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Response by the Asia Video Industry Association to the TRAI's Request for Comment on Tariff-Related Issues for Broadcasting and Cable

Introduction

The Asia Video Industry Association (AVIA) thanks the Telecom Regulatory Authority of India (TRAI) for its request for comments and welcomes the opportunity to submit the international video industry's views on the question of the tariff regulation regime for India's pay TV ecosystem.

AVIA (known until last year as CASBAA) is a non-profit trade association of 90 companies dedicated to the promotion of multi-channel television via cable, satellite, broadband and wireless video networks across the Asia-Pacific region. Our member companies operate and invest in 17 different Asian markets, including India, and ***many of them have substantial presence in India having invested billions of dollars in generation of local & vernacular content.*** The members of AVIA have extensive experience in building and creating television infrastructure and quality programming to meet the needs of India's 700 million strong multichannel TV household base. In doing so, these ***companies have also consistently contributed to the Indian Governments 'Invest India' and 'Make in India' vision.***

India's broadcast industry has been served with seven tariff orders since 2004. As further noted in the recently launched consultation paper by TRAI, India's current tariff regulations for cable and satellite TV have only been in place since February 2019. The industry and consumers have had barely six months of experience in adjusting to a regime that resulted in major shifts from past practices and caused a great deal of disruption during its first few months of implementation. In the past seven months of the new tariff regime, stakeholders including broadcasters, DPOs and consumers have adapted and migrated to the new tariff regime as instructed by TRAI. However ***the process of migration has been gradual, and the long-term impact of the regime is yet to be gauged in terms of empirical data and analysis. Hence, we believe it is highly inadvisable for TRAI to re-open consultations on this complicated regime so soon.***

The Indian broadcasting sector comprising broadcasters and distributors caters to 197 million households offering 907 TV channels and is an example of a highly competitive market. The sheer range of channels on offer indicate that there has is a large range of consumer choice. Further, much like ***most global markets, AVIA observes that consumer choice in India over the past decade tends to be bouquet offering of TV channels.*** This resonates with the globally acknowledged fact that TV consumers prefer bundled channel offerings since they realistically receive significantly more value for money in the same.

A briefing paper summarizing international practices on regulation of bundling and a-la-carte pricing is attached to this submission as Annexure 1.

Several industry stakeholders had requested **TRAI to review the implementation of the “New Tariff Order” after two years of experience with sufficient data. In anticipation of this, the industry incurred ~INR 850 crores in costs towards consumer awareness and migration to the new regime and put in place business strategies aligned to the NTO.** We further note that, **due to uncertainty and confusion in the initial stages of the NTO, the industry also realised a dip in revenue to the tune of ~1500 crores between January – June 2019.**

Since this is a considerably complex regime to implement and since we see no evidence of market failure that would warrant immediate re-regulation as currently proposed through this consultation paper, **AVIA appeals to TRAI to not impose micro-managed measures onto the industry and allow for the NTO regime to stabilise optimally.**

TRAI’s role as the broadcast economic regulator should impel it to be deeply concerned about unnecessary disruption in the industry it regulates. The industry requires a measure of stability, ease of doing business and fresh investment into technology and innovation, rather than frequent regulatory revamps, to construct and successfully deploy business models that can meet consumers’ needs and assures investors of a return on their investments.

We would also underline that regulatory instability, in addition to being highly disruptive to the normal course of business, is also inimical to the interests of consumers, who abhor frequent changes to the commercial offerings they buy. **Frequent disruption due to over regulation in the broadcast sector also discourages broadcasters from investing in new channel launches and offering more consumer choice,** thus threatening creativity and innovation.

Therefore, we do not believe the TRAI should proceed with this exercise any further and we urge that it be deferred until later. For that reason, AVIA will not address the specific points made in the consultation paper, other than to highlight the following criticalities:

- **Lack of data or research that supports the assertions made by the Authority:** The Consultation Paper refers to market research and data to support some of its assertions in the said paper, but there is no specific data attribution and this data has not been shared with the industry.

Specifically, and for instance, **we do not understand the basis for categorizing a channel as ‘unpopular’ or ‘unwanted’.** TV watching patterns differ from person to person, therefore, time spent watching a particular channel in a household cannot be a measure to categorise channels as unpopular/unwanted or conclude that a particular genre is not popular. **BARC data indicates that over 95% of TV households in India are single-TV households,** therefore broadcasters need to cater to a wide range of consumer choice and genres ranging from lifestyle, sports, news and music. Thus it is not very clear how unpopular and unwanted is defined.

