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TRAI'S CONSULTATION PAPER NO. 01/2016 DATED 29TH JAN 2016 ON TARIFF ISSUES RELATED TO TV SERVICES

Submissions for and on behalf of STAR India (P) Ltd.

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Response of Star India Private Limited to the Consultation Paper No. 1/2016 dated 29th January 2016 on Tariff Issues Related to TV Services (“Consultation”)

Preamble

We thank the Authority for initiating the Consultation. Before we dwell upon the specific issues raised in the Consultation Paper, we wish to appraise the Authority of some issues which are germane to the Consultation.

I. Comprehensive Exercise

While we appreciate the initiatives of the Authority to embark on this consultation process, we believe that the same will be incomplete unless the Authority does a comprehensive and simultaneous review of the following additional key areas detailed below to make this a meaningful exercise. This is also important to ensure certainty for the business which will otherwise be hugely impacted by frequent and piecemeal regulatory interventions.

1. Interconnection Regulations: Comprehensive and single interconnection regulations for all addressable platforms.
2. Quality of Service Regulations across all addressable platforms need to be comprehensively addressed
3. Framework of Tariff for commercial subscribers
4. Enabling audit and reporting framework for ensuring hygiene and good conduct.

II. Applicability and Exclusions

The Authority needs to clarify that the entire regulatory framework is applicable only for licensed satellite television channels distributed via cable, DTH, HITS, IPTV in keeping with the existing uplinking/downlinking guidelines of the Ministry of Information and Broadcasting, and specifically excludes all internet, intranet, Over the Top, Edge, mobile and any other similar delivery technologies.

III. Genesis of the Current Tariff Structure: Tariff Controls were always intended to be an "Interim" measure

We request the Authority to appreciate and recognize the considerations on the basis of which price and bouquet freeze/ceiling was imposed by the Authority in December 2003.

The price freeze was imposed at a time when the market was fully analog with no transparency in subscriber numbers and there was limited bandwidth for carrying channels. This was always projected by the Authority as a "temporary measure" and was intended to be in force only till such time there is competition and full addressability. In this context it is important to draw the attention of the Authority to paragraph 5 of the Explanatory Memorandum to The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 (6 of 2004) when the Authority extended the concept of price freeze to the new channels which is reproduced herein below:

Quote

The Authority has considered the question of fixing a ceiling price for new pay channels that have been introduced after 26-12-2003 or for any channels that was a free to air channel on 26-12-2003 is subsequently converted to a pay channel. Fixation of prices charged for new pay channels to consumers is difficult because of large variations of these prices and of the difficulty in linking these to costs. Further this is a localized issue which is not easily amenable to centralized regulation. ***Prices in different parts of the country are based on different systems using different methodologies for fixing the subscriber base. Many of these problems will get resolved if addressability is introduced, giving consumers choice and making the interconnection agreements more transparent. TRAI has separately sent recommendations to the government which, interalia, provide for a framework for transition to addressability in different situations. However, in the interim period prices will have to be regulated. This revised tariff order provides the framework for such regulation.***

Unquote

IV. Extension of legacy pricing to Digital Addressable Systems

In July 2010, instead of carrying out a de-novo and comprehensive exercise for determining an appropriate tariff framework for Digital Addressable Systems (DAS), the Authority extended the interim legacy bouquet and tariff freeze to DAS, knowing fully well that addressable markets were distinct and different and not comparable in any manner with analog markets.

V. Shortcomings of the Current Tariff Framework and its Impact

The current tariff regime which was supposedly an "ad-hoc" and "interim measure" has, over its lifetime of 12 years, perpetuated the lacunae inherent in it. This has not only resulted in severe market distortions, disputes amongst stakeholders, but has also limited broadcasters' ability to unlock the true value of its channels, thus stifling creation of innovative and differentiated content.

1. **Tariff and bouquet freeze has led to wholesale price distortions**

   a. Wholesale bouquets and their prices were frozen in 2003-04, when the market was fully analog and there was no transparency in actual subscriber numbers.

   b. In 2007, while mandating offering of channels on a-la-carte basis, the Authority prescribed the twin conditions which effectively required a-la-carte prices to be derived from the frozen bouquet prices with varying number of channels in each of these bouquets. This led to disparities amongst incumbent channels within the same genre as detailed below.

	Star Bouquet	Zee Turner Bouquet	SET Discovery Bouquet
Frozen Bouquet Price as on 1/12/2007 (in Rs)	46.80	61.20	54.97
Number of channels in the bouquet	9	14	5
A-la-carte Rate (Rs) of flagship Hindi GEC channel (derived from frozen bouquet Rate)	Star Plus: **17.50**	Zee TV: **12. 97**	Sony: **20.00**

   c. Since the rates for incumbent channels had been frozen since December 2003, fear of price freeze led to newer channels being priced closer to ceiling which was totally out of sync with real market value of those channels. As can be seen from the chart below, this not only prohibited real price discovery for the new channels, but also denied the incumbent channels the level playing field vis-à-vis the new channels launched after the freeze date.

Incumbent channel prices frozen since Dec, 2003...	
Star Plus	7.87
Zee TV	5.83

...while newer channels priced higher	
&TV	10.58
EPIC	10.50
Life OK	9.21
Zindagi	9.20
Colors	8.99

2. The legacy genres have in-built inconsistencies

a. As per the existing tariff regime, the new channels have to be priced similar to the rates of similar channels existing as on the date of the launch of the new channel. In determining the similarity of rates of similar channels the following factors shall be taken into account:

   i. the genre and language of the new pay or converted FTA to pay channel; and

   ii. the range of prices ascribed to the existing channels of similar genre and language in the price of a bouquet(s) and prices of bouquet(s) that exist.

b. The Authority has formulated certain genre caps which are applied to check compliance of the aforesaid provisions by the broadcasters. It is pertinent to point out that the genre caps have never been made available transparently in public domain. For that matter, the Authority did not even conduct any consultation process as per the provisions of the TRAI Act, before determining the genre caps. It is for the first time that the Authority has shared these genre caps in the consultation paper. On perusal of the same, it is evident that genre caps have been determined under the genre heads stated below which are based on inconsistent criteria of language, content type and target audience.

General Entertainment (Hindi) General Entertainment (English) General Entertainment (Regional)	Classification on language
Movies Music Sports Infotainment Lifestyle News and Current Affairs Religious / Devotional	Classification on content type
Kids	Classification on target audience

3. Current genre tariff caps do not reflect consumer demand and value

a. The inconsistencies in the genre classification led to creation of arbitrary price caps for each genre without any intelligible differentia which were devoid of value proposition for the consumer, thus heightening the pricing disparities in the market.

b. As shown below, while for general entertainment channels the caps are based on language, despite the fact that the content of the same are agnostic across language and their respective economics. Resultantly, strong regional GEC channels (leaders in their regions) suffer owing to lower Regional GEC genre cap vis-à-vis Hindi GEC genre cap of Rs. 10.58.

For example,

Sun TV	**Rs. 5.57**
Zee Marathi	**Rs. 3.60**
Asianet	**Rs. 5.23.**

c. The inconsistency is more pronounced by having uniform cap for the movies and other genres regardless of language.

d. In effect, the existing tariff regime capped the ability of incumbent flagship channels to grow. On the other hand, it created perverse incentives for new channels to be priced higher and discounted subsequently. Carriage and placement only aggravated these distortions.

