



STAR India's Counter Comments on TRAI's Consultation Paper on Issues relating to Placing of Placing of Television Channel on Landing Page

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I. Introduction

We thank the Telecom Regulatory Authority of India (“TRAI”) for initiating this instant consultative exercise on *“Issues Related to Placing of Television Channels on Landing Page”*. This is a timely exercise given the rapidly evolving broadcast distribution market and the emerging practices in placement and marketing of cable and satellite TV channels. Our comments on the issues raised in this consultation paper are presented in the sub – headings given hereafter. We are conscious of the fact that prior to the issue of this consultation paper, (i) the TRAI issued a directive dated November 8, 2017 which has since been suspended by the Telecom Disputes Settlement and Redressal Tribunal (“TDSAT”) and continues to be so and news reports mention that the TRAI has assured the TDSAT of withdrawal of the directive; and (ii) news reports mention a directive given by the Ministry of Information and Broadcasting on or about February 13, 2018 advising the Broadcast Audience Research Council (“BARC”) to comply with the terms and conditions prescribed in the Policy Guidelines for Television Rating Agencies in India and to take cognizance of TRAI’s directive of November 8, 2017. We provide our response notwithstanding these events having transpired on the understanding that the consultation exercise is completely independent of these events and will follow its own process as per well-established norms.

II. Preliminary Concerns

Before we move on to our comments on the questions raised by the Authority in this consultation paper, we would like to bring to the notice of the TRAI the following preliminary concerns, each of which are placed for the TRAI’s consideration in the alternative and without prejudice to the other:

Any regulation on television channel landing pages would fall within the domain of content control and therefore result in exercise of power beyond the TRAI’s jurisdiction. A copyright (including broadcast reproduction right) owner should be free to exploit his rights without fetter. Therefore any promotional agreements that may be entered into with platforms to enhance sampling of television channels is perfectly within such rights owner’s authority and prerogative to do. Placing an embargo on the manner in which the sampling of television channels may be enhanced places a restriction which is beyond the TRAI’s authority and in violation of the rights owner. On this basis alone, we submit that this consultation is unfounded and ought to be withdrawn.

Further, assuming without admitting that the Authority seeks to frame any regulation on landing pages as a *“measure to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services”*, we would humbly submit that the Authority’s powers in this regard only

extend to the making of recommendations and not the framing of any regulations or issuance of any directions. We note that the abovementioned directive of the TRAI dated November 8, 2017, contains in paragraph 3 and in paragraph 12 express references to “orderly growth of the sector” which leads to the inescapable conclusion that the TRAI has purported to issue this direction as a *“measure to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services”*. We reiterate that given that the TRAI’s powers in this regard only extend to issuance of recommendations, we would also like to place on record our objection to the aforementioned directive as being without authority, notwithstanding recent news reports quoting an imminent withdrawal of the directive by the TRAI. In our understanding, any anti-competitive behaviour which has the effect of adversely affecting competition finds its remedy elsewhere on a case to case basis.

Additionally, since this is a consultation exercise which seeks to examine an aspect of ratings agencies, we would like to place on record for the TRAI’s consideration, the contention that the policy guidelines for television ratings agencies do not have any basis / source in law i.e. they have not been framed pursuant to any statute. To that extent, any guidelines issued in this regard would be found wanting absent a source of law. We would request that the TRAI bears this in mind when framing any recommendations in this regard.

We would further like to raise the pertinent issue of regulating those aspects of broadcast market that are essential to marketing, promotion and publicizing of TV channels.

It is a given principle embedded within the theory of economic regulation that new provisions need to be enacted only if the market forces are insufficient to address the same concerns. In the context of promotion and marketing of cable and satellite television channels in an increasingly dense and cluttered market of over 877 licensed channels, it becomes necessary that newer avenues be created for TV channel providers to be able to present their content to the end subscribers and generate consumer interest.

The overarching push of the regulatory framework enacted by the Authority has always been to promote effective consumer choice and transparency. Therefore, we believe that the exercise of consumer choice depends upon making available the latest information to consumers on the diversity of TV channels on offer and last but not the least, to provide them with an opportunity to sample content before assuming the subscription burden.

Moreover, platform based promotional avenues such as landing page allow DPOs to be able to monetize their latent network capacity and add to their finances.

With the above thought in mind, we would like to apprise the Authority about the significant value that the landing page based promotional tools hold not only for broadcasters but for the DPOs as well. Thus, any regulation that are consequently framed should only address the core concerns, Authority might have on transparency and consumer choice rather than needlessly classifying this important marketing mechanism as undesirable.

