

CHAPTER-6: IMPACT OF DIGITALISATION ON TAX COLLECTIONS

6.1 Entertainment Tax regimes in various states:

Entertainment Tax is a State subject and Central Government has no role in the levy of Entertainment Tax by the State Governments in the Broadcasting sector. There is no uniformity on the applicable rates and there are wide variations. Different methods are adopted by different States for levying Entertainment tax which include²⁵:

(i) Zero Tax (Chandigarh, Dadra & Nagar Haveli, Haryana, HP and Tamil Nadu)

(ii) advalorem basis – varying from 5% to 25%

(Orissa: 5% of gross receipt, UP:25% of gross receipt, UK: 20% of revenue, WB: 5% of gross receipts, Puducherry: 10% of monthly subscription)

(iii) per connection basis- varying from Rs 2 to Rs 50 per connection per month

(AP: Rs 2-5, Assam: Rs 10-50, Bihar: Rs 15, Chattisgarh: Rs 10-20, Goa: Rs 10-15, Gujarat: Rs 6, Jharkhand: Rs 30-50, Karnataka: Rs 15, MP: Rs 10-20, Mah: Rs 15-45, Meghalaya: Rs 10, Rajasthan: Rs 20, Delhi: Rs 20)

(iv) Lump sum basis

(Manipur: Rs 500 p.m., Punjab: Rs 15000/- p.a.

²⁵ TRAI Recommendations on Implementation of Digital Addressable Cable TV Systems in India dated 5.8.2010, pages 81- 86 available on http://www.trai.gov.in/Content/ReDis/72_2.aspx last accessed on 19.03.2014

In some States instead of last mile Cable operators, entertainment tax has been levied on Multi system operators. The applicability of entertainment tax on MSO instead of an LCO has also been a subject matter of dispute in various Courts. It is stated that it is the cable operator who collects revenues from the subscriber and hence should be liable for deposition of tax.

6.2 Problems in assessment of Entertainment Tax liability continue:

Because of lack of transparency in subscriber base and revenue collections in the analog regime, it was neither possible to ascertain the exact number of subscribers nor was it possible to ascertain the exact amount of revenue collected from subscriptions. Accordingly the Entertainment Tax department, was required to conduct door to door surveys from time to time to ascertain and cross check the number of cable collections. Assessments on the basis of such surveys were always a subject matter of dispute. The CAS regime introduced in the 4 metros was able to capture only 5% subscribers in Chennai, 15% in Kolkatta, 60% in Mumbai and 42% in Delhi as only pay channels were required to be encrypted. The SMS at the MSO end in the digital regime was expected to capture all the subscribers whether of pay or free to air channels and hence bring complete transparency and enhance revenues.

As has been seen, the problem is that while the active STB details have been captured in the SMS, data linking the subscriber to the STB and the package subscribed is still being captured and fed. Except for some MSOs like SITI cable, the LCOs have not been given access to the centralised SMS to be able to fill in the collection details of each subscriber. In most of the cases

thus two parallel databases are being maintained. Entertainment Tax officials take the LCO wise data regarding the number of active STBs issued to them from the MSO. In a few cases what had happened was that some of the LCOs faced with a STB shortage problem borrowed some STBs from another cable operator. The MSO keeps on showing these STBs in the name of the original LCO only. Not only does the MSO keep billing the LCO regarding the MSOs share per STB on these boxes to the earlier LCO, but the Entertainment Tax Department also keeps on pressing the earlier LCO for tax payments. Until the mapping process is completed this problem is likely to continue.

