Response to TRAI Consultation Paper

On

Issues related to Advertisements in TV Channels

(Consultation Paper No 7/2012)

Zee Network

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The Zee Network, having perused the Consultation Paper No 7/2012 on Issues Related to Advertising on TV Channels, which has been issued Suo Moto by the TRAI, would like to place its comments before the Authority.

At the very outset, we would like to underline the great esteem & regard we hold for the role of TRAI as a regulatory body of the Nation's communications sector and its efforts – over the years – to create a conducive and supportive role to the broadcasting industry. It is from this perspective, it is regretting to note that the suggestions contained in the consultation paper are imprudent, regressive to the broadcasting industry & reflective of an intent to regulate content on TV channels which is entirely out of the domain of TRAI.

We understand that Indian Broadcasting Foundation (IBF) has sent a comprehensive response to various issues raised in the said consultation paper. While reiterating and reaffirming the response of IBF, Zee Network would like to further submit the following comments to the said consultation paper

As a part of our response, we would like to place our introductory comments, before coming to the specific issues for consultation.

1. Introductory Comments

1.1 <u>Consultation paper is contrary to stated position of TRAI</u>

At the outset, it is submitted that the present consultation paper is entirely contrary to the stated position of TRAI that the television advertisements do not warrant any kind of regulation/restrictions. The attention in this regard is invited to the petition No. 34(c) of 2010 titled Utsarg vs. Union of India filed in TDSAT on the issue of regulation of advertisement on television wherein TRAI was also one of the respondents. In its reply affidavit dated 22/2/2011 TRAI inter alia stated the following:

> *8. That from the perusal of sections 2, 5 ,6 and 18 of the Cable Television Networks (Regulation) Act, 1995, it can be clearly seen that for any contravention of the Advertising Code, the authority to file a complaint before appropriate court for violation of advertisement code vests with the authorized officer. Thus it is amply clear that a policy framework and audit mechanism as prayed for by the Petitioner is already in place under the provisions of Cable Television Network+ (Regulation) Act, 1995 and the rules made thereunder.* ***It is submitted that the answering respondent has no role to play in relation to the Cable Television Networks (Regulation) Act, 1995.***
>
> *"9. That it is submitted that Government of India vide its order [S.O. 45(E)] issued on 9.1.2004 specifically sought recommendations of the answering respondent (TRAI) on "... the parameters for regulating maximum time for advertisements in pay channels as well as other channels ... ."*

10. That after following a consultation process (emphasis supplied), the answering respondent (TRAI), inter-alia, formulated its recommendations on the issue of maximum time for advertisements in TV (emphasis supplied). In Section 8 of the Recommendations dated 1st October, 2004, on “Issues Relating to Broadcasting and Distribution of TV channels”, at paragraph 8.9, the answering respondent (TRAI) mentioned that the Authority has obtained average advertisement time from the pay channel broadcasters. Almost all channels have reported an average advertisement of 10 to 12 minutes per hour which is within the limits laid down in global regulations (emphasis supplied) on advertisement time .. .

In paragraph 8.11 of the said recommendations it has been mentioned that “... The primary objective of the policy is to give consumer choice and good quality service at affordable prices. To ensure affordable services to the consumers, the Authority has regulated the subscription fees of television channels .... ***Besides regulating subscriptions, regulation of the advertisement time and its corresponding affect (sic) on revenues of broadcasters may hamper growth and competition in the broadcasting industry (emphasis supplied)... .”***

11. That considering all the aspects of the matter, the answering respondent (TRAI) in its recommendation dated 1.10.2004, had recommended as under:

"8.15 (i) There should not be any regulation, at present, on advertisement on both FTA and Pay Channels.

1.2 Placing any kind of restrictions – whether of duration or format on Advertisements would amount to violation of fundamental right of Freedom of Speech and Expression

The advertisements are integral part of the progamme and disseminate and convey lot of useful information to the consumers inter alia regarding social issues, educational messages, commercial products etc.. All this not only educate the consumer but the varied information so conveyed empowers the consumer to take informed decisions. Thus, the advertising is very much a part of freedom of Speech and Expression.. The attention in this regard to the following extracts of the judgement of Hon’ble Supreme Court in Tata Press Ltd. vs. Mahanagar Telephone Nigam Limited and Ors. (1995) 5SCC139 :

22. Advertising as a "commercial speech" has two facets. Advertising which is no more than a commercial transaction, is nontheless dissemination of information regarding the product - advertised. Public at large is benefited by the information made available through the advertisement. In a democratic economy tree How of commercial information is indispensable. There cannot he honest and economical marketing by the public at large without being educated by the information disseminated through advertisements. The economic system in a democracy would be handicapped without there being freedom of "commercial speech", in rotation to the publication and circulation of newspapers, this Court in Indian Express Newspaper's case MANU/SC/0340/1984 : [1986]159ITR856(SC) , Sakal Paper's case MANU/SC/0090/1961 : [1962]3SCR842 and Bennett Coleman's case

MANU/SC/0038/1972 : [1973]2SCR757 . has authoritatively held that any restraint of curtailment of advertisement would affect the fundamental right under Article 19(1)(a) on the aspects of propagation, publication and circulation.

23. Examined from another angle, the public at large has a right to receive the "commercial speech". Article 19(1)(a) not only guarantees freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech. So far as the economic needs of a citizen are concerned, their fulfilment has to be guided by the 'information disseminated through the advertisements. The protection of Article 19(1)(a) is available to the speaker as well as to the recipient of the speech. The recipient of "commercial speech" may be having much deeper interest in the advertisement than the businessman who is behind the publication. An advertisement giving information regarding a life saving drug may be of much more importance to general public than to the advertiser who may be having purely a trade consideration.

24. We, therefore, hold that "commercial speech" is a part of the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution.

In fact, the Hon'ble Supreme Court has held that any kind of restriction on media advertisements would be violative to the fundamental rights of Speech and Expression as enshrined in our Constitution The attention in this regard is invited to the following extracts of the judgment in case of **Hindustan Times and Ors vs. State of U.P. 2003 1SCC 591 :**

33. In Sakal Papers (P) Ltd. and Ors. v. Union of India MANU/SC/0090/1961 : [1962]3SCR842, this Court held as follows:-

The advertisement revenue of a newspaper is proportionate to its circulation. Thus the higher the circulation of a newspaper the larger would be its advertisement revenue. So if a newspaper with a high circulation were to raise its price its circulation would go down and this in turn would bring down also the advertisement revenue. That would force the newspaper either to close down or to raise its price. Raising the price further would affect the circulation still more and thus a (SIC) cycle would set in which would ultimately (SIC) the closure of the newspaper. If, on the other hand, the space for advertisement is reduced the earnings of a newspaper would go down and it would either have to run at a loss or close down or raise its price. The object of the Act in regulating the space for advertisements is stated to be to prevent 'unfair' competition. It is thus directed against circulation of a newspaper. When a law is intended to bring about this result there would be a direct interference with the right of freedom of speech and expression guaranteed under Article 19(1)(a)."

