Comments on TRAI Consultation Paper
on
Issues related to New Regulatory Framework For Broadcasting and Cable Services

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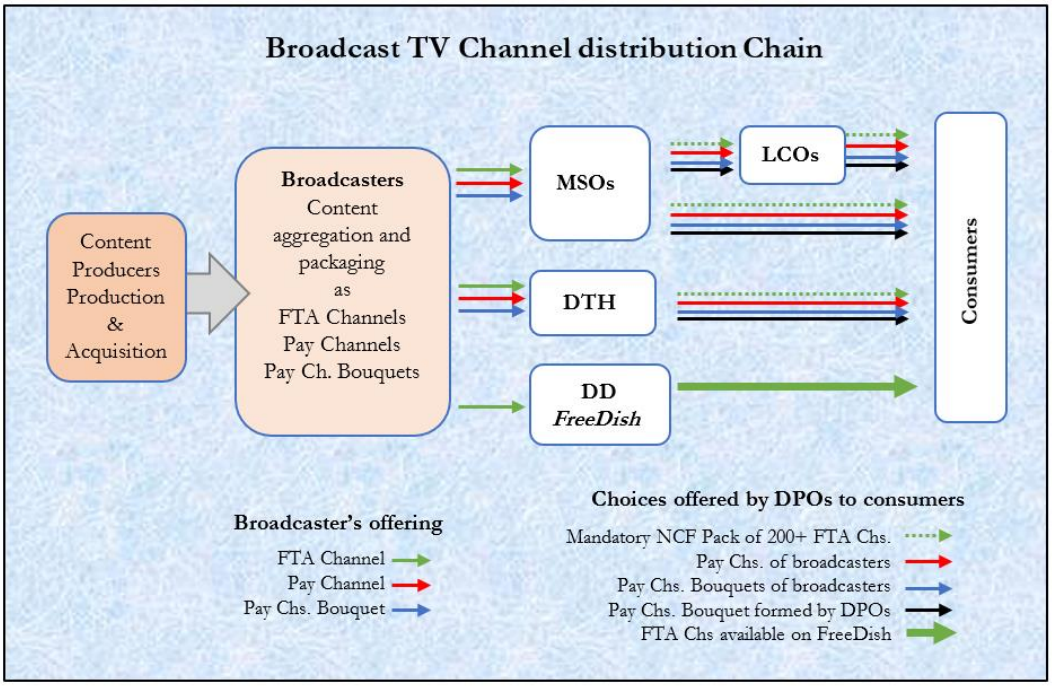
General Observations:

The digitalization of linear TV broadcasting improved transparency and trust in distribution value chain. It reduced bandwidth constraints and enables exercising choices by consumers. The NRF though introduced some new measures for digitized sector, yet some practices and provisions of the analog era were transposed to the DAS as it is. Adoption of such approaches defeats the spirit and principles of MRP based regulation that was introduced in NRF for the digitized sector.

The NRF-20 attempts to micro-manage the sector contrary to the "light touch" regulatory approach followed world over, including India, for emerging digital economy. A micro-regulation addresses micro level issues, requiring more engagement of the Regulator. This could overshadow the larger objectives of regulatory interventions to ensure innovation, growth of industry, quality of service and consumer protection in broadcasting sector.

The Indian broadcasting sector can play important role in bringing out the rich culture, heritage, and diversity of the country to the world. It may help rejuvenate Indian sports and create employment opportunities. India may emerge as a "Content Hub". As such, it is imperative that regulatory interventions focus on encouraging innovation and investment in the sector, while affording consumers adequate cover.

The broadcasters and DPOs, being backbone of the broadcasting eco-system, should be treated in fair, just and non-discriminatory manner by regulatory measures, while protecting interests of consumers. The framework under review appears to give undue advantages to one stakeholder at the cost of other through differentiated provisions. Though consumer interest is presented as the cornerstone of most regulatory interventions, it is observed, that little regard is given to existing provisions that serve it most closely. An inordinate amount of regulatory energy centers around the pricing and packaging of Pay channels and bouquets, completely overlooking the packaging of FTA channels at retail. This is an equally important issue for the consumers and broadcasters/ DPOs. The problem with such a narrow lens is that it directs regulatory attention away from the consumers interests and from the issues that play an active role in denying consumers adequate choice. A simplified overview of broadcast TV channel distribution chain is given below for ease of understanding the present eco-system.



The comments and justification are submitted below for kind consideration of the Authority.

1. Should TRAI continue to prescribe a ceiling price of a channel for inclusion in a bouquet?

a. If yes, please provide the MRP of a television channel as a ceiling for inclusion in a bouquet. Please provide details of calculations and methodology followed to derive such ceiling price.

b. If no, what strategy should be adopted to ensure the transparency of prices for a consumer and safeguard the interest of consumer from perverse pricing?

