

R.B Sahajpal

On

TRAI Consultation Paper dated **7 December 2020** ^{1,2,3} on Ministry of Information and Broadcasting (MIB) back references on TRAI's Recommendations dated 19.11.2014⁴ on “Regulatory Framework for Platform Services” and “Platform Services offered by DTH Operators” dated 13.11.2019⁵.

Issues & Comments

2.1 Response to back references dated 23rd October 2020 received from Ministry of Information and Broadcasting (MIB) on TRAI's Recommendations dated 19th November 2014⁶.

(i) Para 2.39 of the TRAI's Recommendations dated 19.11.2014.

B. MIB View:

This recommendation was not accepted by IMC in respect of MSOs/LCOs, since most of the MSOs/LCOs operated in small areas are either proprietorship or partnership firms which are not registered as companies. Making it obligatory for MSOs/LCOs to convert into companies may not be in line with the promotion of ease of doing business. IMC decided that anybody registered as a DPO, either with MIB or with post office, shall be eligible to carry PS channels.

In view of above TRAI has no objection to accept Ministry's view provided that Ministry of Information and Broadcasting is able to specify compliance structure to ensure that those providing platform services make full disclosure on ownership status and comply to content code and advertisement code while providing platform services.

A. COMMENTS

A few Ifs & buts are implied in the views of TRAI leaving onus on MIB for many things. There are no details about the registration process of Post Office furnished either in the MIB View or TRAI View.

Accordingly, the following is for consideration:

Notwithstanding the fact that MSOs/LDCOs work in small areas either as proprietorship or partnership firms they are business entities. There are special agencies to check the credentials of such entities and issue appropriate certificates depending upon nature of work, location and quantum of business. For example:

Sole Proprietorship Registration can be done in 3 ways:

1. Register under the Shop and Establishment Act.
2. Get a Udyog Aadhaar under the Ministry of MSME.
3. Get a GST registration.

The nature of a Partnership Firm is not clear from lonely word "partnership" firm as there are of three types with different methods of registration:

- Partnership firm

"A Partnership is one of the most important forms of a business organization, where two or more people come together to form a business and divide the profits thereof in an agreed ratio. **Indian Partnership Act 1932 as amended⁸** is the governing law which regulates the partnership firms in India. Registering a partnership firm is of great importance, albeit not mandated by law. There does not exist, a standard procedure, common throughout the Indian Territory due to the discretionary powers given to the state governments to establish a procedure suiting the needs of the general public." (source Internet)

- Limited Liability Partnership Firm (LLP) & FLLP

'A corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in flexible, innovative and efficient manner, providing benefits of limited liability while allowing its members the flexibility for organizing their internal structure as a partnership'. Indian Limited Liability Partnership Act, 2008 ⁹ as amended is the governing law which regulates the LLP in India. There is a mention of FLLP in the same Act ReferSection2(m) ¹⁰

A. Recommendations for kind consideration:

In view of what has been discussed in comments and for the sake of accountability, traceability and security noting that for the sake of Ease of Business the Registration Processes under relevant laws applicable to different entries have been simplified combining with the fact that FDI is allowed upto 100% in some cases in both broadcast and carriage business the following is for consideration:

- a) MSOs/LDCOs working either as Proprietorship or Partnership firms may be mandated to register under the relevant provisions to the nature of business of each business entry for the sake of Ease of Business coupled with Level Playing Field.
- b) Registration with a Post Office may be made mandatory with the proviso that the same shall only be done only after registration as at a) above has been obtained by the concerned business entity.
- c) Registration with MIB may under the rules and regulations of the MIB made for the purpose. However, this registration will only be done after registration as at a) above has been done. MIB may incorporate this condition in relevant rules and regulations framed for the purpose of registration of business entities under consideration.

(ii) Para 2.45 of the TRAI's Recommendations dated 19.11.2014

B. MIB View:

With the completion of digitization process, there is no distinction between DAS and non-DAS area. Further, it is noted while it is necessary to restrict capacity of PS channels carried by DPOs as recommended by TRAI, it is not in the interest of the evolving and dynamic market like Cable TV to restrict the number of PS channels. Regulation may only intervene to the point of upholding customer interests, ethical business practices, ease of doing business and safeguard against violation of programming code and advertisement code. Taking note of this, it is recommended that the MSOs may be permitted to operate to a maximum of 5%, and LCOs to a maximum of 1%, of the total permitted satellite channel being carried by them as permitted PS channels without any upper limit.

