



FICCI'S Submission on TRAI Consultation Paper on Tariff Related Issues in B&C Services

At the outset, we thank the Telecom Regulatory Authority of India (TRAI) for giving us the opportunity to submit comments on the consultation paper on '*Tariff related issues in Broadcasting & Cable services.*' **We appreciate TRAI for its continued efforts towards bringing out the retail-based pricing model introduced in February 2019 which is focused on driving consumer choice and has been received positively by both the consumer and industry at large.**

While there were teething problems due to implementation deficiencies in the value chain and loss of subscribers/viewership initially, most consumers have clearly exercised their choice now. However, we are of the strong opinion that it ***is not an opportune time to start a fresh consultation process or bring in amendments to a new tariff regime which has come into effect only in February 2019 when the consumers could choose the subscribers packs as per their choice.***

India's creative economy is on the verge of a revolution. From being a very small and somewhat fragile industry 20 years ago, today it is a source of global ambition and envy. Investment in content and technological progress are two forces that are soon going to transform this sector. This would happen only if the necessary ***policy and regulatory elements to support growth are institutionalized.*** The key elements that drive the creative industry are the exclusivity proposition for content owners, their ability to monetize their works through multiple formats such as print, TV, radio, internet etc. and the protection of the rights of such authors, composers, broadcasters against piracy and infringement of their rights. The Authority has an opportunity to play a meaningful role in ensuring India becomes a shining beacon in broadcasting by creating the optimum policy and regulatory framework that balances and harmonise telecommunication laws with intellectual property laws. Such a balanced regulatory framework will also ensure that India is in conformity with its obligation under international treaty obligations.

The authority maybe aware that every TV serial, episode, movie generates huge numbers of ***direct employment opportunities*** (artists, singers, lyricists, content producers, advertisers etc) and ***indirectly generates jobs for*** cine artists, cine workers, cameramen, graphic designers, editors, hair dressers, location managers, makeup artists, prop artists, script writers, sound-editors, composers. Any ***over-regulation and micro-management of the***



ecosystem will lead to pre-mature closure of businesses and thus unemployment. The consultation paper might be further imposing restrictions will would result in many broadcasters and TV channels shutting down their businesses and thus layoff of workforce employed might take place.

In particular, we wish to express our concern that ***in an already heavily regulated broadcast sector, that has only just transitioned to a new tariff and regulatory regime, TRAI's proposed consultation process might be avoided at this point of time.*** More specifically, *inter-alia*, the consultation paper raises questions pertaining to review of discount caps on bouquet formation, lowering the MRP ceiling and applying restrictions on number of bouquets offered by distributors and broadcasters all of which clearly restrict a service provider's ability to conduct business. Such ad-hoc and hurried changes in regulations do not provide necessary stability and certainty in the market and in fact will drive away consumers of TV channels to other more easily available forms of accessing content.

We herewith also seek to reiterate recommendations made by FICCI whilst submitting our **'100 Days Agenda Plan for the New Government'** pertaining to television broadcasting as follows:

- 1. *Need for stability in the regulatory regime:*** The Regulator should provide the cable and satellite sector a ***three-year moratorium*** from any further regulatory interventions that will negatively impact consumers and cause economic hardship to other stakeholders.
- 2. *Need for a light-touch regulatory regime:*** The Broadcasting Industry is one of the ***"Champions Sectors"*** as identified by the Government of India. Therefore, the regulator should follow a light touch regulatory regime and act as enabler and facilitator. TRAI should provide certainty in the regulatory regime for cable and satellite sector and not micro- manage the sector via interventions in aspects such as tariff, discounting, cable rentals & rather leave it to consumer choice and market forces.
- 3. *Enforcement of the New Tariff Regime by the regulator to all the stakeholders:*** TRAI should take necessary action against those who do not comply with the provisions of the new tariff regime so that the consumers reap maximum benefits of the regulations. Compliance with the regulations is of utmost importance especially at the downstream level which are a point of contact for the consumers.



4. **Consumers should receive itemised bills:** Also, TRAI should encourage distributors to issue invoices to the consumers with break-up of Network capacity Fee (NCF) and pay channels to bring in more transparency to the system and take action against the violating entities.

In response to the consultation paper, we humbly submit the following considerations which should be taken into account by TRAI:

1. Bouquet is the preferred choice of the consumers in India

Bouquets offered by the broadcasters and distributors enhance consumer choice. It is a myth that consumers are denied choice through bundling as it takes away their right to choose a-la-carte channels. In this regard, we draw TRAI's attention to the data from the consultation paper and its basis for calling a la carte prices "illusory". It is submitted that **Maximum Retail Price (MRP) in the new regulatory regime cannot be compared with the wholesale rates declared by broadcasters in the old regulatory regime.** These two prices are outcomes of two completely different regulatory regimes and hence not comparable.

As pointed out by TRAI itself, **the new tariff regime has given the freedom to consumers to select television channels they want to watch.** They can choose bouquet and/or a-la-carte. Since the majority of subscribers have themselves opted for bouquets, it can be concluded that they have made their choice. Moreover, bundling has ensured that the spend on TV channels subscription by Indians is the lowest across the world. Low ARPU of ~USD 3 per month¹ makes TV one of the most affordable and preferable medium of entertainment in India.

