

Comments by

SUN DIRECT TV PVT. LTD.

CHAPTER V: ISSUES FOR CONSULTATION

5.2 TARIFF FIXATION FOR DTH SERVICES

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

Our Response:

There is a need to regulate the tariff fixation between the broadcaster and DTH operator to ensure non-discriminatory treatment towards the DTH operator and a level playing field for all addressable systems. There must be a regulatory policy or frame work in fixation of tariff of the broadcaster's content so that the DTH operator can provide the broadcaster's content to its subscriber at an affordable price. DTH customers by and large are cable customers and if DTH has to compete, the effective price that a broadcaster earns from a cable operator must be the relevant price. There is no regulation which formulates the fixation of tariff of the broadcaster's content which is provided to the DTH platform. However there is a bench mark for fixation of tariff for the broadcaster's channel based on the Judgment in TDSAT in ASC Enterprises Vs Star India Pvt Ltd dated 14th July 2006 which is 50% of Non-CAS cable rates. There is no justification of a Sum total increase in price in a la carte basis of 150% as it amounts to 75% of cable price which is unjust.

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

Our Response:

The service provided by the DTH operator is not a monopoly service. In the DTH business if a consumer does not like the Service (pricing & packaging) of a particular platform he is free to move. However it is important to fix the tariff structure at the whole sale level i.e. between the broadcaster and DTH operator in order to curb discriminatory treatment and unfair trade practice. Moreover

there exists no necessity to frame a tariff fixation method with regard to the DTH operator and subscribers since there is transparency in service when compared to cable services and consumer has the choice to shift from one operator to another.

5.2.3 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.

Our Response:

Since the customer of a DTH service is most likely a cable customer, there must be parity in pricing between all addressable platform as well as the effective price the cable operator gets the channels from Broadcasters (maxi 15% - 20% of price) or CAS pricing. As far as a la carte is concerned the sum total of all channels cannot exceed 100% of the price broadcasters can split this within their channels at their choice.

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Our Response:

1. Average Price of channels in a Genre / Bouquet
2. New channels Average Price of a particular genre
3. The contribution of a platform to the reach of a 'TV' Channel must be considered while determining the effective price.
4. Reach of channels as claimed by broadcaster which they claim for advertisements as a % of paying subscribers (details filed with TRAI) should be the effective price of a channel. Eg. Channel X claims they have 40 million. views but the paid subscriber base is 10 million. then the effective price is $\frac{1}{4}$ the cable price.

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?

Our Response:

No regulation is required. DTH operator should be given the liberty to fix the tariff based on their research of the market and choice of the customer. Retail regulation of DTH tariff shall affect competition and is against the interest of the customers. Hence the customers are benefitted at the present level of pricing and do not require any retail regulation of DTH tariff. (There is no monopoly in delivery mode).

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?

Our Response

The prices of broadcaster must include the margin splits and the same model of splits as in CAS should be followed. This arrangement shall be only between the broadcaster and DTH operator and not to DTH operator and customer.

As stated above there is no necessity to formulate the retail tariff of DTH operator as competition and market forces will determine the same.

COMPARISON WITH CAS

5.3.1 Whether the basic feature of tariff order dated 31st August, 2006 for cable services in CAS areas, namely fixing of ceiling for maximum retail prices for 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 for DTH services also?

Our Response

The basic feature of cost / channel should be followed as in CAS for a level playing field but as a DTH platform could have different basic tiers (Sun Direct has 6 basic tiers) catering to the needs of the consumer. Fixation of Retail basic price is not viable.

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

Our Response

We do not feel a maximum retail price is necessary. Market will decide the same. As far as Sun Direct is concerned we give the box free, hence suitable amendments must be made to provide for the same. Tariff for renting and box serving must be a % of cost of box it cannot be a fixed amount.

5.3.3 Whether DTH operator 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?

Our Response

Since DTH platform is different from CAS if the customer wants FTA channels DD FTA service is available and further there is a major constraint on transponder capacity. The DTH model is a pay model not FTA model.

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?

Our Response

DTH business is about packaging and bundling, making channels available in a la carte basis is valid only in a monopoly situation. (cable) DTH customers have a choice of platform apart from this there is no known SMS system that can provide such combination. (As the number of combination is equal to the power of number of channels. Eg. 100 channels, combination would be 100 x 100)

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

Our Response

No standard tariff packages for renting Set Top Boxes may be required. We provide Set Top Boxes to our customers free of cost only for the purpose of viewing our services suitable amendments to the regulation is required.

Other Relevant Issues:

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

No regulation is required if the same is to be regulated then a method to share advertisement revenue must also be introduced.

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?

Our Response

The carriage fees charged by the broadcaster need no regulation or ceiling since the DTH operator has invested a huge amount for creating the infrastructure. Further it is a commercial decision of the broadcaster just as they plan for content / infrastructure they should also consider these or share their advertisement revenue.

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

Relevant Comments have been mentioned earlier.

6.1 PROVISIONING OF NEW SERVICES ON DTH PLATFORM

6.1.5 (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?

Our Response

In today's changing environment we cannot create compartments. Business are merging and barriers are fading

This issue can be addressed in two ways

- i) These are special services offered to closer groups of people within the platform, the constraint could be that it must follow the content code as laid down in Cable Act or the platform should have the IPR Rights.
- ii) There should not be considered as broadcast TV Channels. It may be mentioned that most MSO/cable operators offer "Value Added Services" to their customers. Hence this is a common practice if legislation is to be made for DTH it must also be made for cable.

- 6.1.5 (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?

Our Response

Not relevant since these services may not be considered as broadcasting channels or not in the nature of broadcast TV channels.

- 6.1.5 (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?

Our Response

Not relevant. Leave the DTH operators to regulate their self. "Self regulation is the best" or as in the case of telecom, inform the Regulator.

- 6.1.5 (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?

Our Response

Since these services do not fall within the limits of broadcasting channel it cannot be termed as traditional TV. There are already provisions in law with regard to Programme code and Advertisement code the same should be made applicable

- 6.1.5 (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.?

Our Response

No permission should be necessary if it in public interest. Discontinuation can be recommended after due process of law.

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

Our Response

The license may be amended to permit DTH platform to provide such services. This could be through a Gazette Notification for the G.O.I

6.1.5 (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?

Our Response

1. DTH operators are already restricted from interfering with a Broadcaster feed hence this does not arise. Value Added Services belongs to the DTH operator and not broadcaster. Hence interfering with the feed does not arise.
2. Advertisements are inserted into the feed by broadcasters they are not part of the original content. Hence the same would apply in value added service.
3. As video on demand services are restricted to the platform the advertisement would be for a specific audience and must follow the advertisement code for which the DTH platform should be responsible.
4. The DTH platform is obliged to follow the various regulation and law lays down the course of action to be taken which will be the same as broadcaster.

6.1.5 (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?

Our Response

The ability to provide a clean feed to a DTH provider is a matter of commercial negotiation between the broadcaster and DTH player. This question is confusing and we don't think it is relevant.

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?

Our Response

Yes they should be permitted obviously only those which have Govt approval

6.2.4 (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?

Our Response

They should be permitted and the license should be amended accordingly.

6.2.4 (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?

Our Response

Regulation needs to be amended, but before that a discussion with Radio Providers needs to happen to understand their point of view.

(We also request that there is more clarity on the various notification with regard to packaging and bundling also a standard RIO should be implemented as many broadcasters have demands which are unreasonable and since regulation is silent on them they are a cause of unnecessary conflicts).