From : udaykumarvarma@gmail.com Mon, May 30, 2022 03:46 PM
Subject : <No Subject>
To : Anil Kumar <advbcs-2@trai.gov.in>, V.K. Aggarwal <jtadvbcs-1@trai.gov.in>
Dear Mr. Bhardwaj,
In response to the CO floated by TRAI on 7 May 2022, some comments are attached.

Regards,
Uday Kumar Varma
Former, Secretary, MIB

Consultation Paper of TRAI dt. 7 May 2022 on NTO
Some Comments

Beginning in the early 90s when the cable services were introduced on a large scale in India, the Broadcasting and Cable Services(BCS) has seen an extraordinary evolution and growth. The circumstances and the factors that dictated and shaped this new sector bloom into a major economic driver, has reached over 200 million TV households with almost 900 million viewers. It has also, since, undergone radical transformation. From a time when it did not have a competitor, there exists today a formidable competitor. From being the only choice, it faces today's threat of '*cord- cutting*', even creating a new set of consumers known as '*Cord-Nevers*'.

In one respect, however, the consumer is truly the king. The viewer choice has so multiplied that it presents a uniquely delicious but difficult problem of 'Too Many'. More is not always the best and quite often sub-optimum.

The challenge before the Regulator, therefore, merits more than a routine approach, far more comprehensive and far-sighted, even visionary.

The Challenges of A Micro-Managed Tariff Structure
The direction of regulations so far has generally been supportive of the growth of the broadcasting sector. Less government in the affairs of broadcasting has helped the sector expand and diversify.

However, one area of regulation i.e. the tariff for TV channels has defied resolution. Dynamic that this aspect is, TRAI's efforts to protect consumer interest has not seen that acceptance as was expected after the release of two NTOs. The broadcasters never approved of it. Litigations, therefore, naturally ensued. Part of the NTO was set aside. The stalemate continues.

In a large measure, the prevailing impasse is attributable to the orders being excessively restrictive, getting into too much detail and micro-management. Resultantly, there obtains a sense of dissatisfaction among the stakeholders.

The latest Consultation Paper(CP) issued on 7 May is a response to address the continuing dissatisfaction among the stakeholders, although it is made out to have been initiated following court verdicts.

It is more than a decade that the Tariff Orders issued by TRAI have failed to gain acceptance. A mere tinkering to accommodate the judicial intervention may not solve the problem.

If one compares the tariff regime in existence before the NTOs were brought into force by TRAI, the overwhelming hope and objective of TRAI that it protects the interests of consumers particularly those belonging to the lower end of economy, is not conclusively validated. Essentially, tariff regimes pre and post NTO have not affected the consumer significantly. If it has, the CP remains silent about it.

The Twin Obsessions

A perusal of the CP however, reveals TRAI's continuing obsession with micro-regulating the sector. The two concerns that undergird the framing of issues in the CP un-mistakenly bring out two basic concerns that is driving the thinking in TRAI. Firstly, its obsession that consumers must be enabled to exercise ALC choice to the exclusion of bouquets, even if it means paying a higher price; and second, that the bouquets must show homogeneity. Every issue raised in the CP points to sub serving these two obsessions.

Both these concerns are, however, misplaced. Instead, the concern should be that consumers get the channels at a reasonable price and they should have a choice. Both these objectives are served but perhaps not in a manner that TRAI believes to be the right way.

TRAI's objection to perverse price is also not understandable. Admittedly it is in favour of consumers because they are getting the channels at a lower price. TRAI seems to be happy with it provided the same outcome is ensured by consumers having full freedom to choose the channels and not bound by the bundling offered by the broadcasters. So, the basic objection to the current pricing is that broadcasters are imposing their bouquets on the consumers, which in any case cover, in most cases, the channels that they would have in any case opted from the ALC menu. So, in effect, TRAI will like the consumer to exercise their choice not through the bouquets offered by broadcasters even if they cost the consumer less, but through consumers taking the ALC route. The whole complication has arisen because of this obsession. The CP does not claim to possess either hard data or empirical evidence to establish that the consumer is perversely affected because he has to opt for the bouquets offered to them rather than by exercising the selection of channels a la carte.

Broadcasters therefore, are faced with an impression that the Regulator is more against the broadcasters than worried about a genuine concern of Consumers getting a fair deal. This perception, hopefully, is wrong but it does not help matters.

What also needs bearing in mind is the fact that there is a player in this sector that is always available to people at large, that being the Public Broadcaster, the Prasar Bharti, who through its various services including the Free Dish, offers reasonably comprehensive range of information, education and entertainment to the masses without any cost.