34. Advertisements in a newspaper have a direct nexus with its circulation.

In Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. and ors. MANU/SC/0745/1995 : AIR1995SC2438 , it was held as under:-

Adverting is considered to be the cornerstone of our economic system. Low prices for consumers are dependent upon mass production, mass production is dependent upon volume sales, and volume sales are dependent upon advertising. Apart from the lifeline of the free economy in a democratic country, advertising can be viewed as the lifeblood of free media, paying most of the costs and thus making the media widely available. The newspaper industry obtain 60%/80% of its revenue from advertising. Advertising pays a large portion of the costs of supplying the public with newspaper. For a democratic press the advertising 'subsidy' in crucial. Without advertising the resources available for expenditure on the 'news' would decline, which may lead to an erosion of quality and quantity. The cost of the 'news' to the public would increase, thereby restricting its 'democratic' availability."

36. It is not in dispute that advertisements play important roll in the matter of revenue of the newspapers.

This Court in Bennett Coleman & Co. and Ors. etc. v. Union of India and Ors. etc. MANU/SC/0038/1972 : [1973]2SCR757 observed as under:-

The law which lays excessive and prohibitive burden which would restrict the circulation of a newspaper will be saved by Article 19(2). ***If the area of advertisement is restricted, price of paper goes up. If the price goes up circulation will go down. This was held in Sakal Papers case (supra) to be the direct consequence of curtailment of advertisement. The freedom of a newspaper to publish any number of pages or to circulate it to any number of persons has been held by this Court to be an integral part of the freedom of speech and expression. This freedom is violated by placing restraints upon something which is an essential part of that freedom.*** *A restraint on the number of pages, a restraint on circulation* ***and a restraint on advertisements would affect the fundamental rights under Article 19(1)(a) on the aspects of propagation, publication and circulation***.

1.3 Regulation of Advertisements on Television – Outside TRAI domain

It is humbly submitted that the issues of advertisements, its duration, format etc. are already taken care of by the Cable Television Network Regulation Act 1995 and the Rules made thereunder. The authority for prescribing any stipulation in this behalf is Ministry of Information & Broadcasting which has already laid down the Advertisement Code in the Cable Television Network Rule 1994. The TRAI has no role whatsoever in this regard and this position has been clearly accepted by TRAI in its affidavit filed before Hon'ble TDSAT in Utsarg matter as highlighted hereinabove wherein at para 8 it has been stated as under:

*8…………….thus it is amply clear that a policy framework and audit mechanism as prayed for by the Petitioner is already in place under the provisions of Cable Television Network+ (Regulation) Act, 1995 and the rules made thereunder****. It is submitted that the answering respondent has no role to play in relation to the Cable Television Networks (Regulation) Act, 1995.***

There is no reference by MIB to TRAI to undertake such an exercise. The so-called consumer complaints etc. have not been disclosed in the consultation paper. It is submitted that the content regulation a present is being done by MIB through self-regulation mechanism wherein News Broadcasting Authority (NBA) takes up the issues/complaints regarding the news content including advertisements and Broadcasting Content Complaints Council (BCCC) set up by IBF addresses the issues/complaints in respect of General Entertainment Channels and other channels (other than News).

It is pertinent to mention that the consumers, whenever they are aggrieved by the contents of a program shown on television, are approaching the above mentioned self-regulatory authorities for redressal of their grievances. None of the consumers have so far complained to these Authorities regarding the duration of advertisements and/or the format thereof on television.

In view of this accepted position, it is wholly unwarranted on the part of TRAI to initiate this consultation process suo moto even for recommendatory purposes

1.4 Consultation Paper is premature

Without prejudice to the submissions hereinabove that it is entirely out of the domain of TRAI to make an attempt for placing any kind of restrictions on advertisement, it is stated that even assuming (though not admitting) that it has recommendatory powers, the initiation of this consultation exercise is totally premature. A perusal of the consultation paper would reveal that the entire premise on which this consultation is based upon the fact that the digital addressable cable system which is being implemented in India in phased manner starting from 30th June 2012 and the final phase covering whole of India by 31st December 2014, would alter the revenue pattern of pay channel broadcasters. It has been presumed by TRAI that with the proliferation of addressable cable system in the country, the dependence of the broadcasters of pay channels on advertisement revenue will go down. Without any supporting data and other supporting material, it has been further presumed by TRAI that the subscription revenue of the pay channels would substantially increase in the digital regime to an extent, which would warrant the reduction in the existing advertisement time limit from 12 minutes to 6 minutes i.e. 100%.

Besides, the submission that the assumption of TRAI is completely unsupported by any kind of material or data, Zee Network believes that initiation of such an exercise is entirely premature in as-much-as the implementation of digitalization has even not yet begun. Even if such a consultation exercise is warranted, it should be done only after the complete rollout of digital addressable systems. At the present juncture such an exercise would be entirely based on surmises, conjunctures and assumptions without any rational basis/data. The actual experience of digital rollout in terms of the impact on pattern and quantum of pay channel broadcasters in both advertisement and subscription revenue streams would be known only after the complete implementation of digital addressable system i.e. after 31st December 2014 only. It is only after that such an exercise, if at all warranted can be undertaken. At the moment the entire focus has to be on successful rollout of digital addressable system and therefore any kind of suggestion/stipulation like this which would impact the channel economies, would completely derail the entire digital rollout process.

Advertisement Revenue subsidizes subscription charges

It is quite logical and in fact admitted by TRAI also in various consultation papers that advertisement revenue stream acts has a kind of subsidy for keeping the subscription prices low. In case the advertisement revenue is regulated/restricted in the manner suggested by TRAI, the inevitable effect would be to increase the subscription fee/rates of the channels. However, since the subscription fee/prices already stand frozen by TRAI, it would sound death knell for the pay channel broadcasters as on the one hand the advertisement revenue would drastically reduce and on the other hand in view of the prevalent regulatory regime, it would not be possible for them to effect any kind of increase in channel subscription prices. The TRAI itself has observed in para 8.10 of its recommendation dated 1st October 2004 as under:

> *"The cost structure for regional channels is not significantly different from the national Hindi entertainment and news as content like regional movies, news etc is expensive. Many smaller regional channels do not get airtime rates as much as popular Hindi channels. Thus restrictions on advertising time would be very detrimental to the growth of regional channels and may hamper the creation of TV content in the regional languages. The restrictions would also prove detrimental for niche domestic and international channels.*
>
> *Additionally, the regulation of advertisement time typically drives up the subscription fees. Thailand's case provides a relevant example in this regard. In Thailand Advertising is banned on Pay TV as stated under the Ministerial regulation No. 14 (B.E 2537, 1994) issued under the Broadcasting Act, BE 2498(1955), Title 4, Clause 25. Since the only source of revenue for Pay TV services is subscription fee, the Average Revenue Per User (ARPU) naturally for these services is very high at US $ 32 per month. Therefore, the Advertising revenues reduce subscription rates for consumers. The restriction on advertisement time would either result in increase in the subscription fee or affect the variety and quality of the programming. "*