4. Charging for FTA channels on a-la-carte basis has resulted in price distortions

Currently, FTA norms are being violated by DPOs

a. The existing regulatory provisions do not envisage a-la-carte rates for FTA channels

b. Under the present tariff dispensation, a digital cable service provider is mandatorily required to offer a bouquet of 100 FTA Channels described as “Basic Service Tier” (BST) in the Cable Television Network Regulation Act.

c. Many DPOs have not implemented BST; rather they have declared a-la-carte rates for FTA channels thus subverting the Tariff Orders.

d. Pricing FTA channels at retail level is against the very principle of declaring the channels as FTAs

e. Allowing a-la-carte pricing of FTA channels and bundling them with pay channels has created price distortions at retail level resulting in bloating of bouquet size and price

VI. Current Market Scenario: Highly Competitive and Robust

Today with DAS (DTH and Digital cable) acquiring critical mass covering over 80 million households, the consumer has access to

- choice of content and delivery platforms
- more number of channels
- high quality digital content and services

Competition inter-se Platforms

With effective competition through Cable, DTH, HITS, IPTV and with other emerging platforms like mobile television/broadband at advanced stages of implementation, the sector has come a long way in the last ten years thereby displacing the circumstances which led to extreme regulatory intervention.

Competition inter-se Channels

Today, there is intense competition amongst broadcasters as well, in terms of manifold increase in the number of channels from 80 in 2004 to almost 834 in 2016. Pay channels not only compete with each other but also compete with FTA channels. Competition at all levels has thrown open a whole lot of choice to the consumers in terms of channels as well as delivery platforms. Indeed, with thousands of cable suppliers, six operating DTH systems, 2 HITS operators and IPTV offerings, India is one of the most diverse and competitive pay-TV sectors in the world.

Competition with other screened entertainment products

Television in general and pay-tv specifically, is an entertainment product distributed in a highly competitive marketplace. Television competes with a wide range of alternative media delivery systems for share of consumer’s wallet, time and eyeballs, including films, programming on DVDs, games, social media, print media, internet delivery systems, and emerging new media technologies such as mobile broadcasting. In fact, in the current digital era, television even competes with e-tailing and e-commerce.

TV Channels compete with Public Broadcaster

A significant feature of India's television landscape is its large and successful public service broadcaster. Doordarshan, like public service broadcasters in other countries, is funded to provide an essential public service available to all citizens, without charge. It meets the public's needs for basic television services, across the nation with great effectiveness. It should also be borne in mind that pay-TV in particular is a discretionary expenditure (indeed a luxury, in many households). This is also borne out in the Authority's own findings where TV channels were deemed to satiate "esteem needs" rather than "basic physiological" needs.

Hence, careful conceptual distinctions should be drawn between the necessary public service, provided by the public service broadcaster, and the discretionary entertainment products which make up the pay-TV industry.

It would be highly inappropriate to expect that all channels must be made available to the consumers across all delivery platforms, at regulated charges. While we share the Authority's concerns for the consumer interest and its initiative to promote digitalization and addressability, it has to be borne in mind that the very purpose of addressability is to provide choice to the consumers to opt for channels of their choice, and not lower charges to consumers. The consumer has to incur some additional expenditure to receive premium and quality content. The objective here is to create a system which allows consumers an array of diverse content to choose from depending upon his needs, and affordability. ***The Authority must digress from creating an environment which pushes more and more channels at regulated rates to the end consumers, which would virtually amount to offering all consumers the non-mass, luxury cars like "Mercedes" at the cost of mass consumption cars like "Alto".*** Therefore, in order that the consumer gets variety of channels to choose from, the Authority must allow market forces of demand, supply and consumer choice to enable price discovery in a competitive market environment.

Addressability ensures real choice to Consumers

As has been recognized by the Authority, Indian consumers have been paying the lowest charges for content for over a decade which at the current digital ARPU of Rs 200/- works out to Rs 7.00 per day for a minimum of 120 channels. If this were to be compared with print medium which is analogous to the broadcasting sector in terms of working model, a consumer on an average pays Rs 4/- per newspaper per day for just one newspaper as against 6 paise per channel per day.

To elaborate by way of an example, if a consumer today were to pick up a mix of magazines and newspapers for his family he will have to incur approximately a minimum of Rs 590 per month as detailed below:

Publication	Monthly cost to subscriber
Times of India	Rs 4 * 30 days = Rs 120
Economic Times	Rs 3 * 3 days = Rs 90
Amar Ujala (Hindi)	Rs 3 * 30 days = Rs 90
Femina	Rs 60 * 2 = Rs 120
Filmfare	Rs 60 * 2 = Rs 120
Children comics	Rs 50
Total	**Rs 590**

If the consumer wants to spend less he can accordingly amend his requirement and do away with some items. However, public authorities do not mandate making available newspapers and magazines across the shelf to the consumers at regulated rates. In effect, so long as the consumer has access to all the products and services and has the option of real choice, he is always free to exercise such choice as per his needs, aspirations and affordability. Similarly, there is no reason for television channels to be treated any differently.

Through the course of these years, since the price freeze, Broadcasters have repeatedly pointed out to TRAI that the price freeze imposed on the television industry is fundamentally inconsistent with the current realities of the Indian marketplace where pricing of other goods and services are being deregulated in favor of market competition: energy, telecommunications and utilities (to name just a few). We were at all times assured that the “interim” price freeze would enable the Authority to ensure structured growth of the industry and allow smooth transition to DAS, eventually giving way to tariff forbearance.

We therefore submit that the Authority’s decision on tariff exercise has to take into account the several complexities which are unique to the sector.

VII. Sunset Date: Roadmap for Tariff Forbearance

As explained above, given that the market today is highly competitive and there are clear obligations on the broadcasters for “must provide” and “non-discrimination”, we strongly believe that tariff forbearance across the value chain is the way forward. However, since the industry is currently in the cusp of transitioning to full addressability, we recommend an interim regulatory framework that will facilitate this transition. In order to ensure that the transitory framework does not become a permanent fixture as is the case with the current tariff dispensation, we recommend that the Authority notify a clear “sunset date” for the transitory framework leading to total forbearance, not later than two years from the date of notification of the tariff under consultation.

VIII. Transition to New Regulatory Dispensation: To enable smooth transition to the new regulatory regime, we propose that the Authority should provide for a reasonable transition period of a minimum of six months for amending RIOs and entering into new interconnection agreements.

IX. Hygiene and conduct key to realizing Authority’s objective of transparency and equity across the value chain:

The Consultation has a pronounced focus on transparency and equity. In order to achieve the same it is extremely critical to ensure that the audit and reporting provisions are strengthened and enforced in letter and spirit.

Having been at the forefront of driving transparency and non-discrimination through our Modified RIO we have encountered huge challenges in implementing the same on account of lackadaisical behavior of DPOs in duly complying with the audit and reporting provisions. This adversely impacted our revenues and acted as a severe dampener to our efforts towards driving transparency and hygiene across the value chain.

We have accordingly proposed some corrective reforms to be undertaken by the TRAI in Section L below

Against this background we are furnishing herewith our preliminary response to the issues raised in the Consultation Paper.

Section A: 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.

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.

Price Forbearance at wholesale level

As articulated above, price and bouquets freeze have been at the core of all market distortions. Hence it is important to find a solution for the same which enables broadcasters to price channels basis market strength (and allow ability to vary these prices as channel strength is dynamic). Further it has been noticed that core of the disputes amongst stakeholders have arisen on account of conduct and behavioral issues stemming from legacy distortions in pricing. Hence, it is not pricing control that is required but correction of these legacy pricing distortions that will automatically resolve all behavioral and conduct issues. Therefore, we believe that complete price forbearance at the wholesale level is the way forward with adequate safeguards to prevent abuse through the following core principles

i. Transparency and Non-discrimination; and

ii. Controlling discounts

Transparency and non-discrimination: the mantra to control abuse of forbearance

This can be achieved by making the wholesale RIO based deals transparent and available to all addressable platforms (subject to the delivery platforms/technology exclusions as stated in the Preamble) and by implementing the same principles across the value chain. This will ensure a level playing field amongst all stakeholders and reduce instances of disputes and litigations.

