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**STANDING COMMITTEE ON
INFORMATION TECHNOLOGY
(2005-2006)**

FOURTEENTH LOK SABHA

MINISTRY OF INFORMATION & BROADCASTING

*[Action taken by Government on the Recommendations/Observations of the
Committee contained in their Fifty-Second Report (Thirteenth Lok Sabha)
on Conditional Access System (CAS)]*

TWENTY-FIRST REPORT



सत्यमेव जयते

**LOK SABHA SECRETARIAT
NEW DELHI**

November, 2005/Agrahayana, 1927 (Saka)

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Presented to Lok Sabha on

Laid in Rajya Sabha on



LOK SABHA SECRETARIAT
NEW DELHI

November, 2005/Agrahayana, 1927 (Saka)

C.I.T. No. 143

Price : Rs. 19.00

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Eleventh Edition) and printed by Jainco Art India, New Delhi-110 005.

CONTENTS

	PAGE
COMPOSITION OF THE COMMITTEE	(iii)
INTRODUCTION	(v)
CHAPTER I Report	1
CHAPTER II Recommendations/Observations which have been accepted by the Government	18
CHAPTER III Recommendations/Observations which the Committee do not desire to pursue in view of the replies of the Government	23
CHAPTER IV Recommendations/Observations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration	24
CHAPTER V Recommendations/Observations in respect of which Replies are interim in nature	31
ANNEXURES	
I. Minutes of the Fourth sitting of the Standing Committee on Information Technology (2005-06) held on 6.9.2005	38
II. Analysis of Action Taken by the Government on the Recommendations/Observations contained in the Fifty-Second Report (Thirteenth Lok Sabha) of the Committee	40

COMPOSITION OF THE STANDING COMMITTEE ON
INFORMATION TECHNOLOGY (2005-2006)

Shri M.M. Pallam Raju — *Chairman*

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*Nominated *w.e.f.* 27 September, 2005.

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SECRETARIAT

1. Shri John Joseph — *Secretary*
2. Shri P. Sreedharan — *Joint Secretary*
3. Shri Raj Shekhar Sharma — *Director*
4. Shri K.L. Arora — *Under Secretary*

INTRODUCTION

I, the Chairman Standing Committee on Information Technology (2005-2006) having been authorised by the Committee to submit the Report on their behalf, present this Twenty First Report on Action Taken by Government on the Recommendations/Observations of the Committee contained in their Fifty Second Report (Thirteenth Lok Sabha) on Conditional Access System (CAS) relating to the Ministry of Information & Broadcasting.

2. The Fifty Second Report was presented to the Hon'ble Speaker on 16 July, 2003. The Report was also presented to the Lok Sabha and laid in Rajya Sabha on 22 July, 2003. The Ministry furnished Action Taken Notes on the Recommendations/Observations contained in the Report on 13 October, 2004 and status reports on 15 June, 2004 & 29 March, 2005.

3. The Report was considered and adopted by the Committee at their sitting held on 6 September, 2005.

4. For facility of reference and convenience, the Recommendations/Observations of the Committee have been printed in bold letters in the body of the Report.

5. An analysis of Action Taken by Government on the Recommendations/Observations contained in the Fifty Second Report (Thirteenth Lok Sabha) of the Committee is given at Annexure-II.

NEW DELHI;
27 September, 2005
5 *Asvina*, 1927 (*Saka*)

M.M. PALLAM RAJU,
Chairman,
Standing Committee on
Information Technology.

CHAPTER I

REPORT

This Report of the Standing Committee on Information Technology deals with action taken by Government on the Recommendations/Observations of the Committee contained in their Fifty Second Report (Thirteenth Lok Sabha) on "Conditional Access System (CAS)" pertaining to the Ministry of Information & Broadcasting.

2. As the House was not in Session, the Fifty Second Report was presented to the Hon'ble Speaker on 16 July, 2003. Subsequently, the Report was presented to the Lok Sabha on 22 July, 2003 and was also laid on the Table of Rajya Sabha on the same day. It contained 11 Recommendations/Observations.

3. Action Taken Notes in respect of all the Recommendations/Observations contained in the Report have been received and categorised as under:

- (i) Recommendations/Observations which have been accepted by the Government:

Paragraph Nos. 39, 43, 44, 45, 48

Total: 5
Chapter-II

- (ii) Recommendations/Observations which the Committee do not desire to pursue in view of the reply of the Government:

Paragraph Nos. Nil

Total: Nil
Chapter-III

- (iii) Recommendations/Observations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration:

Paragraph Nos.: 40, 41, 42, 46 & 47

Total: 5
Chapter-IV

- (iv) Recommendations/Observations in respect of which replies are of interim nature:

Paragraph No.: 49

Total: 1
Chapter-V

4. Subsequent to the receipt of Action Taken Replies from the Government, several changes had taken place in the field of "Conditional Access System". Hence, to update the replies, the Ministry and the Telecom Regulatory Authority of India were asked to furnish status report on "Conditional Access System", which was initially received on 15 June, 2004 and subsequently on 29 March, 2005.

5. The Committee trust that utmost importance would be given to the implementation of the recommendations accepted by the Government. In case, where it is not possible for the Department to implement the recommendation in letter and spirit for any reason, the matter should be reported to the Committee with reasons for non-implementation. The Committee further desire that Action Taken Notes on the Recommendations/Observations contained in Chapter-I and final action taken notes on the recommendations/observations contained in Chapter-V of this Report should be furnished to them at an early date.

6. The Committee will deal with action taken by the Government on some of their recommendations:

Availability of Set Top Boxes

Recommendation (Para Nos. 40 & 42)

7. The Committee had noted that according to the Ministry's estimates only one-third of the cable TV Subscribers would opt for CAS/Set Top Boxes (STBs), as the rest would be satisfied with the Free to Air channels available within the basic tier. Therefore, the initial requirement of STBs as estimated would only be 20 lakhs against the total viewership of 56 lakhs in 4 metros. The Multi-System Operators (MSOs) had assured the Ministry of having placed orders for import of 27 lakh STBs. The Committee noted that the contention was based upon the guess work of the MSOs who had vested interests in the issue and had not been independently verified by the Ministry through any survey of its own. On the other hand, IBF had estimated that the availability of STBs would only be to the tune of four to five percent of the requirement and according to them, it would lead to a black out of pay channels in the four metros. The Committee further noted that there appeared to be no credible data available with the Ministry as regards the arrival of STBs into the country, and it was after sensing the serious concern of the Committee that the Ministry had assured to monitor weekly arrival of STBs.

In view of the aforementioned, the Committee failed to share the optimism of the Ministry that a smooth roll out of CAS would be possible. The Committee, therefore, had recommended that the Ministry of I & B meticulously monitor the availability of STBs so as to avoid any black out of pay channels and also make all out efforts to ensure expeditious indigenous manufacture of STBs.

8. The Ministry, in its reply, has stated as follows:

“The Ministry has been constantly in touch with the Multi-System Operators (MSOs) and the Ministry of Finance (Central Board of Excise and Customs) to monitor the arrival of imported Set Top Boxes (STBs). As per the information furnished by the Central Board of Excise and Customs (CBEC), as on 16th August, 2003, 159, 580 STBs had been imported. Experience has now shown that the requirement of STBs will pick up only at a later stage. The initial demand for STBs may not be as anticipated due to multifarious factors (for *e.g.*, in Chennai, with the implementation of the CAS *w.e.f.* 1.9.2003, the consumers appear to be satisfied with the free-to-air channels being presently received for which no STB is required and more so, some of the popular pay channels have also switched over to free-to-air category) which has had the slow off take of STBs. Therefore, the initial demand may be relatively at a slow pace. Besides, in Mumbai and Kolkata, due to the ensuing festival season on account of which the law enforcing officers are being over stretched, the State Government has been apprehending law and order problems if the CAS is implemented immediately.

However, as stated above, the effective implementation of the roll out in the metros will depend on the co-operation that will be extended by the State nodal authorities concerned, who are notified as authorized officers under section 2 (a) of the Cable Television Networks (Regulation) Act, 1995. This Ministry had, in fact, convened a meeting of the State authorities of the four metros on 15th September to chalk out the future course of action on the roll out of the addressability. During the course of deliberations, it was suggested that State level Committees be set up by the State Governments comprising representatives of the various stakeholders/consumer groups besides the representatives of the State and of this Ministry in order to facilitate smooth roll out of the CAS. It was agreed, in principle, in the said meeting that the recommendations of the Committee so set up after consideration of the State Government, would be forwarded to this Ministry for

notifying the areas and dates for the roll out of the CAS in different parts of the State.

