 3 years with a firm commitment. However, the regulator should keep a watch on the pricing of dominant channels and intervene where the price premium of such channels is unreasonable with regard to that of other channels in the same genre.
- Going immediately for option (b) for existing TV Channels exceeding a certain threshold TRPs is not recommended on the consideration of practicability. In the immediate context, it may lead to unpredictable consequences including an increase in consumer prices leading to a potential backlash against this policy. A gradualism in movement from controlled pricing to free market is prudent and time tested.
- For an effective implementation of option (b) it is desirable that the there is a separation in ownership of content producers/sellers on one side and content distributors on the other side.
- However, to help unstructured and fragmented cable business to smoothly transition into competitive market place, 'voluntary CAS' pricing should be allowed as an option for the addressable cable platforms for a period of 3 years.

7. Should the carriage and placement fee be regulated? If yes, how should it be regulated?

Primary reason why carriage exists is because of inadequate capacity of analog system to carry TV channels. This can be addressed only by rapid increase in addressable system.

However the question arises if there should be a price regulation in the short term. Unfortunately in absence of any effective 'must carry', no price regulation is implementable. In any case the economic rationale for price regulation on carriage goes away once TV channel content pricing is freed as suggested above.

One of the easy but highly effective long term solutions for this is for the content owner to put in content on the web from where it can be streamed to computers, laptops and TVs. 'Direct from Web' can free the content provider from tyranny of chasing the limited distribution capacity that exists today. However, to make 'Direct from Web' successful, no channel should be allowed to deny its access on this platform

8. Should the quantum of carriage and placement fee be linked to some parameters? If so, what are these parameters and how can they be linked?

Consistent with the view expressed in our response to the previous question, it is not possible to regulate or control quantum of carriage and placement fee in absence of any effective 'must carry' provision.

9. Can a cap be placed on the quantum of carriage and placement fee? If so, how should the cap be fixed?

Consistent with the view expressed in our response to the previous question, it is not possible to regulate or control quantum of carriage and placement fee in absence of any effective 'must carry' provision.

Yours Sincerely,
Kable First India Private Ltd.


Authorised Signatory 