The fundamental consideration that should drive TRAI, is that in the era of soft regulation, and ‘less government more governance’, the policy regime must reflect imagination, comprehension, objective analysis, and the will to foresee and anticipate. Policy making is a far more complex process because the purpose of policies is multiple, cross cutting and straddling over more than one sector of the economy. It will also be wise to concede and acknowledge that any policy in this complex and often divergent milieu must aim at balancing the interests of its stakeholders while preponderantly ensuring protection of genuine consumer interest.

It also needs to be practical and implementable. An ideal policy, that fails to pass the muster of acceptance and execution, may well be a commendable exercise but may still turn out to be futile.

NTO1.0 and NTO 2.0 were both very well meaning and cannot be faulted on the intentions of the government and its avowed objective of maximizing consumer interest but it failed on practicality test, possibly even on equity. And therefore, the inevitability of revisiting them.

The Current Reality

By TRAI’s own admission the universe of coverage of both DTH and the Digital Cable is shrinking. Second only to China, the Indian TV market caters to 210 million TV homes and 892 million viewers.

The TV homes serviced by DTH and Cable have seen significant reduction. The total active number of DTH subscribers has decreased from 70.99 million to 68.89 million during the last more than one year. Similarly, the number of total active subscribers of major MSOs/HITS operators having more than 1 million subscribers, has decreased from 47.58 million to 45.55 million. This trend is likely to continue; it is not a flash in the pan. On the other hand, the expansion of OTT has been phenomenal. A reasonable if not thorough understanding of the trends as well as future anticipated growth including the challenges that they inhere must form an essential aspect of TRAI’s analysis and consideration.

Given this basic fact and the writing that can be seen on the wall, the moot question is how much regulation is indeed needed to control channel prices and whether there is a reasonable case for managing their prices?

The OTT prices are not regulated. No one has prescribed limits, higher or lower, for accessing the contents that are available. There is not even a talk of regulating them i.e. their pricing. The market, and the basic principles of demand and supply, are governing its pricing.

So, the two major sources of entertainment offering services and content to Indian masses, and competing with each other are facing divergent treatment from the regulator. For one, it is the market that is determining the prices and for the other, the Regulator, who finds managing its prices compelling enough. And through a regulation, which is at once complex, multi layered, and intractable in implementation and compliance. Do we need this micro-managed regulation?

Broad Concerns and Imperatives: The Way Forward

So, the fundamental issues that should confront and engage TRAI should be,

1.Consider whether there, indeed, is a need to so extensively and minutely regulate prices of TV channels given that its fast emerging rival is yet beyond the pale of regulation? Is the basic principle of level-playing field being compromised?
2.Even if arguments favouring price regulation can be justifiably and appealingly found, is there a necessity for such a detailed pricing regime? Is getting into the complex web that business models have created and then initiating an exercise balancing the interests of different stake-holders really necessary? Why not leave this exercise to market forces, given the proven maturity of this market? Of Course, also devise intelligent safeguards.
3.Instead, why not lay down a broad tariff structure, protecting the interests of the population at the lower end of income, while taking into account that an inexpensive alternative is available to the masses? And allow the rules of the market and the competition to do the rest. The same principle must undergird the balancing mandate of TRAI.
4. Arguably, a lightly regulated tariff regime will immensely bolster the expansion of Free Dish.
5.Entertainment may be argued to be a public good? but it is not an essential commodity. Therefore, TRAI needs to re-evaluate this concern objectively.
6.In any case, the TV Channel prices in India are one of the lowest in the world. There is a justification to preserve it but not perpetuate it at the cost of growth of the sector.
7. The right of the consumer to have the freedom of choice must outweigh most other considerations but an obsession for it may skew an objective approach.
8. TRAI's objections to 'perverse pricing' by broadcasters may be a conscientious concern, but runs contrary to its logic of placing consumers at the centre of all tariff structures, a move to which TRAI vows to be committed.
9. Lastly, a complex and micro managed tariff scenario will be impractical to implement and enforce and an open invitation to litigation and resultant delay, defeating the very purpose of regulation.

The remedy must not become malady itself.

In other word, what TRAI needs to do is to cut through the cob web it has created and come out with a broad tariff regime which ensures,
a. a reasonable package of news and entertainment is available to common masses (in addition to Free Dish), at a reasonable and competitive price,
And,
b. liberate the sector from a complex, complicated and difficult to enforce regime.

The halcyon days of the BCS sector are over, with OTT causing them nightmares. They want to survive and any pricing that does not give them competitive advantage as against their rival, will spell doom for them. If they chose to charge unreasonably, they may be scripting their own demise.

Be affordable or perish. This choice should be left to them. TRAI may be well advised to refrain from being the arbiters in their battle for choice.

A serious rethink is indeed required. Given TRAI’s avowed commitment to light touch regulation, its trajectory as evidenced by the structuring of the instant CP potentially may make the tariff structure even more layered and complicated; and in all probability further deepen an avoidable mess.