Consequent to the above decision, the State Governments of the four metros have recently been requested by this Ministry to set up the Committee and to convene its meeting at the earliest."

The Ministry, in their reply, have further stated:

"An Implementation Committee, comprising various stakeholders has been set up for effective coordination and monitoring of preparedness to implement Conditional Access System in the metro cities *w.e.f.* 1.9.2003. In order to ensure the smooth roll-out of CAS in the metros, the Government, in consultation with the MSOs has staggered the implementation of the CAS in a phased zone-wise manner in the metros of Kolkata and Mumbai *w.e.f.* 1 September, 2003 instead of 15th July, 2003. As per the information furnished by the Central Board of Excise and Customs (CBEC), as on 16th August, 2003, 1,59,580 STBs had been imported. Moreover, orders have also been placed by the MSOs for import of adequate quantity of the same. Experience has now shown that the requirement of STBs will pick up only at a later stage. The initial demand for STBs may not be as anticipated due to multifarious factors (for *e.g.*, in Chennai, with the implementation of the CAS *w.e.f.* 1.9.2003, the consumers appear to be satisfied with the Free-to-Air channels being presently received for which no STB is required and more so, some of the popular pay channels have also switched over to free-to-air category) which has subscribed to the slow off take of STBs. Therefore, the initial demand may be relatively at a slow pace. Besides, in Mumbai and Kolkata, due to the ensuing festival season on account of which the law enforcing officers are being over stretched, the State Government has been apprehending law and order problems if the CAS is implemented immediately.

In the meeting taken by the Secretary of this Ministry on 15th September, 2003 with the representatives of the four State Governments, it was decided to set up State level Committees consisting of representatives of Ministry and based on the recommendations of the said Committee, after consideration with the State Governments, the same would be forwarded to this Ministry for notifying the fresh areas and date for the roll out of the CAS in different parts of the State. Accordingly, the State Governments of the four metros have been requested recently by this Ministry to initiate appropriate further action in this regard."

The Hon'ble Chief Minister of Tamil Nadu in her letter dated 06.01.2004 addressed to the Union Minister of Information and Broadcasting had mentioned, *inter alia*, as follows:

“With regard to Chennai, I would like to mention that though CAS is under implementation since the 1st of September, 2003, it has not proved to be popular. The common public are deprived of the opportunity of viewing popular programmes on pay channels due to the advent of set top boxes. However, in the absence of any regulatory mechanism, the monthly rates fixed by broadcasters are too high for the consumers to bear after investing in set top boxes. The set top boxes are also highly priced and made available on very rigid terms by Multi Service Operators. Thus the introduction of set top boxes is not at all consumer friendly and there seems to be no reason why the TV viewers of Chennai alone should suffer consequences of CAS experiment in the whole of India.

I therefore request you to withdraw CAS with immediate effect.”

9. The Committee note that the Conditional Access System (CAS) was implemented in Chennai w.e.f. 1.9.2003 and in the rest of the metros, the system has been kept in abeyance by the Government by means of a notification. At present, the system is operational in Chennai only, that too because of the order passed by the Madras High Court.

10. The Committee observe that the implementation of CAS in Chennai has evoked lukewarm response from the viewers towards the system as most of them appear to be satisfied with Free-to-Air Channels, which do not require Set Top Boxes (STBs) for viewing. This obviously manifests the very rigid terms of Multi System Operators, the prohibitive cost of STBs, the complexities involved in the use of STBs and the additional burden of pay channels that had forced the consumers to refrain themselves from purchasing STBs and viewing pay channels. In short, the introduction of CAS appears not at all to be consumer friendly.

11. The Committee feel that failure on the part of Government to undertake a comprehensive study of the ground realities in the four metros before introducing this technological innovation has resulted in a complete rejection of the implementation of CAS by the metros. The Committee also feel that a lack of trust between the Multi System Operators and Cable TV Operators (who have not

given the exact number of users) has been the main cause for a high rate for pay channels.

12. The Committee find that the successful implementation of CAS in four metros depends upon the co-ordination of authorities of State Government concerned as under the Cable TV Network Act, they alone are vested with the powers to enforce and take remedial measures. Formation of State Level Implementation Committee comprising representatives of the various stakeholders/ consumer groups and of the State Government and Central Government is a step in the right direction. Further, in order to make the system consumer friendly and transparent with regard to cost and other aspects of STBs and pricing of pay channels, the Committee recommend the Government to evolve a comprehensive policy on the availability, price and conditions of STBs.

13. The Government should fix the rates of pay channels after consultation with the Broadcasters/Multi System Operators and Cable TV Operators instead of leaving the price fixation to the market forces. The Government should also ensure that the rates so fixed remain unaltered for a considerable period of time and the Broadcasters/Multi System operators and Cable TV Operators should not resort to frequent revision of prices of pay channels to the detriment of Cable TV viewers. This would instill confidence in the minds of the public about the Conditional Access System and encourage them to view pay channels rather than opting out of it.

14. Further, the Government should keep in perspective the technological status of STBs with the emergence of multiple technologies in future. With the permission being accorded to start Direct to Home (DTH) telecast in our country, the Committee opine that Government has to redefine clearly the status of STBs as otherwise the system will become redundant.

Indigenous manufacture of STBs

Recommendation (Para No. 41)

15. The Committee were seriously concerned to find that the Ministry of Information and Broadcasting arbitrarily decided the cut off date for introduction of Conditional Access System without making any indepth study about the availability and price of Set Top Boxes. No efforts were made to explore the possibilities of its indigenous production even though the CAS is a simple device and many of the public sector institutions could and were willing to manufacture them.

The import of Set Top Boxes in such a large number would result in avoidable drain on the foreign exchange reserves of the country. Even the modest estimates put the figure of 20 lakh Set Top Boxes which would amount to outgo of Rs. 600 crores. Prudence required that after assessing the genuine demand Government should explore possibilities of indigenous manufacture in a given time frame.

16. During the course of evidence, the Secretary had assured the Committee that the Ministry would get in touch with C-DAC, which has the technology and capacity to manufacture STBs.

17. The Ministry, in its Action Taken Notes, has stated as follows:

“The observation made to the effect that, “no efforts were made to explore the possibilities of its indigenous production even though the CAS is a simple device” is denied. The Ministry has left no stones unturned in its endeavour of exploring the possibilities of indigenous manufacture. A series of meetings were held for the purpose with the indigenous manufacturers. It was, *inter alia*, indicated by the Consumer Electronics and T.V. Manufacturers’ Association (CETMA) that the indigenous industry would be able to make the STBs available, in about sixty days from the date CAS is implemented. Thus, the indigenous industry was, in fact, not prepared fully to gear up to the situation.

It was decided to implement the CAS in a phased zone-wise manner in the metros of Mumbai and Kolkata and at one go in Chennai w.e.f. 1.9.2003, with the intention of using intervening period to step up the preparedness on CAS, to educate the consumers and to closely monitor the procurement and availability of STBs. Officers of the Ministry of I&B have visited the metro cities to assess the preparedness for CAS and have *inter alia*, observed that the demand of Set Top Boxes at the first stage would be met by imports and through the procurement of STBs by MSOs/ cable operators is in progress. The representative of Consumer Electronics and Television Manufacturers’ Association (CETMA), who represented the indigenous industry, were consulted at different times. CETMA and some other manufacturers had made an appeal for reduction of custom duty on the import of components, required for manufacturers of Set Top Boxes (STBs). The Central Excise duty of 16% on crucial components required in the manufacture of Set Top Boxes indigenously has been dispensed with by the Ministry of Finance so as to give a boost to the indigenous industry. The reduction of customs duty on import of

Set Top Boxes from 50.8% to 5% is a temporary measure till such time the indigenous industry is geared up fully to meet the demands of the consumers”.

18. The Committee take note of the efforts of the Ministry for getting tax sops from the Ministry of Finance to boost the indigenous manufacture of Set Top Boxes (STBs) and for consulting Consumer Electronics and TV Manufacturers’ Association (CETMA), an organization of electronics to manufacture indigenous production of STBs. They are, however, distressed to note that despite the assurance given by the Secretary during the evidence before the Committee, the Ministry has not contacted C-DAC, a public sector undertaking, which is stated to have the requisite technology and capacity to manufacture STBs. The Committee are of the view that if the Government intend to go ahead with the proposal for implementation of Conditional Access System (CAS), the Ministry in addition to consultation with CETMA should also keep in touch with C-DAC in order to manufacture indigenous production of STBs without further delay. The Committee also hope that the State Level Committees proposed to be set up by the State Governments to ensure smooth roll out of CAS, will be constituted expeditiously and hold purposeful meetings regularly. The Committee would like to be apprised about the progress made by the Ministry in this regard.

