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Submission of Responses by **Shemaroo Entertainment Ltd.** to Telecom Regulatory Authority of India (“TRAI” / “Authority”) in response to the **Consultation Paper (No. 7/2014) on Regulatory Framework for Platform Services** (“Consultation Paper”) dated 23 June 2014

**Kind Attention: Mr. Agneshwar Sen,
Advisor (B&CS),
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Please note that our responses are in ‘Red’ font in this document

Preface:

We believe that Cable Service has always been a common man’s service offered at a low price and the regulator should not introduce restrictions which shackle the industry, keeping in view the long term view.

We firmly agree that the Platform Services should be regulated and should conform to all rules and laws whether it is through registration with MIB, ensuring uniform legal status for all DPOs, acceptable registration fee, restrictions on news programs etc. However restrictions like limiting the number of PS channels, limiting the type of content, limiting geographical coverage, Prohibition of re-transmission of the PS channels, restricting the number of FM Channels etc. would hamper the quality of service offered by these DPOs in the long term and consumers might be driven towards platforms like Internet which are largely unregulated. Such moves would severely hurt the consumers by reducing the options/choices available.

We firmly believe that there should not be any restriction on any type of program being transmitted by a DPO as far as the following **3 conditions** are met:

- a) If the PS is regulated by the Regulator, like getting requisite permission from the regulator, conforming to advertising & programming guidelines, paying the requisite permission fee, keeping a 90 Days record of programs and other regulations
- b) If the content license acquired by a DPO is legitimate and
- c) If it is economically viable for the DPO

If the above 3 conditions are met, we feel that the market forces should ultimately rule and the fundamental freedom of speech and expression should prevail. If there is a demand for a certain type of content which suits the tastes and needs of the local consumers, economics permitting, the consumers should not be deprived of quality content.

While we opine that a DPO should be conforming to advertising & programming guidelines, paying the requisite permission fee based on the size/scale etc., we believe that apart from this there should not be any other regulations which would hamper the very existence of these DPOs and **detriment the consumer choices**. Most of the MSOs are small players with few thousand connections catering to their local consumers. We also feel that there is an inherent premise in this paper to compare DPOs like MSOs with private satellite Broadcasters. We would like to state that this is not the correct way to look at this. The very fear that MSOs would be competing with private satellite broadcasters is **unfounded**. **There is a considerable difference in terms of scale, technology used, financial strength, target audience etc.**

Hence instead of looking at this scenario as a competition between broadcasters and DPOs, we should understand that the **MSOs**, whether big or small actually **work in sync with the private broadcasters** and **actually complement them through their own PS**, thereby **giving the consumers a whole new range of benefits and value offerings**.

To add to the above mentioned point, we would like to state that restricting the DPOs through several regulations would ultimately **constrain the many choices available to consumers** which would be detrimental to them and DPOs alike. Therefore we would like to state that any guidelines or regulations **should be brought in keeping in mind the consumers interests/choices** & something which is **fair to all the stakeholders concerned**.

Also, a detailed regulatory framework already exists under the Cable TV Network (Regulation) Act, 1995 for the cable operators or MSOs. Hence, provided, they conform to the necessary guidelines stated above like, conforming to advertising & programming guidelines, paying the requisite permission fee, etc. **we strongly feel that beyond that the market forces should rule and if it is viable, a DPO would launch a PS and it isn't it would not**.

Another point to note is that a uniform pan-India regulation for all DPOs would not be possible as there is a huge disparity amongst the MSOs in terms of their size and scale. There are MSOs in the country ranging from a subscriber base of 10,000 to a million or even more. Considering this the approach for these regulations must be rational and method based.

Also currently platforms like Internet, Mobile, IPTV etc. have relatively lesser restrictions and are already luring customers in big numbers. **Hence any regulations for the PS should be introduced keeping in mind that the DPOs retain their competitiveness, offer quality content and do not lose out to platforms like Internet**.

Issues for Consultation:

1. Do you agree with the definition for platform services proposed in paragraph 1.6? If not, please suggest an alternative definition. Please elaborate your response with full justification.

