

TRAI's Questions:

Q. 5.2.1

Whether there is a need to fix tariff for DTH?

Q. 5.2.2

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

5.2.3

Whether tariff regulation for DTH at wholesale level should be in terms of laying down some relationship between the prices of channels/ bouquets for non-addressable platforms and the prices of such channels/ bouquets for DTH platform? If yes, then what should be the relationship between the prices of channels/bouquets for non-addressable platforms and the prices of such channels/ bouquets for DTH platform? The basis for prescribing the relationship may also be explained.

5.2.4

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 Bharti's. 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.

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?

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?

5.3.1

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

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?

Bharti's Response:

In order to promote digitalization in a price sensitive market like India, it is imperative that the cost of providing the service remains as low as possible through progressive regulatory policies so that the DTH operators are able to offer affordable packages / tariff for end customer.

In the above background, we request the Hon'ble Authority to favourably consider the following:-

Whether there is a need to regulate the wholesale tariff for DTH sector?

The need for the regulator to intervene for laying down tariff for whole-sale:

- a) To create a level playing field, between Cable Operator, a non-addressable platform, and DTH, complete addressable platform, where every subscriber is accounted for and recorded. Without the regulatory protection, the DTH platform will die an unnatural death, while promoting Government's avowed objective of Digitalization and with that the government's wish to promote digitalization will also die.
- b) Unequal bargaining power between DTH service provider and Broadcaster for obtaining content; Even the Authority had tough time with some of the Broadcasters to make them toe the line of the advisory laid down by the Authority.
- c) Few broadcaster controls majority of the channels, therefore, there is a near monopoly of content;
- d) Rampant under-declaration of sub base by un-addressable systems, consequently leading to revenue loss to the central and state governments, and offering these services in a predatory manner/fashion and making DTH wholly unviable.
- e) Regulatory intervention required to eliminate this inequity and bring equilibrium and create level playing field between these platforms.
- f) As of now, there is no tariff order for DTH platform, whereas, cable is having a tariff order. Only an advisory of the Authority is tentatively governing pricing between Broadcaster and DTH service provider, which is subject matter of challenge before the court.

Whether there is a need to prescribe retail tariff for DTH sector?

In a competitive market scenario, the regulatory intervention on tariff related issues are only required in certain circumstances. Even, the Hon'ble Authority also recognized this fact in one of its tariff regulation dated 31st August 2006, the Hon'ble Authority stated:-

.....wherever the Regulator considers that there is no enough competition in the market, regulation intervention is required to protect the interests of the subscribers.....Price regulation is justified when markets fail to produce competitive prices. When markets are competitive and are said to function smoothly, they will lead to "efficient" prices that maximize value to consumers. For this efficient ideal competitive situation to be realized, the market must meet a number of conditions. These conditions includes that the market must have several suppliers and consumers with none so large as to affect market. There should be free entry to and exist from the market. Where all these conditions are not present, the market will not generally produce optimal results.the introduction of price regulation in any market is one such intervention necessitated on account of lack of adequate competition in the markets.

We are of the view that the Indian DTH sector qualifies the criterion of a competitive sector as:-

- ✓ Internationally, the numbers of DTH operators are not more than 3-4 whereas in India, 7 operators are already providing their services including Government's owned DTH services. Further, additional players are likely to launch their services, which will further intensify competition in the market. Thus, the availability of adequate players are ensuring that the market is competitive

- ✓ The customer has the choice to choose and change his DTH platform at any point of time. Thus, the customer has the freedom to enter and exit in the DTH market.
- ✓ Each DTH operator is offering innovative packages to its customers as well as Value Added Services. The customer has adequate choice to choose his package as well as to change package. Thus, the customer has wide choices of packages.
- ✓ Internationally, the retail tariff is not regulated. Even, in India, the retail tariff for telecom services are under forbearance and the intense competition has ensured that the end subscriber is able to enjoy the benefit of lower tariff. We are sure that under the progressive regulatory framework, there is no reason to as why the same success story cannot be replicated by DTH operators.
- ✓ The Indian market is still largely dominated by the cable operator as more than 90% market share belongs to cable network. For DTH operators, the target customer base is generally those customers, who are already having the cable connection. The regulated retail tariff for cable network as well as for CAS market is acting as an indirect tariff for DTH.
- ✓ The existing regulatory provisions are ensuring the customer protection for DTH sector

Why there is a need for separate tariff order for DTH sector?

The linkage between 2 networks can only be made when they are identical from each other. However, the DTH network & cable network are completely distinct from each other and the costing of a DTH operator is very high as compared to traditional cable network.

Despite being a critical distribution network to spread the digitalization, the DTH sector does not have its own tariff order like Cable & CAS network. The prevailing wholesale regime is merely an outcome of the Hon'ble TDSAT order and subsequent TRAI's advise.

While fixing the wholesale tariff for DTH operators as 50% of NON-CAS rates; the Hon'ble TDSAT had clearly stated that this arrangement is only interim till price fixation is done by TRAI by reiterating that *"TRAI should come out with price fixation and regulation in this behalf as early as possible. Price regulation is a must for protecting consumer interest. Delay on the part of the TRAI in carrying out this job is prejudicial to the DTH operators while it suits the broadcasters"*.

