

SUMMARY OF ISSUES FOR CONSULTATION

COMMON ANSWERS TO THE BELOW MENTIONED 7 QUESTIONS

Q1. Do you agree that flexibility available to broadcasters to give discount on sum of a-la-carte channels forming part of bouquets has been misused to push their channels to consumers? Please suggest remedial measures.

Q2. Do you feel that some broadcasters by indulging in heavy discounting of bouquets by taking advantage of nonimplementation of 15% cap on discount, have created a non-level field vis-a-vis other broadcasters?

Q3. Is there a need to reintroduce a cap on discount on sum of a-lacarte channels forming part of bouquets while forming bouquets by broadcasters? If so, what should be appropriate methodology to work out the permissible discount? What should be value of such discount?

Q4. Is there a need to review the cap on discount permissible to DPOs while forming the bouquet? If so, what should be appropriate methodology to work out the permissible discount? What should be value of such discount?

Q5. What other measures may be taken to ensure that unwanted channels are not pushed to the consumers?

Q8. Do you agree that price of individual channels in a bouquet get hedged while opting for a bouquet by subscribers? If so, what corrective measures do you suggest?

Q30. Stakeholders may also provide their comments on any other issue relevant to the present consultation.

As a lawyer who is very interested in the field of Constitutional law, I can tell you something with a great amount of confidence. The judgment of the Madras High Court is NOT applicable in the rest of country. To make myself clear, let me repeat : If a particular High court holds a law to be unconstitutional, then that is applicable only to the areas under its jurisdiction and NOT the ENTIRE COUNTRY (If it was applicable to the entire country, then what is the difference between a High court and Supreme Court?).

As a lawyer who has also practiced Income Tax laws, I can assure you that there have multiple instances of different high courts holding completely opposite points of view on a particular question of law and then, the matter was taken to the Supreme Court.

The relevant portions of the Constitution is highlighted in bold for your reference:

“226. Power of High Courts to issue certain writs

*(1) Notwithstanding anything in Article 32 every High Court shall have powers, **throughout the territories in relation to which it exercise jurisdiction**, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose*

*(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising **jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.***"

I have read the entire judgment of the Madras High Court and the Supreme Court. The relevant portion of the Madras High Court order (which held the 15% cap to be unconstitutional) was NOT a speaking order. Even otherwise, there is a slight doubt if it is even binding in the State of Tamil Nadu as only 1 judge has declared that it is violative.

But the key point here is that it was the petitioners who have appealed to the SC and therefore there was no arguments on that issue in the SC. Therefore it would not be correct to say that the SC has upheld the judgment of the Madras High Court in its entirety. The SC has only dismissed the appellants arguments as to certain portions of the Madras High Court. If there is any doubt, you can look at the appeal papers to confirm the same. And even other wise, a dismissal of SLP has no effect in law in terms of being a *ratio decidendi*.

CONCLUSION:

The TRAI Order mandating a 15% cap in the bouquet discount is still VALID in the rest of the country (except in Tamil Nadu). TRAI can immediately issue a show cause notice to any person who is not complying with the regulations as long as he is not residing in Tamil Nadu. If and when they challenge the same, all these arguments can be validly argued in court.

Q6. Do you think the number of bouquets being offered by broadcasters and DPOs to subscribers is too large? If so, should the limit on number of bouquets be prescribed on the basis of state, region, target market?

While it is large, I don't see any problem with the same. NOBODY has ever complained in the history of Indian consumer behaviour, that the government should interfere and reduce their choices, because there are too many options. Consumer utility is always served better with more options.

Q7. What should be the methodology to limit number of bouquets which can be offered by broadcasters and DPOs?

NA

Q9. Does the ceiling of Rs. 19/- on MRP of a a-la-carte channel to be part of a bouquet need to be reviewed? If so, what should be the ceiling for the same and why?

Keep it at Rs.20 because it is a round number, but please put in provisions to increase this cap automatically every year, so that amendments need not be carried out unnecessarily.

Q11. How this provision has affected the ability and freedom of the subscribers to choose TV channels of their choice?

