Annexure 1

Discovery Communications India's response to Consultation Paper dated January, 29, 2016 on Tariff Issues related to TV Services

Tariff Models

Q1. Which of the price models discussed in consultation paper would be suitable at wholesale level in broadcasting sector and why? You may also suggest a modified/ alternate model with detailed justifications.

Q2. Which of the corresponding price models discussed in consultation paper would be suitable at retail level in broadcasting sector and why? You may also suggest a modified/ alternate model with detailed justifications.

Q3. How will the transparency and non-discrimination requirements be fulfilled in the suggested pair of models? Explain the methodology of functioning with adequate justification.

Q4. How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested pair of models? Give your comments with detailed justifications.

DCI Response to Questions 1-4:

We are of the view that while there may be a case for regulating prices at wholesale level of certain large broadcasters having significant market share (though prima facie we support forbearance), channels operated by entities like DCI which mainly fall under categories like Infotainment, Kids and Lifestyle should fall under forbearance category. These genres constitute a relatively smaller part of the overall universe of the television audience when compared to a genre like GEC. The unique content channels distributed by DCI offer distinguished non-fiction content to their dedicated viewers, empowers people to explore their world and satisfy their curiosity. There is enough and more (and growing) competition in the market in these genres to ensure that no single player can afford to indulge in monopolistic behaviour or impose unilateral terms and conditions or charge absurd prices from platform operators. TRAI has astutely noted in the Consultation Paper that:

(i) the Indian broadcasting landscape presents a very vibrant picture with more than 830 private satellite TV channels, 243 private FM Channels, 35 TV channels of public service broadcaster and 180 community radio stations.

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(ii) broadcasting distribution sector comprises 60,000 Local Cable Operators (LCOs), 6000 Multi System Operators (MSOs), 7 Direct-to-Home (DTH) operators, 2 Headend-In-The Sky (HITS) operators and a few IPTV service providers.

Given this scenario, where there is ever increasing competition in all genres, and the avenues through which content providers are reaching their end consumers are growing (especially with the advent of social media), we are of the view that TRAI should adopt a light touch approach while dealing with this sector and broadly let the market forces decide issues like wholesale pricing, especially when it comes genres like infotainment, lifestyle and kids.

We believe that the broadcasting sector in India is generally over regulated and skewed against broadcasters which form the most important piece in the entire value chain as content creators and providers. With DAS III under implementation, and the deadline for DAS IV approaching, we urge TRAI to look at examples from other markets which have similar (or even lesser) levels of competition and which have adopted the price forbearance model. TRAI has itself quoted examples of such markets in the Consultation Paper.

Pricing at retail level: We suggest that the prices at retail level should be linked to the whole sale prices declared by the broadcaster, to ensure that an operator may not unfairly "out price" or "over price" a channel or set of channels to unfairly target a particular broadcaster, especially broadcasters like DCI which offer unique content channels.

We also request TRAI to focus its attention on speedy and complete implementation of DAS, and also to plug in the gaps which have continued to plague the value chain despite digitization, which include under or non-declaration of subscriber numbers, faulty or tampered SMS / CAS, piracy etc. The redressal of these and similar issues was at the core of rationale for implementation of digitization. However much remains to be done to ensure that these objectives are achieved, which would automatically address the issue of transparency across the value chain. We appreciate TRAI taking steps like making written contracts mandatory for supply of channel signals, which goes a long way towards ensuring transparency and minimizing disputes amongst stake holders.

Integrated Models

Q5. Which of the integrated distribution models discussed in consultation paper would be suitable and why? You may also suggest a modified/ alternate model with detailed justifications.

Q6. How will the transparency and non-discrimination requirements be fulfilled in the suggested models? Explain the methodology of functioning with adequate justification.

Q7. How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested integrated distribution models? Give your comments with detailed justifications.

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DCI Response to Questions Nos. 5-7:
In light of our response to Question Nos. 1-4, we do not recommend adoption of either of these models.

Channel Pricing Framework

Q8. Is there a need to identify significant market powers?

Q9. What should be the criteria for classifying an entity as a significant market power? Support your comments with justification.

Q10. Should there be differential regulatory framework for the significant market power? If yes, what should be such framework and why? How would it regulate the sector?