6.3 Issue of high tax rates in UP:

In Uttar Pradesh, the Cable operators are faced with another problem. As per Tax and Registration Department notification no. 1672/11-Ka. Ni.-6-2009(M(92)-2009) dated 4.9.2009, cable services are subject to an entertainment tax '@25% on the gross monthly receipts from the subscriber'. The gross receipts already include the monthly subscription rates of the package/a-la-carte option exercised plus service tax plus entertainment tax. This tantamounts to collection of tax on tax which is absurd. Except for the income tax which is leviable on net profits, taxes like entertainment and service tax are to be collected from the subscriber and passed on to the concerned government. As an example let us say an LCO collects a total amount of Rs 200 from a subscriber, his payout to LCO will be 55+ service tax i.e. Rs 62 to the MSO. The liability for the E Tax @25% comes to Rs 50. He is thus left with Rs 88. After deducting his expenses he is left with not more than Rs 20-25 per connection. In case this is a second or a third connection to the

same subscriber given at 50% discount, his net outgo will be $62+25=Rs\ 87$. With the rest 13 he is not in a position to meet out his own cost.

During survey and interactions with MSOs and cable Operators, it has also been contested that most of the States have not recognized the distinction between addressable and non-addressable platforms for the purposes of levying entertainment tax. The Cable Operators using digital addressable systems should be subject to lower tax rates because of the near absence of under-declaration in such cases.

UP LCOs are also aggrieved that while Delhi levies E Tax at a fix rate of Rs 20 per consumer (whether it is per subscriber or per STB is still pending adjudication before Delhi HC) irrespective of monthly subscription, they are required to shell out Rs 50 as tax on a monthly subscription of Rs 200. There is no denying the fact that UP customer is far less affluent than an average Delhi customer and leaves very little margin for cable operators. It is felt that a large variation in the Entertainment tax regime among different States may hinder the process of digitalisation. Therefore, a rationalized entertainment tax structure is required for cable services to help them establish a new technological platform, keep the operations viable and also putting lesser economic burden on consumers.

As the UP E Tax revenue has shown an increase of about 48.77% there certainly is a case to bring down the rates for digital cable service providers. In my view, the rates should not be a fixed amount per subscriber like Delhi, as it treats all consumers equally be it poor or rich, whether he is subscribing to BST or premium packages. Those who are availing higher value packages

can certainly afford more and hence the rates can be fixed as percent of monthly subscription (excluding taxes) and not as percent of gross monthly receipts.

6.4 Impact of digitalisation on Entertainment Tax collections in UP:

Details of the seven towns of UP notified under DAS were obtained from the Entertainment Tax Commissioner UP's office which was provided vide their emails dated 14th March . The status is indicated in Table below:

Table 6.1 : A comparative of number of connections in DAS areas in UP: pre and post DAS

DAS Area	Cable Connections as on 31.3.2013 (in lakhs)	No of Active STB as on 28.2.2014 (in lakhs)	% increase
Lucknow	0.87	3.12	258.62
Meerut	0.56	1.42	153.57
Allahabad	0.52	1.01	94.23
Agra	0.62	1.55	150.00
Varanasi	0.4	1.43	257.50
Ghaziabad	0.9	1.65	83.33
Kanpur	1.18	3.65	209.32
Total	5.06	16.17	173.86

Source: Office of Entertainment Tax Commissioner, UP

Table:6.2 : Entertainment Tax collections from DAS areas of UP:

pre and post DAS

DAS Area	E Tax Collections from Cable (Rs in Lakhs)				% increase upto Feb 2014 over 2013
	Year 11-12	Year 2012-13	Upto Feb,2014		
			2012-13	2013-14	
Lucknow	509.10	483.22	414.29	530.75	28.11
Meerut	234.25	255.30	236.18	390.21	65.22
Allahabad	125.73	137.99	117.69	200.52	70.38
Agra	201.62	217.97	187.92	303.81	61.67
Varanasi	172.95	152.71	128.99	193.68	50.15
Ghaziabad	465.54	530.64	471.18	524.53	11.32
Kanpur	516.42	474.80	424.72	803.61	89.21
Total	2225.61	2252.63	1980.97	2947.11	48.77