C. TRAI Response:

It is reiterated that the Authority had forwarded its recommendations on Regulatory Framework for Platform Services in 2014 when digitization process was not complete. As the process of Digitalisation has since been completed in March 2017, the recommendations as regards those for DAS remain relevant. The domain and functioning of the DPOs is different from that of the broadcasters. The main

purpose of granting permission/ registration/ license to Distribution Platform Operators (DPOs) is distribution of TV channels covered under uplinking/ downlinking guidelines. Thus, it is essential that the major portion of the Page 10 of 22 distribution capacity of these platforms is used for the intended purpose. A small portion of this distribution capacity may be used for PS so as to meet the specific need of the subscribers of these DPOs. One must note that a television channel is a mechanism to disseminate information and has the ability to create opinions. When a consumer watches a channel, the impact and effect remain same for satellite channels or Platform Service channels. In fact, in some cases the impact of platform channel may be more as they are more local and may be more relevant for public in that area. At present there are more than sixteen hundred (1600) registered MSOs. A simple calculation with fifteen Platform Services, each exclusive to respective DPO suggests that there can be more than Twenty-four thousand (24000) platform services. Given the limitations on oversight mechanism available for such channels, any more leverage to increase the number of channels further will put unbearable strain on monitoring/ oversight. The technical arrangement in DAS is such that a Television Channel can only be inserted at Head-end. Even if an LCO wishes to provide his channel, the feed for same must be provided at the head-end of the MSO. It is very much possible for an MSO to allocate some channels out of available limit of fifteen PS channels to LCOs. As all the channels are inserted at the level of MSO, it will be responsibility of the MSO to register such platform channels. This will provide sufficient pool of availability on networks for registered satellite television channels. It is important to note that there are more than 900 registered television channels. These channels can only reach the consumers through the networks of DPOs. Sufficient channel carrying capacity is therefore necessary for these broadcasters too. Moreover, among the registered television channels, there is sufficient spread across regional languages and genres. Therefore, there is no pressing requirement, for many PS channels. It is also pertinent to ensure that liberal regulatory framework of PS should not encourage bypassing of traditional broadcast route. In case, there is compelling regional content available on a local platform channel, such entity² can register itself as a broadcaster. The ability to provide a large number of PS channels will 2 MIB may ensure adherence to Vertical Integration guidelines amongst broadcasters and DPOs Page 11 of 22 present an arbitrage opportunity for DPOs as they may circumvent the regulations on broadcasting. The Authority is also of the view that it is not desirable to separately specify the limit on number of PS channels that may be offered by the MSOs and LCOs. This may be left to the mutual arrangement among MSOs and LCOs. An MSO may remain responsible for all the platform service channels being offered on its platform. In view of above, the Authority reiterates its recommendations.

In view of above, the Authority reiterates its recommendations.

B. Comments:

The key sentence in quotes “One must note that a television channel is a mechanism to disseminate information and has the ability to create opinions.” is taken from TRAI response above.

B. Recommendations for kind consideration:

1. The Authority recommendations may prevail subject to modifications as per the recent **Gazette Notification¹¹ regarding Allocation of Business of MIB** while finalising the recommendations.

(iii) **Para 2.52 of the TRAI's Recommendations dated 19.11.2014**

B. MIB View:

1. TRAI's assumption that all the DPOs operating in DAS areas are security cleared is not correct since security clearance for LCOs is not a pre-requisite for grant of registration. Further, with the completion

of digitization process there is no distinction between the DAS and non-DAS areas. At present about 72% MSOs are not security cleared by MHA as during their registration period security clearance was not a pre-requisite. More so, none of the LCOs are security cleared.

2. Taking note of this, it is recommended to extend TRAI recommendation for security clearance of MSOs/LCOs in non-DAS areas, to all MSOs / LCOs who are not security cleared and wish to offer PS to their subscribers.

3. That is to say, MIB will obtain security clearance of all MSOs / LCOs, who wish to offer PS and were not MHA security cleared at the time of registration, while Page 12 of 22 they run their PS. However, if at any time before the MIB obtains the security clearance, it is determined that the programming service offered on PS and which has been registered on the online system is inimical to India's national security or to the public interest, MIB may require the MSO / LCO to withdraw from distribution of the PS Channel or the programming service and / or cancel the registration.

C. TRAI Response:

The Authority had forwarded its recommendations on Regulatory Framework for Platform Services in 2014 when digitization process was not complete. It is desirable that all the MSOs offering PS are security cleared. In view of above TRAI agree with the suggestion given by MIB.

In view of above TRAI agree with the suggestion given by MIB.