DCI Response to Questions 8-10:

We believe that the Competition Act of India provides adequate safeguards for ensuring fair competition and restraining anti-competitive behaviour. The authority set up under the Act, i.e. the Competition Commission of India (CCI) is the appropriate authority to deal with such issues. We stress on the point that the Competition Act provides adequate safeguards in case an enterprise is found to be indulging in anti-competitive behaviour. The Competition Act *inter-alia* provides the CCI the power to regulate / take corrective steps in case it comes across agreements amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including tie-in arrangement, exclusive supply / distribution agreement, refusal to deal, resale price maintenance, etc., which cause or are likely to cause an appreciable adverse effect on competition in India. The Competition Act also provides for safeguards and corrective steps in case an entity abuses its dominant position in a manner which distorts competition. The CCI has the power in such instances to order discontinuation of the abuse of dominant position, discontinue impugned agreements, impose penalties, modify agreements or even order division of an enterprise enjoying dominant position.

It is important to note that the Competition Act does not prohibit an entity from being in a dominant position, but it is the abuse of such position (which has to be established after a proper inquiry) which makes the CCI step in. In that sense, it is opposite to the anticipatory, pre-emptive approach being looked at by TRAI.

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We do not recommend creating parallel concepts or a structure which triggers review by yet another authority apart from the CCI. On the contrary, we are of the firm view that existing regulatory rules, including those laid down by the TRAI, should be substantially relaxed or streamlined. We also do not support sector specific regulations to regulate competition because it cannot auger well for investors to have to grapple with plurality of regulators addressing similar issues. Worldwide, the stage is set for regulators to streamline and simplify legal systems with a view to making them investor friendly – we urge TRAI not to take the step backward.

<u>Channel pricing methodologies</u>

Q11. Is there a need to continue with the price freeze prescribed in 2004 and derive the price for digital platforms from analog prices? If not, what should be the basic pricing framework for pricing the channels at wholesale level in digital addressable platforms?

<u>DCI Response:</u>

We agree with TRAI's views that there is need to revisit the price freeze prescribed in 2004, which has resulted in broadcasters notifying the highest possible prices for their channels under the apprehension that they will not be able to revise their prices with change in market scenario.

As far as criteria for fixing basic pricing framework for channels at a wholesale level for channels offering unique content in genres such as infotainment, kids and lifestyle is concerned, we submit that the wholesale prices for such genres should be kept under forbearance in order to promote the growth of these channels under competitive market conditions.

Q12. Do you feel that list of the Genres proposed in the consultation paper (CP) are adequate and will serve the purpose to decide genre caps for pricing the channels? You may suggest addition/ deletion of genres with justification.

<u>DCI Response:</u>

We are broadly fine with the suggested genres, except that clubbing the music genre with lifestyle and infotainment under the infotainment genre is not appropriate. Music ought to be a separate genre altogether, especially also since a viewer searching for a music channel would normally not look within the infotainment genre.

Q13. Is there a need to create a common GEC genre for multiple GEC genre using different regional languages such as GEC (Hindi), GEC (English) and GEC (Regional language) etc? Give your suggestions with justification.

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DCI Response:

We have no comments to offer on the same.

Q14. What should be the measures to ensure that price of the broadcast channels at wholesale level is not distorted by significant market power?

DCI Response:

We refer to our response to Questions 1-4. We believe there is enough competition in the sector to ensure that no broadcaster can arbitrarily price their channels, since that would be met with resistance from subscribers and consequent loss of viewership.

Q15. What should be the basis to derive the price cap for each genre?

Q16. What percentage of discount should be considered on the average genre RIO prices in the given genre to determine the price cap?

Q17. What should be the frequency to revisit genre ceilings prescribed by the Authority and why?

Q18. What should be the criteria for providing the discounts to OPERATORs on the notified wholesale prices of the channels and why?

Q19. What would be the maximum percentage of the cumulative discount that can be allowed on aggregated subscription revenue due to the broadcasters from a OPERATOR based on the transparent criteria notified by the broadcasters?

DCI Response to Questions 15-19:

We reiterate our response to Questions 1-4. We believe that channels offering unique content such as DCI network channels should be kept under forbearance category as regards fixation of wholesale pricing is concerned, and there is no need to impose price cap on such channels which will hamper their growth and restrict investment. The existing price ceilings has forced the channels, including unique content channels, to declare prices closer to the upper ceiling limits due to the apprehension that the prices once notified cannot be freely revised. Our view is that these price ceilings should be done away with. The market conditions will ensure that the pricing of such channels is kept at competitive levels. In this scenario, the questions 18 and 19 would be redundant. In any case and without prejudice to the foregoing position - for genres where TRAI ends up imposing price ceilings, our suggestion is that these need to be revisited atleast after every 18 to 24 months.