Controlling discounts at wholesale level: the key to bring realism in pricing

On account of fear of price freeze/ genre caps, wholesale list prices of new channels got pegged at the genre cap with the weaker channels discounting these prices heavily to reach the actual market value of the channel. Hence, the key is to control the discounting so that wholesale list price distortions are avoided as clearly demonstrated in the illustration below:

	Pricing Distortions in Current Regime	Controlled Discount in Proposed Regime
Contracted Price of channel	Rs. 2	Rs. 2
Operating Discount	80%	33%
Wholesale List Price	**Rs. 10**	**Rs. 3**

Contracted price of the channel remaining at Rs 2, the wholesale list price of Rs 10 in the current regime will be forced to be brought down to Rs 3 due to controlled discount (say 33%) in the proposed regime.

Thus forbearance at wholesale level works. However, as the industry is currently in the cusp of transitioning to full addressability, we are recommending below, an interim wholesale pricing framework that will facilitate the transition. In order to ensure that this transitory framework does not become a permanent fixture, as is the case with the current tariff dispensation, we recommend that the Authority notify a clear "sunset date" as set out in the Preamble for ushering in total forbearance.

Proposed Interim Wholesale Pricing Framework (An amalgam of Price Forbearance Model, Regulated RIO Model and Flexible RIO Model)

- **Regulate price caps only for the mass genres** of Entertainment (Hindi & Regional), Movies (Hindi & Regional) and Sports genres given that these genres cater to mass audience which is price sensitive. Further, as these genres contribute to ~80% of the total consumption of TV content, the Authority's primary concern of protecting mass consumers is duly addressed during the transition.
- **Wholesale price forbearance for all other genres** like English Entertainment and Movies, Lifestyle, Kids, other genres, HD and upcoming 4K, 3D and virtual reality. Content of these genres is aspirational and is meant for affluent audiences who have willingness to pay for premium and differentiated content and hence best suited for tariff forbearance. Moreover, controlling discounts will inherently ensure realistic pricing of channels and obviate pricing distortions.
- **Reasonable wholesale price cap to be ensured for the mass genres**
  - Channels need to be incentivized for creating diverse and innovative content
  - Incumbent flagship channels have been suffering from legacy price and bouquet freeze.
  - All Channels should earn fair share of consumers' ARPU
  - Our research findings reveal that basis current ARPUs, share of viewership of flagship channels, and existing revenue share of the broadcasters in the addressable market, the value attributed by the market to the flagship channels is significantly more than the existing wholesale list prices of these channels.
  - Accordingly, the retail value ascribed to flagship entertainment channels by consumers translates into a wholesale price of Rs 11/- to Rs 28/-. For details refer to Annexure A.
  - Therefore, the wholesale cap should be Rs 28/- to allow for optimum monetization of the flagship channels. If the channel values are allowed to be corrected basis consumer demand the share of the channel in the ARPUs shall be realigned to reflect their true value proposition without leading to any arbitrary or perverse price hikes. Further the proposed discount cap will effectively eliminate pricing distortions.
  - However in the interest of enabling a smooth and seamless transition to full addressability without creating any unnecessary chaos we are proposing the following caps, in the transition phase. Any lower cap will not only stifle investments in innovative content but

also continue to restrict incumbent channels whose rates were frozen in 2003-2004 from realizing their real value.

Mass Genre	Proposed Price Cap (Rs.)
General Entertainment (Hindi & Regional)	12.00
Movies (Hindi & Regional)	10.00
Sports	18.00

- These caps should be subject to automatic annual revision, basis inflation

1. Broadcasters to publish wholesale RIO prices for pay channels

- Broadcasters to have flexibility to price their channels anywhere below or equal to the wholesale price cap
- Broadcasters to have option to reset channel wholesale prices, upward or downward, based on channel demand, twice a year at a fixed time period, say 1st April and 1st October

2. Broadcasters to offer wholesale discounts to DPOs which should be transparently available as part of RIO

- **Manner of offering discounts**
  - Broadcasters to define the various criteria for the discounts to be availed by DPOs
  - **Broadcasters to be free to define these discount criteria** since these will vary from broadcaster-to-broadcaster, depending upon their business objectives, channel lifecycle stage and market conditions
    - For example some broadcaster may prefer criteria like geographic presence of DPO, market ARPU, DPOs share and size in market, while other broadcasters may prefer channel parity with competition, competitive intensity in genre, etc. as the key criteria
  - These criteria may vary across channels, genres, geographies, etc.
  - Broadcasters and DPOs to concur upon criteria and discounts through mutual discussion/negotiation. Such agreed criteria and discounts to be published and made transparently available to all other DPOs

    - DPOs to be free to opt for discounts, as per their discretion

- **Wholesale discounts to be subject to a maximum overall cap of 33%**
    - As explained above, there are wide variety of parameters that a single broadcaster may want to drive basis various business requirements
    - 33% discount will be sufficient to effectively drive only a few business requirements
    - Any discounting cap lower than 33% will render the discounting structure ineffective/unworkable

- **Carriage/Placement/Marketing Fee transactions outside the pricing framework will undermine sanctity of the transparent framework**
    - Carriage/Placement/Market fee will distort prices and will circumvent principle of transparency and non-discrimination
    - All such transactions should be subsumed in the proposed discount cap of 33%

3. Broadcasters to offer channels on a-la-carte & bouquet basis

- Bouquets and assemblages are the prevalent system of contracting today and ensure ease of operations. Hence, bouquets or assemblages should be continued as part of published RIO.
- The prevailing frozen bouquets should be dismantled
- While the DPOs have an option to avail channels on a-la-carte basis, if DPO opts for any bouquet, then the DPO has to make available the entire bouquet in a single retail pack of DPO's choice. This is critical for broadcasters' to maximize depth and reach for the channels in a bouquet, the very reason for which bouquet is being put together
- Any wholesale bouquet would need to meet the prevailing wholesale twin conditions which would help cap the number of channels that can be carried in a bouquet and also make a-la-carte RIO a tenable option
    - As twin conditions allow for only 1/3rd discount on the sum of a-la-carte RIO rates of channels in the bouquet, a viable bouquet cannot have very high RIO rates
    - As highest price of a channel has to be less than 3 times the average channel price in the bouquet, several low demand/ low priced channels cannot be forced in the

bouquet as it reduces the average and consequently limits the maximum possible RIO rate of the highest priced channel

Star India's views on other wholesale models proposed in Consultation paper

- **Cost Based Model – Not suitable**

    - Historical costs cannot be used as a benchmark for deciding future prices of TV channels
    - Programming costs are a function of investments made by broadcasters which varies every year owing to nature of rights and production
    - Providing fixed mark-up on the programming costs essentially implies that EBITDAs of companies will be regulated
    - Ability of broadcasters to plan investments in innovative & diverse content will be severely hampered
    - We agree with TRAIs views that implementation & workability of this model will be a big challenge and hence this model should not be implemented

- **Universal RIO Model – Not suitable**

    - As wholesale bouquets are not allowed under this model, ease of operations will be lost
    - This will limit the content diversity, and result in creating 'me-too' content in popular genres
    - Broadcasters will get dis-incentivized from investing in content innovations

Proposed Model at Retail Level

- **Direct linkage of prices between wholesale and retail level is required to reflect channel demand,** which will
    - ensure rational wholesale prices translate into tenable retail prices
    - Provide uniform pricing of channels across all geographies and all addressable platforms
    - Align interests of DPOs and broadcasters, thereby reducing disputes and litigations across the value chain
    - If not linked, leave open the possibility for irrational retail prices
    - Linkage can be achieved by capping the maximum retail a-la-carte price of a channel at **2 times** the wholesale listed price.