C. Comments:

i) No comments.

C. Recommendations for consideration:

a). The Trai response may prevail.

2.2 Response to the back reference dated received from Ministry of Information and Broadcasting (MIB) on TRAI's Recommendations dated 13th November 2019

(iv) Para 2.7 of the TRAI's Recommendations dated 13.11.2019

B. MIB View:

It is proposed to adopt the above recommendations in respect of Platform Services offered by MSOs / LCOs also by appropriately replacing the word "DTH" with "MSO/LCO" wherever required

C. TRAI Response:

The suggestion by the Ministry to apply relevant provision to MSOs is quite relevant. Since completion of digitalisation, the Authority has endeavoured to a common regulatory regime. It is important to note that in DAS based networks, the PS channels can only be inserted at the Head-end by the MSOs. The 2019 consultation by TRAI was specific to DTH service providers, provision mentioned in MIB reference is quite similar to the recommendation made by TRAI in November 2014. The definition of platform services recommended by the Authority in its 'Recommendations on Platform Services offered by DTH Operators' dated 13th November 2019 is the same which the Authority had recommended in its recommendations on 'Regulatory Framework for Platform Services' dated 19th November 2014. Only some explanation pertaining to Registered TV channels or television channels or channel was added in 2019. Thus, there is no material change in the definition of platform services owing to this explanation.

Authority, therefore, agrees with the views of MIB.

The definition of Platform Services (PS) shall be:

"Platform services (PS) are programs transmitted by Distribution Platform Operators (DPOs) exclusively to their own subscribers and does not include Doordarshan channels and registered TV channels. PS shall not include foreign TV channels that are not registered in India." Registered TV channels or television channels means a channel, which has been granted downlinking permission by the Central Government under the Page 14 of 22 policy guidelines issued or amended by it from time to time and reference to the term 'channel' shall be construed as a reference to 'television channel'.

D. Comments:

Notwithstanding that the issue is not regarding the definition of PS but as the same is appearing in TRAI response the following may please be noted:

- i) Provided channels included in the PS definition confirm to Articles 6.7 and 10.1¹² as part of the Terms and Conditions of their respective guidelines and licensing Agreement.
- ii) New License Regime¹³ gives a diagram of Broadcasting and Distribution Value Chain¹⁴. According to which IPTV reaches subscriber directly and HITS reaches subscriber via LCO.
- iii) DTH operators are offering USB sticks compatible with some TVs for channels not conforming to Uplink-Downlink configuration as these are beyond their authorisation as not conforming to Article 10.
- iv) As an alternative to option (iii) DTH operators are offering STB capable of achieving the same object
- V) Implementation of option (iv) will make interoperability of STB impossible which is against the recommendations of TRAI and cherished goal of MIB¹⁵.
- vi) There is a mention¹⁶ in quotes "Once the Government notifies the new DTH licensing regime "but its present status could no be ascertained from sources like TRAI, MIB, gazette of GOI etc. in public domain.
- vii) Regime mentioned in comments (i)¹⁷ above is of 2007 vintage.

D. Recommendations for consideration:

- a) Views of MIB may not be agreed. DTH word may be replaced by the concerned PS platform from which the PS service is sourced.
- b) Suitable regulations may be issued to concerned entities to refrain from activities mentioned in comments iii) and iv) above,

(v) Para 2.16 of the TRAI's Recommendations dated 13.11.2019

B. MIB View:

It is proposed to adopt the above recommendations in respect of Platform Services offered by MSOs / LCOs also by appropriately replacing the word "DTH" with "MSO/LCO" wherever required

C. TRAI Response:

To ensure uniformity of guidelines of DTH operators and MSOs, it is desirable that above mentioned recommendations may also be applicable to all DPOs including MSOs.

The Authority agrees with the views of MIB.

The authority recommends that:

- (a) The programme transmitted by the Direct to Home (DTH) operator/ Multi Systems Operators (MSOs)/ Internet Protocol Television (IPTV)/ Head-End into The Sky (HITS) operator as a platform service shall be exclusive and the same shall not be permitted to be shared directly or indirectly with any other Distribution Platform Operator (DPO).
- (b) Programme transmitted by the DTH operator/ MSOs/ IPTV/ HITS operator as a platform service shall not directly or indirectly include any registered TV channel or Doordarshan channel or foreign TV channel. Time-shift feed of registered TV channels (such as +1 services) shall not be allowed as a platform service.
- (c) DTH operator/ MSOs/ IPTV/ HITS operator shall ensure and provide an undertaking to the Ministry in the format prescribed by the Ministry that the programme transmitted is exclusive to their platform and not shared directly or indirectly with any other DPO.
- (d) In case the same programme is found available on the PS of any other DPO, MIB/ TRAI may issue direction to immediately stop the transmission of such programme. MIB also reserves the right for cancellation of registration of such PS of the DTH operator/ MSOs/ IPTV/ HITS operator.