“Platform services (PS) are programs transmitted by Distribution Platform Operators (DPOs) exclusively to their own subscribers and does not include Doordarshan channels and TV channels permitted under downlinking guidelines.”

We agree with the definition

2. Kindly provide comments on the following aspects related to programs to be permitted on PS channels:

1. PS channels cannot transmit/ include

2.1.1. Any news and/or current affairs programs,

We agree with this

2.1.2. Coverage of political events of any nature,

The coverage should be allowed subject to licensing and security clearances

2.1.3. Any program that is/ has been transmitted by any Doordarshan channels or TV channels permitted under uplinking/ downlinking guidelines, including serials and reality shows,

We believe that the use of words “any program that is/ has been transmitted by any Doordarshan channels or TV channels” has been made dangerously wide. We firmly believe that there should not be any restriction on any type of program being transmitted by a DPO as far as the following 3 conditions are met:

a) If the PS is regulated by the Regulator, like getting requisite permission from the regulator, conforming to advertising & programming guidelines, paying the requisite permission fee, keeping a 90 Days record of programs and other regulations

b) If the content license acquired by a DPO is legitimate and

c) If it is economically viable for the DPO

If the above 3 conditions are met, we feel that the market forces should ultimately rule and the fundamental freedom of speech and expression should prevail thereby benefitting the customers with wide range of choices. When the same programs are available on internet for consumers, then why should we drive the customers away from the DPO through these restrictions?

Additional important points in this context:

*- **Cable Service** has always been known for its **local movie channels, localized content etc.** focused on the geography of operations. Even the content which has been earlier showcased on national television is being broadcasted by the Cable Operator, if it **suits the tastes and needs of the local audience.** For example, a*

consumer would want to watch TV classics like “Yeh Jo Hai Zindagi” & “Zabaan Sambhalke” but if a **national broadcaster does not want to telecast it** for various reasons, then **why should a consumer be deprived** of watching the same? Such content **being available on internet & youtube, consumers would eventually move away from DPOs**. Hence keeping a long term view of consumers’ interests in mind and the 3 conditions stated above, we firmly believe that this restriction should not be imposed.

- As far as the **Hindi Movies** are concerned, the **Hindi Speaking Market is not uniformly homogeneous** in terms of consumers’ tastes and preferences. While all of the Hindi Speaking Consumers might be patronizing Hindi movies, there might be **regional tastes and preferences** as well as **certain events, festivals, holidays etc. which would influence the local demand**. The **national networks** may find it **unviable to customize their offerings to such regional differences**. **A Cable Operator can very well address this issue**.

Keeping in mind the above stated points, we **strongly feel that DPOs should be allowed** to transmit any program that is/ has been transmitted by any Doordarshan channels or TV channels permitted under uplinking/ downlinking guidelines in view of consumers’ interests and choices.

2.1.4. International, National and State level sport events/ tournament/ games like IPL, Ranji trophy, etc.

In this case also we feel that there should not be any restriction on any type of international, national and state level sport events/tournament being transmitted by a DPO as far as the following 3 conditions are met:

- a) If the PS is regulated by the Regulator, like getting requisite permission from the regulator, conforming to advertising & programming guidelines, paying the requisite permission fee, keeping a 90 Days record of programs and other regulations
- b) If the content license acquired by a DPO is legitimate and
- c) If it is economically viable for the DPO

For instance, consider a scenario when there is a consumer demand in a particular geography in the country to watch an international sporting event. If no broadcaster has bought the rights for the same, **should we deprive the consumers from not watching it? If a DPO is able to get a legitimate license for the same and commercials also work fine, then why should we stop it?**

2. PS channels can transmit/ include

2.2.1. Movie/ Video on demand

As far as the Movies and Music content is concerned, it should be allowed in the form of linear channels, VOD, PPV or any other form.

Also TV Series, Documentaries, Telefilms or any other content for which the Cable operator has legitimate rights.

2.2.2. Interactive games,

We agree

2.2.3. Coverage of local cultural events and festivals, traffic, weather, educational/ academic programs (such as coaching classes), information regarding examinations, results, admissions, career counseling, availability of employment opportunities, job placement.