Please provide detailed reasoning/ justifications for your comment(s).

Comments:

1. a. *No, there is no need for prescribing a ceiling on MRP for a television channel for inclusion in a bouquet. A price ceiling is obsolete in the digitalized MRP-based regime because consumers can freely choose channels based on MRP prescribed by the broadcaster. The issues confronted by the stakeholders when such a ceiling was prescribed in NTO 1.0 and later in NTO 2.0, are unlikely to be resolved by prescribing a third ceiling. Any calculation or methodology to derive such ceiling may not therefore serve any useful purpose.*

i) *Prescribing such a ceiling indirectly means regulatory prescription on how broadcasters form bouquets, which contradicts the TRAI's earlier position that "the pricing of a channel or packaging of various programs in a channel and packaging of channels in a bouquet are guided by the business strategy of individual broadcaster".*

ii) *The regulatory provisions should be non-discriminatory. Broadcasters and DPOs are given equal powers to form bouquets. A broadcaster can only form bouquets from its limited channels, whereas a DPO has much wider choice to form such bouquets. Further a broadcaster cannot sell Channel/bouquets directly to consumers. These are provided by the DPOs to consumers. However, DPOs are not subject to pricing and packaging restrictions at retails to the extent broadcasters are. Distributors directly interact with consumers and influence their subscription.*

iii) *Channel pricing is dynamic and varies significantly. A broadcaster cross subsidizes its channels and new offerings to optimize revenue by forming bouquet offerings as per business needs. Each of its channels cannot be treated as an independent entity from business perspective. A broadcaster has right to form bouquet under MRP system without any capping or restrictions.*

iv) *The essence of the NRF, supports forbearance approach, it is the best one for all stakeholders. Broadcasting is now a competitive sector at both the upstream (broadcaster) and downstream (DPO) level. Forbearance would see a drop in prices of channels and a concomitant rise in the quality of content because it would force service providers to innovate and experiment new content opportunities and also to compete on non-price related aspects. A ceiling on price of channel and the way it is packaged and distributed, restricts such opportunities. The present regime does little to address this concern/incentivize industry to focus on these key aspects.*

Justification:

i) The TV channel pricing history goes back to 2004 when regulation in TV channels' distribution was initiated by TRAI. The TRAI froze existing channel prices then because there was no mechanism to arrive at the price of a TV channel. There is still no method available today, as the TRAI also affirmed. The 2004 prices have since been used as a reference to calculate channel rates over the last 18 years. These rates were revised by granting inflationary increments and served as reference for pricing new channels and capping of genres which was being followed by industry without any specific regulatory provision.

ii) In 2016, the TRAI undertook a significant revision of the regulatory framework which was aligned to analog era business models and practices. The objective was to adapt it to digital and addressable broadcast delivery networks. In digital era TRAI envisioned "unbundling of content and delivery pipes" and moving to a "tariff forbearance" regime in broadcasting like the telecom sector. Broadcasters earlier though had forbearance but were restricted to B2B selling of channels on "wholesale" to DPOs, who did B2C distribution of channels and bouquets.

iii) The NRF-17 introduced "MRP" based model, where the broadcasters were supposed to be given forbearance in pricing their channels/ bouquets hence earlier restrictions would be removed. Their channels/bouquets were still carried by DPOs to consumers like before, as DPOs were still the intermediaries who manage actual distribution to consumers. As the Content and delivery Pipes stood unbundled, DPOs interests were protected by guaranteeing them "Network Capacity Fee" to be charged from subscribers towards cost of pipe and mandatory delivery of about 35 FTA DD channels. They were also assured distribution fee as revenue share. The "NCF" was set for delivery of 100 FTA channels (DD channels and other FTA channels) at up to Rs. 130/-. The NCF contained cost of pipe for accommodating 100 SD channels (about 80/-) and a component towards improvement of network infrastructure (about 50/-) to ensure smooth implementation of MRP based system and selection of choices at consumer level. This kind of basic tier package was a practice for the analog era, where the consumer did not have any ability to exercise their choice. In the new framework the consumers were therefore empowered to add/drop/replace any FTA or Pay SD/HD channels in the above NCF pack as per their preferences, so that it was in complete sync with the new framework which enables consumer choices. A relation between SD/HD/4K capacity requirement was also prescribed to enable consumers subscribe to HD/4K TV channels in future whenever available, without requiring any regulatory changes.

iv) In NCF-20 the NCF pack was revised to 200 channels at 130/- and more than 200 channels at 160/. Before such revision, it would have been prudent to know if the networks were upgraded and consumers have necessary means to exercise their choices in the NCF pack. If so, then any upward revision would have been justified to offer them more choices.

