

BY E-MAIL

June 3, 2022

The Advisor (B&CS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan (Next to Zakir Hussian College)
Jawaharlal Nehru Marg
New Delhi – 110 002

Kind Attn.: Shri Anil Kumar Bhardwaj, Advisor (B&CS)


Sub: *TRAI's Consultation Paper date May 7, 2022 on Issue related to New Regulatory Framework for Broadcasting and Cable Services ("**Consultation Paper**")*

Dear Sir

Please find attached Sun Direct comments on the above caption Consultation Paper for your ready reference.

Thanking you.

Your's truly
For Sun Direct TV Private Limited


S Sankara Narayanan
Compliance Officer

Encl: As above

BY E-MAIL

June 3, 2022

RESPONSE ON BEHALF OF SUN DIRECT TV PRIVATE LIMITED TO THE CONSULTATION PAPER ON “ISSUES RELATED TO NEW REGULATORY FRAMEWORK FOR BROADCASTING AND CABLE SERVICES”

Sun Direct TV Pvt. Ltd. is a DTH operator transmitting digital satellite television signals across the length and breadth of India since its inception in December 2007. We are the first customer-centric DTH operator in India to provide set-top boxes on free to view basis to the subscribers. We are also the first DTH operator to have adopted the MPEG-4 technology in Standard Definition and MPEG-5 technology in High Definition that offers better compression and signal quality and are one of the fastest growing DTH operators in the country, having garnered more than 14 million subscribers since our inception.

Our comments and observations on the Consultation Paper on Issues related to New Regulatory Framework for Broadcasting and Cable Services dated 07.05.2022 issued by TRAI (“**Consultation Paper**”) can be summarized as follows:

I. PRELIMINARY SUBMISSIONS

1. TRAI should appreciate that the development and smooth working of the broadcasting sector requires a free market approach for all stakeholders, to allow market forces to determine the quality and price of channels. India has one of the lowest broadcasting charges in the world, which has been achieved on account of free play of market forces in terms of negotiations between distribution platform operators (“**DPOs**”) and broadcasters based on the requirement of their consumer base, and the intense competition between different DPOs operating in the same area. This ecosystem has been completely disrupted by the NTO regulations leading to higher broadcasting charges. This is attributable to a great extent to the limitations placed on broadcasters and DPOs alike in providing discounts. TRAI’s regulatory actions are leading to a drastic fall in subscriber numbers and also making the DTH industry uncompetitive.
2. DPOs are also facing increasing competition from other service providers such as OTT service providers offering linear television channels, who are providing very competitive alternatives to viewers. Many of such services are not subject to the heavy handed regulation that are faced by the broadcasting industry. In these circumstances, it would benefit the industry if DPOs are

treated at par with OTT service providers and allowed to operate without restrictions. In any case, TRAI and TDSAT are well equipped to address any anti-competitive conduct or unfair trade practices by any of the stakeholders.

3. It is important to note that the need for regulation arises in case of lack of competition or market failure. With almost 900 channels and over 3000 DPOs of various kinds and 60000 LCOs, there is no dearth of competition in the broadcasting sector at either broadcaster or DPO level. Similarly, there is no instance of market failure that has been established by TRAI through evidence. In such circumstances, TRAI should have a light touch approach, as earlier envisaged by TRAI. Excessive regulation without proper study of market behavior and counterfactual situations can have adverse effect on the industry, which consists of small and large players.
4. The Consultation Paper has clearly proceeded on the assumption that a-la-carte regime is in absolute interest of consumers, and that bouquets with their discounted prices is a necessary evil that needs to be curbed. Sun Direct objects to such approach of TRAI as a DPO. Bouquet choices are more convenient to consumers as it becomes tedious for consumers to choose channels of preference from a choice of close to 900 channels. Moreover, additional channels offered by DPOs / broadcasters in a pack often arouse interest of viewers in other channels.
5. In India, each household has varied viewership depending on a myriad of factors such as regional and linguistic factors, educational background, household earning, size of the family, the age of the family members, religious background, etc. In a diverse family composition, each member will have different requirement of content and channel preference, viz. general entertainment channels, kids channels, sports channels, devotional channels, etc. The bouquets of channels allow every subscriber, having a preference of certain channels, finds it easy to avail additional channels at minimal cost.
6. It is also a fact that it becomes cheaper for DPOs to offer channels in a bouquet. Broadcasters are able to offer multiple channels at a lower price due to economies of scale, distribution of marketing and other costs, higher viewership and ad revenue, etc. These factors suffer in case of a-la-carte offerings. Consequently, DPOs find it more expensive to avail a-la-carte channels from broadcasters to provide the same to consumers.
7. TRAI's entire approach in alleging that broadcasters indulge in "perverse pricing" of bouquets lacks a holistic understanding of the economic rationale of pricing of channels in the broadcasting sector. Bundling of channels by broadcasters in the form of bouquets, allows economies of scale as the cost of broadcasting is shared amongst multiple channels, thereby reducing cost of the channels. TRAI should appreciate that the fact that bouquet formation

lowers the prices of channels and that in the case of a-la-carte channels, the prices of channels would increase significantly. Compulsory provision of channels on a-la-carte basis would lead to a significant increase in the cost of the channels provided on a-la-carte basis. This will affect DPOs adversely as they will end up losing their market to other technologies / platforms/ services available to consumers. Further, multiple a-la-carte choice of channels by consumers, and their repeated change would result in increased cost of service for DPOs. It would create burden on IT, billing systems and collection process of DPOs.

