



IBF's RESPONSE TO TRAI ON TARIFF RELATED ISSUES FOR BROADCASTING AND CABLE SERVICES DATED 16TH AUGUST, 2019

At the outset, IBF would like to state that any further regulatory intervention at this stage is not only premature, but will have disastrous consequences for the entire broadcasting industry.

It is pertinent to note that there have been frequent changes in the Tariff/Regulations ever since 2003. TRAI undertook a comprehensive review of the erstwhile tariff framework for addressable systems in 2016 with the stated objective to create an enabling environment for the orderly growth of the television broadcasting sector, given various developments related to rapid technological changes, emergence of multiple distribution platforms, evolving business models, and enhanced cross platform addressability. On completion, TRAI notified following orders and regulations on 3rd March, 2017, which ultimately came into the effect on 1st February, 2019:

- i. The Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017
- ii. The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017
- iii. The Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017,

all collectively referred to as the “**NTO**”

The NTO was meant to enable transparency, non-discrimination and a level playing field for all players, providing choice and flexibility to consumers and creating an enabling environment for the orderly growth of the broadcasting sector. Within the constraints of some execution challenges which were to be expected in a change of this scale and which also are getting resolved, these objectives have been met with the published RIO now forming the basic document for provision of channels and a transparent incentive waterfall that is part of every RIO. Given this, it will be a retrograde and an industry disrupting step on the part of the Authority to tinker with the NTO which became effective only as recently as 1st February, 2019. Just to elaborate on how complex a transition this has been for the industry, the implementation of the NTO has meant that 160 Mn pay consumer homes had to be familiarised with pricing of more than 800 channels and their bouquets and had to submit their choice of channels (a la carte and/or bouquets) to the 100,000 MSO / LCOs. The MSOs/LCOs were expected to completely change their back end systems to be able to service these millions of specific choice sets of consumers (each choice of a channel by a home is a service demand on the backend system), which as TRAI is aware is still work in progress for a majority of them.

Acknowledging that the implementation will take time, while coming out with the NTO, the Authority had stated that any change to the NTO would not be made for a period of two years. Hence, the Authority's eagerness to come out with a consultation paper barely a few months after the NTO implementation is mystifying and premature.

Preliminary concerns about the Consultation Paper

On going through the Consultation Paper issued on 16th August, 2019 (“CP”), our submission is that some of the assertions made in the CP fail the test of logical scrutiny, and recognised principles of law and



jurisprudence. While preserving our rights and without prejudice to our submissions, please find some issues which could be contentious for broadcasters.

(1) Arbitrary and unreasonable propositions in absence of a validated assessment of any research-based data- relevant to the analysis:

The Tariff issues Consultation Paper dated 16.08. 2019 is based on assumptions and positions that are unsubstantiated.

The Consultation Paper background and the issues identified are reflective of TRAI's approach, which are unreasonable and result in a manifestly arbitrary conclusions, to put in effect a number of pre-determined conclusions. The broadcasting service providers, and the stakeholders in the upstream content production and acquisition industry have responded to the New Regulatory Framework in a positive manner creating and acquiring content, sales, marketing and subscriber outreach efforts despite restrictions and mandate within the framework against a legitimate expectation of stability and continuance.

Since the CP is supposed to reflect the so called drawbacks that the Authority says have come to light in the short time the NTO has been in place, the CP ought to have carried out an all India study and used empirical data to come to its conclusions. However, the CP lacks an evidence-based approach and relies on assumptions and generalisations. No empirical or data backed research findings are available regarding the need for a CP at this early stage in the implementation of the NTO. Given that it has been less than six months since the implementation of the NTO and with TRAI itself stipulating that DPOs offer their subscribers a "best fit" bouquet plan to ensure no disruption in the changeover to the NTO, expecting a complete change-over again, without objectively studying data and analysing the case for any further disruption, is regulatory over reach. The case for further change, if at all any further change is needed, must be clearly established by looking at data over a significant period of time (two to three years at least) and not for a few months

(2) The Authority's rationale and approach based on which it proposes its hypothesis about broadcasters' channel pricing and offering, are not based on reasonable classification, in analysing the offerings by broadcasters and distributors, to the consumer.

The categorization of driver/non-driver/unwanted channels in the CP are far from market realities:

The Authority has used terms like non-driver/unwanted/unpopular channels for some channels whose viewership numbers are limited. The categorization of channels as "popular" / "unpopular" is excessive, beyond what is required in the interest of the public. The interest of the public lies in having the right to access the most diverse views, irrespective of such views being acceptable, popular or wanted. The Authority fails to acknowledge or present any study to appreciate the specifics of consumer behaviour that drives TV consumption patterns in a home.

To say that the channels that are subscribed to by the consumer but not frequently watched or not watched at all, are unwanted channels, is a wrong analysis of consumer choices. The fact that these choices are a clear indication that these channels have not been discarded by the consumers add to consumer's option value i.e. the value that is placed on goods and services by a consumer's willingness to pay for keeping/using though the likelihood of using it may be scarce. Further, an increase in the number of channels has no adverse impact on quality of content produced by broadcasters. In fact, subscribers are in no manner forced or compelled to view channels that are not

preferred. For example, the presence of few advertisements / pages in a newspaper does not impair readers from accessing news articles, nor does it impact the quality of articles carried in the newspaper.