Source: Office of Entertainment Tax Commissioner, UP

As the process of mapping the same subscriber to two or more STBs installed on his premises is still in progress, the subscriber figures in digital regime are not available and what is available is only the number of activated STBs issued to the LCOs by the MSOs . MSOs provided LCO wise numbers of STBs to the Entertainment Tax department officials also who then pursue with LCOs to obtain customer wise details of revenue receipts so that tax can be

levied. As LCOs don't yet have an access to the SMS of the MSO except in a few cases, LCOs maintain their own list of customer wise details and the revenue collected from them. The number of active STBs shown by the MSO against the LCO is often disputed by the LCOs on the ground that all of them are not active, that some of them are lying in stock and not installed, that some are under repair, that some have been installed gratis at residences of various government officials, that some have already been given to another LCO due to shortage but are still being shown against their name. Thus while Table 6.1 shows a 174 % increase in the number of STBs over the earlier number of consumers it is not possible to know whether the actual number of subscribers (taking into account multi TV homes) has increased or decreased or remained same. It will only be possible once the mapping process is completed.

From Table 6.2 pertaining to Tax collections however this much can be clearly inferred that Entertainment Tax collections in all cities have gone up by an average 48.77% with percentage increases varying from 11.32% in Ghaziabad to 89.21% in Kanpur.

6.5 Assessment of Impact on ARPU from Entertainment Tax figures in UP:

Let us now make an attempt to assess and compare the Average Revenue Per User before and after DAS.

Table 6.3: Assessment of ARPU per month (pre DAS)

DAS Area	Number of Connections (in lakhs)*	E Tax deposited upto Feb 2013 (Rs in lakhs)*	Average Revenue Per User per month 2013 (ARPU) (in Rs) (col 3*4/ (col 2*11))
1	2	3	4
Lucknow	0.87	414.29	173
Meerut	0.56	236.18	153
Allahabad	0.52	117.69	82
Agra	0.62	187.92	110
Varanasi	0.4	128.99	117
Ghaziabad	0.9	471.18	190
Kanpur	1.18	424.72	131
Total	5.05	1980.97	143

Source: Office of Entertainment Tax Commissioner, UP

Table 6.4: Assessment of ARPU per month (post DAS)

DAS Area	Number of Active STBs in Feb 2014 (in Lakhs)	E Tax deposited in Feb 2014 (in lakhs)	Average Revenue Per User per month 2014 (ARPU) (in Rs) (col 3*4 / (col 2))
1	2	3	4
Lucknow	3.12	54.67	70
Meerut	1.42	42.34	119
Allahabad	1.01	27.01	107
Agra	1.55	50.89	131
Varanasi	1.43	33.47	94
Ghaziabad	1.65	61.91	150
Kanpur	3.65	107.97	118
Total	13.83	378.26	109

Source: Office of Entertainment Tax Commissioner, UP

While from Table 6.3 it becomes apparent that prior to digitisation, average ARPU for the 7 DAS areas of UP was Rs 143 varying from Rs 82 to Rs 190. On interaction with field level E Tax officers in Kanpur and Ghaziabad, it turned out that for 3 years prior to March 2013, GoUP had implemented a compounding scheme whereby LCO could opt for giving a fixed percent increase over the previous year instead of being billed on actual receipts or subscriber numbers. Hence the subscriber figures for 2012-13 are only notional and not real and actual numbers may have been more and the average ARPU may be much less than Rs 143. On the other hand, from the consumer survey (para 5.13), consumer's average monthly payout prior to digitalisation was Rs 200. Thus analog regime is riddled with total lack of transparency and it becomes difficult to get to the true picture.