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Niche channels

Q20. What should be parameters for categorization of channels under the "Niche Channel Genre"?

Q21. Do you agree that niche channels need to be given complete forbearance in fixation of the price of the channel? Give your comments with justification.

Q22. What should the maximum gestation period permitted for a niche channel and why?

Q23. How misuse in the name of "Niche Channel Genre" can be controlled?

Q24. Can a channel under "Niche Channel Genre" continue in perpetuity? If not, what should be the criteria for a niche channel to cease to continue under the "Niche Channel Genre"?

DCI Response to Question Nos. 20 - 24

We generally agree with TRAI's observations that niche channels should be encouraged, and that pricing of these channels should be kept under forbearance, along with the genre of channels aired by networks such as DCI. We do not however agree on the criteria / methods to classify a channel as a niche channels as suggested by TRAI, which seem vague and may have the effect of including other channels which may not otherwise be "niche" within the ambit of the definition. For eg: a GEC channel which has miniscule viewership would end up qualifying as a niche channel if its viewership numbers fall within a certain threshold.

We agree that niche channels should be kept under forbearance to aid their growth and not subject them to "over regulation". However, we do not agree that there should be a gestation period permitted for a niche channel, especially when it comes to pricing, since our stance is that TRAI has to ultimately look at eventually deregulating prices across genres in light of increasing competition in terms of number of channels, implementation of digitization, increasing number of operators offering their services, increasing internet bandwidth enabling services like OTT and other avenues of consumption of content, etc.

Pricing of HD Channels

Q25. How should the price of the HD channel be regulated to protect the interest of subscribers?

Q26. Should there be a linkage of HD channel price with its SD format? If so, what should be the formula to link HD format price with SD format price and why?

Q27. Should similar content in different formats (HD and SD) in a given bouquet be pushed to the subscribers? How this issue can be addressed?

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DCI Response to Question Nos: 25-27

We submit that the production of HD content for a pure play HD channel involves significantly higher investment than a standard definition channel. HD channels are targeted at a premium audience base, who are willing to spend an incremental sum to procure the equipment required to access HD channels and to also subscribe to the HD channels of their choice for an enhanced content experience.

TRAI has rightly kept the tariff for HD channels under forbearance all this while, and we see no reason for this practice to discontinue. There is no reason or rationale for TRAI to consider regulation of HD channel pricing at this stage, or for linking the price of HD channel to its SD format. This is especially true in cases where, though a HD channel may use the same or similar name as its SD counterpart (since it may be airing HD content in the same genre), but it may be airing substantially different content. It is also an extremely difficult and cumbersome exercise for the Hon'ble Regulator to distinguish which HD channel airs the same or similar content as its SD counterpart, and which channel airs differentiated content from its SD counterpart. It would also be unfair to use the same brush and color various HD channels with same color.

The issue of similar content in SD and HD formats being pushed to the subscribers has to be taken care at the operator's end, with the operator giving an option to its subscribers to unsubscribe to the SD feed of a channel, if the same content is subscribed by him in HD.

Manner of offering of channels

Q28. Do you agree that separation of FTA and pay channel bouquets will provide more flexibility in selection of channels to subscribers and will be more user friendly? Justify your comments.

DCI Response:

We do not think that separation of FTA and pay channel bouquets will provide more flexibility in selection of channels to subscribers, since a subscriber may have to shell out more subscription fees to access the same mix of popular FTA and pay channels which he would have otherwise received by way of subscribing to the base package.

Ease of channel or bouquet subscription

Q29. How channel subscription process can be simplified and made user friendly so that subscribers can choose channels and bouquets of their choice easily? Give your suggestions with justification.

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DCI Response:

Some of the means to simply channel subscription process could be (i) publishing of details regarding channel offerings, both bouquet and a-la-carte on websites by MSOs / DTH players; (ii) intimation to subscribers regarding channel offerings and changes through messages delivered through the STB or through registered phone numbers; (iii) development of apps which allow subscribers to access information regarding their subscription, etc.

Q30. How can the activation time be minimized for subscribing to additional channels/bouquets?

DCI Response:

Platform operators should be encouraged to take cue from certain DTH players, who have installed automated systems which enable subscribers to activate / deactivate packs, so that lead time taken between a request and its activation is reduced. Technologies which enable subscribers to make requests by sending messages (like telecom subscribers) should be encouraged, depending on their cost effectiveness. TRAI may consider giving recommendations in this regard to platform operators.

Carriage / Placement / Marketing fee

Q31. Should the carriage fee be regulated? If yes, what should be the basis to regulate carriage fee?