Similarly,, while a consumer may spend a significant amount of time on watching the favourite GEC or movie channel, they equally have a need to also spend some time watching music channels, English news, English entertainment or lifestyle channels at other points of time. The time spent on these channels may be relatively lesser, but is no less important in meeting the specific viewing demand, as and when the consumer has the need for that consumption. Equally, in almost any Indian home, there are multiple consumers across demographics – grandparents, parents, teenagers, and young children. Each of these consumer groups have different content needs. Since more than 95%% homes in India are single TV homes, these households have to choose channels keeping in mind the requirement of all family members. Hence, bracketing channels basis absolute viewership numbers is incorrect, and using terms like non-driver/unwanted/unpopular channels is an inaccurate and misleading description of the consumption needs of any household. Given the linguistic and cultural diversity of a typical Indian household, a choice of channels in a bouquet offers them a cost effective option of having their cake and eating it too. The objective of the NTO was to create a scenario where consumers would have the ability to choose channels of their choice and not introduce regulation that would force choices in a certain pre-meditated direction.

(3) That broadcasters are offering very large number of bouquets which is confusing, is a mistaken notion:

At the outset, the approach and issues identified in the Consultation paper have no nexus with the object sought to be achieved as set out in the explanatory memorandum of the New Regulatory Fraemwork. The stated objective of TRAI is to to enable the effective choice of pay-TV subscribers, while the actions contemplated aim to enable only choice of a la carte channels, without any assesment of what the consumer prefers . In order to enable an effective choice that lets the consumer choose and receive the TV channels in the offering most suitable to him, whether bouquet or a-la-carte, then the Authority must ensure that DPOs, which are the entities responsible for delivery of the choice whether a-la-carte option, broadcaster bouquet, or DPO bouquets to consumers, enable consumers to make such selections. The Authority asserts that the large number of bouquets offered by Broadcasters has created confusion in the minds of subscribers. This is incorrect, as number of bouquets offered by any network at a specific consumer level is limited. In fact, broadcasters were mindful that creating more complex bouquets for any home to choose from, would be to their own peril, as it could lead to consumer confusion and subsequent dropping of channels. The thinking behind the bare minimum, necessary bouquet creation is as below:

- i) Regulation itself demands that SD and HD bouquets have to be different.
- ii) The second consumer variable factored in is :is it a single ,or multi language home ?

Thus, for a particular home, the decision tree is simple : a) Am I a SD or HD home (which is an easy, premeditated choice for any home): b) Am I a single language home or a multi-language home – a 2,3 or 4 language home? (Again, this is a premeditated choice for any home, as they are clear whether they are , say a Hindi only, or a Tamil + Telugu (2 languages), or Tamil + Telugu+English (3 languages) , or a Hindi + English+Kannada+Telugu (4 languages) home, given the multi-culturalism in our country). As is evident , the above choices are clearly a consumer home driven choice set (vs a



broadcaster driven choice). Given this, the way most large networks have designed bouquets is that they have offered just one choice for every combination of consumer home that may exist, using the above two, simple and well defined consumer variables. Thus, for any single network, they have tried to keep the number of choices they offer (vs the multiplicity of consumer combinations that exist in our country) is at a bare minimum. And this has been done knowing fully well that the backend DPO ecosystem (especially the cable ecosystem) would find it impossible to handle too many options. Hence it needs to be understood that the number of bouquets at a network level are already optimised. The apparent complexity is not because a broadcaster is offering too many bouquets, but stems from the fact that given the varied, competitive landscape of the broadcast industry, consumers have bouquets of different broadcasters to choose from, which expands the choice set available to consumers.

(4) The suggestion that a la carte is more consumer friendly vs bouquets is contrary to all consumer research across the world :

It is humbly submitted that in the Consultation paper, the TRAI has proposed regulatory actions in a manifestly arbitrary and unreasonable manner, based on uncorroborated conclusions sought to be proven in reverse by a biased hypothesis built on unsubstantiated data and assumptions. The necessity was to have an evidentiary approach based on corroborated data and a universally acceptable economic rationale.

Further, the TRAI assertions and assumptions comprised in the Tariff Issues Consultation Paper 2019, is at variance with contents of its explanatory memorandum and submissions before the Honourable Supreme Court of India and the Madras High Court and the Delhi High Court in responding to the challenges, made before the courts to the 2017 regulations and tariff order.

In the CP, TRAI assumes that choosing channels a la carte is the consumer preferred and friendly route. There is no data provided by TRAI to substantiate this assumption. In fact, across the world, bouquets have been firmly established as the preferred route by consumers. A 2004 FCC report¹ concluded that mandating a la carte for cable consumers in the USA would very likely harm new and niche channels and reduce choice to consumers. An evaluation of a similar proposal in Canada in 2014 concluded that in “unbundling” could have adverse effects for the broadcasting sector and could result in 26% of the current channels becoming unviable. As per CASBAA, in a study of broadcast regulations in 10 countries, apart from India, no country mandated a la carte selling, and bouquets were the preferred choice of consumers. Compared to countries like the USA, Canada and countries in South Asia, India is much more culturally and linguistically diverse and a bouquet would be the most cost effective solution for a consumer to receive a variety of channels.

