

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 18 March, 2016

Broadcasting Petition No.360 of 2013

Neo Sports Broadcast Pvt. Ltd., Haryana ... Petitioner

Versus

M/s. Tata Sky Ltd., Mumbai ...Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON
HON'BLE DR. KULDIP SINGH, MEMBER
HON'BLE MR.B.B.SRIVASTAVA, MEMBER

For Petitioner : Mr. Gaurav Panchnanda, Sr.Advocate
Mr. Vikram Mehta, Advocate
Mr. Varu Tiwari, Advocate
Ms. Shruti Gupta, Advocate
Mr. Gaurav Choudhary, Advocate

For Respondent : Mr. Salman Khurshid, Sr.Advocate
Mr. Gopal Jain, Sr.Advocate
Ms. Shally Bhasin, Advocate
Mr. Chaitanya Safaya, Advocate
Mr. Sadapurna Mukherjee, Advocate
Ms. Shruti Garg, Advocate

ORDER

By Aftab Alam, Chairperson – This is an unusual case in that a broadcaster, Neo Sports Broadcast Private Limited (hereinafter Neo Sports) has come to the Tribunal seeking an interconnect agreement, *on its own Reference Interconnect Offer (RIO) terms*, with a Direct to Home (DTH) operator, Tata Sky Limited (hereinafter Tata Sky).

According to Neo Sports, it had been in inter-connect relationship with Tata Sky and the latter had been carrying on its platform Neo sports' two channels, namely (i) Neo Sports and (ii) Neo Prime (formerly, Neo Cricket) since 2006-07. The last agreement between the parties was executed on 17 September 2010. It was for a period of three years, commencing from 1 October 2010 and coming to end on 30 September 2013. Under clause V of the agreement Tata Sky was obliged to pay to Neo Sports the rather steep subscription fee of rupees one hundred and twenty four crores (Rs.124 cr. -- Rs.109 cr. for channels being distributed in the Standard Definition mode and Rs.15 cr. for channels being distributed in the High Definition mode). Sub-clause (b) of clause V (1) gave the year-wise break-up for payment of the subscription fees as under:

b. DTH Operator shall pay the Subscription fee for the channels (Rs. 124 Crores for the term). Amounts agreed to be phased as below:

- a. *Year One: Rs.39.8 crores (Rs.35 Cr. Subscription fee towards SD feed and Rs.4.8 crores as subscription fee towards HD Feed).*
- b. *Year Two: Rs. 41 crores (Rs.36 Cr. Subscription fee towards SD feed and Rs.5 crores as subscription fee towards HD Feed).*
- c. *Year Three: Rs.43.20 crores (Rs.38 Cr. Subscription fee towards SD feed and Rs.5.20 crores as subscription fee towards HD Feed).*

Sub-clause (c) stated that payments would be made in advance or by 15th of every month (in equal monthly installments), without any deduction or set-off; sub-clause (d) stipulated that payment of subscription fee would be made by Tata Sky irrespective of its subscriber base and irrespective of the fact whether or not it was able to collect the payments from its subscribers; sub-clause (e) provided that the amount of subscription fee payable by Tata Sky was exclusive of any taxes and duties, any bank transfer or similar fees or charges.

It is to be noted that at the time the interconnect agreement was executed the Neo Sports enjoyed exclusive BCCI rights for live broadcast of international cricket matches which gave it the power to command very high subscription fees in the Indian broadcasting market. It lost the right to the cricket broadcasts in December 2011 and it is a measure of popularity of the game in the country that thereafter it was unable to hold onto the amount of subscription fees stipulated in the agreement which was still subsisting. The two sides executed an Addendum

dated 16 May 2012 to the Distribution Agreement dated 17 September 2010. By the addendum, the subscription fee was substantially reduced and, for the period from April 2012 to 30 September 2013, it was fixed at the rate of Rs.1 crore per month plus applicable service tax.