We have framed our responses below on the merits of the consultation without prejudice to any of the preliminary concerns raised hereinabove and specifically without prejudice to our submissions in W.P. No. 42216, 42217/2016 pending before the Madras High Court¹. It may be further noted that dealing with the consultation on merits does not amount to a concession in any manner.

III. Response to Issues for Consultation:

Q1. Do you feel that emerging concept of placing TV channel on landing page can influence TRP ratings? Suggest the action which may address the issue with justification.

Response:

In the instant consultation paper, the Authority in Para 2.8 has mentioned the objectives of a well – functioning TV audience measurement system as:

“The underlying spirit of policy guidelines for television ratings in India is to have accurate, credible, transparent and representative TV audience measurement.”

Therefore, it is clear from the above extract that the accuracy, credibility and transparency of TV ratings is a paramount concern for TRAI.

In our experience and opinion, the industry shares this concern and would only like to see ratings that are representative of the actual consumer interest in a given TV channel. Carrying the same spirit forward, it is crucial that if the consumer out of his/her own accord, spends substantial time in viewing the TV channel available as landing page then the same should reflect in the television ratings for the given channel.

From a reading of this paper and other materials surrounding this issue, it is clear that the bigger concern than ratings getting influenced by the practice of landing page is the thrust on pre-determined

¹ Star India Private Limited v. Union of India and Others

time that landing page channels can be programmed to have in order to “force” consumers to watch that content.

This we believe requires to be definitely addressed and the best way to do is to recognize the principle of “Freedom of navigation”, meaning thereby that the subscriber should always be free to switch channels. Hence, if the consumer is not locked down to watch a channel for pre-determined time then not only hygiene in the TV distribution system is ensured, rather any time spent by the consumer thereafter is reflective of their actual interest in a given channel and should legitimately reflect in the ratings.

Thus, regulation is in fact required to prevent DPOs from entering into deals that block viewers to compulsorily view landing page channels for a pre-determined time. However, once this regulation is enforced, then any viewing of a given landing page channel by consumers should accurately and transparently reflect in the BARC ratings.

At this juncture, we must also mention that the average household consumption of television channels as per BARC is around 180 mins per household per day. On an average a particular household may reboot a set top box 3-4 times a day. This leads to a minimum average time of around 15-20 seconds of time spent by a consumer on a landing page. Thus the impact of the said time spent on landing page in terms of the overall average television consumption per household is very less. Therefore in our view the emerging concept of placing TV Channel on landing page does not influence the TRP ratings any ways.

Q2. Should concept of landing page be defined? If so, please suggest the definition of the landing page with justification.

Response:

In response to Q1, we have attempted to specify the core area of concern that needs to be addressed through regulation, i.e. freedom of navigation, and once that is achieved then the landing page promotional tools should be accepted like any other promotional/marketing tool for TV channels.

Therefore, when it comes to defining landing page then it becomes important to base the same on the underlying principles of consumer choice and freedom of moving across all channels.

Hence, we would like to suggest the following as the definition of Landing Page:

“A television channel that is available for viewing by the subscriber immediately after switching – on or soft or hard booting of set – top – box (‘STB’) without any intervention by the said subscriber and is not the same as the last viewed channel.”

The above definition upholds the sanctity of core principles of transparency and non-discrimination and maintains the fine balance between retaining the credibility and accuracy of TV ratings while holding intact the utility of landing page channels as a promotional tool. Also, the exclusion of last viewed channel from the said definition has been made to ensure a consumer benefits by way of sampling and discovery of a new content which otherwise may not be within consumers reach or which a consumer may not be aware of.

O3. Will defining Framework for placing TV channels on landing page affect the present business model of distributors? If so, will it be considered impacting the freedom to do business by distributors of TV channels? Give your suggestions with justification.

Response:

As has already been mentioned by us in the section on *preliminary concerns*, the freedom of broadcasters and DPOs to enter into arrangements to promote and market TV channels is a usual business activity which should not be frowned upon. Rather, the need is to address only those aspects related to the said business practice which are impacting consumer choice and freedom of navigation.

Hence, basis the above premise, it can only be said that there’s absolutely no need to tinker with the existing model of publicizing TV channels through placement on landing channels, if consumers’ choice and freedom of movement over EPG can be ensured.

Therefore, regulation should be framed only to de-legitimize arrangements where the DPO can fixate the landing page for viewing by the consumer through malicious use of middleware. If required such activities may even be penalized by the Authority. However, anything more would undermine a well-functioning broadcast distribution market and affect the right of broadcaster to promote their TV channels and negatively impact an important revenue stream for DPOs. By some estimates, fee for placement of channels on landing page can account for as much as 10% of the top line of DPOs, thus, any restriction would undermine economics of this sector.