8. TRAI has failed to consider that the considerations for pricing structure for a-la-carte and bouquet are very different and based on market forces, and that subscribers still have the option of choosing channels on an a-la-carte basis. TRAI's assumption that a bouquet should have similarly-priced / homogenous channels is clearly erroneous and contrary to general tendency of prices for a-la carte and bundled channels. The very underlying notion for bouquet formation is to have different channels with variety of contents. Moreover, in a bouquet, no channel has a specific price. TRAI's approach shows complete disconnect with normal pricing and marketing strategy followed by businesses not only in broadcasting industry, but in any other industry.

II. RESPONSE TO SPECIFIC QUERIES

- Q1. **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).**

Response: In light of the discussion above, it is respectfully submitted and reiterated that bouquet pricing follows very different parameters and considerations than those applicable for a-la-carte pricing. It is incorrect to compare or correlate the two as it amounts to comparison of dis-similar products.

Further, there has been a consistent view that bouquet formation is more beneficial to consumers, and that prices of channels would increase significantly, in the case of a-la-carte channels. It is submitted that the ceiling of Rs. 12/- on MRP of a-la-carte channels for it to be included in bouquet under the NTO 2.0 framework is an undesirable and unwarranted restraint on the free pricing of TV channels. It results in distortion of pricing. The imposition of such

limit artificially on any channel, has in fact resulted in increase in consumer spending where a-la-carte channels cannot be included as part of a bouquet. DPOs such as Sun Direct have to work out the a-la-carte cost of channels in the present dispensation having regard to competition from competing service providers in other platforms, like OTT.

Bouquets of channels are provided by broadcasters and DPOs alike to reach out to the maximum number of consumers since it is impossible for any broadcaster or DPO to assess exactly, the preference of channel for every household and viewer. Moreover, it is in the interest of broadcasters, DPOs and consumers that they are exposed to various contents and channels even while casually surfing channels, to generate interest for new, additional channels. It is not possible for consumers to sample contents of a channel merely on the basis of channel names and without seeing the contents thereof. It is important to note that even prior to NTO, bouquets were being priced at very reasonable levels. With the price cap mechanism, broadcasters and DPOs alike are finding it difficult to create bouquets that are both price competitive and also addresses their financial and marketing requirements.

In light of the above, TRAI **should not** continue to prescribe a ceiling price of a channel for inclusion in a bouquet in our opinion. TRAI should exercise regulatory forbearance and leave channel prices to be determined by market forces. There is sufficient competition in the market to ensure reasonable pricing of all channels. In view thereof, no price ceiling ought to be imposed for inclusion of a channel in a bouquet.

Q2. 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.

Response: TRAI has resorted to social regulation by advocating the cause of “popular channels”, thereby regulating what consumers should be allowed to watch. Such an approach is discriminatory against regional channels. The regional channels are very important for those who have migrated from their state to other states. Inclusion of regional “unpopular” channels in bouquets should have equal importance. DPOs, being aware of consumer choices and interests and having market based data of subscribers habits, can create better mix of channels across broadcasters for the consumers which would help consumers to easily select channels of their choice with minimal effort.

TRAI’s suggestion to ensure that only “popular” television channels remain accessible to a large segment of viewers, and the adverse inference of TRAI to avoid “unwanted” or “unpopular” channels, is in violation of the principles of fairness and equality under Article 14

and 19(1)(a) of the Constitution of India in seeking to ensure that only the so-called “popular” channels remain accessible to a large audience and that the so-called ‘unwanted channels’ are restricted from being telecast.

In light of the above, we are of the opinion that TRAI **should not** prescribe a ceiling on the MRP of pay channels and **should not** take steps to ensure that only “popular” television channels remain accessible to the large segment of viewers. Prescribing a ceiling on the MRP of pay channels amounts to treating different channels with different pricing considerations equally. This is violative of the principles of fairness and equality under Article 14 of the Constitution of India.

TRAI should exercise regulatory forbearance and leave channel prices to be determined by market forces. There is sufficient competition in the market to ensure reasonable pricing of all channels. In view thereof, no price ceiling ought to be imposed on ceiling on MRP of pay channels.

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.

Response: The third proviso to Clause 3(3) of the Tariff Order, 2017 earlier provided that the MRP per month of bouquet of pay channels could not be less than 85% of the sum of MRPs per month of the a-la-carte pay channels forming part of that bouquet, i.e. amounting to 15% cap on discounts. Such provision was struck down by the Hon'ble High Court of Madras as being arbitrary, and the Hon'ble Madras High Court's findings were affirmed by the Hon'ble Supreme Court of India, thereby setting at large the pricing ability of broadcasters to price its channels.

