

R B Sahajpal
as individual
Counter Comments
on
CP¹PR^{2,3,4}

Introduction:

1. It may be worthwhile first to delineate the:

(i) Objective and

(ii) Scope of the CP⁵ 'FIRST'.

2. The objective is quite explicit in the subject of the CP, however, the scope is implicit in the "Summary of Issues for Consultation" of the CP⁶.

(a) Regarding CP⁷ **inter-alia** the following three comments are pertinent:

(i) "the CP⁸ explores convergence beyond telecom and broadcasting and looks into convergence with the IT sector as well. -----In doing so, the CP⁹ exceeds the scope of the DoT reference." page-4 **EsyaCentre**¹⁰.

(x) Going beyond DoT reference is quite in order and is within the powers of TRAI as present case is about **Recommendations which can be in response to a 'reference' or 'suo motu' (section 11(a) TRAI ACT (24 of 1997))**¹¹.

(ii) 'The Consultation Paper ('CP'¹²)-----is a timely acknowledgement of already established and rapidly evolving convergence between telecommunication, broadcasting, and other service'. page-2/10 **RJIO**¹³.

(iii) Telecom Regulatory Authority of India's consultation paper focuses on enabling convergence of carriage of broadcasting and telecommunication services. **MEDIA NAMA**¹⁴

(b) However neither the present level of **CONVERGENCE** is provided in the CP¹⁵ nor whether the present state of **NETWORK** will be able to evolve to keep pace with the pace of CONVERGENCE of various types enumerated/not enumerated in the CP¹⁶ as a result of sectoral reforms or otherwise.

3. It is worth noting that STB of DTH of TATA PLAY is not compatible with Dish TV regarding the remarks 'an Inmarsat based satellite phone doesn't work with Iridium network and vice versa' page 23/153 of CP¹⁷.

4. TRAI via CP¹⁸ is seeking comments regarding either keeping **status quo** or amendments or new **LEGAL FRAMEWORK** covering Allocation of Business Rules, Acts, Regulations,

Guidelines, Registrations, Authorisations, Licensing, Spectrum Management, really a very tall order.

“The mere possibility of offering the telecommunications using a broadcast infrastructure or vice versa cannot be the cause and reason to converge the ministries and laws”¹⁹

(i) The process flow for achieving the desired objective for each item is not only different but unique.

(a) For example **Allocation of Business Rules 1961** as amended up to 6th Feb, 2019²⁰:

(a) Are Signed by the President

(b) Business Allocated to Cabinet Secretariat as per Schedule I

5. Level Playing Field:

(a) “TRAI’s recent consultation on regulating “Converged Digital Technologies and Services”, which essentially proposes to have form of “*same service same rule*” is one such instance”²¹

(b) ‘In policy debates, we often hear a plea for a level playing field’. This is the opening sentence of Introduction of a paper **Equal Rules or Equal Opportunities? Demystifying Level Playing Field** written in **October 2003**. There after a few examples are discussed concerning ‘Level Playing Field’ and continues that “**The examples given show the relevance of level playing field issues for policymaking**”.²²

(c) “4. A level playing field – but which field & what level?” is chapter w.r.t NGN in²³.
(June-2016)

“Telecommunications and Broadcasting: Convergence or Collision?”²⁴

(d) It is interesting to know that “The Telecom Regulatory Authority of India (TRAI) was, thus, established with effect from 20th February 1997 by an Act of Parliament, called the Telecom Regulatory Authority of India Act, 1997” and “One of the main objectives of TRAI is to provide a fair and transparent policy environment which promotes a level playing field and facilitates fair competition.”²⁵

(e) This phrase:

(i) Appeared ‘2’ times in CP²⁶ dated 15-07-1999

(ii) Appearing ‘3’ times in the CP²⁷ dated 30-01-2023 under consideration.

(iii) Appearing in comments received by TRAI from various stake holders. For example:

(x) ‘1’ time in GPTL²⁸

(y)'6' times in EN(I)L²⁹ level/non level field/market

(z)'6' times in Vi³⁰

(xx)'1' time page-2 TataPlay³¹

(yy) And may be many more times in various documents handled by TRAI established on 20th1997 during its journey of more than 26+ years till date.

(f)Para “2.64 Further, DoT has made a reference to TRAI regarding, convergence of carriage of broadcasting services and telecommunication services which is already under active consideration. Therefore, the Authority, after due consideration will deal with the issue of level playing field separately”³².