Tariff for the distributors of TV signals have to be worked out on scientific method by taking into account cost of production of the content, revenue generated through advertisement and cost of distribution of TV signals. At present, there are different rates of TV channels for different platforms, for example, in the case of CAS a uniform rate of Rs. 2.25 is applicable for each pay channel irrespective of its genre. Whereas, in the case of non-CAS cable, bouquet and a-la-carte rates of the channels have been freezed by TRAI through a tariff order and for DTH tariffs are derived from these non-CAS rates, which is 50%.

Till TRAI carry out a detailed exercise on deciding the pricing mechanism for rates of TV channels for various distributors of TV signals, we are of the opinion that tariff order for DTH service should be linked to non-CAS cable TV rates provided a level playing field is ensured. It is an admitted fact that in the non-addressable system areas, the subscribers and the revenue is under reported, which is of the order of 80%.

By applying 50% formula for DTH, TDSAT as well as TRAI has derived to address the issue up to some extent. However, still there is huge mismatch due to 100% reporting by DTH operators and up to 20% reporting by non-addressable systems. Further, there is a need to factor into the license fee component which is being paid by DTH operators on the content which is not subjected to payment of license fee when carried on cable TV. In the case of CAS area, as per TRAI's tariff order, the

broadcasters are paid only 45% of the content cost. Internationally, the content cost for DTH operator ranges between 25-35%, whereas in India the content cost is as high as 60-70%.

In view of the above, the following is recommended:

- (a) Tariff regulation for DTH at wholesale should be in terms of laying down a relationship between the prices of channels/bouquets for non-addressable platforms and the prices of such channels / bouquets for DTH platforms.
- (b) Till TRAI arrives at a scientific formula on deciding the cost of content for various platforms, DTH tariffs at wholesale level may be derived from the existing non-CAS rates for channels / bouquets after taking into account under reporting in non-CAS areas, license fee paid by DTH operator on the same content when carried on DTH platform and international practices. We recommend that, tariff for DTH services should not be more than 25% of the non-CAS cable tariffs.

TRAI's Questions:

5.3.3

Whether DTH operators 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

Bharti's Response:

As per our understanding, the same cannot be replicated in the DTH segment as the STB is required for carrying every type of channels irrespective of whether it is FTA or pay channels. Thus, the same will not apply on the DTH sector.

TRAI's Questions:

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?

Bharti's Response:

We believe that it would be operationally nightmare to manage the provisioning of pay channels on a-la-carte basis as various activities are involved in attracting a single customer. Thus, the DTH operators would not be in a position to offer the channels the a-la-carte basis. It is important to note that after studying the taste of customers, packages are designed. There are various kinds of packages, namely, national, regional, movie package, sports package. Customer will only select if the required channel are present in a given package.

Thus, the existing arrangement should continue.

TRAI's Questions:

5.3.5

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

Bharti's Response:

Presently, the DTH operators are heavily subsidizing the set box cost and are offering set top boxes under various innovative schemes.

As per Quality of Service for DTH, DTH operators are required to offer Set Top Boxes on outright purchase, higher purchase and rental basis. Due to intense competition, the operators are offering very attractive rental schemes bundled with free subscription for certain period. Even one of the operators is providing free STB. Therefore, there is no justification for regulating or prescribing rental for STBs for DTH operators.

TRAI's Questions:

5.4.1

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

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?

Bharti's Response:

The issue of Carriage Fee has already been addressed by the Hon'ble Authority in its recent regulation on Interconnection for Broadcasting Sector. Thus, the existing arrangement should continue.

TRAI's Questions:

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?

Bharti's Response:

We are of the view that provision of these services by DTH operators or any other distributors of channels, should not be viewed as broadcast TV channel. On the contrary, these services should be viewed as Value Added Services, which comes with a licence to provide basic service.

In the past, the Hon'ble Authority has implemented various progressive regulatory policies, which has facilitated the entry of March of technology. If technology allows the DTH operators to provide these services as Value Added Service to enhance their views experience, the same should be promoted to spread the digitalization in the country. In the telecom industry, an access provider is allowed to provide numerous value added services like SMS, MMS, Voice Mail, GPRS etc. apart from basic voice call and even in the broadcasting sector, video & audio service has been allowed by IPTV service provider by creating a distinction between TV channels offered by broadcasters and these Value Added Services.

The provision of these services by the DTH operators is an internationally accepted practice. For instance, Pay per View is provided by the DTH operators in US, Australia, United Kingdom, Canada, New Zealand, Philippines, Taiwan etc.

In case, these services are construed as broadcast TV channel then whether:

- ✓ Going to Cinema hall where an individual decides to see the movie on payment basis will be a broadcast TV channel?
- ✓ The video / movies / audio, which are easily available on internet either free or on payment basis, will be a broadcast TV channel?
- ✓ Some airlines offer **AVOD** as in-flight entertainment to passengers through individually-controlled video screens embedded in seatbacks or armrests or offered via portable media players. Airline AVOD systems offer passengers the opportunity to select specific stored video or audio content and play it on demand including pause, fast forward, and rewind. Will this service would be construed as broadcasting TV channel?
- ✓ Presently, almost all the cable operators are offering movie on demand, video on demand in every nook and corner of the country apart from carrying the TV channels. Where the cable operators would be construed as broadcast TV channels?

