The Digital Accelerate

New Regulatory Framework: The way forward

Background

Entry of new players in the broadcasting arena combined with new television channels launched by the established broadcasters, led to an increase in the number of television channels available for viewing over the existing non-addressable analogue cable network. There was a need for a system that could be customised as per the individual's need and thereby back in the years 2011 and 2012, the government made the requisite legislative amendments, which laid down the road map for implementation of digitisation of cable television services in the country in a phased manner.

In March 2017, Telecom Regulatory Authority of India (TRAI) in its endeavour to ensure transparency, non-discrimination, consumer protection, level playing field and to create an environment for orderly growth of the sector, released an update to the existing regulatory framework comprising:

1 The Telecommunication (Broadcasting and Cable) Services (Eight) (Addressable Systems) Tariff Order, 2017 (the 'Tariff Order 2017');
2 The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (the 'Interconnection Regulation 2017'); and
3 The Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017 (the 'QoS Regulation 2017'),

The above three are collectively referred to as Regulatory Framework 2017.

However, the Regulatory Framework 2017 was challenged in various courts and was held in abeyance till disposal of the related litigations.

The petitions challenging the Regulatory Framework 2017 were heard and the courts upheld their validity. These came into effect from 3 July 2018. The timelines prescribed for compliance with the Regulatory Framework 2017 would thereby commence from its effective date.

Snapshot of key regulations

Broadcasters

The Tariff Order 2017

- Broadcasters to offer all of their channels at least on a-la-carte basis, however offering bouquet of channels, in addition to a-la-carte, is allowed
- Broadcasters to declare maximum retail price (MRP) of all the pay channels offered and the nature of channels, whether free-to-air (FTA) or pay, within 60 days
- There is no restriction on pricing of a pay channel sold individually, however a bouquet (whether offered by broadcaster or distributor) cannot have a pay channel whose MRP exceeds INR 19 per month on a-la-carte basis
- MRP of a channel shall be uniform across distribution platforms i.e. DTH operator, multi-system operator, IPTV operator or HITS operator
- Broadcasters are free to offer bouquet of pay channels, but such bouquet shall not contain any free-to-air channel
- Discount offered by broadcasters on MRP of pay channels in a bouquet has been restricted to 15% of the MRPs of all the pay channels that are part of that bouquet
- Bouquet offered by broadcasters (and distributors) cannot have standard definition (SD) and high definition (HD) variant of the same channel
- Up to two times in a calendar year, broadcasters are permitted to offer promotional schemes on MRP per month on its a-la-carte pay channel, subject to certain restrictions

The Interconnection Regulation 2017

- Broadcasters need to publish reference interconnect offer (RIO), in compliance with these regulations, for providing feed of the offered channels, within 60 days
- Interconnect agreements to be signed within 150 days
- On receipt of a written request or signed RIO from a distributor of television channels, a broadcaster shall either provide signals of the requested television channel to distributor or communicate the reason for rejection in writing
- Broadcasters cannot impose any pre-condition, in terms of channel placement, for providing signals. Such pre-condition shall be considered as unreasonable
- Broadcasters cannot demand from a distributor either placement of their channel in any particular bouquet or minimum subscriber base

Distributors

The Tariff Order 2017

- Distributors need to declare the network capacity fee (NCF) per month and distribution retail prices (DRP) within 180 days
- DRP needs to be declared for each pay channel and bouquet of pay channels being made available
- DRP of bouquet of pay channels shall not be less than 85% of the sum of DRP of the all the pay channels or any bouquet of pay channels, that are part of the said bouquet
- DRP (of a-la-carte channel or bouquet) declared shall not exceed corresponding MRP declared by the broadcaster
- Distributors may charge consumers a maximum NCF of INR 130 per month for first 100 SD channels
- Distributors may charge a maximum of INR 20 per month for a slab of additional 25 SD channels, subscribed beyond first 100 SD channels
- An HD channel shall be treated as equal to two SD channels, for the purpose of calculating number of channels for determining NCF
- Distributors need to compulsorily offer all available channels on an a-la-carte basis

The QoS Regulation 2017

- Distributors need to setup a subscriber management system and assign unique ID to each consumer
- Distributors need to put in place a customer care centre and customer care channel, website and publish a manual of practice within 120 days
- Distributors need to mandatorily display all available channels and their MRP on their platform in electronic programme guide