Enhancing Minimum Number of Free-to-Air Channels

Recommendation (Para Nos. 46 & 47)

19. The Committee had noted that the task force had worked out subscription rate of Rs. 72 for 60 channels on the basis of cost plus reasonable profits of the cable operators and only marginal cost was required if the channels were increased upto 80 or 90 channels. The Committee failed to understand when the Free to Air broadcasters were ready to provide upto 60 channels, and in the aftermath of introduction of CAS, a large number of subscribers would opt for the basic bouquet, then why the basic tier had been kept at 30 channels. The Committee was also concerned that the consumer would have no choice with regard to channels to be provided in the basic tier.

The Committee also urged the Ministry to reconsider the issue of basic tier with a view to enhancing the number of the channels to be made available. The Committee further urged the Ministry to ensure that the subscriber was able to exercise choice in matters of channels to be available within the basic tier and make suitable amendments in the law, if required.

20. The Ministry, in their Action Taken Notes, have submitted the reply as follows:

“Pursuant to the recommendations of the Task Force, the Government has, through issue of a Notification on 7th May 2003, specified the minimum number of free-to-air channels to be included in the package of channels forming the basic System tier, as thirty, in the four metros. As per the study conducted by the Cost Accounts Branch of the Ministry of Finance, it has been worked out that the cost of the cable operator to show free-to-air channels would be Rs. 71.33 for 60 channels and a very nominal increase in cost is required, if the number of channels is increased upto 80 or 90 channels. Though the number of free-to-air channels may be 70 to 80 on an average in each metro, yet only 35 such channels on an average were being shown. If a minimum number was not prescribed, then the cable operators would not be bound by any such requirement. In fact, free-to-air channels over and above this number, provided by the cable operators will also be at no extra cost. Some of the MSO, e.g. Incable have indicated that they would be in a position to show nearly 70 free-to-air channels while Siti Cable has indicated that they would be able to carry 60 free-to-air channels. Thus, the consumer would be benefited as he would get a large number of free-to-air channels at a cost of Rs. 72/-only (exclusive of local taxes). The package of channels forming the basic System tier includes the compulsory transmission of three Doordarshan channels notified under Section 8 of the Cable Television Networks (Regulation) Act, 1995, the genres of entertainment, news, sports, children’s programmes and music and must be in English, Hindi and regional languages depending on the availability of such channels in the metros”.

The Ministry in their reply have also stated that:

“The package of channels forming the basic System tier include the compulsory transmission of three Doordarshan Channel notified under section 8 of the Cable Television Networks (Regulation) Act, 1995, the genres of entertainment, news, sports, children’s programmes and music and must be in English, Hindi or regional languages depending on the availability of such channels in the Metros. Transmission of various channels in certain area through cable networks depends on the popularity and demand of majority of people, residing in such area. In fact, some of the MSO, e.g. Incable have indicated that they would be in a position to show nearly 70 free-to-air channels while Siti cable have indicated that

they would be able to carry 60 free-to-air channels. Thus, the consumer would be benefited as he would get a large number of free-to-air channels at a cost of Rs. 72/-only (exclusive of local taxes). Subscribers will thus have control over the content that is being viewed in their homes”.

21. The Committee are not convinced with the arguments given by the Government for keeping the minimum number of free-to-air channels at 35 when it actually works out to 60 channels at a price of Rs. 71.33. The Committee, therefore, feel that the minimum number of free-to-air channels should be 60 instead of 35.

Implementation of Conditional Access System

Recommendation (Para No. 49)

22. Summing up their Original Report, the Committee had expressed their considered view that Conditional Access System should be implemented systematically in a given time frame by deferring the date fixed, if necessary keeping in view the interests of the people without disrupting telecast of quality programmes and dissemination of information in any manner. In any case, cable subscribers should not be put into worse position after introduction of CAS.

23. The Ministry, in their action taken reply, have responded as follows:

“The Government has noted the concern expressed by the Committee and therefore, after consultations with the MSOs decided to implement the zone-wise phased roll-out w.e.f. 1.9.2003 in the metros of Kolkata and Mumbai and at one go at Chennai. In Delhi the same will be implemented immediately after the ensuing Assembly elections”.

Status notes from the Ministry of Information & Broadcasting

(a) Dated 15.06.2004 from the Ministry of Information & Broadcasting

24. The Ministry in their note dated 15 June, 2004 on Conditional Access System have stated as follows:

“The Cable Television Networks (Regulation) Amendment, Act 2002 was passed by the Lok Sabha on 15.05.2002 and by the Rajya Sabha on 10.12.2002. The Bill received the assent of the President on 31.12.2002. The said amendment introduced a concept of

'Addressability' in the Cable Television Network (CAS), which could be mandated in a specific area and from a specific date, to be notified by the Government. Initially, it was introduced in the four metros w.e.f. 15th July, 2003. Later, CAS was notified for implementation w.e.f. 1st September, 2003 in the three metros in a phased zone-wise manner and at one go in Chennai. Through a notification issued on 29th August, 2003, the implementation of CAS was, however, withdrawn in the NCT of Delhi. This was challenged before the Delhi High Court, which quashed the said notification by its order dated 04.12.03.

In a batch of writ petitions filed, through its order dated 26.12.03, the Delhi High Court had, *inter alia*, observed that "there has to be some regulatory body in terms of the synopsis of the comments which have been filed by the Respondents to see the implementation". The High Court, therefore, directed that it be enlightened of the steps taken in this direction before 05.04.2004.

On 9th January, 2004, the Central Government has notified the 'broadcasting services and cable services' to be Telecommunication Systems under the Telecom Regulatory Authority of India (TRAI) Act, 1997. The functions of the Authority are laid down in the said Act. In addition, TRAI has been assigned additional functions, through a separate notification. The T.R.A.I. began the examination of all the issues/constraints during the introduction of CAS in the four metros. Meanwhile, the TRAI has, through its order issued on 15th January 2004, fixed the ceiling on charges payable by cable subscribers to the cable operators; by cable operators to MSOs/Broadcasters and by MSOs to Broadcasters (including their authorised distribution agencies) to be those prevalent as on 26th December 2003 for both FTA and pay channels (for CAS and non-CAS areas) until final determination by it on the various issues concerning these charges.

On TRAI's interim recommendation, the implementation of CAS has been suspended in all the four metros w.e.f. 27th February, 2004 through the issue of a notification, which has been challenged by some MSOs in various law courts. The Chennai High Court has, however, granted stay on the operation of a aforesaid notification.

TRAI is in the process of examination of these issues, through a consultative process with all the stake holders. A detailed Consultation Paper has also been circulated by TRAI. Its final recommendations are awaited".

(b) From Telecom Regulatory Authority of India (TRAI)

25. The TRAI in its note dated 22 June, 2004 submitted the following status of the CAS:

“The Government of India issued a Notification No. 39 dated 9th January, 2004 under the proviso to clause (k) of sub-section (1) of Section 2 of the TRAI Act, 1997 as amended, whereby the scope of the expression ‘Telecommunication Services’ under the TRAI Act was expanded to include the broadcasting Services within the purview of the Telecom Regulatory Authority of India. Through an order on the same day, the Government of India, in exercise of the powers under clause (d) of the sub-section (1) of the Section 11, added the following to TRAI’s functions:

- (1) make recommendations regarding:
 - the terms and conditions on which the “addressable systems” shall be provided to customers
 - the parameters for regulating maximum time for advertisements in pay channels and other channels
- (2) Specify standard norms for and periodicity of revision of rates of pay channels, including interim measures.

TRAI issued a consultation note dated 15th January, 2004 on various issues concerning the Cable TV Industry. After analyzing the various issues raised in the consultation note and based on the study of various inputs and comments received in response to the consultation note, the TRAI forwarded interim recommendations on 23.02.2004 that the CAS should be kept in abeyance for at least three months. The Government of India, accepted the recommendation and *vide* Notification No. S.O. 271(E) dated 27th February, 2004 suspended the mandatory operation of CAS until such date as may be notified by the Government.

The GOI notification dated 27.02.2004 was challenged in the Madras High Court and an interim stay on the operation of this notification was granted by Madras High Court on 04.03.2004. The Madras stay order has delivered the final judgement and the interim stay is made absolute. The position now on CAS is that it is operational only in Chennai.