We are of the view that these services cannot be construed as broadcast TV channel as the broadcasters has a different business case, who carries huge content whereas provision of these services by the DTH operators are merely an additional incentive to enhance customer satisfaction apart from carrying TV channels.

Moreover, these services are being provided by the DTH operators with a commercial arrangement with the content owner and under no circumstances, it affects the rights of any party.

In light of the above, we earnestly request the Hon'ble Authority to facilitate the march of technology and allow the DTH operators to offer these services as Value Added Services.

TRAI's Questions:

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), Unlinking and Down linking guidelines be dealt with so that availability of new content to consumer does not suffer for want of supporting regulatory provisions?

Bharti's Response:

As stated above, the provision of these services by the DTH operators should be considered as Value Added Services and this should be construed to be part of DTH Licence.

TRAI's Questions:

c) What should be the regulatory approach in order to introduce these services or channels while keeping the subscriber interest and Bharti's alterations in DTH service operations and business model?

Bharti's Response:

As stated above, the provision of these services by the DTH operators should be construed as another delivery mechanism to enhance subscriber interest. As these services would be provided through the commercial arrangement with the content owner, it will not affect the business interest of any other party.

TRAI's Questions:

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- Unlinking/ Down linking, Programme Code, and Advertisement Code be prevented?

Bharti's Response:

As per its licence agreement, the DTH operator is already required to comply with the programming & advertisement code. Thus, no change would be required in the licence agreement. As carrying these services by the DTH platform would be are only Value Added Services, it should not be construed as broadcast TV channel and thus, no change in the uplinking / downlinking guidelines would be required.

TRAI's Questions:

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.?

Bharti's Response:

The DTH operators are the reputed players, who have invested thousand of crores to provide the DTH service and are subject to various licensing / regulatory provisions. Thus, the DTH operators will not take any step, which affects their operations or credibility before the market / licensor.

In light of the above, it would be appropriate if the DTH operators are allowed to offer the VAS services on automatic basis with a provision to discontinue such services by the Government under certain circumstances.

TRAI's Questions:

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

Bharti's Response:

As stated above, no change would be required in the DTH Licence conditions and uplink / downlink guidelines.

TRAI's Questions:

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?

Bharti's Response:

In order to promote its product / service, the companies use various means such as advertisement on TV channels, road-side shows, newspapers, internet etc. and thus, advertisement on TV channels is only one of the delivery mechanism. In case, the broadcasters are showing the advertisement on TV channels, it should not prohibit any existing and / or potential delivery mechanism to run the advertisement on its platform. Thus, if the DTH operators run the advertisement on its platform independently, they should not be construed as broadcasters.

Moreover, carrying the advertisement by the DTH operators will not directly affecting the broadcasters and in both the cases, the target population would be different. For instance, cable operators, who have limited target market in a village / district etc. are running local advertisement, which is promoting the business of the local businessmen. Similarly, the advertisement by the DTH operators would be limited to their subscribers only whereas advertisement space given by broadcasters is applicable on all distribution networks, who would be carrying that particular channel. Thus, broadcasters and distribution of channels should not be construed as competitor for the same market.

The existing licence conditions mandate the DTH operator to comply with the programming / advertisement code and in the case of running the advertisement on its platform, the DTH platform would comply all the applicable laws.

TRAI's Questions:

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?

Bharti's Response:

We are of the view that the clear feed is a welcome initiative, which should be considered for Indian market. However, the must provide clause should exists between broadcasters and DTH platform.

TRAI's Questions:

6.2.1

a) Whether carriage of radio channels by a DTH operator be permitted? Should such permission cover all kind of radio channels to be carried?

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?

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?

Bharti's Response:

March of technology cannot be stalled or stopped. Technology is a dynamic phenomenon and it cannot be cribbed, cabined and confined by an archaic regulation. The regulations have to facilitate the provision of Value Added Service within the existing licensing policy with aid of new and advanced technology. License cannot become an impediment in provision of new or value added service to the Customer, unless the adopted new technology is in contravention of public policy or loss of revenue to the public exchequer. Regulations must become a handmaid for provision of new services to the Customer.

Presently, most of the DTH operators including Government's owned DTH service is providing radio channels on its platform. DTH Platform is capable of delivering TV and radio channels to the end customer without any extra devise or equipment to the customer. DTH platform ought not to be

reduced to mere distribution of TV channels, when the platform is competent to provide other value added service. This should even be extended to IPTV as well.

Moreover, such radio channels are freely available on internet, without limiting itself to any geographical boundaries. Internet radio cannot be compared to the traditional radio carriage delivery platform like radio handsets and similarly, carriage of radio channels by DTH operators would not be directly competing with radio handsets as this value added service by DTH operators would be available in TV, which is kept at a fixed location.

In light of the above, we request the Hon'ble Authority to allow the DTH operators to carry the radio channels.