v) Infrastructure upgradation is important given that non-standard DAS networks will also lead to trust deficit, signal piracy and other ills of earlier era. The necessary mechanism is lacking to ensure that DPOs upgrade their systems and enable consumer choices. In such a scenario consumer will not be able to realize the benefits of digitization and add/remove channels as per their preferences. There is no information shared in consultation paper on network upgradation and extent of choices being exercised by consumers, for which a fee mandated by Regulator is being collected from subscribers.

vi) In absence of any ground-level assessment about the availability of channel selection to consumers, the NCF pack has become a basic tier pack of analog era. It obscures consumer choices, blocks bandwidth, newer and better TV channels, and enables pushing unwanted channels on subscribers.

vii) It is submitted by DPOs that consumers are not tech savvy and they are not able to exercise their selection choices, therefore regulatory prescription of mandatory NCF pack becomes an important issue at consumer level. In such a situation if providing effective choices to consumers is a real concern, then the NFC pack should ideally contain no more than 35 mandatory DD channels and cost of transmitting these channels plus network improvement fee. The consumer can freely subscribe to a-la-carte, broadcasters' bouquet or DPOs bouquet. Acquiring any additional capacity and channels (FTA or Pay) should be left to the choice of consumers.

viii) The NRF-17 framework (NTO 1.0) sought to give equal power to broadcasters and DPOs so they could offer channels in a-la-carte and bouquet models to consumers as per their business requirements and consumers could exercise their choices. However, the objective of the NRF-17 reform could not be achieved as the Regulator prescribed a channel price ceiling of INR 19 for the inclusion of channel in broadcaster's bouquet. The regulator derived INR 19 ceiling from the prevailing maximum ceiling of a "genre" cap evolved through market forces and industry-wide consensus over the years. The ceiling was further amended in 2019 (NTO 2.0) to INR 12 which primarily has led to the current consultation.

ix) It is submitted that the price ceiling on channels goes against the spirit of the MRP based distribution model. Regulatory forbearance, fair opportunities to stakeholders to do business and allowing market forces to reach a consensus on the price point of TV channels is the best way forward.

1. b. If no, what strategy should be adopted to ensure the transparency of prices for a consumer and safeguard the interest of consumer from perverse pricing?

Please provide detailed reasoning/ justifications for your comment(s).

i) The prices of channels are transparently known to the consumers. The existing framework has mandated the display of channel prices in EPG which most DPOs are supposed to have implemented. The guaranteed NCF package mandatorily provides 228 channels to a consumer when the average consumer watches about 30 to 40 TV channels. The existing regulation gives consumers power to add/remove channels as per their preferences. It is, however, observed by the TRAI and other stakeholders that consumers are not able to exercise effective choice within the NCF. Consumers may want to watch fewer channels but receive 228 TV channels as an initial package. It is unclear whether consumers are able to exercise their choices to subscribe to these channels within the NCF. Here, the TRAI should focus on enforcement of transparency regulations under the QoS Regulations to ensure that consumers are able to exercise effective choice when they subscribe to the Basic Tier Pack/NCF pack.

ii) Perverse pricing was a concern in the analog era in B2B dealings at wholesale because of some discriminatory distribution instances observed in few cases. Now the scenario has changed with technological developments and consolidation in the distribution segment of broadcasting. Further the interconnection regulation guarantees, non-discrimination through "must provide", "must carry" provisions, although the must-carry is conditional. Currently, there are no regulatory restrictions on discounts at retail level that offers competitive packages to consumers and channel pricing is dynamic and competitive. Therefore, there is no need for considering price caps or any other bundling restrictions at broadcasters end alone to ensure transparency of prices.

iii) Broadcasters cross subsidize production and distribution costs of their channels and new offerings to optimize revenue by forming competitive and appealing bouquet offerings as per business needs. Its channels are not independent business entities but varied products from business perspective. A broadcaster has right to form bouquet of its channels without any capping for marketing to consumers under MRP system. Discounted bouquets to consumers do not stifle their individual choices rather it gives them better value for money. The largest broadcasters have about 60 – 70 channels each which are further divide into bouquets. A broadcaster therefore is not in a position to push many unwanted channels to consumers unlike the NCF base pack of DPOs which indirectly pushes 228 TV channels, stifling a-la-carte choices of consumers.