To take final view on CAS, TRAI based on the responses received on the consultation note dated 15th January, 2004 and discussions

held with various stakeholders, issued a detailed Consultation Paper on "The issues relating to Broadcasting and Distribution of TV Channels" on 20 April, 2004. TRAI also held detailed discussion with stakeholders in Chennai, Delhi and Mumbai. A detailed workshop to educate consumers on CAS is being held in Mumbai on 19.06.2004. TRAI has also constituted a committee with representatives of the State of Tamil Nadu, Maharashtra, West Bengal and NCT of Delhi to assist TRAI in finalizing the recommendation.

The TRAI is now in the process of finalisation of its recommendations/regulations on Conditional Access System and related issues and it is expected that these will be finalized in July, 2004. Since TRAI has not finalized its views on CAS, it may not be in position to provide any suggestions at this stage".

(c) *Dated 29.03.2005 from the Ministry of Information & Broadcasting*

26. In their note dated 29.03.2005 the Ministry has further stated as under:

"The implementation of CAS was to be undertaken in Delhi, Mumbai and Kolkata (Zone-wise) and Chennai w.e.f. 1.9.2003. The Government subsequently de-notified the implementation of CAS in Delhi through a notification dated 29.08.2003, which was later quashed by the Delhi High Court on 4.12.2003, in a case filed by M/s Jay Polychem & Ors. CAS was not implemented in Mumbai and Kolkata. The Government of Maharashtra requested for postponement of the implementation of CAS in Mumbai, citing a number of issues, including additional burden on the common man in terms of purchase of STBs. The West Bengal Government also highlighted a number of issues impinging on the consumers' interest.

The Multi-system Operators (MSOs)/Cable Operators in Chennai city went ahead with its implementation w.e.f. 1.9.2003. The Chief Minister of Tamil Nadu, through her DO letter dated 6.1.2004, requested for withdrawal of CAS and suggested introduction of such system in future after consultation with the concerned State Government and keeping in mind the interest of the consumers. It was also suggested that a regulatory mechanism might be put in place to keep a check on the Broadcasters and Multi Service Operators with adequate powers given to the State Government.

The MSOs in Delhi decided to implement CAS in the notified areas of Delhi w.e.f. 15th December, 2003, pursuant to Delhi High

Court Order dated 4.12.2003. The implementation of CAS in Delhi witnessed partial implementation of CAS in many parts of the notified area, apart from certain difficulties faced by the consumers at large. In the initial stage, a petition was filed by Consumer Coordination Council and Consumer Online Foundation before Delhi High Court, seeking various reliefs, including the prayer for withdrawal of implementation of CAS on account of consumers' concerns like pricing of channels/STBs, monopoly of cable operators, prescription of service quality parameters, etc. The Delhi High Court, in its interim order dated 26.12.2003, declined to restrain the Government from implementing CAS in Delhi and decided also to review the situation after three months. The aforesaid interim order also directed as under:

“..... we desire that in this period of three months all the loopholes, difficulties faced by the consumers, effect of the implementation and problems, if any, arising out of the implementation can be assessed and remedial measures be taken in that regard.

There has to be some regulatory body in terms of the synopsis of comments, which have been filed by the respondent to see the implementation. We would like the respondent to enlighten this Court of the steps taken in this direction before the next date of hearing.....”

Meanwhile, the Chief Minister of Delhi, through series of correspondence, highlighted various issues arising from the implementation, which are summarized below:

- Linkages between the broadcasters, MSOs, Cable Operators and the consumers must be strengthened to focus on the issues *viz.*, product pricing, quality, availability and pricing of pay channels etc. To sort out various distortions and to remove mistrust among the various stakeholders, a manual spelling out the details of the broadcasters and MSOs must be indicated.
- Absence of regulatory body for dealing with the broadcasters and MSOs.
- Lack of awareness among the consumers regarding the benefits of CAS and the feeling among the consumers that CAS is being imposed on them. The consumers perceive that the additional financial burden of having to buy a set top box and get limited pay channels is not of any

advantage in the present system of pricing of the channels and the arrangements for purchase/sent [Sic. 'Rent'] of STBs is also unsatisfactory. The consumers are being made to pay for seeing less.

- Need for re-consideration of the system of CAS from the point of view of inadequacy of competition in local area leading to virtual monopoly by the Cable Operators, which is not only leading to current distortions but also likely to aggravate as the backward linkages with the broadcasters and MSOs do not seem to have been adequately worked out in terms of pricing, availability of channels, etc.

Following the order of the High Court dated 26.12.2003 as mentioned in para 3 above, the Government brought "Broadcasting and Cable Services" within the ambit of TRAI Act on 9.1.2004. Pursuant to Government's notification dated 9.1.2004, TRAI became the Regulator for broadcasting and cable services. Through another notification dated 9.1.2004, TRAI was also assigned additional functions under Section 11 (1) (d) of the said Act, which mandated TRAI to make recommendations regarding terms and conditions on which the "**Addressable Systems**" shall be provided to customers and the parameters for regulating maximum time for advertisements in pay channels as well as other channels. These additional functions were assigned keeping in view the difficulties faced during the course of implementation of CAS in four metro cities.

TRAI began the consultation process by issuing the consultation note on 15th January, 2004. Based on the inputs received from the stakeholders, TRAI made interim recommendation to the Government on 23.2.2004 to suspend CAS for at least 3 months, in order to look into various issues arising from the implementation of CAS. Government suspended CAS till further orders on 27th February, 2004, citing the grounds leading to such an action. The Madras High Court however granted stay on the operation of the aforesaid notification and CAS is currently under implementation in Chennai. The issue of implementation of CAS in Delhi, Mumbai and Kolkata is subjudice.

TRAI carried the consultation process forward, with the issue of a more detailed consultation paper titled "**Issues relating to Broadcasting and Distribution of TV Channels**" on 20.4.2004. TRAI has now furnished its final recommendations on 1st October, 2004. These recommendations, *inter alia*, cover the following aspects:

- Direction of Regulatory Intervention.
- Consumer Choice.
- Pricing.
- Interconnection Agreement and Revenue Share.
- Promotion of Competition in the distribution of TV Channels.
- Rationalisation of Licence Fee and Taxation.
- Advertisement.
- Regulatory Enforcement.
- Quality of Service.

Keeping in view the specific recommendation of TRAI on the issue of the options for introducing addressability, the Ministry has sought the views of all the State Governments on 12th October, 2004 followed by reminders in the months of January and February, 2005. Some State Governments like MP, Bihar, HP and Nagaland have furnished their views. This issue was also slated for discussion by SIMCON (State Information Minister's Conference) on 18-19th February, 2005, which has now been rescheduled on 15-16th April, 2005. Simultaneously, the matter is being pursued with the remaining State Governments. It needs to be pointed out that earlier when CAS was sought to be implemented, the State Governments had also opposed its implementation as a number of problems were encountered impinging on the consumers' interest. Therefore, the issues connected with the implementation of CAS needs to be addressed in consultation with the State Governments.

Thus, the Ministry is currently in the process of examination of TRAI's recommendations referred above. The Ministry proposes to have consultation with all the stakeholders.

27. The Committee's anxiety was to have the Conditional Access System implemented in such a manner that it becomes consumer friendly. By handing over the issue to the TRAI as an interim regulator, the Government has made an effort to find a favourable lasting solution acceptable to all the parties involved viz., the Government, the Multi System Operators, the Cable Operators and most importantly, the Consumers. Now, the Committee have been informed that TRAI has made its final recommendations on implementation of CAS, which are currently being examined by the

Ministry. In this regard, the Committee would like to impress upon the Ministry to take an early decision on the issue by addressing the genuine concerns of all parties, while protecting the interests of consumers. The Committee may be kept informed of the initiatives taken by the Ministry in this regard.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS, WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

Recommendation (Para No. 39)

The Amended Cable TV Networks (Regulation) Act, 2002, apart from mandating viewing of pay channels through an addressable system *i.e.* Conditional Access System, seeks to ensure that every subscriber pays only for those pay channels they wish to watch and receive a minimum number of free-to-air channels at a reasonable price. The Committee notes that under this system of conditional access, for viewing of pay channels subscribers would be required to install a Set Top Box (STB).

Action Taken by Government

“The Ministry in their reply has agreed to the recommendation”.

Recommendation (Para No. 43)

The Committee is deeply concerned to note that even though the CAS is to be rolled out within the next few days, yet many of the important issues agitating the public and having financial implications have not been resolved. Availability of Set Top Boxes at affordable prices to the subscribers and its distribution are not clearly defined.