The agreement came to end on 30 September 2013.

For renewal of the agreement the parties carried on negotiations. But since Neo Sports did not have the marketing power as it had at the time of execution of the earlier agreement, Tata Sky was no longer willing to meet its demands. At one stage in course of the negotiations, Tata sky is said to have offered the subscription fee at the rate of Rs.50 lakhs per month which was not acceptable to Neo sports. Finally, the parties were unable to come to any mutually acceptable negotiated terms and then the petitioner filed this petition for a direction to the respondent to enter into an interconnect agreement with it on its RIO terms.

We have heard Mr. Gaurav Panchnanda at some length.

The claim of the petitioner and the reliefs sought on its behalf are fundamentally flawed and misconceived. It is overlooked that under the Regulations framed by the Telecom Regulatory Authority of India (TRAI) the scheme of interconnection is based on the principle of “must provide on non-discriminatory terms”. This means that if anyone in the distribution chain in the

broadcasting sector asks the one above him for supply of signals, the latter must provide signals of TV channels to the seeker on the same terms and conditions on which it provides to other distributors, comparable to the seeker. The interconnection Regulations in this country do not recognise the principle of “must carry” and a distributor of channels is not obliged in law to carry the TV signals of any broadcaster or a distributor above it in the distribution chain.

It is common knowledge that even broadcasters of free-to-air channels have to pay heavy carriage/placement fees to distributors of channels for carrying their TV signals on the distributor’s networks. And the demand of carriage/placement fee by a distributor from a broadcaster is not recognized as illegal.

Mr. Panchnanda, in support of the petitioner’s case relied upon clauses 13.2A.6(1) and 13.2A.8 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004. The two provisions relied upon by Mr. Panchnanda are as under:

“13. 2A.6 (1) The Reference Interconnect Offer of a broadcaster referred to in clause 13.2A.1 or 13.2A.3 or 13.2A.5, as the case may be, and intimated to the direct to home operators and published by the broadcaster on its website shall be the basis for all interconnection agreements to be entered into between the broadcaster and direct to home operators:

Provided that the broadcaster may enter, on non-discriminatory basis, into agreements with different direct to home operators modifying the Reference Interconnect Offer on such terms and conditions as may be agreed upon between them:

Provided further that in case a broadcaster had entered, before the commencement of 44 [the Telecommunication (Broadcasting and Cable Services) Interconnection (Sixth Amendment) Regulation, 2010 (4 of 2010)], into an agreement with any direct to home operator and publishes, subsequently, its Reference Interconnect Offer (including its modifications) under said regulations, such broadcaster shall, after publication of the said offer, give an option to such direct to home operator to either enter into an agreement in accordance with these regulations or continue with the agreement entered before such commencement till its validity.

13.2A.8 In case the broadcaster and the direct to home operator fail to enter into an interconnection agreement, then both of them may jointly, without prejudice to the provisions of Section 14A of the Act, at any time, request the Authority to facilitate in the process for entering into an interconnection agreement.”

The submission, in our considered view, is quite misconceived. The two provisions are part of the broadcaster's obligations to publish Reference Interconnect Offers for direct-to-home service and the provisions relied upon by the learned counsel secure the interests of the direct-to-home distributor rather than the broadcaster.

As noted above, the interconnection arrangements are based on the principle of “must provide”. The provisions relied upon by Mr. Pachnanda simply mean that the broadcaster's RIO would provide the basis for the two sides to enter into a negotiated agreement within the broad framework of the RIO. It does not give the broadcaster any right to insist that the distributor (DTH operator) must carry its channels on its RIO terms.

In light of the discussions made above, we find no substance or merit in this petition. It is accordingly dismissed with costs of Rs.25,000/- payable to the TDSAT Employees Welfare Society within four weeks from today.



(Aftab Alam)
Chairperson



.....
(Kuldip Singh)
Member



.....
(B.B. Srivastava)
Member

sks