Continuous increase in input costs

In this regard it is pertinent to point out that the channel prices have been frozen since 2003. Since the pricing for digital addressable systems are also derived from non-CAS prices (which at present is 42% of non-CAS prices), they are also indirectly frozen. On the other hand, the cost for acquiring the content has increased manifold. In addition, there has been substantial increase in operational costs including the increase in manpower cost. There is no regulation whatsoever at input level. The costs of procurement of movies and sporting rights of various sporting events by the broadcasters have skyrocketed during last few years. Recently the BCCI cricket rights have gone for as high as Rs. 3851 crores or Rs. 40 crores per match. In order to meet these exorbitant costs, the corresponding revenue streams are required to be fully exploited by the channels. Any attempt to tinker with these revenue streams would completely jeopardize the business model of the pay channel broadcasters. This is specially true as in view of the prevailing regulatory regime in the television broadcasting sector. Over and above, the broadcasters have to shell out heavy carriage fee in order to ensure carriage and viewership of their channels. Thus, the channels are already reeling under the impact of frozen channel pricing and continuous increase in input and operational costs.

It is submitted that in such circumstances if any attempt is made to restrict the advertising stream of revenue it would not only impact the quality of content which would be ultimate analysis would prejudicially affect the consumer interest, it would also be highly detrimental for the sector and may result in closure of various channels.

1.5 Comparison between Indian and Foreign-Advanced Pay TV markets-ARPUs

We may also point out that the consultation paper is guided by extant practices in various developed countries, which have been laboriously and diligently detailed in the Annexure to the consultation paper. As we would like to explain in our response, the situation in India cannot be compared to any of the developed markets outlined in the annexure. Most of these markets have been digital and Pay since last 12-15 years, and have ARPUs which are in the range of US$70-95 per month. These markets have a different business model for Broadcaster channels in terms of Subscription Revenues. The Piracy and under-declarations are non-existent. India, in comparison is a market at the bottom of the Pay TV ladder with subscription packages ranging from Rs 100 ($2) to Rs 400 ($8) at the very top. Moreover most customers lie in the median range of $4 per month. **Therefore the reliance on Advertising revenues is to be higher if the same quality of content including foreign content is to be shown on the Television**.

For the Perusal of TRAI we place below the ARPU of DirecTV which is the largest DBS provider in USA

SEGMENT FINANCIAL REVIEW
DIRECTV U.S. Segment

DIRECTV U.S.	Three Months Ended December 31,		Twelve Months Ended December 31,	
Dollars in Millions except ARPU	2010	2009	2010	2009
Revenue	$5,531	$5,126	$20,268	$18,671
Average Monthly Revenue per Subscriber (ARPU) ($)	96.64	92.36	89.71	85.48
Operating Profit Before Depreciation and Amortization(1)	1,324	1,275	5,216	4,685
Operating Profit	863	750	3,290	2,410
Cash Flow Before Interest and Taxes(3)	847	989	3,510	3,072
Free Cash Flow(4)	646	718	2,348	2,206
Subscriber Data (in 000's except Churn)				
Gross Subscriber Additions	1,116	964	4,124	4,273
Average Monthly Subscriber Churn	1.44%	1.52%	1.53%	1.53%
Net Subscriber Additions	289	119	663	939
Cumulative Subscribers	19,223	18,560	19,223	18,560

The Position for Dish Network, the second largest DBS provider is similar. In the video-only DBS biz, for example, average revenues per unit (ARPU) for DISH rose 5% year-over-year (y/y) to $75.39 while DIRECTV moved up by 3.9% to $88.79.

The situation in the **Cable Business** is also similar with ARPUs ranging from $70-90 per month for Video Services alone. Comcast's 2011 (covering 2010) 10-k indicates monthly total revenue per video customer of $129/month, though video customer here refers to anyone who receives cable television. The breakdown by service goes:

- Video (22.8 million customers at $71.37/mo)
- High-speed internet (17.0 million customers at $42.07/mo)
- digital phone (8.6 million customers at approx $36.15/mo)

Hence it would not be incorrect to say that we are comparing two very dissimilar markets in terms of ARPUS. We will also like to exhibit later in our response that we are also comparing markets which are also different in terms of the Broadcaster revenue models, the geographic spread, regional and Multilanguage requirements and need to cater to populace with GDP which is 10% of that of developed markets.

In terms of Advertising revenues also, the Indian markets are yet to develop a lot as compared to the developed markets. Placing severe restrictions on Advertising time and modes of advertising (Pop-ups, scrolls etc) would mean that the advertising revenues will be capped at very low levels.

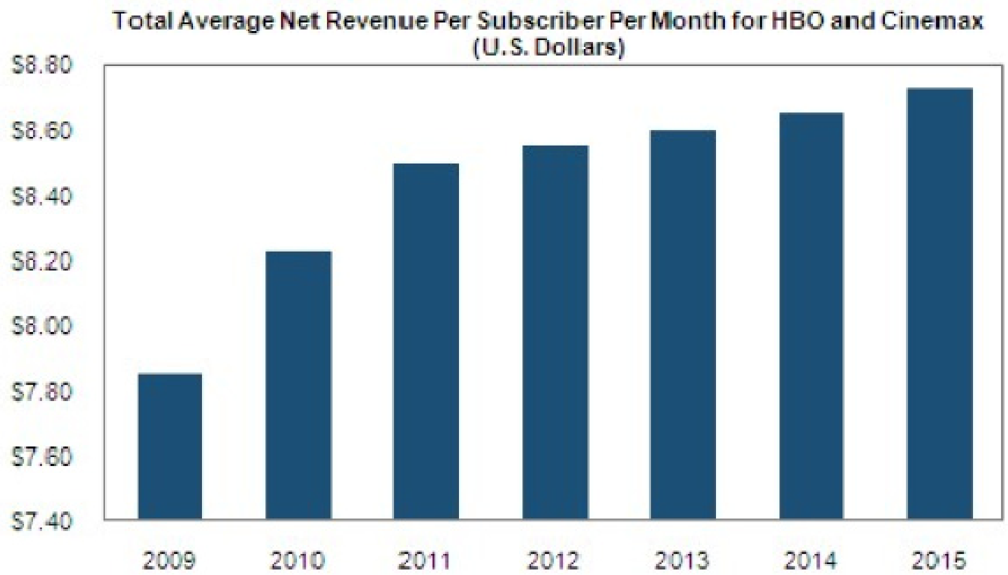
Table 2.13: Global television advertisement market 2010

Country	Television advertising market (USD million)
USA	70,693
Canada	3558
UK	5541
China	9115
India	2255

Source: PwC Global Entertainment & Media Outlook 2011-2015, PwC Estimates

1.6 Channel revenues

In developed markets, not only the Pay TV platforms, but the individual channels also are able to garner healthy revenues which take away their dependence on Advertising revenues. For example the revenues of HBO:

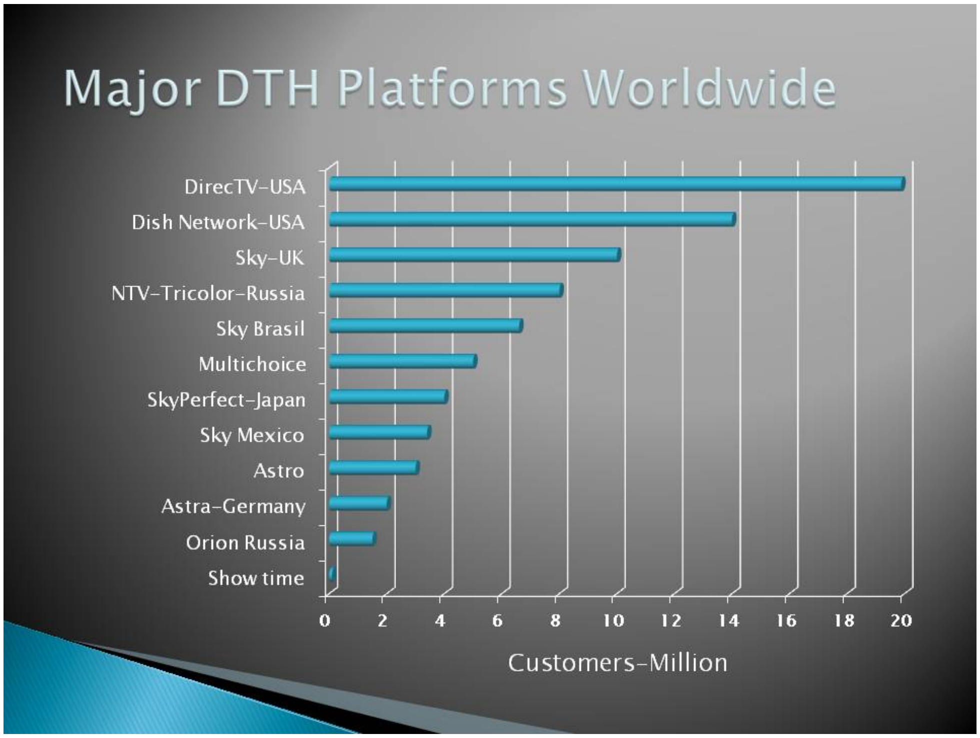


Source: IHS Screen Digest June 2011

In General, in developed markets, the level of Subscription for various niche Channels (Discovery, National Geography and other similar ones) is exorbitantly high and they then prefer to make the channel largely Advt free. The desirability of such a scenario is in question in India where each major channel would need to be priced at Rs 200 or more to make it barely viable.

1.7 Stage of Development of Overseas Pay TV Markets

The stage of development of the Pay TV markets is also important determinant of the capability of the Broadcasters (providing Channels) and the Platforms (Distributing the Channels) in their capacity to garner subscription revenues. For example US has only two DBS platforms while UK has only one platform. This enables these platforms to force subscription to very high levels and reduce the dependence on advertising.



In UK, for example, due to complete monopoly of one DBS operator (Sky) the subscription packages are very high. This is quite unlike India where channels are priced at a fraction of the subscription charge in developed markets, making the dependence on advertising revenues vital.

1.8 Channels Vs. Platforms & Delivery Modes

We regret to note that the entire consultation paper focuses on Channels (originated by Broadcasters) but does not focus on delivery Platforms such as Cable, DTH and others, on each of which the channel may have a different business model. On IPTV the Advts can be individually targeted if so desired.

For example, channels designed solely for Subscription viewing (called beak-free Channels) are provided on DTH to subscribers who wish to watch movies without breaks. These are available on most DTH platforms as well as Digital Cable Platforms. This is in addition to Movie on Demand (MoD) which have no Advts at all. An example of Break free Channels on Zee Network are Zee Action, Zee Premier and Zee Classic all of which show movies with only one break. For Cable markets we have Zee Cinema which has more advertisement time in order to compensate for much lower subscriptions.

Hence the Authority should not view " Channels" in isolation, but also consider the Platforms in its considerations.

1.9 Classification of Channels

The TRAI has targeted its restrictions on Advertising based on "News and Current Affairs" Channels and "other channels", which presumably include all Non-News Channels or "General Entertainment" Channels. These two sets of channels are proposed to be subject to two different sets of regulations.

However not all channels which are Non-News Channels are designed to be only "General Entertainment Channels". In fact all channels which are licensed by the Ministry to be General Entertainment Channels provide a "viewing Experience" to the customers which may consist of programs, promotions as well as Commercials or advertisements. There is no such requirement that they beam up all the time, or that they do provide "General Entertainment" as the term is usually used.

There are channels which are solely dedicated to advertising such as CJ live, Home Shop 18 which carry 24 hour advertising as content. There are many other channels which could be classified as "religious channels", "music channels", healthcare channels (such as CARE TV) , (Discovery Travel, NDTV Imagine) Travel etc. All these channels would typically carry programming which feature a mix of programs by sponsors of products, services, manufacturers, resort owners and many others) which are paid for. These are very common in the industry and go by the name of "Slot Sales" and "Exposures" . A travel channel may contain programs fully sponsored say be Hotels, resorts, airlines, tour operators. Slot sales or Sponsored programs can be educative such as by the Mutual fund industry, insurance industry, educational institutions and others. The viewers are benefited in watching them. These are paid programs(Advertisements), but the channel is essentially designed to carry such programs, and so licensed by the MIB. The TRAI cannot sit in judgment whether or not a slot sale of a "Rudraksh Mala & Gem-Stones Set" should feature on a religious channel. Many viewers are keen to watch them for perceived benefits. This is purely a content issue, even if related to advertising.

Figure: A 24-Hour Shopping Channel (Home Shop 18)

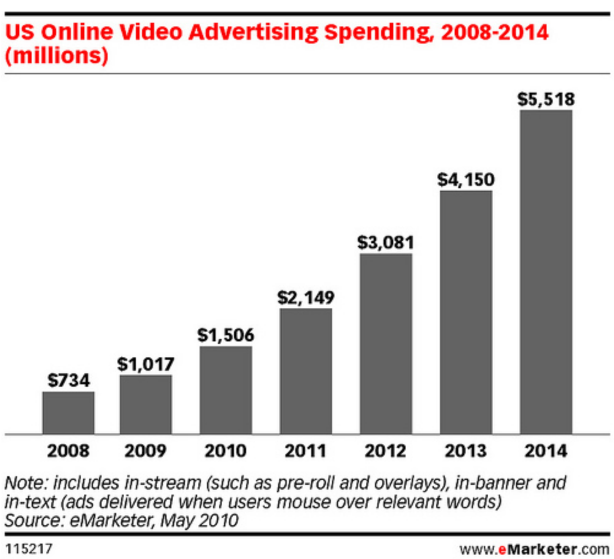
Hence TRAI cannot put a stipulation on advertising time so long as the viewers are happy to watch the channel.