Action Taken by Government

The Ministry in their reply has stated that:

“The implementation of CAS is being closely monitored by the Implementation Committee, comprising representatives of Multi-System Operators (MSOs), Broadcasters, Cable Operators etc. They will also interact with the representatives of consumer protection groups and take steps to address their concerns. The STBs will be made available by the MSOs and broadcasters at reasonable and affordable prices. The cost of STB ranges between Rs. 2500/- and Rs. 3000/-. As per data furnished by the Customs and Central Excise Authorities, 1,59,580/-STBs had been imported by MSOs/ Cable Operators as on 16.08.2003. The MSOs and the Cable Operators have come out with different attractive schemes for

making the STBs available to the subscribers, *i.e.* through installment/hire-purchase/outright purchase, loan schemes etc. or on a refundable deposit plus nominal daily rental charges. The cost to the subscribers would be affordable. Incable Net has, for example announced an introductory offer of making available Digital STBs to the customers at a rate of Re. 999/-+ nominal daily rent of Rs. 1/-. Siti Cable and Hathway too will make available STBs on similar lines at a refundable deposit and payment of a nominal daily rental charges. The Cable Television Networks (Amendment) Rules, 1994 have been amended by the Government through issue of Notification of 6th June, 2003 which requires that the cable operator shall make provisions for rent and security deposits or refund thereof as well as warranty, repair and maintenance in the manner notified by the Government. The Government has also notified on 8th September, 2003 the manner of making provision for rent, security deposit etc. in STBs. As per the amended Rules, the cable operator will intimate to each cable subscriber in writing and at least fifteen days before the introduction of CAS, the various details of the STBs like payment schemes, maximum time for refund of security deposit, maintenance facility, maximum time for repair/replacement of the STB, period of warranty etc. The cable operators have also been required to furnish this information to the Ministry of Information & Broadcasting duly authenticated by the authorized signatory (copies of these Notifications are available in Ministry's website www.mib.nic.in)".

Recommendation (Para No. 44)

Further, in addition to anticipated high cost of the STB, its inapplicability in case a subscriber shifts residence and switch over to another MSO have not been resolved. The Ministry is now persuading the MSOs to provide the STBs on returnable basis and fix rentals for the same, even though there is no such provision in the Act. The Committee also notes that though the MSOs/cable operators under the Act can not force the consumer to procure any particular type of STB, yet it is clear from the submission of the Ministry that the MSOs would opt for costlier Digital STBs as they are more suitable to them. It is also a matter of concern to the Committee the Ministry has not been able to address the issue of installing multiple STBs for subscribers homes having more than one TV set. It is also a matter of concern that the Act or the notifications of the Ministry have not provided for a complaint redressal mechanism to deal with consumers' complaints against cable operators/MSOs/Broadcasters. The Committee urges the

Ministry to look into all these aspects and resolve them in a given time frame and ensure that interest of the TV viewers are well protected otherwise the very objective of introduction of CAS to ensure quality entertainment at affordable rates will be substantially frustrated creating great confusion and inconvenience.

Action Taken by Government

The Ministry in their reply has stated that:

“The Bureau of Indian Standards (BIS) has already published standards both for Analogue and Digital STBs and each and every STB must conform to these prescribed standards. The technical parameters of the STBs which will conform to the Indian standards, as prescribed by the BIS will take into account the internationally accepted standards. The Cable Television (Amendment) Rules, 2003 notified on 06.06.2003, *inter-alia*, provide that cable operator shall make provisions for rent and security deposit or refund thereof as well as warranty repair and maintenance in the manner notified by the Government. Through issue of Notification dated 8th September, 2003, the Government has notified the manner of making provision for rent, security deposit etc. in STBs. As per the amended Rules, the cable operator will intimate to each cable subscriber in writing and at least fifteen days before the introduction of CAS, the various details of the STBs like payment schemes, maximum time for refund of security deposit, maintenance facility, maximum time for repair/replacement of the STB, period of warranty etc. The cable operators have also been required to furnish this information to the Ministry of I&B duly authenticated by its authorized signatory (copy of Notification available in Ministry’s website www.mib.nic.in). The Ministry has also through advertisement in the leading dailies indicated the helpline numbers of the MSOs as well as of the Ministry for complaint redressal mechanism. Any violation of the provisions of Section 4A shall be treated as a cognizable offence. Besides, in case of violation of the provisions of the Cable Act/Rules, they are also at liberty to approach the notified authorized officers as well as the Chairman of the Inter Media Publicity Coordination Committee who have been authorized to receive the complaints and interact with the nodal officers concerned. During the course of discussion with the MSOs, they had informed that they would prefer to go in for digital STB since these are less susceptible to hacking and also ensure better quality signals”.

Recommendation (Para No. 45)

The Committee feels that the Ministry should ensure that the MSOs being the sole suppliers of the STBs, do not exploit the subscribers with regard to availability, affordability and choice of the STBs. The Ministry should ensure strict enforcement of the provisions of the Act in this regard and that the STBs conform strictly to the standards formulated by BIS and choice of STBs remain with the consumer.

The Ministry in their reply has stated that:

“As already pointed out, the STBs will be made available to the subscribers by the cable operators only. An Implementation Committee has been constituted consisting of the officers of the Ministry of I&B for visiting the metros to have an on-the-spot assessment of the demand of STBs, preparedness of the MSOs and cable operators in the smooth roll-out of the CAS and also to ensure that the quality of STBs is as per the standards prescribed by the BIS. The Ministry has also amended the Cable Television Networks (Regulation) Rules, 1994 through issue of Notification dated 8th September, 2003 requiring the cable operator to intimate to each cable subscriber in writing and at least fifteen days before the introduction of CAS, the various details of the STBs like payment schemes, maximum time for refund of security deposit, maintenance facility, maximum time for repair/replacement of the STB, period of warranty etc. The cable operators have also been required to furnish this information to the Ministry of I&B duly authenticated by its authorized signatory (copy of Notification available in Ministry’s website www.mib.nic.in)”.

Recommendation (Para No. 48)

As regards pay channels the Committee desires that the Ministry to ensure that the rates of pay channels are transparent, so as to avoid bundling of channels by pay channels broadcasters and such rates be notified to public as early as possible so that they can exercise their choice whether or not to opt for STBs.

Action Taken by Government

The Ministry in their reply has stated that:

“The Government has notified through issue of Notification dated 6th June, 2003 every cable operator to publicise the rate of subscription for each individual pay channel provided by the cable

operator and discounts, if any offered on subscribing to a minimum number of channels or more. It has further been provided that the discounts so offered for subscribing to the minimum number of channels or more shall not be such as to dilute/nullify the choice of subscribing to individual channels. Besides, it has been stipulated that the subscriber shall not be forced to buy more than the channel(s) of his choice through the mechanism of discounted pricing and by grouping of channels in such a way as to render the choice of individual pay channels offered, an illusory one.

The Ministry has also amended the Cable Television Networks (Regulation) Rules, 1994 through issue of Notification dated 8th September, 2003 requiring the cable operator to intimate to each cable subscriber in writing and at least fifteen days before the introduction of CAS, the various details of the STBs like payment schemes, maximum time for refund of security deposit, maintenance facility, maximum time for repair/replacement of the STB, period of warranty etc. The cable operators have also been required to furnish this information to the Ministry of I&B duly authenticated by its authorized signatory (copies of these Notifications available in the Ministry's website www.mib.nic.in)".

CHAPTER III

RECOMMENDATIONS/OBSERVATIONS WHICH THE
COMMITTEE DO NOT DESIRE TO PURSUE IN
VIEW OF THE REPLY OF THE GOVERNMENT

-NIL-

CHAPTER IV

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Availability of Set Top Boxes

Recommendation (Para Nos. 40 & 42)

The Committee had noted that according to the Ministry's estimates only one-third of the Cable TV Subscribers would opt for CAS/Set Top Boxes (STB), as the rest would be satisfied with the Free to Air channels available within the basic tier. Therefore, the initial requirement of STBs as estimated would only be 20 lakhs against the total viewership of 56 lakhs in 4 metros. The Multi-System Operators (MSOs) had assured the Ministry of having placed orders for import of 27 lakh STBs. The Committee noted that the contention was based upon the guess work of the MSOs who had vested interests in the issue and had not been independently verified by the Ministry through any survey of its own. On the other hand, IBF had estimated that the availability of STBs would only be to the tune of four to five percent of the requirement and according to them, it would lead to a black out of pay channels in the four metros. The Committee further noted that there appeared to be no credible data available with the Ministry as regards the arrival of STBs into the country, and it was after sensing the serious concern of the Committee that the Ministry had assured to monitor weekly arrival of STBs.