Fundamentally, Consultation narrative and the issues raised has been unreasonably premised on a misconceived and flawed understanding of the A-La-Carte pricing and the Bouquet relationship. The legitimacy and credibility of the A-La-Carte MRP and Bouquet offerings is questioned without data, in complete disregard of the economic, commercial and legal reality of the industry and its two-sided revenue proposition.

¹ <https://www.fcc.gov/reports-research/reports/cable-industry-prices-reports/report-cable-industry-prices-2004>



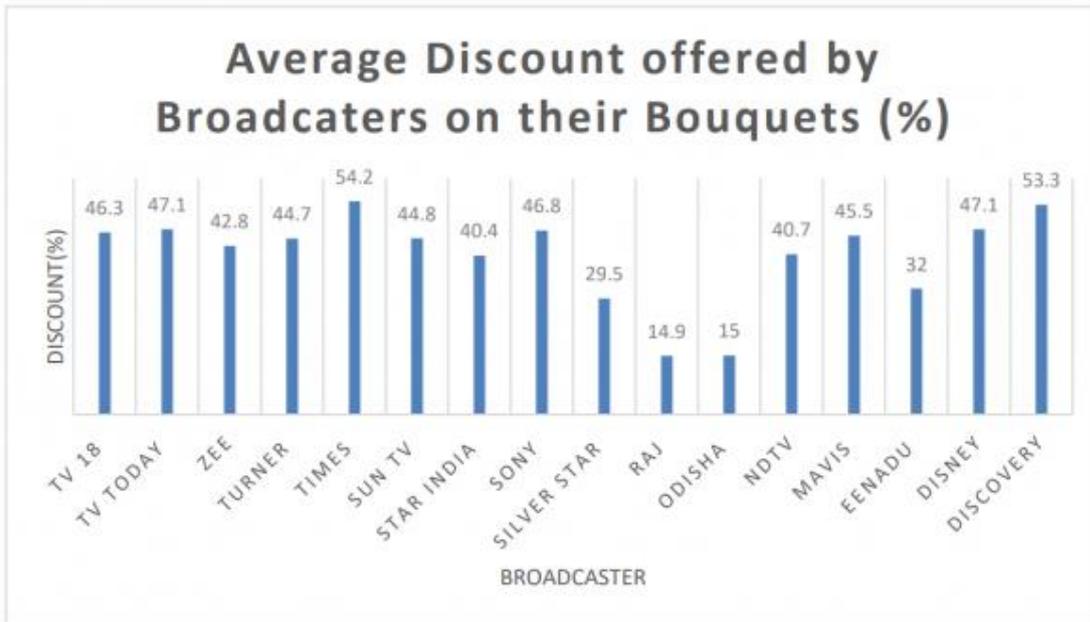
In fact, “Bundling of channels” provides better service to subscribers allowing more consumer choice, variety and differentiation for subscribers, while bringing the necessary advertising revenue to the producer’s and the broadcasters to cross-subsidize the costs of production, which would otherwise increase the burden on the consumer.

Bundling in two-sided markets has many consumer benefits and is pro-competition. The economics of bundling in two-sided markets which are dependant on two revenue streams, namely subscriptions and advertisement revenues, are distinctively different from the economics of “product bundling” or “service bundling” in traditional markets whose only stream of revenue is from the sale of products and services. Bundling is commonly used in media and technology markets having two-sided structures (for e.g. mixed advertising and subscription supported internet services like you-tube). Here, Bundling makes a pricing structure more balanced and can raise total welfare (i.e., consumer welfare and producer welfare). Further, by offering bundles in such a two-sided market, a broadcaster uncovers the types and preferences of consumers; and can also segment the content by type and price.

In a two-sided market, (such as the market for television broadcasting), there are two distinct groups of consumers being catered to, i.e. subscribers and advertisers. Because of the network effects in a two-sided market, the more the number of subscribers, the more attractive a TV channel becomes to an advertiser, thereby increasing the value of the TV Channel. Accordingly, a broadcaster has an incentive to lower its subscription fees, to attract more subscribers, which in turn attracts subscribers, to increase revenues on the advertisement side. The value obtained by an advertiser thus increases with the number of subscribers, and thus conversely, a broadcaster has little incentive to increase subscription fees, as this results in lower reach and, in turn, lesser advertisement revenue. Similarly, a broadcaster has no incentive to increase the number of advertisement slots available on a channel, as this could potentially affect the viewership of a TV channel. Therefore, a broadcaster maintains the balance to benefit the subscriber in keeping subscription price at the optimal and managing the revenue exploitation capabilities on both sides of the market, while also keeping in mind regulatory contours and requirements.

- (5) Stating that broadcasters have created most Bouquets with exceptionally high discounts is not borne by fact : The Authority has commented that the bouquet discounts are very high and many bouquets are upto 70% discount over the sum of Ala carte rates. This is not factually correct, as even by the Regulators own data as set out in the CP, most of the bouquet discounts are in the range of 35% - 45%. Below is chart depicting average discounts offered by the broadcaster in bouquets²:

² <https://ultra.news/s-e/48270/broadcasters-oppose-trais-second-move-make-tv-channels-cheaper>; various broadcasters’ websites



Out of the 331 bouquets offered by top 5 broadcasters, 15% have a discount that is less than 35%, and 66% have a discount that is 50% or less. Only 1 bouquet has a discount higher than 65%. Moreover, higher discounts are ultimately to the benefit of the consumer, as it delivers better value for money.