It needs to be mentioned that with over 650 channels availability, the broadcasters of such channels do need to take into account the viewer preferences on their own or shut down the channel if there is no viewership. It is not a good option to dictate any content policy for such channels. The viewers vote with their remotes and this is reflected in the TRPs and GRPs of Channels. Channels which do not figure high in viewership get no advertising support and thus the limitation or otherwise on advertising time is immaterial.

1.10 Secondary Events- Bugs, Scrolls are on the rise in developed markets

The assertion by the TRAI that the scrolls, bugs, pop-ups and the use of screen areas for advertising is irritating to the users and so should not be used does not have merit, if considered carefully. The nature of News and Current Affairs channels is such that the viewers are interested in not only hearing the news read by the anchor but also its analysis which comes through the on-screen graphics. Partial use of the screen for advertising in such a scenario is imperative as this facilitates continuous delivery of news/ current affairs, which would otherwise need to be stopped for advertising. For the viewers a continuous coverage, scores over breaks, where only advertising is shown and news delivery stops. They are likely to switch out to another channel- something which does not happen with onscreen advertising.

Even in overseas markets the use of Secondary events (including overlays and pre-rolls) is on the rise.



Hence the notion that they should be reduced in Indian markets is entirely misplaced.

1.11 Business Dynamics

The restriction of Advertising time on FTA channels is against business dynamics. In fact FTA channels are not subjected to advertising time restrictions in general as TRAI has already noted for Terrestrial networks in Canada.

FTA channels face many hurdles such as Carriage fees on both DTH and Cable and get no revenues to offset programming costs. The slots for FTA channels on DD-Direct DTH Platform, for example were auctioned for Rs 3.5 Crores per year. These channels enjoy high GRPs due to better reach and viewer preference. The total expanses of such channels exceed Rs 12 crores a year even without expansive content. With programming being a mix of high cost serials and movies, there is no business case if sufficient advertising time is not given.

1.12 High Advt Rates

If the time available for advertising is severely limited on a clock hour basis, the advt slot rates will rise many fold. On prime channels it is not inconceivable that they may rise by a factor of magnitude. Such high rates are not in the interest of industry due to poor recall and will particularly adversely impact SMEs which will not be able to advertise at all.

A significant amount of Govt publicity (via DAVP or otherwise) will be adversely affected and social messages will not reach the masses.

1.13 Bulk of Indian TV Channels will be forced to Close

With severely restricted advertising time, a bulk of channels will not be able to raise rates enough to compensate for the lower advertising revenues.

As per report from ICRA *"The advertisement revenues of a channel depend largely on the advertisement budgets of the corporates,* ***gross rating points (GRPs) generated by the particular channel*** *and the demographics of the target audience. The analysis for different genres for CY 2010 shows that the power ratio (Advertisement Revenue/ Viewership) is highest for niche genres such as English News and Sports which focus on demographics with high purchasing power".*

Chart 1: Power Ratio Analysis across genres

Genre	% Viewership	% Ad Revenues	Power Ratio
English General News	0.4%	3.6%	8.9
English Business News	0.2%	1.5%	7.9
Sports	3.2%	16.2%	5.1
Hindi News	4.1%	8.5%	2.1
English Movies + Infotainment	1.9%	2.9%	1.5
Regional GEC + Movies	27.3%	25.1%	0.9
Hindi GEC	29.3%	23.1%	0.8
Regional News	5.0%	3.6%	0.7
Kids + Music	10.6%	7.1%	0.7
Hindi Movies	12.9%	5.0%	0.4
Total	94.8%	96.6%	1.0

Source: FICCI KPMG Report 2011

The GRPs of channels falls sharply as one moves down the list of TV channels in India and the advertising slots need to maintain low rates and longer Ad breaks.

At the same time the Quality of Programming on Prime Channels could see a decline due to the much higher production cost not being recoverable by subscription alone. As per ICRA Report 2011, the Programming expanses of major channels have risen sharply.

"*The Cost of producing new content has been increasing on account of higher talent cost, production cost and higher technology investment requirements. Additionally, the GECs are also investing in more original programming to attract and retain viewers and keep up the TRPs; the content cost has also come under pressure with the increasing popularity of reality shows which generally cost much higher than the fiction shows. For example, the content and programming cost of ZEEL, increased y-o-y by 43 per cent during Q4, 2010-11, while that of Viacom18 increased by 27 per cent during the same period in spite of the reduced new programming content due to Cricket World Cup during the period.*"*(ICRA Report)*

All these will not be in the interest of viewers and will lead of a much less vibrant TV industry in India.

Discrimination vis-à-vis other media

1.4. Also, on behalf of the television media, may we please ask "why this bias against us"? Print – an equally dominant media with comparable ad revenues – is not subject to any such regulation. They are free to publish reams of newsprint stacked with advertising. Neither is there a capping on their subscription rates. They operate on absolutely the same framework of enhancing reader engagement through a balance of commercial & non-commercial content. The only difference being that there is non-interference in their business decisions & market forces are allowed to influence their fortunes. In fact, nor is there any such regulation on any of the other media.

Instead, we wish to submit that the ideal regulatory approach – especially in light of the dramatic changes that the broadcasting industry is undergoing on account of the digitization mandate & which are only expected to multiply - should be to simplify and minimize regulation rather than proposing arbitrary suggestions especially when there is an existing framework which has not been faulted in its essence. This will not just ensure a steady growth of the industry in a regularized manner, but also benefit the nation's economy at large.

1.5 Response to TRAI's observations that television should not be a medium for marketing:

As per an IBF study on the "Impact of Television on India", 89% people agreed that advertisements were a source of valuable information as it informed them of news products and services, 96% agreed that television informed them of the latest products and 97% agreed that they were informed about the latest trends, fashion and products through television. So, contrary to TRAI's view, advertisements are not a "nuisance" and they do not affect the quality of a viewer's audio-visual experience. It is vital for TRAI to acknowledge this and even recognise the social benefits of advertising

In a country with low literacy levels & diverse languages, TV ads – being audio-visual in nature – transcend the literacy & language barrier thereby further accentuating the above role of informing & educating the masses across the length & breadth of country.

Ads are a powerful tool for generation of sales of new products and services and hence contributes to growth of the Indian Economy. Reducing ad time will reduce overall inventory leading to a situation where fewer products will be advertised and the natural fallout will be that smaller brands will fade away from the consumer's radar. In short it will be short sighted and fatally flawed.

Augmented Dickey-Fuller test, Philips- Peron Test, Cointegration technique and Error Correction Models were employed to examine association between advertising and consumption during the period of 1980-2006 in India using National Accounts Statistics(2006) and Economic Survey published by Government of India. The study evidences that the fluctuations in advertising expenditure has a positive impact on consumption expenditure. The empirical results are thus consistent with a model in which causation runs bi-directionally from advertising and consumption expenditure and vice versa. This shows that a sudden change in advertising effect the consumption pattern of the people. The study reveals that increase in advertising expenditure can have a positive impact of consumption irrespective of its lag.