- **A-la-carte at retail to be mandatorily offered by DPOs to ensure** consumer choice

- **DPOs to be allowed to offer multi-broadcaster retail packages**

  - Consumers consume content across multiple channels within genres. Hence, multi-broadcaster retail packages offer consumers a curated content choice.
  - Also, within a household, multiple channels across multiple genres are consumed, selection of which is again made convenient by the multi-broadcaster retail packages
  - Retail packages also ensure convenience and ease of access for consumers
  - DPOs are better equipped (than broadcasters) to create retail bouquets since they are in transactional relationship with consumers giving them opportunity to understand consumer choice
  - Maximum discount on multi-broadcaster retail bouquet to be capped at **33%** of sum of retail a-la-carte prices of channels comprised in such bouquet, which will
    - Limit the number of channels in the retail bouquets
    - Ensure unwanted channels are not forced to consumers
    - Any discounts higher than 33% will make retail a-la-carte choice illusory for consumers
  - If consumer wishes to subscribe for one or more pay channels, minimum charge of Rs 150/- to be levied with no incremental charges till the sum of subscribed pay channels/ bouquets is less than or equal to Rs 150/-. In case more pay channels are subscribed to, then the charges will be summative.

The aforesaid proposed model not only fulfils the transparency and non-discrimination requirements but also protects consumers interests like choice of channels and enables them budget their expenses.

Star India’s views on other retail models proposed in Consultation paper

- **Retail forbearance Model – Not suitable**

  - Consumer is served with large retail packages, consisting of many irrelevant channels to the consumers

- A-la-carte option to the consumer is illusory

- **Exclusive a-la-carte model – Not suitable**
  - Detrimental for content quality & innovation as it treats content as a commodity
  - Absence of retail bundling would make the channel selection process to the consumers complex and cumbersome.

Star India's views on other integrated models proposed in Consultation paper

- **Conventional MRP model – Not suitable**
  - We are of the opinion that DPOs are in regular touch with the consumers at a transactional level, and hence are best placed to make and price consumer offerings.
  - Broadcaster-wise bouquets are inefficient consumer offering, since consumers consumer many channels in a genre
  - Hence, we prefer wholesale model with linkage at retail level, as suggested above.

- **Flexible MRP Model – Not suitable**
  - Complex and multi-fold offerings to consumers because of both broadcasters as well DPOs allowed to do retail packaging

- **Distribution Network Model – Not suitable**
  - Our understanding of the model
    - DPOs are not allowed to do multi-broadcaster bouquets
    - DPOs are only infrastructure providers
    - DPOs can charge fixed access fee/rental to the consumers for the first 100 channels (pay + FTA) with additional charges for incremental channel offering beyond the first 100 channels
  - This model has substantial shortcomings. To cite a few
    - Charging access fee/ rental to consumers for channels is akin to thrusting them to pay this amount even if they select just a few, say 10 Pay or FTA channels

- For the consumers who are paying separately for Pay channels, rental being charged amounts to double charging the consumer for the same service
- Similarly, FTA channels, in principle, are supposed to be free to consumers as well, but are being charged for in this scenario
- Just to highlight a scenario in Telecom industry, for prepaid consumers, practice of charging rental/ access fee has been done away with and this has done a world of good for consumers with incoming calls free all the while. With the same authority regulating both Telecom as well as Broadcast & Cable sector, it would be regressive step for the latter.

▪ Broadcaster-wise bouquets are inefficient consumer offering, since consumers consumer multiple channels across many broadcasters within a genre

Section B: Significant Market Power

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?

There is NO need to identify the so-called "significant market power" (SMP) for the following reasons:

1. **Lack of Anti-competitive Symptoms**: The market today is highly robust and competitive, as explained above, and has not thrown up any symptoms of abuse of dominance leading to appreciable adverse effects on competition in the sector. SMP if at all, can have two-fold impact: a) Access b) Price. If there is an occurrence of significant market power and its abuse, then evidence needs to be examined with respect to the harmful effects (such as foreclosure, distortion of price, absence of level playing field etc.) and the same needs to be examined on case to case basis and not through ex-ante regulation. However, the paper does not indicate the presence of any of such harmful effects.

2. **Current Regulatory Framework:** Existing regulatory framework acts as sufficient safeguard to prevent distortions in access and price as explained below:
   - Sufficient *ex-ante* regulation by the TRAI in relation to: a) access to all channels to the distributor of TV channels through the mandate of "must provide" on non-discriminatory basis thereby preventing any foreclosure effects; (b) no parallel obligation on distributors to carry the channels of broadcasters (c) tariff freeze of channels at wholesale level; (d) bouquet freeze at wholesale level; (e) broadcasters have no say in the manner of offering channels at the retail level with complete freedom to distributors (f) terms and conditions of offering channels (g) disaggregation of multi-broadcaster bouquets at the wholesale level .
   - The regulatory framework also provides for an *ex-post* mechanism as any action of a broadcaster or digital platform operator ("**DPO**") which is not in compliance with TRAI regulations can be challenged before the Telecom Dispute Settlement Appellate Tribunal ("**TDSAT**").

- Along with TRAI and TDSAT's regulatory framework, the CCI has both *ex-ante* and *ex-post* regulation that provides sufficient safeguards. The Competition Act 2002 ("**Act**") prevents misuse of market power by prohibiting anti-competitive agreements, abuse of dominant position and regulating mergers and acquisitions. The CCI has examined several cases relating to the broadcasting sector in discharge of its mandate. For eg: Media pro, Arasu Cable, Fastway Cable etc.
- **Conclusion**: The above mentioned *ex-ante* and *ex-post* regulation creates an optimum balance, providing companies with an incentive to invest and innovate as evidenced by:
    a) Increase in the number of channels
    b) Increase in the number of broadcasters
    c) Increase in the number of delivery platforms

3. **Countervailing Forces:** Paper notes that there is market power in both broadcasters' and DPO markets; even presuming without admitting that it is true, this would show that there is sufficient countervailing buyer power and therefore no broadcaster can have market power vis-à-vis a DPO and vice versa.

4. **Channel Uniqueness is not indicative of SMP**: TRAI's presumption or assumption of channels per se being monopolistic or having significant market power is erroneous; Channel content ideally should always be unique, however this uniqueness should not be mistaken as being monopolistic or leading to significant market power; Content production is fundamentally an activity of creating unique content (product). There are no entry barriers to content production and hence, there is no question of market power. All IP laws (including Copyright) have been given an exception in The Competition Act and such jurisprudence is internationally valid. This specific carve out for Copyright is indispensable for the very existence of Content production industry.

5. **Discounts and carriage fees indicate lack of market power**: There is no basis to differentiate between the 'driver channels' and the 'not-so popular channels'. The concept of 'driver channels' is flawed. No market power finding can be made on this basis; The fact that so called driver channels also have to either incentivize (by discounting prices) and/or pay carriage and placement fees to secure access/visibility is indicative of the fact that there is no monopoly at

the broadcaster's level. Further, all the driver channels are clearly substitutable, and there are a minimum of 5-10 substitutes for each of these so called driver channels.

6. **TRAI's recommendations on Cable Monopoly**: TRAI's findings in its recommendations on Cable monopoly clearly reiterate that market power, if at all, rests with operators.

7. **Unprecedented Channel diversity**: Given that the number of Pay Broadcasters has risen from 3 to 51 with 262 channels in a decade shows there are neither entry barriers nor any foreclosure effects. Today there are about 834 licensed satellite channels competing with each other ensuring availability of varied content to the consumer with no particular broadcaster being able to gain market power at the cost of others.