Discount	Count of Bouquets	% of Bouquets
< 35%	51	15%
35% to 50%	217	66%
51% to 65%	62	19%
> 65%	1	0%
Grand Total	331	100%

Bundling of TV channels, by enabling advertisement revenues to defray content costs, has also expanded consumer choice from 212 TV channels in 2005 to 880 TV channels in 2018³. More importantly, this advertisement revenue has prevented the “pass-through of content costs” to subscribers and has reduced the average monthly TV bills in India by 81% than they would otherwise be without bundling. The fact is that for the same business and economic conditions, the price of a bouquet of TV channel will necessarily be lower than the sum of a-la-carte prices of the channels in that bouquet. However, unlike product bundling, these prices on bouquet of TV channels are not discount on the sum of a-la-carte prices. Each bouquet price is uniquely determined and hence a different price discovery than that of a-la-carte channels.

- (6) Statement that consumers are facing challenges in exercising real choice due to BOUQUET DESIGN ONLY is not borne out by facts: The Authority has inferred that the consumers are facing a challenge in being able to select the channels / bouquets and that this challenge is squarely because of the construct of the broadcaster bouquets, and due to the discounting of price from a la carte to bouquet. This is far from the ground reality. Further, it was the Regulator that directed DPOs to offer a “best fit” plan to their subscribers to encourage them to transit to the NTO which the DPOs did by offering

³ TRAI's 2017-18 annual report



bouquets. The Authority cannot approbate and reprobate: on one hand use bouquets to incentive transition and after transition is complete, argue that bouquets are not consumer friendly

The challenge is not the bouquets or bouquet pricing, but the inability of DPOs, especially the cable ecosystem, to deliver end to end service to fulfil the requests of the consumers. Unlike the cable ecosystem, a subscriber of DTH operators like Tata Sky, Dish, Airtel etc. is able to get her/his choice of channels with a few clicks, and consumer issues and concerns are the least in the DTH ecosystem. This is best reflected in the fact that the DTH ecosystem, which was not seeing much growth prior to implementation of NTO, due to the non – level playing field, has actually performed much better post the NTO. The DTH subscriber base has grown more rapidly post the NTO rollout, at an annualised rate of ~12% in the first six months. And this is largely because of the better customer service provided by DTH, even though the pricing is now exactly the same as it is for the cable ecosystem. The same customer service however, is not there in the cable ecosystem, as the IT systems installed at the MSO's and LCO's have technological limitations/constraints, and consumers are not able to choose their channels freely.

It is this inadequacy of lack of systems upgradation in certain section of the DPOs, which is causing most of the consumer discomfort, and the same had been highlighted to the Authority well before the start of the implementation. It is suggested that to make it easy for consumers to get their channel choices in the cable ecosystem, the focus of the MSO's/ LCO's should be to invest in the backend infrastructure which facilitates this. The Authority should insist on such infrastructural changes in consumer interest.

Furthermore, a comparison of a-la-carte prices of channels (on a bouquet-wise basis) under the old regulatory regime to the 2017 Tariff Order, would also show that the sum of all a-la-carte prices of channels has significantly decreased for subscribers. Despite such significant decrease in a-la-carte prices, nearly 80% of subscribers are still choosing to procure bouquets. This shows that the preference of Indian consumer is bouquets, irrespective of the low price of a-la-carte channels.

(7) There is a myth being created and perpetuated that the broadcasters have priced channel /bouquets such that mostly the broadacsters are benefitting post NTO

Regulatory discipline and balance are not expected to base their economic modelling and regulations on unsubstantiated hypothesis and in propagating incorrect assumptions. The fact is that the consumers have benefitted from a transparent retail regime which informs the customer of all the applicable prices as well as the options it can avail, while the DPOs have benefitted from the assured revenue provided in the new regulations and tariff order. The broadcaster, has complied with the regulations, and benefits subject to proper implementation of the new regulatory framework by the DPO.

The Authority has prescribed, on its own accord, a network capacity fee (NCF) of Rs. 130 plus 18% GST (Rs. 153.40 post GST) as the base price for getting any set of channels. This would be applicable to every consumer, irrespective of their income profile or choice of pay channels. Because of this forced pricing, certain segments of consumers and especially the lower income consumers will find the price of channels to have increased in the NTO. Hence, to claim that some sections of consumers are unhappy with the new pricing because of broadcaster bouquets and pricing is an over-generalisation,



and an incorrect assertion. Moreover, suggesting differential pricing across income strata is not a feasible option as ascertaining true & correct subscriber reports would be a challenge.

The NCF mandates providing of 100 FTA channels, which is a pre meditated choice made for consumers in the regulation, forcing consumers to pay this fee for a set of 100 channels which they may or may not want to choose. It is an unreasonable proposition to propagate a myth of broadcasters denying consumers choice through bundling, hence the broadcasters TV channels and offerings enhance consumer choice, subject to the gatekeeping abilities of the distribution operators, who have previously maintained opacity of pricing, earnings and subscription data to the detriment of both the industry and the consumers.

8. A comparison of end consumer price for various information/entertainment mediums : The table below gives the end consumer price comparison of different forms of information/entertainment that consumers have access to. It clearly demonstrates that TV, event post NTO, remains the cheapest and richest form of information and entertainment for any home.