2. Comments on Issues for Consultation

i. The limits for the duration of the advertisements shall be regulated on a clock hour basis i.e. the prescribed limits shall be enforced on clock hour basis.

ii. The 12 minutes of advertisements will not be in more than 4 sessions in one hour. In other words, there will be continuous airing of the TV show for at least 12 minutes each. Not more than three advertisement breaks shall be allowed during telecast of a movie with the minimum gap of 30 minutes between consecutive advertisement breaks.

The comments of Zee Network are in continuation of our introductory comments above. We believe that it is not practical to introduce the duration of advertisements by the clock hour basis for the following reasons:

(a) The Channels operational in the country operate both under the "uplink licenses" and downlink licenses. In general the channels being down-linked are meant for the entire sub-continent and may not be inclined to follow the advt. time codes only for India. It will be impractical to discontinue their license only for the reason of not following the Advt time code in one country. Consequently many channels now uplinked from India may shift their base overseas.

(b) The proposed curtailment of advertising time does not take into account that the channels, which are non-news fall into several genres other than "General Entertainment". These genres can include Health, Travel, Food, Finance, Religion, Music, Home shopping and many others. All of such channels contain content predominantly consisting of slot sales or exposures, which is a different form of Advertising. As such it is not practical to implement such restrictions. It is also not for the benefit of viewers as the viewers have a good choice for things such as shopping or learning about a product or feature. This is relevant because not all viewers may have access to online internet shopping.

(c) The idea of restriction of Advt time has originated in USA and UK followed partly in Europe. However the ARPUS in these countries are very high being or the order of $70-95 per month. Single Channels such as HBO are priced at $9 per month per subscriber. These rates are not feasible in the developing markets of India. Hence the channels which procure content at high cost do not have a viable business model. The Chart below shows the Pricing of Only Sky Channels with add-on of Movies Chs:

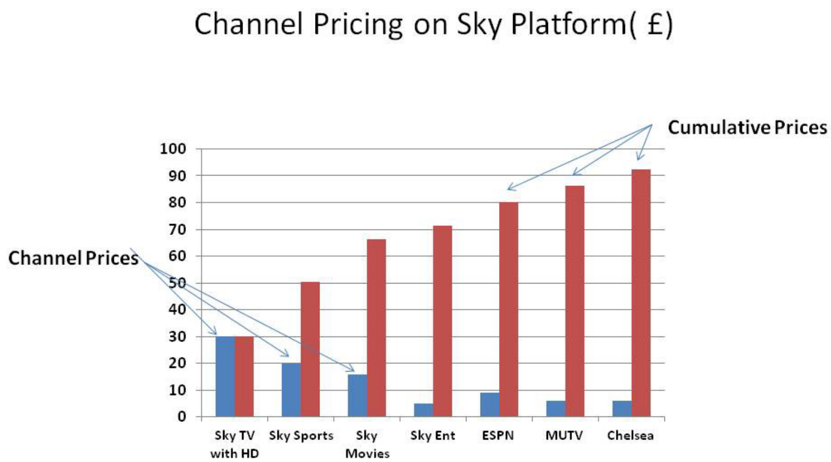


Figure: Example of High ARPUs on Sky DBS Platform (£ 90 Per Month)

(d) The channels in India are designed to be Platform Specific. For example movie channels are available on all DTH and Digital Cable Platforms break free (in addition to MoD).Channels such as Zee Classic, Zee Premier and Zee Action are examples of such movie channels which run with only one break. All DTH platforms have equivalent products. On the other hand movie channels for Cable markets may have more advertising due to lower subscription rates. Industry is thus well aware of the customer preferences as against their willingness to pay for content and both type of products need to co-exist.

(e) “A Time Limited” advertising Model does not fit the business model of FTA channels. All FTA channels need to pay heavy carriage fees. Even DD-Direct slots were auctioned for Rs 3.5 Crores. In this scenario once operational and programming costs are added, there is no model for FTA channels. Many channels will thus shut down.

(f) There is no data to show that when the content is compelling, the users tend to keep away due to excessive advertising. As an example, movies running on channels which have multiple breaks have garnered high TRPs and GRPs.

Top Bollywood Movies aired in GEC during 2010 in All India Market				
Rank	Channel	Programme	TVR%	GRPs
1.	Sony Entertainment TV	3 Idiots	8.55	72.1
2.	Colors	Ajab Prem ki Ghazab kKahani	5.59	37.6
3.	Zee TV	All the Best	3.16	18.9
4.	Star Plus	De Dana Dan	2.96	20.0
5.	Star Plus	Wanted	3.04	21.2
6.	Star Plus	Veer	2.75	17.9
7.	Star Plus	Atithi Tum Kab Jaoge	2.5	12.5
8.	Star Plus	Paa	2.24	15.2
9.	Colors	Do Knot Disturb	1.8	9.6
10.	Zee TV	Kambakkht Ishq	1.65	8.6
11.	Colors	Toh Baat Pakki	1.63	7.0
12.	Sony Entertainment TV	Dil Bole Hadippa	1.68	12.2
13.	Star Plus	My Name is Khan	1.74	12.6
14.	Colors	Kites	1.61	9.3
15.	Colors	Whats your Raashee	1.05	8.0
Source: TAM | TG: CS 4+ yrs | Period: Jan to July 2010				

The satellite rights for Movies are in fact priced based on the ability of the Channels to garner advertising revenues. Restriction on advertising times will impair this ability and lead to sharp fall in Satellite Rights for movies. This has implications on the film industry. As reported by **Indiantelevision.com:**

> *"Channels are pursuing hard to pocket big ticket movies and persistently locking in air-time for them within the smallest time-gap from their theatrical release. This means, for some, accessibility on TV could be just four weeks after the theatrical release while for a few the availability would be six-seven months post hitting the plexes. A complete change in the cost recovery model for movies has also accelerated the eagerness of channels to showcase such products within a shorter window span. Besides quoting huge satellite right prices for their movies, producers have found other avenues like home video and DTH to exploit and monetize their products. The networks pay a very heavy price towards acquiring these titles and ultimately, the frequency and viability of such big-ticket 'premieres' (through advertising) need to justify the cost-to-reward ratio in line with the business objective."*

The question is whether the TRAI can deprive the users with the opportunity to view the latest movie releases, due its perception of Advertisements being "irritating" to the viewers, when the viewers themselves see this as an excellent option against going to multiplexes. This is more pronounced for certain movies which spend only about a week at the Box office for various reasons, and Satellite viewing becomes an attractive option. But this option is practical only with advertising modes prevalent today.

(g) Limited availability of Advertising time will imply jacking up of Advt rates by many folds and this will e detrimental to the SMEs. Many advertisers who today advertise will then be forced out due to high tariffs.

(h) The nature and genre of channels is so vast (Prime Channels, Movie Channels, Regional Channels, religious Channels, City Channels and so on) and the Advt rates vary so widely that a common base of Restricted Advt time cannot be envisaged.

ii. No FTA channel shall carry advertisements exceeding 12 minutes in a clock hour. For pay channels, this limit shall be 6 minutes.