We agree

2.2.4. Public announcements pertaining to civic amenities like electricity, water supply, natural calamities, health alerts etc. as provided by the local administration.

We agree

2.2.5. Information pertaining to sporting events excluding live coverage.

We agree

2.2.6. Live coverage of sporting events of local nature i.e. sport events played by district level (or below) teams and where no broadcasting rights are required.

We agree

3. What should be periodicity of review to ensure that the PS is not trespassing into the domain of regular TV broadcasters?

The periodicity of review should be at least one year. This is a considerably sufficient period to review and ensure that the trespassing doesn't happen into the domain of regular TV broadcasters.

4. Should it be mandatory for all DPOs to be registered as Companies under the Companies Act to be allowed to operate PS? If not, how to ensure uniform legal status for all DPOs?

According to us, in order to ensure uniform legal status for all DPOs, getting registered as a company is not the only option. Many DPOs operate as joint ventures in the industry, in which case an LLP could be a more suitable option. When the Indian Government has given legal sanctity to an LLP and allowed it to exist, there shouldn't be an issue in allowing DPOs to get legal status via an LLP structure.

5. Views, if any, on FDI limits?

As per the consultation paper "MSOs registered under the Companies Act can access foreign investment limits up to 74% with 49% under automatic route under revised FDI norms of the Government of India. If such MSOs operate local news channels, the FDI limits in some cases might exceed the permissible limit of 26% leading to an anomalous situation which needs to be addressed.

Exclusion of 'News & Current Affairs' category of programs from PS channels would address the anomalous situation discussed in the previous paragraph"

We agree with the above stated view.

6. Should there be any minimum net-worth requirement for offering PS channels? If yes, then what should it be?

As per the consultation paper - *“As per the Downlinking guidelines, the applicant company should have a minimum net-worth of Rs. 5 Crore for downlinking of first (Non-News or News & Current Affairs) television channel and Rs. 2.5 Crore for downlinking of each additional television channel. **The requirement of net-worth is generally to ensure that only serious players enter into the sector.**”*

Taking cues from the above quoted lines, we are of the view that **once a DPO has qualified to be an MSO in its region of operation, by default it should be considered as a “serious player”**. The DPO being already present in this business is bound to understand and comprehend the complexities of this business and operate in a serious manner, compelled by the market forces. **However the net worth requirement for an MSO should be slab wise & based on the number of subscriber points they have.**

7. Do you agree that PS channels should also be subjected to same security clearances/conditions, as applicable for private satellite TV channels? -

We believe that since in order to become an MSO, a security clearance is already granted by the Central Government, why should a separate security clearance be required for a PS?

8. For the PS channels to be registered with MIB through an online process, what should be the period of validity of registration and annual fee per channel?

With thousands of MSOs operating in the country with considerable variation in their size and scale, it is difficult and unfair to charge a blanket fee from all MSOs. A fair way is to charge the DPO is based on the total number of active subscriber points. Hence a slab wise fee structure based on the number of subscriber points can be built.

9. What is your proposal for renewal of permission?

Considering that the validity of registration is for 10 years, the same process mentioned in point no. 8 can be followed for renewal as well.

10. Should there be any limits in terms of geographical area for PS channels? If yes what should be these limits. Please elaborate your response with justifications.

We firmly believe that there should be no limits in terms of the geographical area for PS channels. As per the consultation paper –*“One could argue that the **market forces themselves would compel the DPOs to restrict the transmission of local level programs to a certain local geographical area, as these programs may not be of much interest countrywide**”*

We feel that as long as the DPO conforms to the 3 conditions as mentioned in Point no. 2.1.3, there should be no limits of geographical area and also the DPO should be allowed to share the signals with other distribution networks.

11. Should there be a limit on the number of PS channels which can be operated by a DPO? If yes, then what should be the limit?