8. **Unprecedented Platform diversity**: Moreover, it's also a very competitive market in so far as platforms are concerned with about 6000 MSOs, 60000 LCOs, 7 DTH Operators and 2 HITS providers. It must also be noted that Doordarshan (DD) is already providing a choice to consumers through its Freedish and Terrestrial platforms.

9. **International Precedents**: Globally, there are regulations to check SMP within the existing competition laws. All such regulations are applied ex-post, after collecting required evidence of abuse of market power or appreciable adverse effect on competition and after a careful study of its impacts (such as foreclosure, distortion of price, absence of level playing field etc.). The Regulatory regimes in other countries are mentioned in Annexure C.

10. **Regulations should not protect inefficiencies:** It is to be noted that consolidation is a reality in the evolution of any sector. This would mean that 'not-so efficient players' in the market would be acquired or ousted; this is an interplay of market forces and does not warrant intervention of TRAI. A similar scenario can be witnessed in the telecom space wherein, consolidation of the market is the natural corollary. The purpose of regulating market power should be to protect competitive process and not inefficient competitors.

11. **No usage of any natural resource**: Also there is no usage of any natural resource like spectrum or coal mines that merit consideration of SMP in the broadcasting space.

Section C: Channel Pricing Framework & Pricing Methodologies

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?

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.

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.

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

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 DPOs 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 DPO based on the transparent criteria notified by the broadcasters?

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1. No need to continue with price freeze prescribed in 2004 and derive the price of digital platforms from analog prices

- The existing tariff and bouquet freeze has led to severe price distortions as identified in the Preamble section. The extension of the same legacy freeze to DAS has further perpetuated the distortions leading to frequent disputes amongst stakeholder. Hence, we strongly recommend against continuation of the price and bouquet freeze and request the Authority to dismantle the same. For the reasons stated, there should not be any pricing caps and price forbearance is the way forward. However, we have proposed a transitory tariff model in Section A which can enable seamless transition to full addressability with a clear roadmap towards forbearance. Also, **the caps should be reasonably high** to allow flagship channels to monetize adequately and enable innovation. Discount caps in any event will prevent perverse and arbitrary pricing.

2. Genres irrelevant for pricing

- Genre classification is not relevant for channel pricing as it only enables ease of selection of channels by operators and consumers to cater to their diversified tastes and preferences.
- Genre classification should be delinked from pricing after the sunset date. However during the transitory phase we propose the following:
  - Mass Genres : Entertainment (Hindi & Regional), Movies (Hindi & Regional) and Sports to be classified as Mass genres given that these genres cater to mass audience which is price sensitive and contribute to ~80% of TV consumption.
  - Non Mass Genres: English Entertainment, English Movies, Lifestyle, Kids, other existing genres, HD and upcoming 4K, 3D and virtual reality, to be classified as Non-mass genres, since these genres are aspirational and meant for affluent audiences who have willingness to pay for premium and differentiated content.

3. Effective Competition and existing Regulations checks 'Significant Market Power'

For reasons stated in Section B, concerns around 'significant market power' is fundamentally misplaced as current regulations and effective competition in the sectors acts as an automatic check against perverse pricing.

4. Basis of arriving at Price Cap for each genre

- As stated, discount control checks perverse pricing obviating the need for price caps. However, during the transitory phase, we have proposed a price cap for mass genres of Entertainment (Hindi & Regional), Movies (Hindi & Regional) and Sports genres.

- Forbearance for **non-mass genres** like English Entertainment, English Movies, Lifestyle, Kids etc, HD and upcoming 4K, 3D and virtual reality to encourage stakeholder to invest in quality and diverse content.
- The rationale for deriving the price cap for mass genres as set out in Section A is based on the fundamental principles of “reasonability” and “fair revenue share” of the ARPU, basis viewership.
- The existing inconsistent genre classification and caps have led to severe distortions and disputes amongst stakeholders. Further the regime has worked to the disadvantage of incumbent channels whose rates got frozen in 2003-04, thereby impairing their ability to realize the real value. Hence, such legacy caps cannot be used as a basis for determining cap, going forward.
- It is indeed alarming to note that the Authority, instead of doing a de-novo exercise, has come to the forgone conclusion that going forward, the genre caps should be the average of the minimum and the maximum caps as highlighted in question no 16 of the consultation paper. In fact, as stated in the Preamble, even the existing genre caps and range were arbitrarily determined by the Authority without adhering to the principles of transparency as envisaged under Section 11 of the TRAI ACT. These genre caps and their ranges thereof have been unilaterally determined by the Authority without any consultation with the stakeholders and without making it available transparently in the public domain. It is for the first time that the Authority has published the so called genre caps and ranges in the instant consultation paper and is now attempting to enforce the same on the stakeholders and perpetuate the arbitrariness and non-transparency. It is indeed disconcerting to note that the Authority has already made up its mind to average the purported current genre ranges to derive the price cap and has sought the stakeholder’s views only on the limited question of quantum of discounts on such averages. Hence, we vehemently oppose such unilateral and arbitrary genre caps and averaging thereof. We wish to submit that if the Authority persists in pre-judging the issues, it will render the entire consultation process otiose.
- Be that as it may, our research findings reveal that basis (i) current ARPUs, (ii) share of viewership of flagship channels, and (iii) existing revenue share of the broadcasters in the addressable market, the value attributed by the market to the flagship channels is significantly more than the existing wholesale list prices of these channels.

- Accordingly, the retail value ascribed to flagship entertainment channels by consumers translates into a wholesale price of Rs 11/- to Rs 28/-. For details refer to Annexure A.
- Therefore, the wholesale cap should be Rs 28/- to allow for optimum monetization of the flagship channels. If the channel values are allowed to be corrected basis consumer demand, the share of the channel in the ARPUs shall be realigned to reflect their true value proposition without leading to any arbitrary or perverse price hikes. Further the proposed discount cap will effectively eliminate pricing distortions.
- However, in the interest of enabling a smooth and seamless transition to full addressability without creating any unnecessary chaos, we are proposing the following caps, in the transition phase. Any lower cap will not only stifle investments in innovative content but also continue to restrict incumbent channels, whose rates were frozen in 2003-2004, from realizing their real value.

Mass Genre	**Proposed Price Caps (Rs.)**
General Entertainment (Hindi & Regional)	12.00
Movies (Hindi & Regional)	10.00
Sports	18.00

- These caps should be revised annually, till the sunset date, to factor in inflation.

5. Broadcasters to be free to define the discount criteria

- As stated, criteria for discounting will vary from broadcaster-to-broadcaster depending upon their business objectives, channel lifecycle stage and market conditions. Hence, broadcasters should be free to define the discount criteria.
- In order to prevent any distortion, such criteria should be transparently disclosed to all DPOs

6. Cumulative discount to be capped at 33%

- Given that there will be several criteria that a broadcaster may drive basis its business requirements, it is recommended that the cumulative discount be capped at 33%.

- 33% discount will be sufficient only for a few business requirements and hence, any cap lower than 33% will render the discounting structure ineffective; more so, as carriage and placement fees are being subsumed in the discount cap.
- 33% discount cap will ensure that a-la-carte remains a viable option. Also, this will align with the existing principles of wholesale twin conditions.
- Cumulative discount cap of 33% should include all the discounts that will include discounting via bundling.

Section D: 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"?