The suggestion in this regard is totally arbitrary and without any basis whatsoever. The premise on which the above mentioned suggestion is being made is that post digitalization, the subscription revenue of the pay channels would improve and as such their dependence on advertisement revenue would come down. Without prejudice to the submissions made hereinabove that it is entirely premature on the part of TRAI to have initiated this exercise without waiting for the complete rollout of digitalization in the entire country which as per schedule announced by MIB would be by December 2014 and the actual impact thereof on various categories of revenues, the basis for suggesting drastic reduction in duration from 12 minutes to 6 minutes has not at all been indicated anywhere in the said Consultation Paper. In other words, no empirical data and/or the assumption even on projected basis have been stated in the Consultation Paper, which would indicate the extent/ quantum of increase in subscription revenue of pay channels in digital regime so as to warrant the reduction in duration of permitted advertisement time from 12 minutes to 6 minutes. Instead an arbitrary figure of 6 minutes has been picked up and suggested which is purely adhoc, baseless and cannot stand the scrutiny of any rational regulatory exercise having enormous commercial and economic implications on the business models of pay channel broadcasters.

Zee network does not favor any time restrictions on advertising times on either Pay Channels or FTA channels. The industry standard commercial time for one advt is 30 seconds (Ads can be 10 Seconds to 60 Seconds).This type of restriction would imply just 10 Advts per 30 minutes of pay programming. Assuming the general cost of programming and delivery being over 50 lakhs for 30 Minutes in a GEC (other than Sports channel), there is no way that 10 Advts can meet this cost (at Rs 5 lakh per Advt of 30 Secs) for a Pay channel. Same is the case for an FTA channel where 20 Advertisements per 30 mins will imply a pricing of over 2.5 lakhs per Advt. of 30 secs.

On many music, regional and religious channels, the Ad rates are just Rs 200-500 for 10 secs. All such channels will need to shut down leading to further monopolization of channels and edging out of SMEs from advertising. Regional and local channels will be worst affected.

iv. **In case of sporting events being telecast live, the advertisements shall only be carried during the interruptions in the sporting action e.g. half time in football or hockey match, lunch/ drinks break in cricket matches, game/set change in case of lawn tennis etc.**

v. **There shall only be full screen advertisements. Part screen advertisements will not be permitted. Drop down advertisements will also not be permitted.**

(a) In this regard, it is stated that there are already enough stipulations in the Cable Network Regulation Act and the Rules made there under and the suggestion in this behalf does not deserve to be considered at all. The Rule 7(10) of the Cable Rules reads as under:

"**7.** ***Advertising Code***

(10) All advertisements should be clearly distinguishable from the programme and should not in any manner interfere with the programme, viz. use of lower part of screen to carry captions, static or moving alongside the programme."

The above mentioned stipulation clearly provides for the safeguarding of the interest of viewers so that their viewing experience should not be degraded.

(b) The attention in this regard is also invited to the following:

Section 2(g) of The Cable Television Networks (Regulation) Act, 1995 defines "programme" as under:

"2(g) "programme" means any television broadcast and includes –

(i) exhibition of films, features, dramas, advertisement and serials through video cassette recorders or video cassette players;
(ii) any audio or visual or audio-visual live performance or presentation and the expression "programme service" shall be construed accordingly;

The above-mentioned statutory definition, in our humble submission is the legislative recognition of the fact that advertisements are an integral part of any programme transmitted to the viewers through the cable or any other platform.

(c) Accordingly, advertisements being an integral part of any programme, as defined under the Act, Rule 7(10) allows airing the promotions, innovative advertisements (without affecting the viewing experience) and interactive additions which are being used to enhance the viewer experience. Such kinds of Insertions have been used by the Channels, including Doordarshan, for many years now. Such insertions are an effective tool for communicating to the viewers the information about various products & services on the one hand and also for the Sports channels to commercially exploit the available limited airtime so as to meet the huge acquisition cost of acquiring telecast rights of sports programming specially cricket.

In an increasingly competitive environment, Channels have been required to develop new, creative ways of engaging with their viewership on behalf of advertising clients, and advertising and sponsorship Insertions represent an important strategic way in which Channels can seek to monetize their airtime. If the Channels' opportunity to offer programme or segment sponsorships is curtailed, it will lead to huge financial loss for the Sports channels like Ten Cricket , who acquire cricket telecast rights at huge cost running into several thousands of rupees.

(d) With airtime being limited, TV channels are greatly constrained and have to come up with creative ideas to optimize the utilization of airtime for generating revenues without interfering with the quality of telecast and without causing any interruption to the viewing experience of the viewers. Accordingly, Sports channels have adopted a method of displaying advertisements through tags, pop-ups, teasers, scrolls or tickers, L shaped graphics, etc. during telecast of the cricket matches and the same are being displayed without disturbing the contents of main programme i.e. the live cricket actions. It is specially ensured that the programmes are clearly distinguishable from such advertisements. Unlike, newspapers, Insertions/advertisements in the broadcasting sector, necessarily have to be carried during the telecast of programmes viz matches so that the same catches viewers' attention without disturbing/interfering with the viewing experience. The Zee Network considers such a proposal, of allowing advertising only in the break time or half time as totally impractical. The users switch out of the screen at such times as they too need a break or do something else. They are well aware that a break will last a certain duration and that they can come back to join the program at the appropriate time.

(e) The practice is to use on-screen advertising while the game is going on or to use part of the screen. It is also common to use the gap between "overs" (in a cricket match for example) to show advertisements. The TRAI has also recognized this aspect in para 8.12 of its recommendations dated 1st October 2004 which reads as under:

> *"8.12 Broadcasters that put sizeable amount of time on advertisement loses viewership which is detrimental for a TV channel as such loss of viewership would mean loss of revenue. This shows that the market has a means of correcting "overadvertising". This is corroborated by a report provided by Edeilweiss Capital on Zee Telefilms.* ***Moreover for sports, advertisements can be inserted only during the natural breaks like between overs in a cricket match or during lunch/tea time."***

(f) Virtually all of the major Sporting events are pre-sold to Broadcasters based on certain properties in advertising being used by them which do include drop down ads, sponsors for Goals or Sixes, Fours (in Cricket) and continuous display of Ads in different forms including pop-ups. The Programming which is delivered from such Sports events (In India or overseas) is always pre-programmed with such advertising and no broadcaster of platform has any control on such features.

Moreover no regulator can ask the broadcasters to revoke the contracts and forgo hundreds of millions of dollars paid for being able to use the advertising properties mentioned. In this context, it is pertinent to point out that recently BCCI has sold the telecast rights of cricket matches to be played in India for a whopping sum of Rs. 3851 crores or Rs. 40 crores per match.

Many of the sports events originate from overseas and these are pre-embedded with on-screen, drop down and multiple other forms of advertising. The Indian broadcasters or platforms have no control on such events.