Q32. Under what circumstances, carriage fee be permitted and why?

Q33. Is there a need to prescribe cap on maximum carriage fee to be charged by distribution platform operators per channel per subscriber? If so, what should be the "price Cap" and how is it to be calculated?

Q34. Should the carriage fee be reduced with increase in the number of subscribers for the TV channel? If so, what should be the criteria and why?

Q35. Should the practice of payment of placement and marketing fees amongst stakeholders be brought under the ambit of regulation? If yes, suggest the framework and its workability?

DCI Response to questions Nos. 31-35:

We are in principle against the levy of carriage, placement fees or marketing fees, by whatever name called on broadcasters, especially broadcasters of pay TV channels. In the analogue regime, the operators had limited capacity to carry channels on their network. Carriage fee was a phenomena created due to such capacity constraints (artificially created and maintained by operators), and the must provide obligation imposed on the broadcasters without a corresponding must carry requirement. Operators created an artificial bandwidth shortage on their network so that they can carry channels as per their own whim and demand arbitrary and exorbitant carriage fee from broadcasters. This practice has had the effect of creating a huge strain on the finances of broadcasters, who were threatened with low or no visibility in case they didn't pay carriage.

One of the objectives of digitization is to increase the channel carrying capacity of operators, so that the rationale for levying carriage fees no longer exists. The industry is in the process of completing transition to DAS –III and will go on implementing DAS IV by the end of the year. With digitization leading to increase in bandwidth, capacity, and also with the "channel frequency" being irrelevant as far as channel reception is concerned, we are of the view that the Hon'ble Regulator should ensure that the practice of levying these charges by the operators is stopped completely.

Variants of Channels

Q36. Is there a need to regulate variant or cloned channels i.e. creation of multiple channels from similar content, to protect consumers' interest? If yes, how should variant channels be defined and regulated?

DCI Response:

We are of the view that such issues would prima facie fall outside the jurisdiction of TRAI. In the garb of attempting to regulate "cloned" or "variant" channels, it may end up trying to regulate channel content, which falls outside its purview. We urge to TRAI to reconsider its thought process in this regard.

Channel visibility on Electronic Program Guide (EPG)

Q37. Can EPG include details of the program of the channels not subscribed by the customer so that customer can take a decision to subscribe such channels?

Q38. Can Electronic Program Guide (EPG) include the preview of channels, say picture in picture (PIP) for channels available on the platform of OPERATORs but not subscribed by the customers at no additional cost to subscribers? Justify your comments.

DCI Response:

We agree with TRAI's recommendations, since it will enhance consumer awareness and information regarding all available options.

Pay-per-program viewing and tariff options

Q39. Is the option of Pay-per-program viewing by subscribers feasible to implement? If so, should the tariff of such viewing be regulated? Give your comments with justification.

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Q40. Will there be any additional implementation cost to subscriber for pay-per-view service?

DCI Response:

DCI is of the view that there is no need at the present to regulate Pay-per-program service that may be offered by a platform operator. There is increased competition between platform operators which has resulted in them offering value added services to the subscribers in order to retain the existing subscribers and to attract new ones. These include catch up services and VOD offerings. Some DTH operators have commenced offering linear and non-linear channel content on second and third screens through their TV everywhere / On the go services. We are of the view that there is adequate competition in the market to ensure that these services are either offered as an add-on service without additional charges or for minimal additional fees. There is therefore no pressing need for TRAI to over-regulate these offerings or their tariff.

Audit and reporting issues related to tariff

Q41. Do you agree with the approach suggested in para 5.8.6 for setting up of a central facility? If yes, please suggest detailed guidelines for setting up and operation of such entity. If no, please suggest alternative approach(s) to streamline the process of periodic reporting to broadcasters and audit of OPERATORs with justification.

DCI Response:

We appreciate TRAI bringing forth the issues set out in this section regarding lack on integrity in SMS systems, non-furnishing of proper reports by operators, etc. While we welcome TRAI's recommendations regarding setting up of an online facility to enable transparent collection and sharing of SMS data, we submit that such a facility would have to cost effective to be feasible for its stakeholders. Also, success of such facility would be dependent on ensuring the integrity of the SMS/CAS system at operator's end.

As regards audit, we suggest that an industry body like the IBF could maintain 4-5 reputed audit firms on its panel. All issues faced by various broadcasters could be referred to IBF, which could finalize the scope of the audit and assign the task of carrying out the audit to one of the empanelled firms.

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