No need to identify 'Niche' as a separate category

- In describing the market segment that a product targets, it is pertinent that the demographic and psychographic (i.e. lifestyle and personality) profile of the consumer is taken into consideration. Therefore, the class of consumers that a product caters to is of utmost relevance to classify "niche".
- In view of the above discussion, it can be derived that any product/service very specifically created for catering to a certain segment of consumers/target audiences (and the corollary of the same also applies) can be classified as "Niche". Further, it is clear that any product/service being classified as "niche" is agonistic of the number of consumers.
- Drawing analogy from the above, any TV channel (service) to be classified as "niche", would require it to be catering to an audience of certain special interest and not on the basis of the number of subscribers. Hence, the understanding that it stays niche till a certain subscriber threshold is achieved, is misplaced. It should be kept in mind that there is no method globally or otherwise wherein clear parameters or thumb rules have been chalked out for defining a TV channel as "Niche".
- Hence, there is no need to identify 'Niche' as a separate category.
- Further, we also submit that 'Niche' should not be identified with Non-mass genres as detailed in Section A above as Niche channels are distinct and cater to Special Interest Groups. Given that they cater to special interest groups the question of prescribing any gestation period does not

arise since they will continue to cater to such special interest groups throughout the lifecycle of these channels.

- In any event, as has been recommended above, we do not support price caps for any Non Mass genres. In any event, discount caps will prevent misuse of price forbearance across all categories of channels.
- Illustration:
    a. For example, a ‘Channel A’, under forbearance, has a list price of Rs 100 and has a lowest offer price of Rs. 66 (after max discounting of 33%)
    b. If the channel has genuine demand at this price, the channel will see off-take, else there will be a dramatic shrinkage in the viewership if the price is found to be high, by buyer
    c. The channel will therefore be left with no choice but to either be satisfied with lesser number of subscribers or reduce the list price in order to become market relevant
    d. In case, the channel attempts to bundle with other popular channels, buyers will find the bouquet unrealistic and prefer to take the popular channels on realistic a-la-carte prices
        i. Say, ‘Channel A’ is bundled with popular channels, ‘Channel B’ and ‘Channel C’ which are priced at Rs. 20 and Rs. 25 respectively
        ii. The discounted bundle price will be Rs. 97
        iii. Since, ‘Channel A’ is not popular this bundle price of say Rs. 97 is far higher than the price to be paid for picking up both ‘Channel B’ and ‘Channel C’ on a-la-carte (Rs. 45). Hence, such a bundle will not find uptake at all

Section E: HD Channel Pricing

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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1. HD Channels offer a viewer experience that is distinctly different from SD channels

- The production, transmission and re-transmission of HD channels entail substantial investments
- HD Channels offer distinctly superior audio and video quality to the viewers through cutting-edge technology used right from shooting of content, production, post-production, transmission & re-transmission. For detailed explanation refer to Annexure B
- The consumption of HD channels requires significant investment by the consumer in an HD TV and HD set-top box. As such, these channels are aspirational and for affluent audiences who demand better content & quality offering and have the capacity to pay for it.

2. Price forbearance for HD channels should continue

- HD channel can be subscribed by only those subscribers who can afford specialized HD set-top-box as well as HD TV, which comes at a premium.
- The HD channel market has witnessed a robust growth and has allowed broadcasters to invest in quality and innovative content. Over the last four years market forces have enabled the channels to discover their real prices and desired penetration.
- This has been possible because of the laudable decision of the Authority to keep HD channels outside the regulatory purview. With upcoming 3D, 4D and virtual reality it would indeed be a regressive step if the Authority were to now regulate HD channels thereby sending out a negative signal to potential investments in these technologies.
- Hence we recommend that the Authority should continue to keep HD channels outside the regulatory ambit.

- In order to protect the interest of subscribers and to foster further growth in this segment, we recommend that **HD channels should adhere to twin conditions and discounting caps** at the wholesale and retail.
- Discount on wholesale prices should be capped at 33% to ensure a viable a-la-carte fallback option for DPOs
- Retail a-la-carte prices should be linked to wholesale prices (same linkage multiplier as used for SD channels)
- Discount at retail level also to be limited to 33% to ensure a viable a-la-carte fallback option for consumer

3. **Bundling of HD and SD channels should not be allowed, both at wholesale and retail levels**
4. **Charging of access fee for HD channels should not be allowed at retail level**
5. **DPOs free to sell HD channels as a-la-carte as well as bouquet(s) of HD channels**
6. **Consumers and DPOs should have a choice to subscribe to only HD channels or only SD channels or both combined but purchased separately**

Section F: Exclusive Pay and FTA bouquet

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.

FTA and Pay channels should not be bundled together

- As has been highlighted in the Preamble, we believe that FTA channels should be free to consumer.
- Pay and FTA channels should not be bundled in the same bouquet
- The declaration of a-la-carte rate is only with regard to pay channels, as per existing regulations. Allowing a-la-carte pricing of FTA channels is thus not in accordance with the extant regulatory constructs.
- Pricing FTA channels at retail level and bundling them with Pay channels leads to price distortions by bloating the bouquet size and price, which is not in consumer interest.
    - Creating separate pay bouquets will ensure consumers are provided true visibility of pay channel pricing.

Section G: Ease of Channel and 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.

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

Channel and Bouquet selection can be facilitated through strict enforcement of QoS norms

- Multi-broadcaster retail bouquet is the best way to provide a curated content offering and ease the selection process for consumers
- 'Ease of subscription' is difficult to address without regulating LCOs and disciplining the billing/subscription process
- 'Ease the subscription' process by incorporating suitable QoS norms for -
    - Easy access to MSO Call Center & registration of requests
    - SMS based activation
    - Web based request registration option
    - Turn–around-time for all consumer requests
    - Information availability to consumers through websites and on-screen regarding channel choices and prices

Section H: 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?

All Carriage/Placement/Marketing Fee to be subsumed as identified discounting criteria, within the proposed cumulative wholesale discount cap of 33%

- In order to ensure that the proposed wholesale and retail model, as explained in section A, is implemented in letter & spirit and to rule out any possibility of abuse of the discounting cap, it is necessary to ensure that there should be NO separate carriage/placement/marketing arrangements.
- In the eventuality the authority allows payment of carriage / placement / marketing fee separately, both Broadcasters and DPOs should transparently disclose their arrangement in public domain.

Section I Channel Variants

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?

Channel Variants

- Linguistically modified channels are not clones
  - Separate licenses are granted for such channels and hence they are distinct and separate from each other
  - Broadcasters have to acquire specific content rights for creating different language feeds
  - Broadcasters are free to put any content on their channel, as long as it is in conformity with programming and advertisement codes as enshrined in the Cable Television Network Regulation Act and the extant uplink/downlink guidelines issued by the Ministry of Information & Broadcasting
- Consumers have complete freedom of choice and can select one or more channels as per their preference. The model as proposed in section A ensures that a-la-carte channels are realistically viable for consumers, negating any attempt of force-bundling of channels
- We would also like to respectfully submit that TRAI does not have requisite jurisdiction over the content shown in any channel
- Hence, the above question is misplaced

Section J: Channel Visibility on Electronic Programming 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 DPOs but not subscribed by the customers at no additional cost to subscribers? Justify your comments.

EPG with program details of channels not subscribed by consumers can help drive awareness

- Yes, EPG should include details of the programs of all the channels, as it will increase the awareness about the channel content & help consumers in channel subscription decision making
  - Platforms to list all program content of channels that the platform has opted for, in the EPG
  - This can be helpful for a-la-carte offerings to work through better consumer awareness
- Preview of channels for 15 to 30 seconds will help sampling & should be encouraged
  - Of course, in order to avoid misuse, repeat preview should not be allowed within 10 minutes of the previous preview.

Section K: Pay-Per-Program Viewing

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.

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

Pay-per-program Viewing

- We respectfully submit that regulating programs/content is outside the purview of the TRAI Act and the regulatory framework. Hence TRAI does not have the jurisdiction to regulate the offering of individual programs.
- Monetization of programs which constitute audio-visual works are strictly governed by the provisions of the Indian Copyright Act.
- The existing broadcasting and distribution framework operates with satellite TV channels as the primary currency for transacting with the subscribers.