- *DPOs are guaranteed revenue stream through the regulatory mandate of NCF. They are also given guaranteed revenue stream in the form of a 20 percent distribution fee along with a 15* *percent discount as revenue share. Given that DPOs have been given assured revenues under the regulation, it is only fair and reasonable that that broadcasters be given complete freedom of pricing and packaging for their channels.*

- *The "NCF" package mandated by the Regulator has created a regulatory imbalance which is likely to lead to a "market failure". NCF obscures consumer choices, enables pushing of unwanted channels to them, creates artificial bandwidth constraints, and forces a channel to become FTA to reach the huge number of subscriber eyeballs. Large DPOs have millions of subscribers each so there is no incentive for a small or niche channel to debut as a Pay channel. The NCF also adversely affects the consumer because they get formulaic, poor-quality content. It could also lead to anti-competitive business practices for assured selling of "eyeballs" to broadcasters.*
- *The a-la-carte selection of Pay channels has been at the core of most regulatory interventions, and a-la-carte selection of FTA channels have been completely ignored. From consumer perspective a-la-carte selection of both Pay and FTA channels is equally important. The "NCF" regulation in its present form without requisite infrastructure and any regulatory oversight for monitoring and enforcement mechanism at ground is against the regulatory objectives of improving subscriptions over advertisement revenue and creating a choice based eco-system. The "NCF" pack has become somewhat similar to operation of "DD FreeDish" being operated by each DPO, where the consumers end up paying mandated monthly subscription for 228 FTA channels. Overall, there is a need for TRAI to review the NCF, top create a regulatory balance in the broadcasting value chain.*

Justifications:

i) In the explanation to this consultation question, two issues have been highlighted; transparency of "prices to consumers" and safeguarding "interest of consumers from perverse pricing". The transparency of "prices to consumers" is already there, and "knowing the prices" of channels buy consumers is no longer an issue. Transparency of prices to consumers and consumer protections provisions were key features of the NRF. The consumers have been given power to add/remove any channel by QoS regulation but have limited means to exercise it and the regulatory provisions are not yet widely implemented by DPOs in a user-friendly manner. The Regulator, through its "Channel Selector App" has made a praiseworthy effort to help improve consumer choice. However, the outcomes of this effort are not reflected in the CP. A reliable, robust and transparent systems to for television subscribers is yet to be developed. Overall, the ecosystem and ability to exercise a-la-carte subscriptions by consumers is real issue which has not attracted enough attention of the Regulator.

ii) It is outlined in the consultation that perverse pricing of Broadcasters bouquet restricts consumer a-la-carte choice and bundling pushes unwanted channels to the consumers. However, there is no elaboration on DPOs bouquets, who have wider scope for bundling and marketing bouquets. Moreover, it has to be highlighted again that broadcasters do not have any direct dealing with consumers. The present CP in para 1.8 brings out that *"with the implementation of certain provisions of NRF 2020 as mentioned above, many benefits of the 2020 amendments have already accrued to the consumers. Every consumer now can get 228 TV channels instead of 100 channels earlier, in a maximum NCF of Rs. 130/-. This has enhanced the availability of more television channels to the consumers…"*.

iii) On the one hand improving a-la-carte choice to consumers is stated as prime concern, while on the other hand regulatory intervention has increased the channel being pushed to consumers from 100 to 200 and more, through the guaranteed NCF regulation.

iv) If providing effective choices to consumers is a real concern, then the NCF pack should ideally contain no more than 35 mandatory DD channels and cost of transmitting these channels plus network improvement fee. The consumer can freely subscribe to a-la-carte, broadcasters' bouquet or DPOs bouquet. Acquiring any additional capacity and channels (FTA or Pay) should be left to the choice of consumers. The CP para 1.28 argues that, *"the consumers exercise their choices differently based on their preferences. In general, the consumers of DTH platforms make use of online portals and apps. Whereas consumers served by Local Cable Operators (LCO), still prefer to convey their choices to their LCO either by filling choices on a predefined form or over the telephone. Therefore, any changes in consumer offering will entail greater efforts on part of LCOs and in turn MSOs*". Further para 2.10 says that *"some consumers are not comfortable in selecting the channels of their choices, due to their inability to use IT systems and understanding the packages offered by distributors/ broadcasters".* In DAS era an LCO doesn't exist independently. The LCO must either create infrastructures to become a MSO or LCO must affiliate to a DPO on revenue share prescribed by regulation. The DPO provides LCO with signal feed and manages the subscribers. Enabling means of exercising channels selection at last mile is the responsibility of DPOs.

v) On the issue of perverse pricing it is pointed out in CP that *when high discounts are offered for bouquets that are offered by the broadcasters, the effect is that subscribers are forced to take bouquets only, as the a-la-carte rates of the pay channels that are found in these bouquets are much higher. This results in perverse pricing of bouquets vis-à-vis individual pay channels." In the process, the public ends up paying for unwanted channels, thereby blocking newer and better TV channels and restricting subscribers' choice. It is for this reason that discounts are capped".*

An example is also indicated in Table 3 in the present CP to show perverse pricing.