Information/Entertainment Medium	Unit	Representative Price (In INR)
Hindi Newspaper	Cost/Newspaper/Month	105-120
Regional Newspapers	Cost/Newspaper/Month	120-195
Movie Tickets in Theatre	Cost/Ticket	130
Music Apps	Cost/Per App/Month	99-119
General Entertainment Channels	Cost/Channel/Month	3-19
Hindi News Channels	Cost/Per Channel/Month	0.1-1
Movie Channels	Cost/Per Channel/Month	1-15
Sports Channels	Cost/Per Channel/Month	2-19

- (9) The demand for a TV channel is essentially a demand for the content, as TV channels survive or die-out on the backbone of the content. Thus, any proposal to either fix a price, or restrict the offering, or in any manner restrict the manner and number of offerings, will effectively curtail the fundamental rights guaranteed to the creator of the content, and even more-so to the creator of niche, regional or diversity content, for whom the medium of TV broadcast is existential, in achieving dissemination of its expression and speech through its work.

The impact of any unilateral conditions that place further restrictions like interference with the ceiling price of a TV Channel in a bouquet, or impose conditions for formation of the bouquet in restricting the bouquet offering or the methodology for creating a bouquet, or introduce maximum number of TV Channel bouquets offered, would be to compel the broadcasters either to reduce the quality or the quantity of the content, or the number of TV channels or to raise the prices. While the former will naturally restrict the dissemination of the content as a form of expression, the latter would significantly cut down the circulation of the TV channel and the content. Both involve a direct infringement of the content creators, the broadcasters' right and the consumer's right under Article 19(1)(a).



Thus, any imposition of mandatory a-la-carte offering, coupled with a fixed MRP, would completely bind the broadcaster from supplying the TV channel at a reasonable price, or to realize a equitable value. In effect, the content owner / content provider/ artists/ writer/ singer/ filmmaker upstream will also be unable to realise value and gain reasonable consideration for their content / work from the broadcaster and will effectively be inhibited to express and speak through their content/work. Further, the freedom to receive the speech and expression by the consumer shall be also illegitimately restricted.

In analysing newspaper publishing, it has been clearly found that the freedom to publish any number of pages is the freedom to circulate to any number of persons. Publication is akin to the freedom to broadcast to any number of persons, whereby the offering and the expansion of the offering by dissemination are integral part of the freedom of speech. Broadcast is medium of communication and the medium for dissemination of speech and expression of an artist / writer / content creator.

The regulations are already structured to curtail the price of channels in a bouquet offering, whereby any further restrictions on the offering of the TV channels, will ensure either the reduction of the choice and quality received by the consumer, or else an increase in the price of the TV channel. The consumers right to receive speech and expression is further diminished when faced with a limited offering of content considered in the abstract as having mass appeal, or due to a rise in prices.

(10) The attempt of the Authority to lay down the regulation regarding what channels to include in the bouquet, what not to include in the bouquet, what price they ought to be sold at, or how many bouquets or bundles can be offered by the broadcasters cannot be termed as a regulation for the orderly growth of the broadcasting sector but a direct restriction on the upstream content economy and broadcaster's right to carry out business. Further, unsubstantiated assumptions that consumers are compelled to watch "unwanted channels" is devoid of any research-based assesment or appreciation of upstream economics in the provision of broadcast services.

(11) The Consultation Paper sets out the Authority's intent as stating the foremost issue "the authority wants to settle through the new tariff order has been sacrosanct right of consumers to choose and pay for only those channels they want to watch". The Authority, while laying emphasis on the right of the consumer to opt for a TV channel or an offering, which consumer right has always been protected, appears to entirely ignore the fact of the the artists / the content provider's / and the broadcaster's right to carry out its business, profession and trade. In so far as the 'niche' TV Channels is concerned , and the content that has less mass appeal but is nonetheless the expression of content creators reflecting the demand of varied sections of the public, any unreasonable fetters on TV channel offerings, effectively infringe the right of content creators, and content curators/ broadacsters to carry on their profession, trade and business.

It is well settled that though the right to carry out business enshrined under Article 19 (1) (g) the only valid restriction on this right is the authority to make law imposing reasonable restrictions. The citizen cannot be deprived of the said right except in accordance with law. Such a law must be one enacted by the legislature. The right to carry out business also includes the right to carry on the business in a way, manner and form as deemed fit by the owner. Any restriction which has the effect of destroying the business or making it impossible for the professional except under onerous conditions is an unreasonable restriction on the right to pursue a profession or trade.

SECTION B – Potential impact on industry from any further changes in tariff regulation

It appears from the CP, that without allowing for the new regulation to fully settle in, or without adequate analysis of consumer data, the Authority wants to rush into another set of changes on regulation which is certain to negatively impact orderly functioning and future growth prospects of the industry, besides inhibiting choice for the consumers.