(g) The proposals by the TRAI are entirely out of Tune with Industry practices in India or overseas. They are also beyond the realm of control of any regulator unless the intention is to cancel the License of all downlink providers.

The Zee network does not agree with this logic of not permitting part screen advertisements. The use of a TV screen to display multiple properties is a desirable attribute to content programming. With the availability of HD programming the usable screen resolution is also much higher, which enables placement of multiple properties on the screen. Part screen advertisements permit the main event in the program to continue uninterrupted. This could be sports, news or part of a business channel. The users distinctly prefer that the main program should not be interrupted for advertising, whereas the use of a part of the screen to show sponsors, related products is totally acceptable.

There is also no harm in drop down advertisements as they also allow the main program to continue uninterrupted.

vi. In so far as News and Current Affairs channels are concerned, they are allowed to run not more than two scrolls at the bottom of the screen and occupying not more than 10% of the screen space for carrying non-commercial scrolls, tickers etc.

News and Current affairs channels get their USP only by on-screen graphics, look and the information displayed. This is what is needed by the viewers so that they can review all the information available continuously. For a business channel, for example, the users like to have the BSE and NSE prices, Commodity prices, exchange rates and Indexes of all major markets (Hong Kong, Singapore, Korea, Taiwan, London, Frankfurt, NYSE-USA,NASDAQ-USA) amongst similar other information. They also need to have the breaking news in addition to the market information.

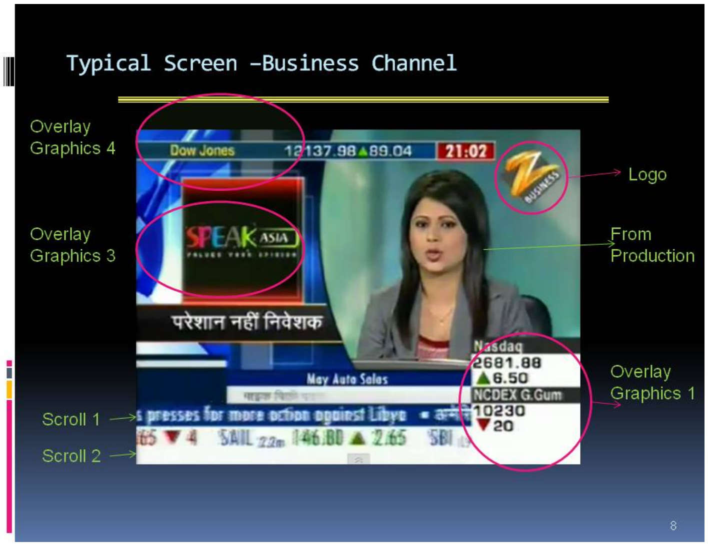


Figure: A Business Channel and its Screen Properties

Major broadcasters not only in India, but overseas have been using screen extensively for displaying maximum information which is permitted by the screen in addition to the program which is being aired.

Moreover they cannot stop the programs to break and give advertising and hence this also needs to be accommodated on the screen. Fortunately the high quality of graphics devices available make this practical, particularly for HDTV where there is extra screen area always available.

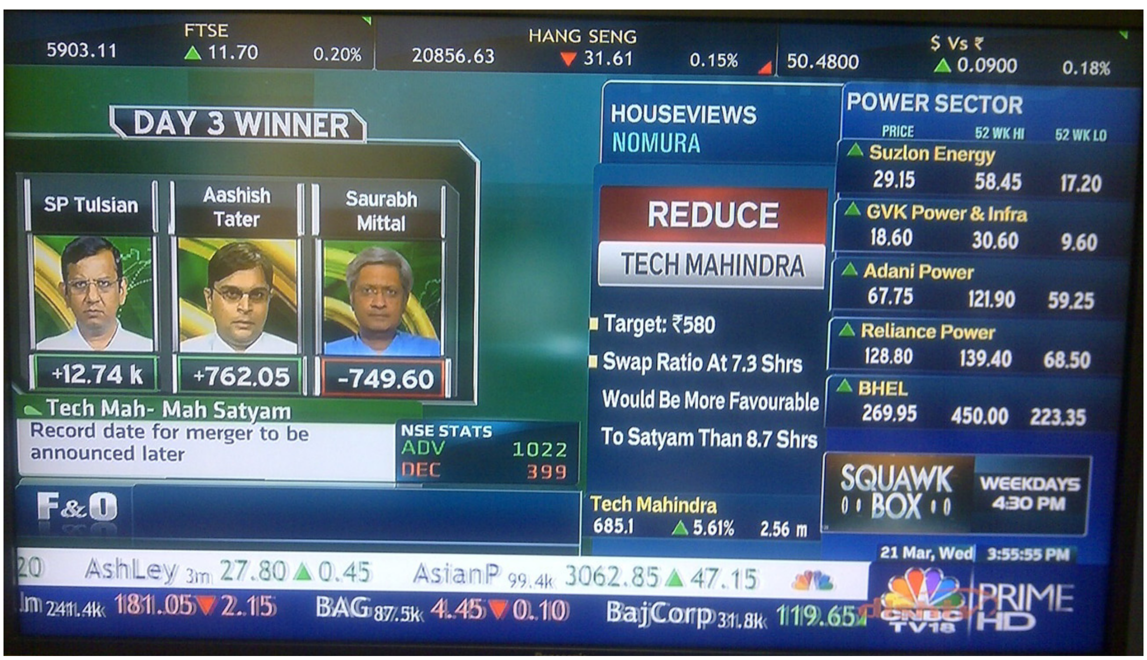


Figure: An Efficient Use of Screen Area to deliver Information of Interest to Viewers

Channel branding and design with maximum commercial and non-commercial information is a key objective of a news and business channel and rightly so. The TRAI proposal of using only 10% screen area is completely out of place and needs to be rejected outright.

vii. The audio level of the advertisements shall not be higher than the audio level of the programme.

This aspect is already taken care by Cable Rule 7(6) which reads as under :

"The picture and audible matter of the advertisement shall not be excessively loud"

Conclusion:

Indian Television Broadcasting industry is undergoing a dynamic and vibrant phases and poised for further growth with digitalization initiative. The industry can function in most effective manner only when governed by market forces and not by regulation. It is time proven fact that any industry which was controlled against the market forces, had faced a lot of problems which lead to not only running under losses but also were forced to be wound up e.g. looms, collieries etc.

Television – like all other media – has dual markets to address i.e. on the one hand, it aggregates audiences by sustaining their engagement levels and on the other, it provides advertisers with access to these audiences. So, being an intermediary, the inherent demand is to judiciously balance the level of commercial & non-commercial content to ensure viewer stickiness. This framework of market forces is a default regulator and given the high competitiveness in the broadcasting space, any broadcaster who chooses to ignore this framework will do so at its own peril.

It is therefore suggested that the issue of advertising which is purely a content issue should be left to self-regulation as at present as any attempt/suggestion to regulate the same would be highly detrimental for this sector .

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