Section L: Subscriber Reporting & Auditing

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 DPOs with justification.

Subscriber Reporting & Auditing

STAR has been at the forefront of driving transparency and non-discrimination through its Modified RIO based deals since November 2014.

Implementation of the scheme resulted in the following challenges impacting revenues:

- Operators' systems were not capable of generating reports
- Reports submitted were not in conformity with the contracted format
- Inordinate delays in submission of subscriber and other reports thus holding back invoicing
- No finality in the reports submitted – with operators frequently changing their subscriber and other declarations
- No transparency in retail packaging
- Depriving consumers the option to subscribe for STAR Channels
- Resistance and non-cooperation in Audits – holding back information thereby rendering the entire auditing exercise futile

In the light of the above, we are happy to note that the Authority has recognized that there are issues in reporting and audits that need to be addressed. However the Authority's proposal for a Central facility may not be workable in the current environment for the following reasons:

- Incremental costs across the value chain
- Challenges of sharing of confidential proprietary data with a common agency
- Huge probability of undue conflicts inter se stakeholders

Instead, we propose the following:

- Standard & Common reporting format to be mandated under the Interconnect Regulations with flexibility to seek additional relevant information in keeping with contractual requirements.

- A common audit to be conducted by a IBF nominated audit panel of 3-4 reputed CA firms.
- Maximum 4 audits in a fiscal year

Additionally to promote hygiene and to check behavioral issues the Authority should strengthen the existing regulatory provisions on Reports and Audit. Equally important for the Authority to enforce these provisions in letter and spirit by prescribing appropriate consequences including but not limited to imposition of financial disincentives and denying “Must Provide” on defaulters.

Section M: Additional Issues

Q42. Stakeholders may also provide their comments on any other issue relevant to the present consultation

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1. Fix the broken MSO Business Model

The financial health of MSOs is a bane of this industry and is a root cause for litigation. The paper does not offer any framework to correct the MSO-LCO equation. This will continue to thwart the progress of this industry. Hence we would urge the Authority to usher in appropriate measures like prepaid billing that will drive transparency and ground collections. The MSOs can take a leaf from the DTH industry that has thrived by building a great consumer model.

2. Commercial Tariff

A longstanding issue has been that of commercial subscribers. We urge the Authority to bring in a fair and equitable tariff and regulatory framework in this regard by establishing a realistic differentiation between Domestic users & Commercial establishments.

Annexure A: Derivation of fair wholesale price of a channel

Fair wholesale price of the channel is calculated basis its viewership share, existing revenue share percentage of the broadcasters in the addressable market and the typical consumer ARPU.

For example, in the state of Tamil Nadu, typical ARPU is in range of Rs. 210 for addressable markets. Existing revenue share for broadcasters in addressable market is estimated at 40%, implying that broadcasters should get Rs 84 out of the consumer ARPU. The flagship channel in TN gets 34% viewership share (based on BARC data) among all channels (pay as well as FTA). Thus, this channel can command 34% of the broadcaster share of Rs 84, translating into a fair wholesale price of Rs. 28.

Similarly, fair wholesale price working for flagship channels is worked for many other states, as enumerated below:

State	Viewership Share of leader channel in state*	Estimated Urban ARPU (in Rs.)	Fair wholesale price of channel (in Rs.)
Tamil Nadu	34%	210	28
Kerala	33%	190	25
Andhra Pradesh	14%	200	11
Karnataka	14%	215	12
West Bengal	17%	235	16
Gujarat	9%	275	11

** Based on BARC data, Dec’15 – Feb’16*

As shown in above tables, the fair wholesale price of flagship channels in these states ranges from Rs. 11 – Rs. 28.

Annexure B: HD Channels distinctly different from SD channels entailing substantial investments in form of time and resources

Equipment used in high definition content production are far more expensive. The additional post-production costs - since high definition images require more editing and storage capacity - are much higher, depending on the requested quality of the final product. The high definition services imply more intensive use of infrastructure capacity and, therefore, higher costs of packaging and distribution. Production of such quality content is naturally more accurate: staging, lighting, filming and even artistic production - e.g. makeup of actors, set designing, etc. have to be more detailed and rigorous, given that high definition highlights and amplifies the imperfections of the object being filmed.

- **The Shooting**: Content is shot on Hi-Def cameras using hi-end shooting gear. Content creators have to invest significantly in state-of-the-art HD cameras utilizing a three 2/3 inch CCD sensor array with a native resolution of 1920 by 1080 pixels and frame rate of 25 frames interlaced with 50 fields with 16:9 aspect ratio. Be it the lenses, Sensors, Color sampling, Compression, Recording Media, Exchange media or the display devices; every bit in the production chain requires incremental investments to deliver HD images.

- **Production:** Within Hi-definition picture there is 5 times more information in the image. Considerable challenges therefore lie in how the sets, make-up and wardrobe will stand up to closer scrutiny. Production designers pay more attention to detail when working in HD. Issues which did not concern them in SD, now have increased importance. For example with Standard Definition images - a damaged portion of a set could be fixed with a gaffer tape, but now with HD that has become unacceptable. The increased detail in the picture means that in the close-ups of the actors, personal features get amplified and highlighted hence that much more detailing is required in make-up and designs.

- **Post Production:** The content is then processed in a Hi Def post production environment - without any media conversions. Post Production techniques and technologies required are of the highest quality and where the native acquisition format cannot be utilized, the lowest possible compression ratio (Highest possible bit rate) available by the post productions hardware's' individual codec have to be used. The entire Audio and Video Post-Production eco system needs to be upgraded to process High Resolution HD images and better sound quality. HD images take up lot more disk space compared to SD; hence entailing investments in more storage space and Digital Archive Library. In so far as graphics in HD are concerned the computer file sizes are larger and more pixels take more time and processing power. This adds cost as well as time when creating HD Graphics sequences.

- **Technical Quality Check**: HD content entails high technical quality benchmark for programme's video and audio components. All programs go through multiple technical check points - automated as well as manual QC processes before sending them to the Transmission center.

- **Delivery to TX Center**: The HD program content ready for transmission is sent to the transmission facility in the same quality as finished in the HD post production process without any decoding or re-encoding and directly moved into the Video server as a file. This ensures that there is no quality loss from the post production environment to the transmission environment and the content is maintained at HD quality for all times. This entails investment in high quality bandwidth to ensure that there is no compromise in the HD program content quality throughout the delivery process to the transmission systems from the post production systems.

- **Transmission**: As very high performance is required to play out HD content in HD resolution, twice the number of video server's bandwidth and ports are used per HD channel as opposed to that required to play out a SD channel. The complete technical monitoring at all stages of the play out is done using HD monitoring tools and the SD tools cannot be used for this monitoring.

- **The Dolby Effect**: Dolby 5.1 sound mixing studios are specifically designed to cater to the requirements of High Definition Channels. A full revamp and upgrade of the telecast facility to handle HD content is made to ensure a never before seen experience for consumers. Content Creators have to invest significantly in 5.1 channel surround sound for all its HD channels. This provides an immersive audio environment for those viewers who have home theatre systems, which can deliver an audio experience that is at par to the rich audio quality experienced in cinemas. A great deal of care is taken to ensure that users who do not use home theatres also receive an enhanced audio quality, and that the audio delivered to their legacy playback equipment is compatible with such older equipment. The final audio is mastered to the prescribed loudness levels, encoded in Dolby E, and delivered to the transmission facility after stringent quality checks performed by state-of-the art loudness monitoring and correction equipment. At the time of transmission to the consumer, the content is transcoded to Dolby Digital Plus formats, which are international standards for surround sound audio in broadcast television, cinema and home audio systems. This enables the delivery of 5.1 discrete channels of audio to consumers for superior high definition entertainment experience.