- i) Significant impediment to ease of doing business: Such frequent changes in regulation are not desirable for the orderly growth of the sector. The rationale for this sudden change is not even supported logically by data, is a significant impediment to ease of doing business, a key objective of the government which is keen to spur growth in the economy.
- ii) Potential Impact on employment loss in the sector – Broadcasters, content production companies, operators and their linked service providers together employ more than 1 Mn people in the sector⁴. At present, the business models of industry players are reasonably robust, though coming under increasing pressure due to content and talent costs. Due to the current economic slowdown, wherein advertising revenue, which is ~ 70% of the broadcaster revenue, and was growing in double digit till last year, has come down to low single digit growth. In this context, “heavy hand” regulation that prescribes micro aspects like pricing and discounts will negatively impact the financial viability of the business models. Unviable economics will force shutting down of channels. Broadcasters will be unwilling to launch new channels and producers will be unwilling to experiment with new content. All these will lead to fewer shows being produced, which will have a knockdown effect on downstream production and on employment in the sector.
- iii) Potential impact on choice for consumers – As shared in point (ii) above, such rapid regulatory changes will lead to reduction in number of channels that consumers will actually get to watch (as opposed to channels just existing but not being watched). There has already been a 20% reduction in actual channels being watched by consumers post the NTO. Over a period of time, such loss of viewership will lead to reduction in number of channels that consumers actually are/were watching (as opposed to the belief that channels that are not being watched are the ones that will be the only ones that will get shut down).
- iv) imposing any restriction on the way channels are priced, is interfering with the right of service providers to market, promote, advertise their products. These restrictions impinge upon the broadcaster’s and content creators *right to carry on trade guaranteed under Article 19 (1)(g) of the Constitution of India*. Any such restrictions will also restrict a content creators, Broadcasters & consumers *freedom of speech and expression under Article 19 (1)(a) of the Constitution of India*.

In Summary...

As per BARC estimates, there are 197 Mn TV households in India.

⁴ <https://timesofindia.indiatimes.com/india/media-entertainment-sector-to-add-7-8-lakh-jobs-in-5-years-report/articleshow/61901275.cms>



<u>Particulars</u>	<u>Estimated Household (Mn)</u>
Total TV	197
Free TV	33
DTH (Pay)	55
Cable (Pay)	109

Source: BARC 2019, EY FICCI report 2019, industry estimates

While from above table the estimated Pay TV household is 164 Mn, broadcasting industry gets subscription revenue only from 115 – 125 Mn homes. This would imply that our country, which wants to achieve the 5 Trillion dollar economy milestone in next few years, has only 40% pay TV homes as reported (universe of homes : ~300 Mn). This, in the judgement of the broadcasters, reflects a very significant under-reporting of subscriber base, and of the actual reality on ground. The focus of the regulator as well as the industry should be to address this gap in the actual pay homes (viz 160 Mn) vs the industry realised revenue (from just 115 – 125 Mn homes). Ensuring formalisation and complete transparency of the subscription ecosystem in the country will not only help broadcasters to offer quality content for more consumer delight, but also help the government to realise the full potential of tax revenue from the sector. It will also allow more degrees of freedom for pricing of TV channels to the broadcasters.

Stability in policy formulation and a “soft touch” regulatory oversight is an absolute necessity for healthy industry growth. The Government’s focus on “ease of doing business” warrants minimal regulatory intervention. In these circumstances, we as IBF, would humbly urge the Authority to defer any further regulatory interventions, and allow the consumers, the industry and all its stakeholders time to adapt to the new regulatory regime.

In the light of the foregoing, our responses to the queries raised in the Consultation Paper is as under:-

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.

IBF RESPONSE:- NO.

It is pertinent to point out that TRAI must consider the objective of its creation through the Telecom Regulatory Authority of India Act, 1997, and the sole objective is to ensure an orderly growth in the industry. Before adversely commenting on the actions of the broadcasters, TRAI ought to have studied whether the existence of number of bouquets is any manner disadvantageous to the end consumers. In fact, globally it has been observed that consumers prefer to choose bouquet of channels instead of ala carte channels and India with its size of population with their linguistic and cultural diversity cannot be an exception. Globally, bundling is a practice in most industries -- airlines, hotels, media, consumer products and most importantly in telecom which the TRAI regulates. It goes without saying that “Buffet meals” are usually cheaper and offer more variety than an “a la carte meal”. We fail to understand as to how TRAI which is mandated to look after interests of all stakeholders can disregard the economic



benefits of bouquets simply because of “excessive” discounts (when capping of discounts has been held to be arbitrary) and make this an issue for consultation. In this connection, it is interesting to note an analysis of Competition and Regulatory Intervention in India’s Television Distribution and Broadcasting Services from a reputed thinktank- the Indian Council for Research on International Economic Relations (ICRIER) which was carried out post implementation of the MRP Regime and published in March 2019 which also talks about benefits of availability of bouquets to the end consumers. An analysis carried out by them across DTH operators showed that Tata Sky, Airtel and Dish TV are the top three DTH operators stated to offer more value than cable, more flexible and convenient than cable and offer excellent value for money. As per the survey undertaken by them, there are currently 332 pay channels of which 232 are transmitted in SD and 100 are HD. After the implementation of the MRP Regime, only 57 of the 232 SD channels are priced at Rs. 10 or more while the remaining 175 channels are priced at Rs. 9 or lower. Only twenty-five SD channels are priced at the upper price limit of Rs. 19. The primary reason for fixation of the price at Rs.19 may be in view of the fact that these channels would be the primary channels of the respective broadcasters in certain genres and in which they would invest huge amount for bringing to the consumers varied content. Further, as per the said publication a BCG-CII research carried out with consumers in more than 10 countries found that Indian consumers are more demanding and more price-sensitive than most of their global peers.