In view of the aforementioned, the Committee failed to share the optimism of the Ministry that a smooth roll out of CAS would be possible. The Committee, therefore, had recommended that the Ministry of I&B meticulously monitor the availability of STBs so as to avoid any black out of pay channels and also make all out efforts to ensure expeditious indigenous manufacture of STBs.

Action Taken by Government

The Ministry, in its reply, has stated as follows:

"The Ministry has been constantly in touch with the Multi-System Operators (MSOs) and the Ministry of Finance (Central Board of

Excise and Customs) to monitor the arrival of imported Set Top Boxes (STB). As per the information furnished by the Central Board of Excise and Customs (CBEC), as on 16th August, 2003, 159, 580 STBs had been imported. Experience has now shown that the requirement of STBs will pick up only at a later stage. The initial demand for STBs may not be as anticipated due to multifarious factors (for *e.g.*, in Chennai, with the implementation of the CAS *w.e.f* 1.9.2003, the consumers appear to be satisfied with the free-to-air channels being presently received for which no STB is required and more so, some of the popular pay channels have also switched over to free-to-air category) which has had the slow take of STBs. Therefore, the initial demand may be relatively at a slow pace. Besides, in Mumbai and Kolkata, due to the ensuing festival season on account of which the law enforcing officers are being over stretched, the State Government has been apprehending law and order problems if the CAS is implemented immediately.

However, as stated above, the effective implementation of the roll out in the metros will depend on the co-operation that will be extended by the State nodal authorities concerned, who are notified as authorized officers under section 2 (a) of the Cable Television Networks (Regulation) Act, 1995. This Ministry had, in fact, convened a meeting of the State authorities of the four metros on 15th September to chalk out the further course of action on the roll out of the addressability. During the course of deliberations, it was suggested that State level Committees be set up by the State Governments comprising representatives of the various stakeholders/consumer groups besides the representatives of the State and of this Ministry in order to facilitate smooth roll out of the CAS. It was agreed, in principle, in the said meeting that the recommendations of the Committee so set up after consideration of the State Government, would be forwarded to this Ministry for notifying the areas and dates for the roll out of the CAS in different parts of the State.

Consequent to the above decision, the State Governments of the four metros have recently been requested by this Ministry to set up the Committee and to convene its meeting at the earliest".

The Ministry, in their reply, have further stated:

"An Implementation Committee, comprising various stakeholders has been set up for effective coordination and monitoring of preparedness to implement Conditional Access System in the metro

cities *w.e.f.* 1.9.2003. In order to ensure the smooth roll-out of CAS in the metros, the Government, in consultation with the MSOs has staggered the implementation of the CAS in a phased zone wise manner in the metros of Kolkata and Mumbai *w.e.f.* 1 September, 2003 instead of 15th July, 2003. As per the information furnished by the Central Board of Excise and Customs (CBEC), as on 16th August, 2003, 1,59,580 STBs had been imported. Moreover, orders have also been placed by the MSOs for import of adequate quantity of the same. Experience has now shown that the requirement of STBs will pick up only at a later stage. The initial demand for STBs may not be as anticipated due to multifarious factors (for e.g., in Chennai, with the implementation of the CAS *w.e.f.* 1.9.2003, the consumers appear to be satisfied with the Free-to-Air channels being presently received for which no STB is required and more so, some of the popular pay channels have also switched over to free-to-air category) which has subscribed to the slow of take of STBs. Therefore, the initial demand may be relatively at a slow pace. Besides, in Mumbai and Kolkata, due to the ensuring festival season on account of which the law enforcing officers are being over stretched, the State Government has been apprehending law and order problems if the CAS is implemented immediately.

In the meeting taken by the Secretary of this Ministry on 15th September, 2003 with the representatives of the four State Governments, it was decided to set up State level Committees consisting of representatives of Ministry and based on the recommendations of the said Committee, after consideration with the State Governments, the same would be forwarded to this Ministry for notifying the fresh areas and date for the roll out of the CAS in different parts of the State. Accordingly, the State Governments of the four metros have been requested recently by this Ministry to initiate appropriate further action in this regard”.

The Hon’ble Chief Minister of Tamil Nadu in her letter dated 06.01.2004 addressed to the Union Minister of Information and Broadcasting had mentioned, *inter alia*, as follows:

“With regard to Chennai, I would like to mention that though CAS is under implementation since the 1st of September, 2003, it has not proved to be popular.The common public are deprived of the opportunity of viewing popular programmes on pay channels due to the advent of set top boxes. However, in the absence of any regulatory mechanism, the monthly rates fixed by broadcasters are too high for the consumers to bear after investing in set top

boxes. The set top boxes are also highly priced and made available on very rigid terms by Multi Service Operators. Thus the introduction of set top boxes is not at all consumer friendly and there seems to be no reason why the TV viewers of Chennai alone should suffer consequences of CAS experiment in the whole of India.

I therefore request you to withdraw CAS with immediate effect”

Comments of the Committee

(Please see Paragraph Nos. 9, 10, 11, 12, 13, & 14 of Chapter—I)

Indigenous manufacture of STBs

Recommendation (Para No. 41)

The Committee were seriously concerned to find that the Ministry of Information and Broadcasting arbitrarily decided the cut off date for introduction of Conditional Access System without making any indepth study about the availability and price of Set Top Boxes. No efforts were made to explore the possibilities of its indigenous production even though the CAS is a simple device and many of the public sector institutions could and were willing to manufacture them. The import of Set Top Boxes in such a large number would result in avoidable drain on the foreign exchange reserves of the country. Even the modest estimates put the figure of 20 lakh Set Top Boxes which would amount to outgo of Rs. 600 crores. Prudence required that after assessing the genuine demand Government should explore possibilities of indigenous manufacture in a given time frame.

During the course of evidence, the Secretary had assured the Committee that the Ministry would get in touch with C-DAC, which has the technology and capacity to manufacture STBs.

Action Taken by Government

The Ministry, in its Action Taken Notes, has stated as follows:

The observation made to the effect that, no efforts were made to explore the possibilities of its indigenous production even though the CAS is a simple device is denied. The Ministry has left no stones unturned in its endeavour of exploring the possibilities of indigenous manufacture. A series of meetings were held for the purpose with the indigenous manufactures. It was, *inter alia*,

indicated by the Consumer Electronic and T.V. Manufacturers' Association (CETMA) that the indigenous industry would be able to make the STBs available, in about sixty days from the date CAS is implemented. Thus, the indigenous industry was, in fact, not prepared fully to gear up to the situation.

It was decided to implement the CAS in a phased zone-wise manner in the metros of Mumbai and Kolkata and at one go in Chennai *w.e.f.* 1.9.2003, with the intention of using intervening period to step up the preparedness on CAS, to educate the consumers and to closely monitor the procurement and availability of STBs. Officers of the Ministry of I&B have visited the metro cities to assess the preparedness for CAS and have *inter alia*, observed that the demand of Set Top Boxes at the first stage would be met by imports and through the procurement of STBs by MSOs/ cable operators is in progress. The representative of Consumer Electronics and Television Manufactures' Association (CETMA), who represented the indigenous industry, were consulted at different times. CETMA and some other manufacturers had made an appeal for reduction of custom duty on the import of components, required for manufacturers of Set Top Boxes (STBs). The Central Excise duty of 16% on crucial components required in the manufacture of Set Top Boxes indigenously has been dispensed with by the Ministry of Finance so as to give a boost to the indigenous industry. The reduction of customs duty on import of Set Top Boxes from 50.8% to 5% is a temporary measure till such time the indigenous industry is geared up fully to meet the demands of the consumers".

Comments of the Committee

(Please see Paragraph No. 18 of Chapter—I)

Enhancing Minimum Number of Free-to-Air Channels

Recommendation (Para Nos. 46 & 47)

The Committee had noted that the task force had worked out subscription rate of Rs. 72 for 60 channels on the basis of cost plus reasonable profits of the cable operators and only marginal cost was required if the channels were increased upto 80 or 90 channels. The Committee failed to understand when the Free to Air broadcasters were ready to provide upto 60 channels, and in the aftermath of introduction of CAS, a large number of subscribers would opt for the basic bouquet, then why the basic tier had been kept at 30 channels.

The Committee was also concerned that the consumer would have no choice with regard to channels to be provided in the basic tier.

The Committee also urged the Ministry to reconsider the issue of basic tier with a view to enhancing the number of the channels to be made available. The Committee further urged the Ministry to ensure that the subscriber was able to exercise choice in matters of channels to be available within the basic tier and make suitable amendments in the law, if required.