Table – 3: Effect of varying the Discount on Sum of a-la-carte prices of constituent TV Channels on final price of bouquet for consumers

Channels	**MRP of Bouquet after % discount on Sum of MRPs of all Ala Carte Channels forming the Bouquet**					
	MRP of a-la-carte channels	**With 25% discount**	**With 33% discount**	**With 40% discount**	**With 50% discount**	**With 60% discount**
Channel 1	12					
Channel 2	12					
Channel 3	10					
Channel 4	10					
Channel 5	6					
Sum of a-la-carte prices of 5 driver pay channels	**50**	**60**	**54**	**48**	**40**	**32**
Sum of a-la-carte prices of 20 non-driver pay channels	30					
Total price of 35 a-la-carte pay channels	**80**					

vi) However, the above example of bouquet discounts to explain perverse pricing assumes that the consumer will choose all driver channels of the bouquet as a-la-carte subscription also, thus making his choice costing 50/- unviable as compared to bouquet price of 32/- when highest discount of 60% is offered on bouquet. As pointed by the TRAI, (Annexure I of CP) under the provisions of NRF 2017 *"Consumer gets clarity of the product offered and is not fleeced by smart packaging."*

This is in fact the actual situation which has been completely overlooked. If a consumer chooses 50% or even 60% of these driver channels judiciously from this bouquet as a-la-cate subscription, he still ends up saving over the price of discounted bouquet. The consumers will choose a few driver channels from different broadcasters as per their preferences. To ensure that all driver channels of all broadcasters are available to consumers at lowest prices through regulatory intervention does not augur well for the larger objective of growth of the broadcasting sector. The reasoning therefore doesn't hold ground that discounts on broadcaster's bouquet make a-la-carte selection unviable for consumers to exercise their a-la-carte preferences.

vii) The provision to restrict discounts on broadcaster's bouquet seems discriminatory as no such restrictions are enforced at DPOs level who have more power for form bouquets from the "Buffet" of channels and bouquets available to them for distribution to consumers. The broadcasters have to file RIOs whereas no such concept is implemented at consumer level to safeguard the interests of consumers. There is mandatory provision of pushing 200 channels at Rs. 130/- (and more than 200 channels at Rs. 160/-) by DPOs at retail to every subscriber without making any effective a-la-carte selection choice available to them.

viii) Broadcasters and DPOs should be treated fairly and in a non-discriminatory manner for making and marketing bouquets, any regulatory intervention therefore must be equally applicable. *However, under the NRF, DPOs are not subject to pricing and packaging restrictions to the extent broadcasters are. Distributors being content aggregators from broadcasters directly interact with consumers and, provide bouquets and channels to consumers therefore have much greater role in channel/ bouquet selection and subscription by consumers.* Due to poor enforcement at the subscriber level, even in the era of "Digital India" the opaqueness of analogue era continues still continue to exist.

ix) It is evident that there is lack of consumer awareness and necessary means to exercise their choices are not enabled at the last mile, where the real focus should be to further improve a-la-carte selection of channels by consumers. *Here, the TRAI should focus on enforcement of downstream regulations under the QoS Regulations to ensure that consumers are able to exercise effective choice and realize the benefits of seamless channel addition/deletion. Ideally, consumers should have the know-how and means made available to them to view all available channels on their DAS system and decide their channel subscription. Consumers directly interact with DPOs for their channel subscription and the TRAI should take a closer look at this interaction to identify concerns faced by consumers with respect to channel selection.*

x) The concern about pushing of unwanted channels by a broadcaster, who has much lower number of channels in their bouquets as compared to a DPO, through perverse pricing is therefore not fair and justified. A regulatory push for a-la-carte choice to consumers (especially when they are already empowered with such choices) by regulating formation of bouquet at broadcasters end only, will certainly create more disturbances in the value chain, and hence does not appear to be a pragmatic regulatory intervention. The focus should be on educating the consumers and enabling user friendly means for a-la-carte subscription to be made by the DPOs.

2. What steps should be taken to ensure that popular television channels remain accessible to the large segment of viewers. Should there be a ceiling on the MRP of pay channels? Please provide your answer with full justifications/reasons.

i) The popularity and price of a TV channel are dynamic in nature. A popular channel for one section may not be favored by another section of viewers. The viewers preferences are subject to numerous factors as cultural, linguistic, geographic diversity etc. A wider subscription base doesn't mean that it is popular amongst all subscribers. Ensuring the interests of all consumers should be objective of the regulator.

ii) Any regulatory objective purely centered around argument that consumers should only choose all driver channels only from different broadcasters, on a-la-carte basis, is against both the overall growth of the industry and consumer welfare. The linear broadcast delivery industry is driven by Subscription and Advertisement Revenue streams, from pay and FTA channels or bouquets. A lot of recurring investment goes into making and maintaining a channel as a driver channel, pragmatic approach would be needed to create a regulatory eco-system for overall growth of the sector while safe guarding the interests of consumers.