Annexure I itself demonstrates that while the rates of some channels may have gone up, however rates of majority channels have been reduced also. In fact the HD channels have become much affordable in the new regime.

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. 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.

TRAI seems to be driven in its extreme view due to comparisons made in Annexure I and Annexure II of the Consultation Paper. While TRAI intends to compare the prices declared by the broadcasters under the old regulatory framework with the prices declared under the new regulatory regime (See Annexure I), TRAI conveniently forgets to mention that under the old regulatory regime, the rates were frozen as of 26.12.2003, and intermittent increases were allowed of 4%, 7%, and 4% again. It is illogical to compare the rates of 2003 (with intermittent and negligible increases) to the rates under a restricted forbearance regime. The demand and supply mechanism, as TRAI also agrees, governs the rates of a channel. In Annexure II, TRAI has attempted to make out a case that there are much lesser percentage of persons who have chosen a-la-carte channels as against the bouquets of various channels. This has led TRAI to believe that true consumer choice is not available. The analogy drawn by TRAI in coming to the conclusion that the subscribers are not choosing the a-la-carte channels only because bouquets are available at a discount is absolutely wrong. It is wrong to attribute the preference for bouquets over a-la-carte channels only to the bouquets being available at an attractive rate. There are various other reasons for slow uptake of the channels on a-la-carte basis – (1) that the subscribers generally are impatient and do not have the leisure of time to choose channels; (2) a household consisting of a husband and wife, with two children, and old parents. Each person has his own interest and channels are opted accordingly, for e.g. children may have an interest in cartoons, husband in news, wife in general entertainment channels, and old parents in travel or religious channels. Hence, a normal Indian family



is likely to choose such a bouquet as would provide all such genre of channels rather than choosing a single a-la-carte channel of each category. The choice that TRAI desires for the subscribers is illogical, since persons in a household have varied interests.

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.

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. Instead and despite all the evidence to the contrary, TRAI assumes that majority of subscribers want a la carte and not bouquets. It is a fact that bundling has ensured that the spend on TV channels subscription by Indians is the lowest across the world. As per Media & Entertainment Television Segment, CARE Ratings, June 2018, Low ARPU of ~USD 3 per month makes TV one of the most affordable and preferable medium of entertainment in India.

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 competitive price which is desirable for the same being in consumer interest. In this light of the foregoing, there should not be any restriction imposed by TRAI on bundling as the same will restrict consumer choice too.

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

IBF RESPONSE:- NO.

It is to be noted that the Authority had introduced discount scheme in the Tariff Order, 2017 wherein it permitted the Broadcasters to offer a maximum discount of 15% while offering its bouquet of channels over the sum of MRP of all the pay channels in that bouquet.

This provision was subject matter of a challenge before the Madras High Court in a batch of writ petitions filed challenging the constitutional validity of certain provisions of the Interconnect Regulations, 2017 and the Tariff Order, 2017, apart from the challenging the very jurisdiction of the Authority to proceed with such a Regulation. The Hon'ble Madras High Court, although gave a split verdict, however, in respect of one issue, the decision was unanimous. Both the judges of the Division bench struck down the proviso to Clause 3(3) as arbitrary..

In view of the split verdict, the matter was referred to third Judge, who concurred with the decision of the Hon'ble Chief Justice of Madras High Court, effectively upholding the order striking down proviso to clause 3(3) . Finally, the matter went in appeal before the Hon'ble Supreme Court wherein the Madras



high Court Judgments dated 02.03.2018 and 23.05.2018 were assailed. The Hon'ble Supreme Court, while dismissing the appeals challenging the Madras High Court judgments, held that:-

"...We are, therefore, clearly of the view that the Regulation and the Tariff Order have been made keeping the interests of the stakeholders and the consumers in mind and are intra vires the regulation power contained in Section 36 of the TRAI Act. Consequently, we agree with the conclusion of the learned Chief Justice and the third learned Judge of the Madras High Court that these writ petitions deserve to be dismissed..."

(Emphasis supplied)

Operating with clear knowledge and understanding that the said clause 3(3) was struck down, TRAI filed a special leave petition seeking to reverse the finding that clause 3(3) was arbitrary, which SLP was not entertained, and dismissed as withdrawn. Hence, the said provision has been set aside and effectively not included within the 2017 Tariff order and the 2017 Regulations.

The provisions of the 2017 Interconnect regulations and the 2017 Tariff Order apply equally to all the stakeholders. As has been stated in the foregoing paras, it would be in the fitness of things to avoid statements or assertions which are neither tenable in law nor in facts.

Q3. Is there a need to reintroduce a cap on discount on sum of a-la-carte 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?

IBF RESPONSE:- NO

The provisions relating to cap on discount have already been subjected to judicial review, wherein it has been held that the cap on discount is arbitrary and unworkable as stated aforesaid. The judicial finding on the provision was not on the "quantum" of the discount, but on the cap 'per se' on the discounts on MRP of bouquet of channels.

Hence the cap on discount on sum of a-la-carte channels forming part of the bouquets cannot be reintroduced, as it would be contumacious of the order of the Hon'ble Supreme Court, whereby the Special Leave Petition of TRAI on this very aspect stood withdrawn. TRAI, by imposing any restriction on the way channels are priced, will be interfering with the right of service providers to conduct their business. Further, 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.