The Interconnection Regulation 2017

- Distributors need to publish reference interconnect offer (RIO), in compliance with these regulations, for providing access to the distribution networks, within 60 days
- Interconnection agreements to be signed within 150 days
- Broadcasters need to declare minimum 20% of the MRP of pay channels or bouquet thereof as distribution fee
- Further broadcasters need to pay carriage fee to the distributors, subject to certain capping and percentage of channel subscription
- No distributor shall enter into an arrangement with any broadcaster or local cable operator, that prevents others from obtaining access to his network or from obtaining signals
- A distributor may discontinue carrying a particular channel if its monthly subscription percentage is less than five percent of monthly average active subscriber base in each of the immediately preceding six consecutive months
- Distributor cannot impose any pre-condition on the broadcaster, in terms of minimum number of channels or tenure, for providing access to distribution network. Such pre-condition shall be considered as unreasonable.
- On receipt of a written request or signed RIO, a distributor shall either provide signals of the requested television channel to local cable operators or communicate the reason for rejection in writing
- Distributors cannot demand from local cable operators a minimum subscriber base

Consumers

The Tariff Order 2017

- Within the capacity of first 100 SD channels (excluding mandatory channels as notified), consumers are free to choose FTA or pay channels or any channel bouquet
- If a consumer opts for pay channels or bouquet of pay channels within the distribution network capacity subscribed, he shall be liable to pay DRP for such channels and bouquets in addition to NCF
- Only NCF to be paid for subscribing to FTA channels or bouquet of FTA channels
- Consumers are free to pick and choose the a-la-carte channels

The Interconnection Regulation 2017

- Distributors shall place channels in the electronic programme guide, in a way that the television channels of same genre and same language, are placed together and one channel shall appear at one place only

The QoS Regulation 2017

- Consumers can get services temporarily suspended
- Consumer's consent needs to be recorded for any changes done to the subscribed channels
- Consumer's requests for activation/deactivation of a channel or bouquet shall be processed within a maximum of 72 hours
- Procedure for intimation of discontinuance or change in nature of channel has been prescribed
- In case of continuous disruption in the television channels for a period exceeding seventy-two hours, the subscription charges shall be reduced proportionately

Our view*

The Regulatory Framework 2017 will impact the entire delivery chain from broadcasters to consumers. It further strengthens the foundation for providing digitised television services by enhancing their affordability and brings more transparency, in order to ensure its continued growth.

Broadcasters

Broadcasters will need to overhaul their channel catalogues to achieve the right mix, in terms of channel categorisation, channel MRPs etc. Bouquets offered may need to be re-bundled to comply with the new framework and also to achieve an appropriate mix of revenues from sale of content and advertising revenues.

Internal processes and systems may need to be re-calibrated to cater to the enhanced product offerings in terms of à-la-carte channels and bouquets. Revenue assurance mechanism may need to be tailored to align with such new products/services. Arrangements with distributors for distribution fee, carriage, content, promotional schemes, etc. may require one to carefully examine the recognition, measurement and presentation in the financial statements, in light of the available accounting guidance under Ind AS or earlier GAAP, as may be applicable.

Distributors

As in case of broadcasters, distributors will also need to align their channel bouquets/packages on offer, to comply with the new framework and get the right mix to attract/retain the consumers. Additionally, channel DRPs will play an important role in determining business' profitability. Also, they will need to subscribe to the appropriate channels/bouquets being offered by broadcasters, which may aim at growth of the business and keep content costs under check.

As the pay channel costs may become a pass through for distributors, the underlying arrangements may need to be re-assessed to determine if they are acting as a principal or an agent. New revenue sharing arrangements with cable operators may also require a careful assessment for their accounting implications. Accounting treatment of relatively fixed NCF versus a relatively variable DRP may need to be evaluated separately. The revenue assurance mechanism may need to be tailored to align with the new products/services/arrangements.

Consumers

Consumers will have more options and thereby can more precisely choose their subscription package. Also the facilities like temporary suspension of services, consumer's prior consent for making changes in subscribed packages, time bound addressal of requests, customer care centre and customer care channel etc., will positively add to consumer experience.

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