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Ref: RP/FY 21-22/075/076
Dated: November 22, 2021

To,

Shri Anil Kumar Bharadwaj
Advisor(B&CS)-II
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
Old Minto Road,
New Delhi-110002

Sub: Response to TRAI Consultation Paper on 'Market Structure/Competition in cable TV services'.
Ref: TRAI's captioned Consultation Paper dated 25.10.2021.

Dear Sir,

In reference to the captioned Consultation Paper, we are pleased to enclose our response for your perusal.
We hope that our submission will merit your kind consideration.

Thanking You

Yours Sincerely,

For Bharti Telemedia Limited

A handwritten signature in blue ink, appearing to read 'Rahul Vatts', is written over a white background.

Rahul Vatts

Chief Regulatory Officer

Encl: a.a.

Copy to:

Principal Advisor(B&CS), TRAI.

Preamble

The digital technologies are evolving at a breakneck speed leading to fast disappearance of lines between broadcasting, cable TV, telecom networks and OTTs. These platforms are increasingly complementing and also competing with each other - with growing adoption of high-speed broadband networks and consumers demanding the same content experience (OTT + Linear) across all screens – smartphone, TV and PC – and looking for bundled services (both data/broadband and cable/DTH services under one offer) to fulfil their needs.

Several different technologies are delivering same customer experience i.e. From terrestrial broadcasting and analogue cable to DTH services and now online platforms, the carriage platform of broadcasting content has come a long way with wireless and traditional broadcasting platforms. Collision of all these carriage platforms offering similar content/linear channels will only deepen further.

Content consumption is similar across all devices due to availability of high-speed broadband services, Broadband capable Cable TV, coupled with the launch of various OTT platforms. It has nullified the previous dependency on specific devices for watching specific content. Today, linear programming, live broadcasting and global and local OTT content are being consumed across screens (e.g., smartphone, PC, Smart TVs).

The broadcasters have created their own apps/websites to offer their own linear content over that of the Telcos networks, and/or through other mediums. Further, although several different technologies are providing exactly the same customer experience, there is a different price for the content being provided under the Ministry (via the TV industry) as mandated by TRAI and content developed thru an app/OTT. This is leading to people switching and using one technology over another. This competition aspect has not been factored into the regulations by TRAI yet.

Thus, the changes on the technology front and the dynamics played out in the market present a strong case for convergence where the thin line between broadcasting and telecom has disappeared completely and both verticals complement each other.

From the above, it can be said that while digital convergence has benefited consumers, it also poses regulatory challenges. For example, the complexity of digital ecosystem markets increases regulatory uncertainty, and the rapid pace of change makes regulation become quickly obsolete. If regulatory policies and institutions fail to adapt to changing markets, markets can become distorted in ways that harm competition, slow innovation, and ultimately deprive consumers of the benefits of technological progress.

In this regard, it is important to point out that **NDCP 2018 has recognized the importance of convergence in the telecom and broadcasting services and has enabled the infrastructure convergence of IT, telecom and broadcasting, establishing a unified policy framework for**

CP on "Market Structure/Competition in cable TV services"

broadcast and broadband technologies and restructuring legal, licensing and regulatory frameworks so as to reap the benefits of convergence.

From the point of view of communications infrastructure and related services, convergence makes the traditional separation of regulatory functions between these sectors increasingly inappropriate and calls for a coherent regulatory regime. The regulatory framework should enable the service providers to meet customer expectations rather than acting as a hindrance that doesn't allow the country to benefit from its technological developments.

Perspective from DTH operations:

The DTH operators have immensely contributed to the Indian broadcasting sector's growth and the Government vision of creating a digital infrastructure to distribute the TV channels. Due to the DTH service providers, citizens residing in difficult terrains and far-flung areas can view various television channels and keep themselves abreast of multiple developments.

With that context in mind we would like to highlight that it is pertinent to ensure level playing field among the players in the Cable TV /DTH markets, specially when it comes to ensuring regulatory parity.

The TRAI itself has highlighted that as of May and June 21, the subscriber base of major MSOs and DTH operators are 4.77Crore and 6.98Crore respectively, which translates into 41% and 59% market share of Cable TV subscriber base.

Considering that both set of players compete for same household and same service, and in a growing digital platform economy where OTTs are also competing for same customer and wallet, it is important for the authority to ensure a level playing field. In specific, we highlight the following challenges:

- Cable TV currently carry lot of local content or some channels in some areas which are not approved channels from MIB in many regions. This is leading to other platforms like DTH not being able to compete while for that particular channel leading to a monopolistic situation on cable TV.
- In some cases, some of the channels are being offered to DTH operators as Pay Channels, while the same are made available as free to air (FTA) on DD free Dish. This is a discriminatory practice that should be stopped immediately since it is disturbing level playing field among distributors, and impacting subscribers.
- The Must Provide principle is not being applied universally across all platforms. While the country has taken an enlightened position on "Must Provide" for linear TV, this gain applies only to cable and DTH. It excludes all content being delivered through an app. Since the underlying content delivered through all platforms including App/OTT remains the same, the principle must be extended to App/OTT also. For example, the same content should be available on all platforms.

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- While the DTH players are obligated to follow regulations and rules like QoS, maintaining a site, ensuring CAF, Consumer forum etc., the same are not being followed by cable TV players. We believe that this anomaly should be removed and principle of 'same service – same rule' should be followed.
- For DTH players, now content and the margin is fully regulated and thus DTH platforms pays 8% License Fee, the other distribution platforms like Cable TV are not subjected to such levies. It is not out of place to state that today, in broadcasting sector's entire value chain, DTH operators are the only ones subjected to license fees. Thus, the Regulatory approach towards DTH operators' vis-à-vis MSO-cable/HITS/IPTV has created a discriminatory environment making it challenging for DTH operators to survive in the market.
- There are plethora of OTT platforms offering broadcasting services in India without being subject to any regulatory provision. This creates anti-competitive environment between the regulated and unregulated platforms and is severely putting the Digital Platform operators (DPOs) like DTH/HITS/IPTV in a disadvantageous position. Since the TRAI tariff regulations are not applicable on the OTT platforms for same linear content, broadcasters offer arbitrary pricing norms for OTT platforms. This results in unequal bargaining power for DPOs vis some vis the OTT platforms leaving DPOs in disarray.
- The extant downlinking policy for TV channels restricts the broadcasters to provide services directly to the customers or through any medium other than registered DPOs e.g. DTH, MSO/Cable operators, IPTV and HITS. However currently many broadcasters are providing TV channels directly to the OTT platforms, thus, violating the downlinking policy.

In view of the above, we recommend that the Authority:

- Should apply principle of same service same rule and recommend same regulatory framework for cable and DTH players.
- Bring the OTT platforms within the purview of the existing TRAI regulations and tariff orders.
- Ensure that Broadcasters must follow the 'must provide' principle for all types of distribution platforms.
- Should ensure that Broadcasters follow the downlinking guidelines and refrain from distributing the channels directly to consumers through their owned (directly/indirectly) online/OTT platforms.
- Should notify that all such channels that are given FTA on some platforms and Paid on some platforms are declared as FTA channels for all distributions platforms.
- Should introduce a non-discriminatory and a balancing licensee fee regime.
- Should introduce a provision in the Tariff Order to provide for a periodic increment mechanism in NCF to a suitable index matrix which will help DPOs to recover the increased operational costs.