Ideally, landing page channels should be considered akin to the blocking of prime shelf space by companies operating in the FMCG sector. Till the time consumers are free to look at and even sample other products, any prohibition on the said activity can only be said to be unreasonable.

Q4. Is landing page a natural choice of consumer while viewing TV channels? If not, why should channels, whose TV ratings are released by TV rating agency, be placed on landing page? Give your comments with justifications.

Response:

All marketing and promotional activities undertaken in any sector, let alone broadcasting, are behavioural in nature and it is not always possible for any agency to objectively delve into the “natural” or “in-natural” aspect of the same.

Having said that, the long experience of private broadcast distribution industry in this country dictates that the subscribers’ consumption patterns can never be determined within four corners of economic regulation. Instead, consumers can look for sampling of new and diverse content in varied ways which forces broadcasters and DPOs to utilize every single given opportunity in this regard.

Consequently, broadcasters and DPOs have to create arrangements for tapping into the landing page system for building upon the “snacking” behaviour of consumers where they may be able to get them to sample the wide variety of content on offer. Moreover, this allows consumers to sample those TV channels that are outside their subscription package thereby reducing entry barriers for new channels.

Therefore, once the freedom of movement across EPG is ensured, there’s no real concern left to address with respect to landing page channels and hence even those channels whose ratings are released by BARC should be allowed to utilize the landing page marketing opportunities.

Q5. Whether placing of a TV channel on landing page increases television ratings? If yes, why TV Channels, whose TV ratings are released by TV rating agency, should not be barred from being placed on landing page? If no, why broadcasters are eager to place their channels on landing page? Give your suggestions with justification.

Response:

As has already been explained in our response to Q3 and Q4, placement of TV channels on landing page of DPOs helps broadcasters build touch points with their consumers and allows the latter to sample content without subscribing to such channels.

Moreover, it has also been explained in response to Q1 that once freedom of consumer to change to other channels from landing page is ensured then the ratings so achieved are reflective of consumers' interest in the said channel and should appropriately become part of the TV ratings. Also it has also been clarified by us that landing page placements can only negligibly influence the cumulative TV ratings for the said channel.

Therefore, we can say that TV channels that are already part of the BARC ratings system should be allowed to be placed on landing page for marketing and promotion and their ratings should be measured. Also, ratings of landing page help broadcasters in determining the efficacy of landing page placements and this plays a great role in determining the overall pay-out to the DPO.

Q6. What should be the criteria/consideration to put a TV channels on landing page? Give your suggestion with justification.

Response:

As already highlighted in our responses to Q1 to Q4, the only aspect of landing page channels that demands regulation is the practice by DPOs to fix the time for which a landing page shall be visible without the choice on part of consumer to change the same. Therefore, regulation should be enacted to ensure that the subscriber is free to move between any and all channels, and once that is achieved there're hardly any concerns left to regulate.

Q7. Do you think the influence, if any, in television ratings by placing of TV channels on landing page can be mitigated through changes in measurement methodology of television ratings? Give your suggestions with justifications?

Response:

Throughout the discussion in our response, we have tried our utmost to clarify that placement of channels on landing page has little or no effect on TV ratings. However, if the Authority believes that further deliberations be made on this aspect then it should separately consult BARC along with associations of broadcasters and DPOs.

Q8. Please comment on the feasibility to implement user's 'last visited page' as landing page in distributors' network?

Response:

This question raised by the Authority relates to technical measures that have to be adopted at the level of STBs. Thus, it would be in fitness of things for DPOs to comment on this particular facet of the given issue.

However, having specified the above, if the said suggestion were to be implemented, then it can easily be envisaged that this would require vast amounts of investments by DPOs at pan – India level to modify STBs and this burden shall ultimately be passed on to the consumers. It should be kept in mind that implementing “last visited page” as landing page cannot be centrally controlled by DPOs.

Q9. Should the landing page be used to place TV channels not having TRP rating or only to provide platform specific information? Give suggestions with justification.

Response:

Any regulation should not be enacted for the sake of it. If landing page was turned into just another information platform for consumers then it would serve little benefit to the consumers as the said information is already available through the EPG menus. In sharp contrast the landing page benefits the consumer as he/she is exposed to content may not be within his reach or which he may not be aware.

Also as explained in response to Q.5 the landing page presents broadcasters an opportunity to measure the consumer choice and preference in respect of content through TV ratings. By placing only those TV channels which do not carry TV rating, the broadcaster would not be in any manner encouraged to offer fresh and improved content on the landing page thereby reducing content benefits to the consumer.