iii) There is no need to identify popular TV channels and force broadcasters to keep them in a bouquet and make them affordable for all consumers. *DD FreeDish* has over 40 million subscriber households that have access to free television from different genres and there is no regulatory imperative for ensuring that certain channels be made affordable to all consumers. It is strange that on one hand the regulator wants some channels to be kept out of bouquet and at the same time it wants "popular" channels to be compulsorily included in bouquets. This clearly shows how micro-management of business activities along value chain, leads to more complication and unnecessary regulatory interventions.

iv) The TRAI has over the years taken consistent position, which stands well established, that it does not regulate the content and the prices of TV channels. The NRF-2017 on MRP based model was evolved on this premise to give complete forbearance to broadcasters and to protect interest of DPOs by giving assured minimum ARPU per subscriber through the NCF. There is no need to enter a new territory by considering ceiling on the MRP of pay channels, in view of the already set principles. It is unjustified to consider facilitating and mandating distribution of popular private TV channels through regulatory provisions for larger viewing of Indian masses, except may be the mandatory public service DD channels.

v) The freedom to price Pay TV channels does not impact affordable access to television content for viewers. As mentioned before, broadcasting is now a very competitive sector and it is likely that forbearance will usher a drop in prices of channels and other services in the sector. The Regulator did not regulate the channel prices even in analog era (accepted the industry set prices) where limited options were available to consumers to access media and entertainment sources. Now in digital era having abundance of sources, regulating prices of private TV channels for affordability in broadcasting sector is regressive.

vi) The existing regulation has elaborate protection of consumer interests ensuring affordable access to information, education, sports and entertainment as follows:

a) Access to NCF bouquet of 228 FTA TV channels at 130/- plus taxes and more than 228 channels at 160/- plus taxes.

b) Many of the FTA channels are popular News and Entertainment channels. The consumer has full freedom to add /drop/replace any new FTA or Pay channel of choice, within this pack. They can also choose HD channels in this pack.

c) All DD channels are mandatorily to be provided to the consumers.

d) All important events of National significance if covered by any channels are to be shared with DD and hence accessible to consumers. (Sports Act 2007)

vii) The need of the hour is to enable selection and enforcement of quality-of-service norms at the last mile. DPOs (and their attached LCOs) require technology upgradation for Networks and NRF implementation. The NCF allocates INR 50 for technological upgradation, but TRAI does not have an enforcement mechanism to ensure how DPOs upgrade their infrastructure. This allocation should be performance-linked and the TRAI could implement a mechanism where DPOs are allowed to charge INR 50 under NCF only after they submit proof of technological upgrades. This is important in protecting consumer interests to improve a-la-carte selections at the last mile

viii) The present CP has highlighted some key issues affecting the broadcasting sector. These and other concerns as listed below also need to be looked into while deciding any regulatory intervention, to unlock the potential of the B&CS segment.

a) Indian broadcasting sector is advertisement driven with much lower share of subscription revenue. While the situation is reverse in developed countries. This has led to growth of TV channels both in GEC and News genres with formulaic content that is designed to attract eyeballs to get more TRPs. As a result, there is no investment in content innovation because regulations prevent broadcasters from pricing and packaging channels in a manner that helps them to ensure returns on investment in improving quality of content.

b) Indian M&E Industry has significant headroom for growth in contribution to economy. We are second to China as a growth market but contribute below 1% to GDP as compared to Japan, UK South Korea (3+%) and Mexico, Brazil (~2%) [CII BCG Media Report Dec'2021]. The TRAI should look to create an enabling environment for growth of TV sector, with limited restrictions on the ability to monetize.

c) Introduction of 5G services will further fuel content delivery over non-broadcast networks. The TRAI should adopt an agile framework to maximize the benefits it can derive from easier delivery of broadcast content and two-way interaction that 5G will enable, for consumer interests.

d) India with rich cultural heritage, history, diversity and talent can emerge as a Content Hub for the world provided there is a conducive regulatory environment.

In view above submissions, already settled position of TRAI on channel price regulation and the challenges being faced by the Indian broadcasting industry, there is no need to prescribe channel MRP ceilings in broadcasting sector there should not be any packaging restrictions to give the industry an opportunity to evolve and grow in the DAS broadcasting era.