Action Taken by Government

The Ministry, in their Action Taken Notes, have submitted the reply as follows:

“Pursuant to the recommendations of the Task Force, the Government has, through issue of a Notification on 7th May 2003, specified the minimum number of free-to-air channels to be included in the package of channels forming the basic System tier, as thirty, in the four metros. As per the study conducted by the Cost Accounts Branch of the Ministry of Finance, it has been worked out that the cost of the cable operator to show free-to-air channels would be Rs. 71.33 for 60 channels and a very nominal increase in cost is required, if the number of channels is increased upto 80 or 90 channels. Though the number of free-to-air channels may be 70 to 80 on an average in each metro, yet only 35 such channels on an average were being shown. If a minimum number was not prescribed, then the cable operators would not be bound by any such requirement. In fact, free-to-air channels over and above this number, provided by the cable operators will also be at no extra cost. Some of the MSO, e.g. Incable have indicated that they would be in a position to show nearly 70 free-to-air channels while Siti Cable has indicated that they would be able to carry 60 free-to-air channels. Thus, the consumer would be benefited as he would get a large number of free-to-air channels at a cost of Rs. 72/- only (exclusive of local taxes). The package of channels forming the basic System tier includes the compulsory transmission of three Doordarshan channels notified under Section 8 of the Cable Television Networks (Regulation) Act, 1995, the genres of entertainment, news, sports, children’s programmes and music and must be in English, Hindi and regional languages depending on the availability of such channels in the metros”.

The Ministry in their reply have also stated that:

“The package of channels forming the basic System tier include the compulsory transmission of three Doordarshan Channel notified under section 8 of the Cable Television Networks (Regulation) Act, 1995, the genres of entertainment, news, sports, children’s programmes and music and must be in English, Hindi or regional languages depending on the availability of such channels in the Metros. Transmission of various channels in certain area through cable networks depends on the popularity and demand of majority of people, residing in such area. In fact, some of the MSO, e.g. Incable have indicated that they would be in a position to show nearly 70 free-to-air channels while Siticable have indicated that they would be able to carry 60 free-to-air channels. Thus, the consumer would be benefited as he would get a large number of free-to-air channels at a cost of Rs. 72/- only (exclusive of local taxes). Subscribers will thus have control over the content that the being viewed in their homes”.

Comments of the Committee

(Please see Paragraph No. 21 of Chapter-I)

CHAPTER V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH REPLIES ARE INTERIM IN NATURE

Implementation of Conditional Access System

Recommendation (Para No. 49)

Summing up their Original Report, the Committee had expressed their considered view that Conditional Access System should be implemented systematically in a given time frame by deferring the date fixed, if necessary keeping in view the interests of the people without disrupting telecast of quality programmes and dissemination of information in any manner. In any case, cable subscribers should not be put into worse position after introduction of CAS.

Action Taken by Government

The Ministry, in their action taken reply, have responded as follows:

“The Government has noted the concern expressed by the Committee and therefore, after consultations with the MSOs decided to implement the zone wise phased roll-out *w.e.f.* 1.9.2003 in the metros of Kolkata and Mumbai and at one go at Chennai. In Delhi the same will be implemented immediately after the ensuring Assembly elections”.

Status notes from the Ministry of Information & Broadcasting

(a) *Dated 15.06.2004 from the Ministry of Information & Broadcasting*

The Ministry in their note dated 15 June, 2004 on Conditional Access System have stated as follows:

“The Cable Television Networks (Regulation) Amendment, Act 2002 was passed by the Lok Sabha on 15.05.2002 and by the Rajya Sabha on 10.12.2002. The Bill received the assent of the President on 31.12.2002. The said amendment introduced a concept of ‘Addressability’ (CAS) in the Cable Television Network, which could be mandated in specific area and from a specific date, to be

notified by the Government. Initially, it was introduced in the four metros *w.e.f.* 15th July, 2003. Later, CAS was notified for implementation *w.e.f.* 1st September, 2003 in the three metros in a phased zone-wise manner and at one go in Chennai. Through a notification issued on 29th August, 2003, the implementation of CAS was, however, withdrawn in the NCT of Delhi. This was challenged before the Delhi High Court, which quashed the said notification by its order dated 04.12.03.

In a batch of writ petitions filed, through its order dated 26.12.2003, the Delhi High Court had, *inter alia*, observed that "there has to be some regulatory body in terms of the synopsis of the comments which have been filed by Respondents to see the implementation". The High Court, therefore, directed that it be enlightened of the steps taken in this direction before 05.04.2004.

On 9th January, 2004, the Central Government has notified the 'broadcasting services and cable services' to be Telecommunication Systems under the Telecom Regulatory Authority of India (TRAI) Act, 1997. The functions of the Authority are laid down in the said Act. In addition, TRAI has been assigned additional functions, through a separate notification. The T.R.A.I. began the examination of all of the issues/constraint during the introduction of CAS in the four metros. Meanwhile, the TRAI has, through its order issued on 15th Jan. 2004, fixed the ceiling on charges payable by cable subscribers to the cable operators; by cable operators to MSOs/Broadcasters and by MSOs to Broadcasters (including their authorised distribution agencies) to be those prevalent as on 26th Dec. 2003 for both FTA and pay channels (for CAS and non-CAS areas) until final determination by it on the various issues concerning these charges.

On TRAI's interim recommendation, the implementation of CAS has been suspended in all the four metros *w.e.f.* 27th February, 2004 through the issue of a notification, which has been challenged by some MSOs in various law Courts. The Chennai High Court has, however, granted stay on the operation of a aforesaid notification.

TRAI is in the process of examination of these issues, through a consultative process with all the stake holders. A detailed Consultation Paper has also been circulated by TRAI. Its final recommendations are awaited".

(b) From Telecom Regulatory Authority of India (TRAI)

The TRAI in its note dated 22 June, 2004 submitted the following status of the CAS:

“The Government of India issued a Notification No. 39 dated 9th January, 2004 under the proviso to clause (k) of sub-section (1) of Section 2 of the TRAI Act, 1997 as amended, whereby the scope of the expression ‘Telecommunication Services’ under the TRAI Act was expanded to include the Broadcasting Services within the purview of the Telecom Regulatory Authority of India. Through an order on the same day, the Government of India, in exercise of the powers under clause (d) of the sub-section (1) of the Section 11, added the following to TRAI’s functions:

- (1) make recommendations regarding:
 - the terms and conditions on which the “addressable systems” shall be provided to customers
 - the parameters for regulating maximum time for advertisements in pay channels and other channels
- (2) Specify standard norms for and periodicity of revision of rates of pay channels, including interim measures.

TRAI issued a consultation note dated 15th January, 2004 on various issues concerning the Cable TV Industry. After analyzing the various issues raised in the consultation note and based on the study of various inputs and comments received in response to the consultation note, the TRAI forwarded interim recommendations on 23.02.2004 that the CAS should be kept in abeyance for at least three months. The Government of India, accepted the recommendation and *vide* Notification No. S.O. 271(E) dated 27th February, 2004 suspended the mandatory operation of CAS until such date as may be notified by the Government.

The GOI notification dated 27.02.2004 was challenged in the Madras High Court and an interim stay on the operation of this notification was granted by Madras High Court on 04.03.2004. The Madras stay order has delivered the final judgement and the interim stay is made absolute. The position now on CAS is that it is operational only in Chennai.

To take final view on CAS, TRAI based on the responses received on the consultation note dated 15th January, 2004 and discussions

held with various stakeholders, issued a detailed Consultation Paper on "The issues relating to Broadcasting and Distribution of TV Channels" on 20 April, 2004. TRAI also held detailed discussion with stakeholders in Chennai, Delhi and Mumbai. A detailed workshop to educate consumers on CAS is being held in Mumbai on 19.06.2004. TRAI has also constituted a Committee with representatives of the State of Tamil Nadu, Maharashtra, West Bengal and NCT of Delhi to assist TRAI in finalizing the recommendation.

The TRAI is now in the process of finalisation of its recommendations/regulations on Conditional Access System and related issues and it is expected that these will be finalized in July, 2004. Since TRAI has not finalized its views on CAS, it may not be in position to provide any suggestions at this stage".

(c) Dated 29.03.2005 from the Ministry of Information & Broadcasting

In their note dated 29.03.2005 the Ministry has further stated as under:

"The implementation of CAS was to be undertaken in Delhi, Mumbai and Kolkata (Zone-wise) and Chennai *w.e.f.* 1.9.2003. The Government subsequently de-notified the implementation of CAS in Delhi through a notification dated 29.08.2003, which was later quashed by the Delhi High Court on 4.12.2003, in a case filed by M/s Jay Polychem & ors.