Table 6.4 makes an assessment about ARPU in 2014 from the STB and Tax figures of Feb 2014. It is apparent that average ARPU in Feb 2014 comes to Rs 109. It therefore appears that ARPU has come down after digitalisation, however this will not be a correct inference. Firstly because the connection figures of 2013 are on the lower side as already mentioned, and secondly because the actual installed and active STB figures of 2014 may be lower than those indicated as the mapping process has still not been completed and the figures have been taken directly from MSOs by the department. Average payout of total subscribers from the consumer survey comes to Rs 229 (para 5.13) which is more than double the figure from the E Tax department and seems closer to reality. Thus transparency is yet to be achieved even in the digital regime.

6.6 Impact of Digitalisation on other tax receipts including Service Tax:

Let us now come to Service Tax receipts. An effort was made to obtain the service tax receipt figures by the MSOs and Local Cable Operators from the Tax Research Unit, Department of Revenue, Ministry of Finance. It was informed that from 2011-12 onwards as all services except for those mentioned in the negative list have been brought within the purview of service tax, the headwise breakup in respect of service details has been stopped and is not available. It was further informed that what can be provided is the service tax deposited by individual assesseees. Accordingly a list of major MSOs was drawn up and details obtained in respect of them for the past three years. The details are as follows:

**Table 6.5 : SERVICE TAX CASH PAYMENT DETAILS OF MAJOR MSOs
(Rs in Crores)**

S. No.	Name of the MSO	Revenue 2011- 12	Revenue 2012- 13	Revenue 2013-14 (as on 11.3.14)
1	DEN satellite Network Pvt. Ltd, Mumbai	4.71	1.73	1.83
2	Den Networks Ltd 'Den', Delhi	8.07	11.51	8.64
3	SITI cable Network Limited, Delhi	0.06	0.79	2.85
4	Digi cable Network India Pvt Ltd, Mumbai	0	0.14	0.12
5	Hathway Cable and Datacom limited, Mumbai	21.62	17.32	3.02
6	Ortel Communication Limited, Delhi	7.23	7.25	8.59
7	IndusInd Media & Communications Limited, Mumbai	18.5	16.84	7.73
8	NOIDA Software Technology Park Ltd, Delhi	0.00	0.13	3.41
9	Den Enjoy Cable Network Pvt Ltd, Delhi	0.15	1.52	1.20
10	Delhi Distribution Co., Delhi	0.67	0.19	0.11
11	Satellite Channels Pvt Ltd, Delhi	0.20	0.50	0.10
	Total	61.21	57.92	37.60

Source: Tax Research Unit and Service Tax Commissioner Office, Delhi

The details of CENVAT credit availed by these MSO could not be provided by these offices which would have been useful in getting a complete picture of the service tax liability created and discharged by availing set off against CENVAT credit or by paying in cash. The CENVAT Credit Rules, 2004, introduced with effect from 10.9.2004, provides for availment of the credit of the Service Tax paid on the input services/Central Excise duties paid on inputs/capital goods/Additional Customs duty leviable under section 3 of the Customs Tariff Act, equivalent to the duties of excise. Such credit amount can be utilized towards payment of Service Tax by an assessee on their output services. In the instant case, such duties paid on the Headend and networking equipment or for the procurement of STBs will entitle them for availing CENVAT credit. While the table seems to be showing a downward trend in cash Service Tax collections, actual collections taking into account the custom and excise collections must surely have increased. Taking into account the fact that 142 lakh STBs have been installed by 31.12.2013, and from a break up of STB cost obtained from CEAMA (**Appendix-III**), and further discounting the fact that STBs after procurement might be lying in stock also, it is evident that at least $142 \times 290 = 411.80$ crore must have been paid BCD, SAD and CVD. This does not take into account the duties paid on headend and networking equipment. It is further to be noted that that CENVAT credit of Rs 135.95 per STB once availed and liquidated against CVD will not be available in subsequent years with regard to these STBs. Fresh CENVAT credit may accumulate during Phase-II and IV but thereafter Service Tax payout will only increase as the new STB seeding will be low.

Thus it can be safely concluded that the government has already gained and stands to gain a lot in terms of revenue receipts in the coming years.