It has greatly increased transparency and has had a positive impact on my ability to choose TV channels of my choice. Kudos to you TRAI. Thank you 😊

Q12. Do you feel the provision permitting the broadcasters/Distributors to offer bouquets to subscribers be reviewed and how will that impact subscriber choice?

No need to review

Q14. Should regulatory provisions enable discount in NCF and DRP for multiple TV in a home?

Yes

Q15. Is there a need to fix the cap on NCF for 2nd and subsequent TV connections in a home in multi-TV scenario? If yes, what should be the cap? Please provide your suggestions with justification.

Not necessary

Q16. Whether broadcasters may also be allowed to offer different MRP for a multi-home TV connection? If yes, is it technically feasible for broadcaster to identify multi TV connection home?

Yes. Greater freedom for broadcasters will translate to more choice for the consumers.

Q17. Whether Distributors should be mandated to provide choice of channels for each TV separately in Multi TV connection home?

Yes. – Gives more choice to consumers

Q19. Is there a need to allow DPO to offer discounts on Long term subscriptions? If yes, should it be limited to NCF only or it could be on DRP also? Should any cap be prescribed while giving discount on long term subscriptions?

Yes. – Gives more choice to consumers.

There should be no bar against how much discount can be offered. That would be anti-consumer interest.

Q20. Whether Broadcasters also be allowed to offer discount on MRP for long term subscriptions?

Yes. – Gives more choice to consumers.

Q21. Is the freedom of placement of channels on EPG available to DPOs being misused to ask for placement fees? If so, how this problem can be addressed particularly by regulating placement of channels on EPG?

The DPO's are trying to monetise their assets, so you really can't blame them. Perhaps a provision to require DPO's to give advance notice (whether SMS/ newspaper Advertisement) would be better as that would save the consumer from extra hassles.

Q23. Whether distributors should also be permitted to offer promotional schemes on NCF, DRP of the channels and bouquet of the channels?

Yes. – Gives more choice to consumers

Q26. Whether DPOs should be allowed to have variable NCF for different regions? How the regions should be categorized for the purpose of NCF?

Yes. – Gives more choice to consumers

Q27. In view of the fact that DPOs are offering more FTA channels without any additional NCF, should the limit of one hundred channels in the prescribed NCF of Rs. 130/- to be increased? If so, how many channels should be permitted in the NCF cap of Rs 130/-?

No. The said regulations are already in the nature of “PRICE CONTROL”. In the interest of free and fair functioning of markets and in order to aid price organic price discovery, the limit of 100 channels should not be touched. If at all touched, please reduce the same and not increase it.

Q28. Whether 25 DD mandatory channels be over and above the One hundred channels permitted in the NCF of Rs. 130/-?

In the true spirit of consumer choice, TRAI should strive give consumers the option of rejecting any channel if they so choose to. Kindly remove DD channels as mandatory ones and if that cannot be done, please let it remain as apart of 100 channels, because in this way, the DPO’s are not burdened additionally and consumers also realise the cost of being forced to buy content.

Q29. In case of Recommendation to be made to the MIB in this regard, what recommendations should be made for mandatory 25 channels so that purpose of the Government to ensure reachability of these channels to masses is also served without any additional burden on the consumers?

There is no such thing as a “free lunch” in economics. If the government is so keen on ensuring the reach of these 25 channels, then they should be ready to bear the cost of distribution.

Q10. How well the consumer interests have been served by the provisions in the new regime which allows the Broadcasters/Distributors to offer bouquets to the subscribers?

No comments

Q18. How should a long term subscription be defined?

No comments

Q13. How whole process of selection of channels by consumers can be simplified to facilitate easy, informed choice?

No comments

Q22. How the channels should be listed in the Electronic Program Guide (EPG)?

No comments

Q24. In case distributors are to be permitted, what should be the maximum time period of such schemes? How much frequency 72 should be allowed in a calendar year?

No comments

Q25. What safeguards should be provided so that consumers are not trapped under such schemes and their interests are protected?

No comments