- **Retransmission**: Once the HD channel is received by the DPO at its head end, it is turned around to the satellite of such operator for onward distribution to ultimate viewers. However such viewers would require a specialised set top box to watch these high definition channels. Moreover the television set also should be capable of high definition viewing. Therefore, for a viewer to experience the wholesome and real HD feel, all the aforesaid factors need to be made available as one integrated whole.

Annexure C: Regulations in other Jurisdictions

- **EU**: The process of deregulation in EU telecommunication sector (inclusive of broadcasting transmission) has been gradual. The 2002 Directive[1] reflected a need for a precise identification of relevant markets in order to subject them to *ex-ante* obligations. In line with the 2002 Directive, the 2003 Recommendation identified 18 relevant product or services markets that warranted *ex-ante* regulation.[2] Subsequently, the 2007 Recommendation reduced the products and services markets that warranted *ex-ante* regulation to 7.[3] It also provided a three criteria test to identify markets that need *ex-ante* regulation. Further, the latest recommendations of 2014 reduced the number to four.[4] Thus, the evolution of the regulation reflects a rolling back of *ex-ante* regulation over time in preference for competition law enforcement.

The European Commission's 2007 Recommendation sets out three criteria for applying *ex-ante* regulation in the electronic communications market:

1. The presence of high and non-transitory structural, legal or regulatory barriers to entry;
2. The market structure does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based and other competition behind the barriers to entry;
3. Competition law alone is insufficient to adequately address the identified market failure(s).

The 2007 Recommendation removed the wholesale market of broadcasting transmission services from the list of markets susceptible to *ex-ante* regulation, considering the second criterion wasn't met. The explanatory note to the recommendation states that "*several comments received during the consultation observe that there have been significant developments in the market. There is evidence of an increase in competition between platforms related to the passage from analogue to digital technology. This implies that capacity constraints of a given platform will tend to decrease ; most of the member states will have three to four*

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[1] Directive 2002/21/EC available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32002L0021
[2] Recommendation 2003/311/ EC available at http://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32003H0311&from=EN
[3] Recommendation 2007/ 879/EC available at http://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32007H0879&from=EN
[4] Recommendation 2014/710/EU available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014H0710&from=EN

competing platforms (over the air), cable, satellite and telecom, rather than two to three analogue platforms, as previously, one of which, satellite, only emerged at a late stage. The transition from analogue to digital technology has given an impulse to the platform competition for service to end-users ... These developments show that, notwithstanding any subsisting barriers to entry, the market's dynamics are such that the second criterion is not met in this market". Keeping in mind the growth and progress of the broadcasting sector, we can conclude that the characteristics of the sector in India do not fit the three criteria test as stipulated in the EU recommendations.

Additionally, in a speech by European Commission Competition Commissioner, Joaquin Almunia in 2010 describing the relationship between regulation and competition in the communications sector, he stated that "*regulation is being progressively phased out in the communications sector as competition in the market develops; ultimately, electronic communications will be governed by competition law only. Under the current EU Regulatory Framework for electronic communications, regulation is the exception rather than the rule. The Commission, alongside national regulatory authorities, has a role to play in ensuring that regulation is imposed only where it is necessary* (emphasis added)."[5] The rationale for this approach is that ex-ante regulation is required only where a sector lacks effective competition or faces structural issues such as entry barriers. In the instant case, the Indian broadcasting sector is competitive and there have been several new entrants in the past few years. E.g. News Nation, a Hindi news channel entered the market in 2012 and is one of India's fastest growing Hindi news channels.[6] Similarly, 9XM, a Hindi music channel entered the market in 2007 and is now one of the top 5 Hindi music channels.[7] This shows that there are no structural issues in terms of entry barriers in the Indian broadcasting sector.

- **UK**: UK has no *ex-ante* regulations to check market power in the broadcasting sector. Like EU, the UK has been rolling back on the *ex-ante* regulations (on price and terms and conditions) in the sector.

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[5] Suzanne Rab and Alison Sprague *Media Ownership and Control*, page 112
[6] Available at http://www.newsnation.in/about-us
[7] Available at http://www.businesstoday.in/features/9x-media-banks-on-music-back-from-near-bankruptcy-turnaround/story/203166.html

It is pertinent to mention an instance where the Ofcom referred concerns to the Competition Commission (erstwhile competition regulator of UK) relating to pay TV services in UK. Specifically, Ofcom was concerned that BskyB would use its market power to restrict distribution of premium movie content and charge excessive prices. Upon investigation, the Competition Commission announced that the exclusivity did not give rise to an adverse effect on competition in any market. The Competition Commission considered that there was a prospect that an independent pay TV retailer would be able to outbid BskyB for the relevant rights of at least one major studio. The implications of this for India should be one of caution. This instance throws light on the fact that the regulators in other mature jurisdictions are concerned more with the misuse of the market power rather than the possession of such market power. Additionally, it also reflects the positives that the competition law enforcement can offer in regulating the market.

- **US**: FCC does not impose any *ex-ante* regulations at the wholesale level for distribution of content as it is of the view that sufficient competition in the market makes regulatory intervention unnecessary.[8] However, FCC does have *ex-ante* power to regulate mergers in the communications sector.[9] E.g., the FCC coordinated with the Department of Justice to ensure that no competition concerns arose while granting a conditional approval to the joint venture between NBC and ComCast. The conditions imposed included content sharing obligations on NBC and divestment of ComCast's interest in Hulu.[10]

Additionally, the shortcomings of the *ex-ante* regulations have been succinctly summarized by the US FTC Commissioner Ms. Maureen K. Ohlhausen in the Sixth Annual Telecom Policy Conference held on March 18, 2014. He stated that a prescriptive *ex-ante* approach is not well suited for this sector as it suffers from 'knowledge problems' which leads to negative consequences. Firstly, the dynamic nature of the sector makes it impossible for the regulator to continually update the rules. Secondly, since these *ex-ante* regulations are an attempt at predicting the future, some unanticipated harms may occur. Thirdly, such prescriptive

[8] Available at https://transition.fcc.gov/Speeches/Furchtgott_Roth/sphfr903.txt;
[9] Available at http://www.ecfr.gov/cgibin/retrieveECFR?gp=&SID=659956d3e85c45d7aa331e665a29d2df&mc=true&n=pt47.4.76&r=PART&ty=HTML#se47.4.76_193
[10] FCC order available at http://corporate.comcast.com/images/FCC-Order-on-NBCU.pdf

regulations may hinder innovation. For example, if an innovative new project or service doesn't easily fit within a particular statutory or regulatory classification, the innovator may be uncertain about how to comply with the law.[11]

The Verizon v FCC[12] decision provides a fascinating example of the inflexibility of the *ex-ante* approach. The D.C. Circuit Court struck down the 'Open Internet Order' rules, in part, stating that the US FCC was impermissibly treating broadband service like a common carrier service.

By introducing a differential regulatory framework TRAI would be running the risk of falling for the 'knowledge problem' resulting in 'false positives' i.e. the risk of unwarranted intervention in the market.

Competition law provides a robust alternative to such a 'knowledge problem' as it is enforcement centric rather than rule centric. The enforcement paradigm provides or allows the competition authorities to approach every complaint afresh by applying broad norms to the facts before it. This structural difference ensures that CCI's enforcement is less vulnerable to systemic knowledge problems.

[11] Maureen K. Ohlhausen, *The Procrustean Problem with Prescriptive Regulation,* Sixth Annual Telecom Policy Conference, March 18, 2014.
[12] Verizon v. FCC, 740 F.3d 623 (D.C. Cir., Jan. 14, 2014)