Q3. Should there be ceiling on the discount on sum of a-la-carte prices of channels forming part of bouquets while fixing MRP of bouquets by broadcasters? If so, what should be appropriate methodology to work out the permissible ceiling on discount? What should be value of such ceiling? Please provide your comments with justifications.

i) It is settled that broadcasters have freedom to fix price of each channel under the MRP based distribution model. They are also permitted to form bouquets as per business requirement. The DPOs distribute these bouquets to consumers without any modifications.

ii) A bouquet of TV channels is like a Thaali or a basket offering different products bunched together for selling at discounted price. It offers value proposition to both the provider and buyer. As discussed in Q1 and Q2 above the provision to restrict discounts on broadcaster's end alone by any method seems discriminatory and the ground for showing perverse pricing is based on wrong assumptions. The regulatory objectives should not be contradictory and at micro level. If we look at regulatory interventions on broadcaster's bouquet, we find condition on:

- channels to be excluded from a bouquet
- channels to be included in a bouquet
- relation between MRP of bouquet v/s MRP of channels in bouquet
- discounts offered on a bouquet

- distribution fee offered on a bouquet
- homogeneous pricing of the channels can be ensured in a bouquet
- FTA channel cannot be combined with pay channel in a bouquet
- SD version of a channel cannot be with its HD version in a bouquet

iii) In MRP system such conditions can be thought off only when the only broadcasters have bouquet formation power and the DPOs are passive network operators, and only broadcasters packages are available to consumers. The focus on "bouquet regulation" should be fair across the value chain. The DPOs have power to repackage the channels and even make bouquet of bouquets, where no such restrictions are enforced. Such micro interventions as cited above at one end of the value chain, not only obscure freedom of broadcasters to do business but do not translate into intended benefits to consumers. There is no need for any conditions except the last two that are prescribed to safeguard the interest of consumers.

iv) The concept of upper ceiling does not always bring benefits, rather it becomes the de facto mandatory price. A similar approach at retail level by prescribing an upper ceiling for NCF, which is nothing but a bouquet of 200 plus TV channels, has obscured consumers' choices and has become prime source of pushing unwanted channels to consumers.

Q4. Please provide your comments on following points with justifications and details:

a) **Should channel prices in bouquet be homogeneous? If yes, what should be an appropriate criterion for ensuring homogeneity in pricing the channels to be part of same bouquet?**

b) **If no, what measures should be taken to ensure an effective a-la-carte choice which can be made available to consumers without being susceptible to perverse pricing of bouquets?**

c) **Should the maximum retail price of an a-la-carte pay channel forming bouquet be capped with reference to average prices of all pay channels forming the same bouquet? If so, what should be the relationship between capped maximum price of an a-la-carte**

A bouquet is a product hamper comprising of different products. Considering prescribing any homogeneity defeats the very purpose of allowing formation of a bouquet. In view of submissions made in response to earlier questions, no such micro level interventions are warranted at this stage.

Q5. Should there be any discount, in addition to distribution fee, on MRP of a-la-carte channels and bouquets of channels to be provided by broadcasters to DPOs? If yes, what should be the amount and terms & conditions for providing such discount? Please provide your comments with justifications.

a) This is repetition of the consultation question no. 3 which also discusses about ceiling on the discounts of bouquet. Broadcasters do not deal directly with consumers. A broadcaster therefore cannot offer discounts on MRP to consumers, it is always for the DPOs. However, if a part of the discounts is transferred to consumers is not known and there is no provision to know it either. It is also unlikely, given the commercial imperatives of firms, that such discounts are passed on to the consumer. Broadcaster bouquet at DPO level or consumer level is same. Consumers end up buying channels and bouquets at MRP only. The "Discount" and "Distribution Fee" offered by broadcasters on a pay channel or bouquet to a DPO are nothing but two sides of the same coin. As per NRF, up to 35% percent discounts can be offered to DPOs on pay channel, and up to 20% on bouquets (as discount on bouquet was withdrawn later). The CP at para 30 brings out that :

"Firstly, the Authority also agree with the views expressed by stakeholders including broadcasters about the need for having regulatory stability, allowing flexibility in pricing, wider choice of

channels for consumers etc. Secondly, so are the complexity of factors involved, it is extremely difficult, if not impossible, to arrive at an ideal number as cap on discounts on bouquets offered by the broadcasters. None of the stakeholders, including those who supported a cap, could suggest a scientific method to arrive at that single figure, so as to ward off or to stand the test of a legal challenge, on the ground of arbitrariness."

Therefore, prescribing caps on discounts may be left to market forces.

b) DPOs in DAS regulatory era are now national level distributors. The unorganized smaller LCOs are no longer independent enterprises. They must either affiliate with a larger MSO or scale up infrastructure to become an MSO. The consolidation and mergers along the distribution value chain have created an eco-system balanced by market forces. Moreover the "Must provide" regulatory provision ensures a non-discriminatory availability of the channels to all distributors. The term "Discount" ideally should be subsumed in the "Distribution Fee" payable to the DPOs and it may be left to the stakeholders as their business proposition.

Q6. Stakeholders may provide their comments with full details and justification on any other matter related to the issues raised in present consultation.