No, there should not be a limit on the number of PS channels operated by a DPO. We firmly believe that the market forces should rule and the consumer should not be deprived of the choices available. It costs considerable investment in content to start a new channel. If there is a revenue model which is viable, shouldn't a DPO be allowed to operate a channel in the interest of its consumers and its own business? There should definitely be a compliance/review mechanism through which the regulator is completely aware of the number of PS channels being operated, the type of content being shown, regulatory compliance etc. But if a DPO can afford to run many PS channels & there is a demand for the same, why should it be stopped. We feel that the consumers should not be deprived of the wide range and quality of content. Also in DAS, technology theoretically allows the MSOs to run many number of channels. In such a case why restrict them and consumers' choices.

However the regulator can introduce a regulation which makes it mandatory for DPOs to allot a minimum number of channels, say 500, only for downlinked channels.

12. Do you have any comments on the following obligations/ restrictions on DPOs:

12.1 Non-transferability of registration for PS without prior approval of MIB;
We agree with this

12.2 Prohibition from interconnecting with other distribution networks for re-transmission of PS i.e. cannot share or allow the re-transmission of the PS channel to another DPO; and

We believe that the re-transmission of PS to another DPO should be allowed as it would be cheaper to share signals and would result in considerable cost savings for the DPOs. This would ultimately benefit the consumers as the DPOs would be encouraged to invest in quality content.

12.3 Compliance with the Programme & Advertisement Code and TRAI's Regulations pertaining to QoS and complaint redressal.

We agree with this

13. What other obligations/ restrictions need to be imposed on DPOs for offering PS?

Mentioned in point number 17

14. Should DPO be permitted to re-transmit already permitted and operational FM radio channels under suitable arrangement with FM operator? If yes, then should there be any restrictions including on the number of FM radio channels that may be re-transmitted by a DPO?

Once a DPO is allowed to re-transmit already permitted and operational FM radio channels under a suitable arrangement, we believe that there should not be any restrictions on the number of FM channels.

We firmly believe that the market forces should rule and determine the no. of channels to be operated by a DPO. For instance, in a platform like YouTube, there is no restriction on the number of channels to be operated. The market forces & economic viability ultimately determine whether to restrict or expand this number. In the present scenario, Internet is already luring the customers away from the traditional platforms. By putting restrictions and shackling the DPOs, the quality of service could be hampered in the long run and could prove lethal for the industry as customers would be driven away to Internet which is largely unregulated.

15. Please suggest the mechanism for monitoring of PS channel.

We agree with the following quotes from the Consultation paper - *“DPO may also be mandated to keep a record of programs for a period of 90 days and produce the same before any agency of the Government as and when required. For monitoring of content on PS channel on day to day basis, MIB may constitute monitoring committee(s)/ body(ies) at suitable level. “*

16. Do you agree that similar penal provisions as imposed on TV Broadcasters for violation of the terms and conditions of their permissions may also be imposed on PS? If not, please suggest alternative provisions with full justification.

We agree with this

17. What amendments and additional terms & conditions are required in the existing registration/ guidelines/ permission/ license agreements w.r.t. DPOs for regulating the PS channels?

We believe the following T&C from the Annexure II are relevant in this context:

Minor changes done in this context:

1) DPOs will show only those News and Current Affairs television channels which have been registered with Ministry of Information and Broadcasting. They will not produce or provide any other broadcast or non-broadcast channel having any element of News and Current Affairs.

2) If the contents are being sourced from content providers other than DPOs, then it will be the responsibility of DPOs to ensure that their agreements with such content

providers contain appropriate clauses to ensure prior compliance with the Programme and Advertisement Codes and other relevant Indian laws, civil and criminal, regarding content. ..”

3) Article 10 of the Schedule to the DTH license agreement states “..... the DTH facility shall not be used for other modes of communication, including voice, fax, data, communication, Internet etc. unless specific license for these value-added services has been obtained from the competent authority.....”

18. What should be the time limit that should be granted to DPOs for registration of the existing PS channels and bring them in conformity with the proposed regulatory framework once it is notified by MIB?

We believe that the DPOs should be mandated to apply for registration within 3 months of regulatory framework notification by MIB and another 3 months for conformity.

19. Stakeholders may also provide their comments on any other issue relevant to the present consultation including any changes required in the existing regulatory framework.

Please refer to the preface for a broader perspective