However, TRAI issued and re-introduced such cap on discount vide the twin conditions in an amendment to the third proviso to Clause 3(3) of the Tariff Order which amounted to a 33% cap on discounts. While the Hon'ble Bombay High Court upheld the first twin condition, it has held that the second twin condition or ‘average test’ in the third proviso to Clause 3(3) of the amended Tariff Order - which provides that the MRP per month of any a-la-carte pay channel, forming part of a bouquet, shall in no case exceed three times the average MRP per month of a pay channel of that bouquet – is arbitrary, being contrary to the mandate of Section 11(4) of the TRAI Act, 1997 of ensuring transparency and violative of the petitioner broadcasters’ fundamental rights under Article 14 of the Constitution of India.

It is reiterated that it becomes cheaper for DPOs to offer channels in a bouquet. Broadcasters are able to offer multiple channels at a lower price due to economies of scale, distribution of marketing and other costs, higher viewership and ad revenue, etc. These factors suffer in case of a-la carte offerings. Consequently, DPOs find it more expensive to avail a-la-carte channels from broadcasters to provide the same to consumers.

In our opinion, there **should not** 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. TRAI has ignored the fact that bouquets and a-la-carte channels are two completely separate products subject to distinct pricing considerations. In any case, any effort in this regard would infringe upon Article 19(1)(a) of the Constitution of India.

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 criteria for ensuring homogeneity in pricing the channels to be part of same bouquet?

Response: It is submitted that the pricing of channels and pricing of bouquets involves a complex economic and financial exercise taking into consideration multiple factors of which, the cost of content is only one of the factors. As rightly pointed out by TRAI at para 2.4 of the present Consultation Paper, even the cost of production of different programs within the same channel varies significantly because of multiple factors. Further, TRAI has itself, in para 2.24 of the present Consultation Paper, stated that “...*given that the television channels constitute a specific product, one channel is not substitutable by other television channel. Individual consumer preference decides which television channel is subscribed by her/ him. Therefore, in a multi-channel scenario, each channel constitutes a non-substitutable product fulfilling the choice and need of a certain set of consumers.*”

The proposal to impose a ceiling on the price of pay channels in effect means applying a homogeneous standard of pricing by the regulator for different kinds of channels with varying content. Ensuring homogeneity in pricing the channels to be part of same bouquet amounts to treating different channels with different pricing considerations equally. We are of the opinion that channel prices in bouquets **should not** be homogeneous. TRAI should exercise regulatory forbearance and leave channel prices to be determined by market forces. There is sufficient competition in the market to ensure reasonable pricing of all channels.

- 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?**

Response: It is reiterated that TRAI's entire approach in alleging that broadcasters indulge in "perverse pricing" of bouquets lacks a holistic understanding of the economic rationale of pricing of channels in the broadcasting sector. Bundling of channels by broadcasters in the form of bouquets, allows economies of scale as the cost of broadcasting is shared amongst multiple channels, thereby reducing cost of the channels. TRAI should appreciate that the fact that bouquet formation lowers the prices of channels and that in the case of a-la-carte channels, the prices of channels would increase significantly. Compulsory provision of channels on a-la-carte basis would lead to a significant increase in the cost of the channels provided on a-la-carte basis. This will affect DPOs adversely as they will end up losing their market to other technologies / platforms/ services available to consumers. Further, multiple a-la-carte choice of channels by consumers, and their repeated change would result in increased cost of service for DPOs. It would create burden on IT, billing systems and collection process of DPOs.

- 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 channel forming the bouquet and average price of all the pay channels in that bouquet? Or else, suggest any other methodology by which relationship between the two can be established and consumer choice is not distorted.**

Response: It is respectfully submitted that the Hon'ble Bombay High Court has held the second twin condition or 'average test' in the third proviso to Clause 3(3) of the amended Tariff Order - which provided that the MRP per month of any a-la-carte pay channel, forming part of a bouquet, can in no case exceed three times the average MRP per month of a pay channel of that bouquet – to be arbitrary, being contrary to the mandate of Section 11(4) of the TRAI Act, 1997 of ensuring transparency, and violative of the petitioner broadcasters' fundamental rights under Article 14 of the Constitution of India. It is thus not open to TRAI to raise such issue of capping of MRP of an a-la-carte pay channel forming part of a bouquet with reference to average prices of all pay channels forming the same bouquet, as the same has been set aside by the Hon'ble Bombay High Court.

Q5. Should any other condition be prescribed for ensuring that a bouquet contains channels with homogeneous prices? Please provide your comments with justifications.

Response: Kindly refer to response to Q4 (a) above.

Q6. 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.


Response: We are of the opinion that broadcasters should be allowed to provide discount of 35% (distribution fee+ incentive) on MRP offered by broadcasters to DPOs.

Q7. Stakeholders may provide their comments with full details and justification on any other matter related to the issues raised in present consultation.

Response: In our opinion, DPO should be allowed to offer discounts on long-duration recharge for the benefit of customers. This will allow customer to be locked-in for a certain period. Further, a small quantum of incentive should be given to the DPOs for timely submission of subscriber report, payment, and compliance of audit.

Thanking you.

For Sun Direct TV Private Limited


Sankara Narayanan
Compliance Officer