A. A-la-carte choice and consumer protection:

i) In consultation process, the interests of consumers often get ignored, and issues raised by other stakeholders take precedence. The regulator must take a holistic view of the issue and its implications on the entire eco-system to ensure orderly growth of the sector.

ii) To ensure differentiated and quality content the broadcasting sector needs to move away from predominantly advertisement driven revenue model to subscription driven model with a freedom to subscribers to either opt for a-la-carte or and bouquet of channels as per their taste and choice. A purely advertisement driven approach adversely affects content improvement and innovation as seen in the news sector whereas a-la-carte approach only will result in consumer segmentation and decline of overall revenues. A consumer is interested in best value proposition as a-la-carte and/or bouquet as per his content preferences and may subscribe to combination of both.

iii) Regulatory objectives therefore need be broad-based enabling overall growth of broadcasting sector. The interests of Broadcasters, DPOs, and Consumers being key stakeholders in the value chain, need be balanced.

B. Contradiction in regulatory objectives:

i) The regulation should avoid aiming at contradictory objectives. The MRP ceiling for exclusion of a channel from a bouquet, mandatory inclusion of a channel in bouquet, relation between price of bouquet and its constituents, and homogeneous pricing of channels of a bouquet, are mutually contradictory approaches in MRP based model.

ii) Mixing of FTA and Pay channels in a bouquet is prohibited. Due to this consumer are unable to exercise any choice FTA/Pay channels in the NCF pack though they are empowered to do so. Consequently, the NCF provision has indirectly become a mandatory basic tier bouquet of analog era, to push 200 or more channels to every consumer. This is the real issue that prevents consumer a-la-carte selection. The consumers are unable to exercise their choices to select channels as per their preferences and end up paying for unwanted channels. As mentioned before, the NCF regulation therefore may also need a review.

iii) The present CP in para 1.8 brings out that …."with the implementation of certain provisions of NRF 2020 *as mentioned above, many benefits of the 2020 amendments have already accrued to the* *consumers. Every consumer now can get 228 TV channels instead of 100 channels earlier, in a maximum NCF of Rs. 130/-. This has enhanced the availability of more television channels to the consumers…*". This would have been true if consumers were able to exercise their choices, in absence of such choice and current situation on ground as reported by the stakeholders, the amendment has become a vehicle to push unwanted channels to consumers.

iv) The NCF regulation also creates artificial bandwidth scarcity for small and new broadcasters who may face entry barriers. It forces new and niche channel broadcasters to convert their pay channels into FTA to be part of the NCF pack. This forces such channels to become advertisement driven, killing the scope for development of differentiated services.

v) The NCF in present form does not support new and niche channels for price discovery and takes away subscribers' choice of getting more differentiated content. It also looks unjustified that a new broadcaster has to pay network carriage fee, when the same is also being charged from the consumer in the form of NCF.

vi) NCF pack should ideally contain no more than 35 mandatory DD channels and cost of transmitting these channels plus network improvement fee. The consumer can freely subscribe to a-la-carte, broadcasters' bouquet or DPOs bouquet. Acquiring any additional capacity and channels (FTA or Pay) should be left to the choice of consumers and offers by service providers.

vii) The NCF-20 regulation especially when it mandates 228 channels at 130/- (and also more than 200 channels at 160/-) in its present form indirectly creates an eco-system in broadcasting sector which is contrary to TRAI's overall objectives and may lead to market failure.

In view of the above the NCF regulation therefore needs holistic review

C. MRP system adoption and applicability in broadcasting:

i) The introduction of MRP based system for broadcasting sector as per NRF-17 by the Regulator envisioned giving price and packaging forbearance to broadcasters, assured revenue streams to DPOs, and enabled consumer choices with larger objectives of growth of industry. The MRP model is well established for commodity product selling to consumers. This approach looked best way forward to take advantage of the emerging opportunities due to digitization of broadcasting sector. In digital era linear broadcasting is transforming. There are immense possibilities of content monetization even beyond a-la-carte and bouquet subscriptions.

ii) The implementation of MRP based distribution to broadcasting sector however needs some adaptations. Here the product a "Channel or Bouquet", is not same as a commodity product. For commodity marketing, more demand fuels more production resulting in reduction in prices. In commodity market, price of product is easy to arrive at and production cost goes down due to economy of scale. However same approach may not be fit for a TV channel. Here the product is not static, but dynamic. The composition of product and cost of ingredients keep on changing, requiring more and more expenditure and innovation on new content, to ensure sustained demand from the viewers. Therefore, price of a TV channel, may not necessarily follow the demand v/s price trends as observed in commodity market. As such, it is submitted that "Micro Regulatory" approach may be avoided giving business freedom to the stakeholders to price, package and distribute TV channels to accommodate the unique economics of the emerging broadcasting market.

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