E. Comments:

- a). The same as per D(i) to D(vii) above.

E. Recommendations for consideration:

- a) The same as per D(a) and (b) above.

(vi) Para 2.37 of the TRAI's Recommendations dated 13.11.2019

B. MIB View:

It is proposed to adopt the above recommendations in respect of Platform Services offered by MSOs / LCOs also by appropriately replacing the word "DTH" with "MSO/LCO" wherever required

C. TRAI Response: The suggestion by the Ministry to apply relevant provision to MSOs is quite relevant. Since completion of digitalisation, the Authority has endeavoured to a common regulatory regime. It is important to note that since November 2014 market dynamics have changed. Though, the 2019 consultation by TRAI was specific to DTH service providers, provisions mentioned in MIB reference are quite common and pro-consumer. DAS system provides for the features related to activation/ deactivation of channels on a-la-carte basis. This should be applied on all DPOs including the MSOs. Once applied, this feature will help the consumers in exercising the choice. The Authority agrees with the views of MIB. The authority recommends that the DTH operator/ MSOs/ IPTV/ HITS operator shall provide an option of activation/deactivation of platform services as prescribed in the orders/directions/regulations issued by TRAI from time-to-time.

F. Comments:

- a). The same as per D(i) to D(vii) above.

F. Recommendations for consideration: a) The same as per D(a) and (b) above.

(vii) Para 2.45 of the TRAI's Recommendations dated 13.11.2019

B. MIB View: It is proposed to adopt the above recommendations in respect of Platform Services offered by MSOs / LCOs also by appropriately replacing the word “DTH” with “MSO/LCO” wherever required

C. TRAI Response:

To ensure uniformity of guidelines of DTH operators and MSOs, it is desirable that abovementioned recommendations may also be applicable to MSOs. It is also pertinent to note that since November 2014 market dynamics have changed. As mentioned earlier, though, the 2019 consultation by TRAI was specific to DTH service providers, provisions mentioned in MIB reference are quite common and pro-consumer. DAS system provides for the features related to classification on EPG, which should be applied on all DPOs including MSOs. This feature will assist the consumers in getting explicit information on their TV screen. The Authority agrees with the views of MIB. The Authority recommends that for the DTH operator/ MSOs/ IPTV/ HITS operator: (a) The platform services channels shall be categorized under the genre ‘Platform Services’ in the Electronic Programmable Guide (EPG) subject to orders/directions/regulations issued by TRAI from time-to-time. (b) The respective maximum retail price (MRP) of the platform service shall be displayed in the EPG against each platform service subject to orders/directions/regulations issued by TRAI from time-to-time. (c) A provision for putting a caption as ‘Platform Services’ may be required to distinguish the platform services from the linear channels. Government may decide the caption in a size which is visually readable by the consumers.

G. Comments:

a). The same as per D(i) to D(vii) above.

G. Recommendations for consideration:

a) The same as per D(a) and (b) above.

References:

1. https://trai.gov.in/sites/default/files/PR_No.96of2020.pdf
2. https://trai.gov.in/sites/default/files/CP_07122020.pdf
3. https://trai.gov.in/sites/default/files/PR_No.99of2020.pdf
4. <https://trai.gov.in/sites/default/files/Recommendation%3D24112014.pdf>
5. https://trai.gov.in/sites/default/files/Recommendation_13112019.pdf
6. 4 supra.
7. 5 supra.
8. https://www.mca.gov.in/Ministry/actsbills/pdf/Partnership_Act_1932.pdf
9. http://www.mca.gov.in/Ministry/actsbills/pdf/LLP_Act_2008_15jan2009.pdf
10. 9 ibid.
11. <http://egazette.nic.in/WriteReadData/2020/223032.pdf>

12. <https://mib.gov.in/sites/default/files/Detailsguidlinesupdated6.11.2007.pdf>

13. <https://trai.gov.in/sites/default/files/DTH-Reco%28New-Licensing-Regime%29-uploaded.pdf>

14. 13 ibid.

15. https://trai.gov.in/sites/default/files/Recommendation_11042020.pdf

16. 13 supra

17. 12 supra