Additionally, TRAI’s assumption that **bouquets are pushed to the consumers and are not in consumer interest also seems without basis.** TRAI has stated in the consultation paper that a-la-carte prices are illusory which is based on an incorrect methodology as MRP rates in the new regulatory regime cannot be compared with the wholesale rates declared by broadcasters in the old regulatory regime since the two regimes are completely different. Thus, we request TRAI to provide the rationale for their assumptions and kindly produce

necessary data or market research conducted by them in this regard. We also request the **Authority to conduct research-based impact analysis of the regulations** on the sector, in accordance with global best practices, so that **regulations are not implemented on a trial and error method** and the regulatory authority is aware of the implications its regulations on the health of the sector.

- **India's diversity demands plurality of content and the demand is met by bundling of channels:** The Authority has highlighted in the consultation paper that the bouquets should be comprised of similarly priced channels and channels of the same genre. The Authority has also mentioned that offering a large number of bouquets is not in consumer interest. We submit that plurality of content needs to be promoted in a country as diverse as India with a heterogeneous population of 1.2 + billion people. In this light, ***the Authority must understand that 'popularity' of channels does not define the 'preference' of subscribers.*** Consumer preference is defined by several variables including age, regional affinity, preferences, interest, mother tongue, other language proficiency, peer pressure, program popularity, quality etc. ***Different consumers watch different channels at different times, whereby no single yardstick can apply to them in making a choice.***
- **The rationale of increased consumer choice through a-la-carte channels is unclear:** The rationale for concluding that a-la-carte channels would mean larger consumer choices versus the bouquet of channels also seems unfounded. Every broadcaster has created two levels of bouquets (Base level: GEC + Movies and Premium: English entertainment, Lifestyle, sports) across SD and HD channels spanning regional languages. Consumers are aware of their choices which typically begin by choosing their genre, language, SD/HD and a choice between Base and Premium or both. Bouquets promote variety sampling of channels and increasing consumer choice. Broadcasters have always been sensitive to consumer choice and thus tailor bouquets to offer maximum choice to the consumer.
- **Restriction on formation of bouquets can in fact throttle creativity and consumer choice:** While offerings in bouquet or bundle form are the norm across the globe, TRAI's insistence on promoting a la carte at the cost of bouquets can deny consumers the choice they need in a country like India with such a large and variegated diversity of cultures and languages and where TV viewing is a family activity. Restriction on formation of bouquets will be detrimental to the consumers and their households.
- **Bouquets/ channel bundling, a global standard:** The Consultation Paper does not address how the proposed new approach – which would strictly control / rule out bundling of channels by broadcasters– fits into an international best practice context. We think it is opportune to underline that in ***almost all other countries – and certainly in all major international media production markets – channel bundling is a standard, widely-accepted process that is regarded as generally beneficial to consumers.*** Bundling enhances consumer choice, by ensuring that channels other than mass-market general entertainment channels have a way to generate revenues from other than a committed few patrons. A move to pricing purely on an a-la-carte basis will threaten the viability of small and niche content channels; that in turn will lead to fewer and less diverse programming being produced, and thereby reduce the choices available

to consumers. This would be particularly damaging in India, which has so many fragmented linguistic and cultural groups.

As stated previously, ***In order to assist TRAI in understanding the international practices in this regard, we have prepared a short briefing paper (Annexure I)*** describing international practices with respect to regulation of bundling/program packaging. The data is drawn from AVIA's periodic survey of regulatory policies and practices in the Asian pay-TV industry; it covers markets in Asia as well as two comparator jurisdictions which have major media markets, the US and UK. The ***survey clearly demonstrates that bundling is a standard commercial practice virtually everywhere, and that governments do not impose regulatory strictures of the type TRAI is contemplating.*** Indeed, within the scope of the survey the only government that attempts to mandate a-la-carte pricing is in Taiwan – hardly a media market of India's size, complexity, and ambitions. (Even while requiring a la carte prices be declared, Taiwan allows for flexible pricing of bundles, making them more attractive to consumers.) The complete survey (which covers a wide range of other issues) is published in matrix form and is available online at www.asiavia.org/rfg also reproduced as Annexure I

- **Need for stringent compliance with the extant regulations:** We want to draw your attention to the non-compliance by various last mile operators with the extant consumer-centric regulations, which is creating bottlenecks in efficient and swift implementation of the NTO. Since TRAI has put in place a framework which allows consumers to approach service providers in case of complaints, but ***consumers have nowhere to go if the service providers do not have an application or portal which can be used by the consumers for filing of complaints.*** Therefore, we urge the Authority to take strict action wherever required for ensuring stringent compliance with the regulations for the benefits of the consumers.
- **The impact of recurrent changes in the regulatory framework is detrimental for the growth of broadcasting industry:** Frequent tinkering with the regulations will drive away foreign investment in the sector due to instability of the regulatory environment. This will discourage both incumbent and potential investors from investing in the content ecosystem because creation of content is discouraged if people are not allowed to derive financial benefits out of it. This will further lead to employment loss for the three million people employed by the sector.