In fact, since 2004, consumers have been opting for bouquets instead of a-la-carte because it creates value for them. The reason for this can also be attributed to the fact that **around 98% of the TV households in India are single TV homes.** On an average, around 4 people live in the same household and share the same TV set which requires the service providers to offer channels in bundles so that diverse content can be made available to them at the lowest possible price. An analysis of data published in TRAI in Annexure II of the consultation paper also reveals that the **80% of subscribers in India have chosen bouquets which clearly shows that consumers have made their choice.**

¹Media & Entertainment – Television Segment, CARE Ratings, June 2018. Available at: <http://www.careratings.com/upload/NewsFiles/Studies/Media%20and%20entertainment%20Television%20Segment.pdf>



It is also submitted that any ***categorisation on the basis of non-driver/not so popular/unwanted channels will help the regulator in understanding consumer choice*** as choice may be unique for every consumer. ***Consumers' uptake of TV channels is based on personal and demographic based preferences*** such as age, sex, culture, peer suggestions, sampling, curiosity, accessibility, aspiration. While one consumer may like to subscribe to a regional language channel which caters to a specific set of population, another may want to subscribe to a national channel (which due to its reach may be subscribed by a majority of the population). Thus, a variety of bouquets enable the consumers to opt for channels of their choice at a discounted price which is desirable for the same being in consumer interest. In this light, we also urge TRAI to not impose a restriction on bundling by mandating bouquets to consist of channels of same genre or similarly priced channels as the same will restrict consumer choice.

2. Imposition of discount caps would violate of the freedom of speech and expression, and right to carry on trade guaranteed under the Constitution

TRAI, by imposing any restriction on the way channels are priced, will be interfering with the right of service providers to conduct their business. Imposition of discount caps is one such restriction which will impinge upon the ***right to carry on trade guaranteed under Article 19 (1)(g) of the Constitution of India***. In addition, every person who is employed in the industry such as artist, producer, director, song writer, composer etc. has a right to have his work as widely disseminated as possible through all means of dissemination and communication. Any restriction on the service providers will indirectly affect these persons which, in addition to infringing their fundamental right to carry on profession under Article 19(1)(a), will also ***violate their freedom of speech and expression guaranteed to them under Article 19 (1)(a) of the Constitution of India***. Such restrictions will also be in contradiction of the judgement given by the ***Hon'ble Madras High court***² wherein the court had ***struck down the provision of 15% cap to the discount*** on the MRP of a bouquet as arbitrary and not enforceable.

3. Consumer dissatisfaction is due to last mile non-compliance with the new regime:

We draw TRAI's attention to the recently issued show cause notices to various industry stakeholders for non-compliance with the provisions of the new tariff regime. Therefore, we

² *SIPL. V. DIPP, 2018 (2) CTC 113.*



request TRAI to address consumer grievances by taking action in such cases of non-compliance.

In light of the concerns as elucidated above, ***we request TRAI to refrain from bringing out any regulatory changes now as it is too early to understand the impact of the regulations. The broadcasting sector should be given at least three years before amending the extant regulatory regime to avoid causing economic hardship to other stakeholders which in turn will be detrimental to the interests of the consumer.*** Additionally, for enabling orderly growth of the sector, TRAI, as a practice, should start conducting surveys to understand consumer demands, and a research-based impact analysis of the regulations before any regulatory intervention.

4. Need for a research-based approach towards regulations on the sector

It has hardly been 6 months since the new tariff regime was implemented and TRAI has already started the stakeholder consultation with an intention to change the regulatory framework again. ***No data-based research findings have been made available to the stakeholder which justify this need to review the tariff conditions.*** There has been no TRAI consumer-based survey, to determine the varied responses to the TV channels across the breadth of subscribers. ***The consultation paper seems to lack concrete data and is in places fraught with assumptions. This CP also comes at a time when broadcasters and distributors are still engaged in the process of gathering consumer data*** and understanding their concerns and demands.

While TRAI undertakes consultations and open house discussions before implementation of regulations on the sector, in addition to these processes proper assessment of the potential economic impact of these regulations on the sector should be conducted. ***Any decision to regulate the tariff must be based on a thorough analysis of the market with quantitative econometric models that enables the regulator to clearly understand the 'trade-offs' from each decision.***

5. Ad-hoc changes will impact the industry due to uncertainty in the regulatory environment

As the industry is still trying to take stock of the situation post the implementation of the new tariff regime, any hasty change will only impact ***ease of doing business*** conditions and ***consequent flow of investments*** in the sector due to the resulting instability and will ***lead to***



fall in employment rates. The broadcasting sector carries enormous growth and employment potential. However, due to the present regulatory regime, there is clear ***danger of value erosion***.

Moreover, since the launch of the new tariff regime, the ***broadcasting industry has apparently already incurred a cost of INR 850 Cr towards creating consumer awareness***. Any further revisions to the NTO would put an additional and unwarranted burden on the industry. ***Stability and price certainty is the paramount need of the hour***. Any knee jerk regulatory intervention will be premature and is likely to cause disastrous effect on the industry.

Closing Recommendations

India needs to take cue from other evolved media markets who have all forged a ***light touch approach to regulation***; one that enables innovation, creates employment opportunities, promotes competition and orderly growth. Such an approach founded on ***principals of regulatory flexibility, certainty and predictability, and importantly one that leaves aspects like tariff, discounting, and contracts between stakeholders to market forces*** will help herald the Indian broadcasting ecosystem into its next level of growth.