CAS was not implemented in Mumbai and Kolkata. The Government of Maharashtra requested for postponement of the implementation of CAS in Mumbai, citing a number of issues, including additional burden on the common man in terms of purchase of STBs. The West Bengal Government also highlighted a number of issues impinging on the consumers' interest.

The Multi-system Operators (MSOs)/Cable Operators in Chennai city went ahead with its implementation *w.e.f.* 1.9.2003. The Chief Minister of Tamil Nadu, through her DO letter dated 6.1.2004, requested for withdrawal of CAS and suggested introduction of such system in future after consultation with the concerned State Government and keeping in mind the interest of the consumers. It was also suggested that a regulatory mechanism might be put in place to keep a check on the Broadcasters and Multi Service Operators with adequate powers given to the State Government.

The MSOs in Delhi decided to implement CAS in the notified areas of Delhi *w.e.f.* 15th December, 2003, pursuant to Delhi High

Court Order dated 4.12.2003. The implementation of CAS in Delhi witnessed partial implementation of CAS in many parts of the notified area, apart from certain difficulties faced by the consumers at large. In the initial stage, a petition was filed by Consumer Coordination Council and Consumer Online Foundation before Delhi High Court, seeking various reliefs, including the prayer for withdrawal of implementation of CAS on account of consumers' concerns like pricing of channels/STBs, monopoly of cable operators, prescription of service quality parameters, etc. The Delhi High Court, in its interim order dated 26.12.2003, declined to restrain the Government from implementing CAS in Delhi and decided also to review the situation after three months. The aforesaid interim order also directed as under:

'..... we desire that in this period of three months all the loopholes, difficulties faced by the consumers, effect of the implementation and problems, if any, arising out of the implementation can be assessed and remedial measures be taken in that regard.

There has to be some regulatory body in terms of the synopsis of comments, which have been filed by the respondent see the implementation. We would like the respondent to enlighten this Court of the steps taken in this direction before the next date of hearing....."

Meanwhile, the Chief Minister of Delhi, through series of correspondence, highlighted various issues arising from the implementation, which are summarized below:

- Linkages between the broadcasters, MSOs, Cable Operators and the consumers must be strengthened to focus on the issues viz., product pricing, quality, availability and pricing of pay channels etc. To sort out various distortions and to remove mistrust among the various stakeholders, a manual spelling out the details of the broadcasters and MSOs must be indicated.
- Absence of regulatory body for dealing with the broadcasters and MSOs.
- Lack of awareness among the consumers regarding the benefits of CAS and the feeling among the consumers that CAS is being imposed on them. The consumers perceive that the additional financial burden of having to buy a set

top box and get limited pay channels is not of any advantage in the present system of pricing of the channels and the arrangements for purchase/sent [Sic. 'Rent'] of STBs is also unsatisfactory. The consumers are being made to pay for seeing less.

- Need for re-consideration of the system of CAS from the point of view of inadequacy of competition in local area leading to virtual monopoly by the Cable Operators, which is not only leading to current distortions but also likely to aggravate as the backward linkages with the broadcasters and MSOs do not seem to have been adequately worked out in terms of pricing, availability of channels, etc.

Following the order of the High Court dated 26.12.2003 as mentioned in para 3 above, the Government brought "Broadcasting and Cable Services" within the ambit of TRAI Act on 9.1.2004. Pursuant to Government's notification dated 9.1.2004, TRAI became the Regulator for broadcasting and cable services. Through another notification dated 9.1.2004, TRAI was also assigned additional functions under Section 11 (1) (d) of the said Act, which mandated TRAI to make recommendations regarding terms and conditions on which the "Addressable Systems" shall be provided to customers and the parameters for regulating maximum time for advertisements in pay channels as well as other channels. These additional functions were assigned keeping in view the difficulties faced during the course of implementation of CAS in four metro cities.

TRAI began the consultation process by issuing the consultation note on 15th January, 2004. Based on the inputs received from the stakeholders, TRAI made interim recommendation to the Government on 23.2.2004 to suspend CAS for at least 3 months, in order to look into various issues arising from the implementation of CAS. Government suspended CAS till further orders on 27th February, 2004, citing the grounds leading to such an action. The Madras High Court however granted stay on the operation of the aforesaid notification and CAS is currently under implementation in Chennai. The issue of implementation of CAS in Delhi, Mumbai and Kolkata is subjudice.

TRAI carried the consultation process forward, with the issue of a more detailed consultation paper titled "Issues relating to Broadcasting and Distribution of TV Channels" on 20.4.2004. TRAI has now furnished its final recommendations on 1st October, 2004. These recommendations, *inter alia*, cover the following aspects:

- Direction of Regulatory Intervention.

- Consumer Choice.
- Pricing.
- Interconnection Agreement and Revenue Share.
- Promotion of Competition in the distribution of TV Channels.
- Rationalisation of Licence Fee and Taxation.
- Advertisement.
- Regulatory Enforcement.
- Quality of Service.

Keeping in view the specific recommendation of TRAI on the issue of the options for introducing addressability, the Ministry has sought the views of all the State Governments on 12th October, 2004 followed by reminders in the months of January and February, 2005. Some State Governments like MP, Bihar, HP and Nagaland have furnished their views. This issue was also slated for discussion by SIMCON (State Information Minister's Conference) on 18-19th February, 2005, which has now been rescheduled on 15-16th April, 2005. Simultaneously, the matter is being pursued with the remaining State Governments. It needs to be pointed out that earlier when CAS was sought to be implemented, the State Governments had also opposed its implementation as a number of problems were encountered impinging on the consumers' interest. Therefore, the issues connected with the implementation of CAS needs to be addressed in consultation with the State Governments.

Thus, the Ministry is currently in the process of examination of TRAI's recommendations referred above, The Ministry proposes to have consultation with all the stakeholders.

Comments of the Committee

(Please *see* paragraph No. 27 of Chapter-I)

NEW DELHI;
 27 September, 2005
 5 Asvina, 1927 (Saka)

M.M. PALLAM RAJU,
 Chairman,
 Standing Committee on
 Information Technology.

ANNEXURE I

MINUTES OF THE FOURTH SITTING OF THE STANDING
COMMITTEE ON INFORMATION TECHNOLOGY (2005-2006)

The Committee sat on Thursday, the 6th September, 2005 in
Committee Room 'C' Parliament House Annexe, New Delhi.

PRESENT

Shri M.M. Pallam Raju—*Chairman*

MEMBERS

Lok Sabha

2. Shri Nikhil Chaudhary
3. Shri Mani Cherennamei
4. Shri Sanjay Dhotre
5. Shri Kailash Joshi
6. Shri P.S. Gadhavi
7. Shri Ashok Kumar Rawat
8. Shri Vishnu Sai
9. Shri Tathagata Satpathy
10. Shri Ram Kripal Yadav

Rajya Sabha

Nil

SECRETARIAT

1. Shri P. Sreedharan — *Joint Secretary*
2. Shri Raj Shekhar Sharma — *Director*
3. Shri K.L. Arora — *Under Secretary*
4. Shri R.C. Tewari — *Under Secretary*

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee. The Committee then, considered the Draft Action Taken Report on "Conditional Access System (CAS)" and after some deliberations the Draft Report was adopted.

3. The Committee, then, authorized the Chairman to finalize the Draft Report and present the same to the House at a date and time convenient to him.

4. The Committee then discussed the on-the-spot study visit programme and finalized to visit Udaipur, Mumbai, Pune and Goa in the first week of October, 2005 to discuss Rural Telephony, Universal Service Obligation, Functioning of Doordarshan etc.

The Committee, then, adjourned.

ANNEXURE II

[Vide Paragraph No. 5 of Introduction]

ANALYSIS OF ACTION TAKEN BY GOVERNMENT ON THE
THIRD REPORT (FOURTEENTH LOK SABHA)

- (i) Recommendations/Observations which have
been accepted by the Government:
Paragraph Nos.: 39, 43, 44, 45, 48
- Total: 5
Percentage: 45.45%
- (ii) Recommendations/Observations which the
Committee do not desire to pursue in view
of the replies of the Government:
Paragraph Nos.: Nil
- Total: Nil
Percentage: 22.72%
- (iii) Recommendations/Observations in respect
of which replies of the Government have
not been accepted by the Committee
and which require reiteration:
Paragraph Nos.: 40, 41, 42, 46 & 47
- Total: 5
Percentage: 45.45%
- (iv) Recommendations/Observations in respect
of which replies are of interim nature:
Paragraph No.: 49
- Total: 1
Percentage: 9.10%