(g) “1. Executive summary” of³³ is quite relevant to ‘The "free rider" fallacy’, ‘The level "playing field" fallacy’, ‘The "same service same rules" fallacy’. ‘Based on the technological and market reality,’ and suggests ‘a principled way forward’.

6.”this consultation was to await the outcome of three major legislations namely the Telecommunication Bill³⁴, the Digital Personal Data Protection Bill³⁵ and recently announced Digital India Act (DIA)^{36//37}.

Issues for Consultation:

Q1. Whether the present laws are adequate to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, please explain how?

OR

Whether the existing laws need to be amended to bring in synergies amongst different acts to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, please explain with reasons and what amendments are required?

OR

Whether there is a need for having a comprehensive/converged legal framework (separate Comprehensive Code) to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, provide details of the suggested comprehensive code.

Q2. Whether the present regime of separate licenses and distinct administrative establishments under different ministries for processing and taking decisions on licensing issues, are able to adequately handle convergence of carriage of broadcasting services and telecommunication services?

If yes,

please explain how?

If no,

What should be the suggested alternative licensing and administrative framework/architecture/establishment that facilitates the orderly growth of telecom and broadcasting sectors while handling challenges being posed by convergence? Please provide details.

Q3. How various institutional establishment dealing with –

(a) Standardization, testing and certification.

(b) Training and Skilling.

(c) Research & Development; and

(d) Promotion of industries under different ministries can be synergized effectively to serve in the converged era. Please provide institution wise details along with justification.

Q4. What steps are required to be taken for establishing a unified policy framework and spectrum management regime for the carriage of broadcasting services and telecommunication services? Kindly provide details with justification.

Ans. Q1.-Q4. No specific answer to **Q1.** to **Q4.** Kindly refer to **Ans.5.** below please.

Q5. Beyond restructuring of legal, licensing, and regulatory frameworks of carriage of broadcasting services and telecommunication services, whether other issues also need to be addressed for reaping the benefits of convergence holistically?

What other issues would need addressing?

Please provide full details with suggested changes, if any.

Ans5. The issues need addressing submitted for kind consideration are:

(i) In view of paras 5.,5(a) to '5'(g) above the issue of 'Level Playing Field' may please be dealt with immediately. TRAI is already **late** by more than '26+' years for considering this issue.

(ii) The outcome of '3' legislations mentioned in para '6' above may be awaited.

Before proceeding further with:

(a) The present CP³⁸.

(b) The holding of proposed OHD³⁹.

(iii) Both Ans.5.(i),5(ii)(a)(b) may please be deferred.

References:

1. https://traigov.in/sites/default/files/CP_30012023.pdf

2. https://traigov.in/sites/default/files/PR_No.06of2023.pdf

3. https://traf.gov.in/sites/default/files/PR_No.21of2023.pdf
4. https://traf.gov.in/sites/default/files/PR_No.28of2023.pdf
5. supra '1'.
6. *ibid.*
7. *ibid.*
8. *ibid.*
9. *ibid.*
10. https://traf.gov.in/sites/default/files/Esya_Centre_05042023.pdf
11. https://traf.gov.in/sites/default/files/The_TRAI_Act_1997.pdf
12. supra '1'.
13. https://traf.gov.in/sites/default/files/RJIL_05042023.pdf
14. <https://www.medianama.com/2023/02/223-summary-telecom-regulator-push-regulatory-convergence/>
15. supra '1'.
16. *ibid.*
17. *ibid.*
18. *ibid.*
19. <https://news.abplive.com/blog/traf-regulating-converged-digital-technologies-and-services-a-case-of-mixing-apples-with-oranges-1588500>
20. https://cabsec.gov.in/writereaddata/allocationbusinessrule/completeaobrules/english/1_Upload_3540.pdf
21. supra '19'.
22. https://www.researchgate.net/publication/4833784_Equal_rules_or_equal_opportunities_De_mystifying_level_playing_field
23. <https://ccianet.org/wp-content/uploads/2016/06/Next-Gen-Comm-Level-Playing-Field.pdf>
24. OECD (1992-06-01), "Telecommunications and Broadcasting: Convergence or Collision? No. 29", OECD Digital Economy Papers, No. 5, OECD Publishing, Paris. <http://dx.doi.org/10.1787/237416285388>
25. <https://traf.gov.in/about-us/history>
26. <https://traf.gov.in/sites/default/files/consulpre.pdf>