Conclusion

The Indian media market is dynamic and highly competitive; price controls in this market are not a recommended practice. The regulator should **endorse light-touch regulation**, focusing on ease of doing business principles to infuse growth into the sector which is already facing new, strong competition from online video services. The regulator should also examine the increase in the monthly subscription fee paid by the consumer in light of the introduction of the network capacity fee for all distribution platforms. **In conclusion, we humbly urge TRAI to kindly defer from any further regulatory interventions with respect to the New Tariff Order, until the sector stabilises both in terms of growth and return on investment.**

ANNEXURE I

AVIA Briefing Paper: Pay TV program packaging rules in Asian countries

Bundling and tiering are very common commercial practices in the cable/satellite television industries in most Asian countries. By and large, Asian governments do not have restrictions on tiering and bundling.

- In several markets, including India, Mainland China, and Taiwan, operators are required to offer mandatory basic packages (with flexible packaging assured for premium tiers).
- In Singapore, there has been no regulation of program packaging. Although the cross-carriage rules provide authority for some requirements for sensitive content, they have never been enforced on bundles.

Regulator	Pay TV program packaging rules
Australia	No restrictions.
Cambodia	No restrictions.
China	No specific restrictions on tiering or bundling for Pay TV services. However, customers must be able to subscribe to basic cable packages only and not be forced to subscribe to additional channels or value-added services.
Hong Kong	No restrictions.
India	<p>Distributor must offer a basic service tier, consisting of 100 free-to-air channels including a list of channels specifically mandated by the Central Government, for a cost of Rs130 plus 18% GST. The basic service tier must contain at least five channels of each genre, i.e. devotional, general entertainment, infotainment, kids, movies, music, news and current affairs, sports, and miscellaneous. An HD channel is the equivalent of two SD channels.</p> <p>Every channel must be offered on an “a-la-carte” basis. The price has to be lower than Rs19 if the channel is part of a bouquet. A Distribution Platform Operator (DPO) cannot break a broadcaster bouquet but can add it to other broadcasters’ bouquets to create its own bouquets. There is a minimum payment of 20% distribution fee to the DPO.</p>
Indonesia	No restrictions
Japan	No restrictions.
Malaysia	No restrictions.
Myanmar	No restrictions according to the TV and Broadcasting Law, but the new Competition Law might be interpreted in the future to affect bundling if it acts as a restraint on competition or unfair competition. (The Competition Law came into effect on 24 February 2017 but to date, the Competition Commission has not been formed and enforcement under the Competition Law is low.)

New Zealand	No restrictions.
Philippines	No restrictions.
Singapore	Cross-carriage rules apply to certain content (so far, only premium soccer matches). If a bundle contains a channel including that content, the entire bundle would be subject to the cross-carriage requirements. (Prices for cross-carried content are not controlled, but must be identical across platforms.) Other than that, there are no restrictions on designing, marketing or pricing channel bundles.
South Korea	Tiering and bundling are unrestricted and are common. Korean operators offer some premium channels a la carte but there is no regulatory requirement.
Sri Lanka	There are no rules about tiering or bundling.
Thailand	There are no restrictions on tiering/bundling, although the numbers assigned to the channels are set by the government.
Taiwan	Mandatory carriage of large, prescribed basic package of 90–100 channels. Above cable basic level, and for all IPTV, “a la carte” prices must be set but in practice, bundling has been permitted, with prices lower than the sum of “a la carte” rates. Within those constraints, packaging and bundling are not subject to review/approval.
United Kingdom	Packaging and bundling are not subject to specific regulation in the United Kingdom, but must comply with general competition law. Market practice is typically for providers to bundle a basic tier package with tiered subscriptions to premium content such as movies and sports.
United States	Tiering and bundling are not generally restricted. However, content providers can file complaints against platform operators if they can show that the operator prioritized its own channels over the content providers’ channels, such as by placing unaffiliated but similar channels on worse tiers. However, the content provider must show adequate evidence of unlawful discrimination.
Vietnam	There are no regulations on packaging although packages are common and based on commercial decisions. There are, however, a few “must carry” channels on the national list which must be included in all basic packages.

About AVIA

The Asia Video Industry Association (AVIA) is the trade association for the video industry and ecosystem in Asia Pacific. Formerly known as CASBAA, AVIA is changing as the video industry adjusts to technological and commercial change, relying on traditional means as well as new forms of delivery to consumers. AVIA serves to make the video industry and other parts of the ecosystem – such as satellite transmission networks and technology support firms -- stronger and healthier through promoting the common interests of its members. AVIA is the interlocutor for the industry with governments across the region, leads the fight against video piracy and provides insight into the video industry through reports and conferences aimed to support a vibrant video industry.