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?

IBF RESPONSE:- There is no need to review the cap on discount permissible to DPOs while forming the bouquet.

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

IBF RESPONSE:- Demand for a channel may vary depending on content, genre, language, etc., but the channel will still have a viewership and audience. No broadcaster will launch an “unwanted” channel. The rating or reach of the channels cannot be a bench mark to ascertain whether a channel is being viewed by the consumers or not. The objective of the broadcasters in launching various channels of different genres is to offer choice and variety of content to the end consumers. Furthermore, TRAI, without in depth study cannot come to a conclusion as whether a subscriber is watching one channel in a particular bouquet or not. It is best left to the consumer to choose whether he wants a bouquet or a-la-carte channel. Bracketing channels basis absolute viewership numbers is incorrect, and using terms like non-driver/unwanted/unpopular channels is an inaccurate and misleading description of the consumption needs of any household. Given the linguistic and cultural diversity of a typical Indian household, a choice of channels in a bouquet offers them a cost effective option of having their cake and eating it too. The objective of the MRP Regime was to create a scenario where consumers would have the ability to choose channels of their choice and not introduce regulation that would force choices in a certain pre-meditated direction.

A. Number of bouquets

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?

IBF RESPONSE- It is pertinent to note that the concept of formation of bouquet was introduced for the first time in 2007, which was further modified in the year 2014 when the formation of bouquet was restricted to broadcaster wise (Content Aggregator Regulation). Thus, IBF believes that to place any sort of restriction on the number of the bouquets of individual broadcasters is untenable in law. Under the new Regulations, and the Tariff Order, 2017, a broadcaster may offer bouquets state wise, region wise, target market wise. TRAI is also aware that there are various variants of channels available i.e. High Definition, Standard Definition channels, and hence, to analyse and restrict combination of such bouquet, would mean an unreasonable restriction in the manner of doing business for a broadcaster. Restriction on the number of bouquets will also restrict entry of new channels, channels of a smaller broadcaster etc. On one hand TRAI emphasises that one of the objective of the new MRP Regime is to offer wide range of choices to the end consumers and on the other hand, TRAI is now considering to limit the number of bouquets which an individual broadcaster can come out with pertaining to its channels. Further, it is pertinent to note that the Authority even came out with a Press note in the month of February 2019 wherein the Authority itself noted that though the new framework promotes consumer choice and enables the subscriber to pay for what they wish to view but non-exercise of option should



not create any inconvenience to the subscribers. Accordingly, the Authority directed all DPOs to create a “Best Fit Plan” for their subscribers who have not exercised their options yet. The Authority had further stated that the “Best Fit Plan” shall be designed based on consumers usage pattern and language spoken and should preferably be blended combination of various genres. While making “Best Fit Plan” for a subscriber, DPOs should ensure that pay out per month for the “Best Fit Plan” does not exceed the pay out per month of the existing tariff plan of the subscriber. The Authority further stated that subscribers would be free to change their “Best Fit Plan” at any date and time on or before 31st March, 2019 and DPOs shall convert their “Best Fit Plan” into the desired pack (channel/bouquet) within 72 hours from the time choice exercised by the subscribers. In short, the Authority itself advocated bouquets of channels to be sold to the consumers and now in the present Consultation Paper is trying to take a complete different stand. Further, by advocating and pressurising DPOs to offer a “best fit” plan based on usage and without increasing “pay outs”, TRAI was itself institutionalising the preference for bouquets over a la carte. It is surprising that within a few months thereafter TRAI’s CP criticises broadcasters and DPOs for offering various bouquets

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

IBF RESPONSE :- It is felt that there is no need to restrict the number of bouquets in view of our submissions made in respect of the foregoing question.

Q.8 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?

IBF RESPONSE:- NO. The pricing of the individual channels in a bouquet does not get hedged while opting for a bouquet of channels by subscribers. The principle enshrined in the regulatory framework is deriving the price of a bouquet based on the a-la-carte rates of the channels, and not otherwise. The Authority cannot seek to derive the rate of the channels from the rate of bouquets. Needless to say, it is too early to conclude without any supporting data that the rights of the consumers are being hampered. In fact, the consumers now having understood the mechanism of opting either the a-la-carte channel or bouquet of channels, are exercising their right in the manner they deem fit for their individual circumstance. Hence we believe that the need to re-write the regime at this nascent stage does not arise at all.

Q.9 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?

IBF RESPONSE:- IBF feels that a price ceiling or price control of any nature is abhorrent to a free and competitive economy. There is no need to set a price ceiling for entry of channels into bouquets. TRAI has taken contradictory positions about the exercise of consumer choice. On the one hand, TRAI expects all consumers to be well informed to make a choice of desired a-la-carte channels over bouquets; but on the other hand, TRAI itself imposes a price cap and regulates the prices of a-la-carte channels forming part of the bouquet, therefore leaving no room for the price discovery process in an open market. We are of the view that the Authority must leave price discovery to market forces.

The Authority itself advocated that the industry should move towards forbearance with minimal restrictions.



Hence, broadcasters should be allowed freedom to price their channels as contemplated in the 2017 Tariff Order.

Q.10 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?

IBF RESPONSE:- It has merely been seven (7) months since the new regulatory regime has been completely implemented. The consumers have only recently started getting accustomed to the new regulatory regime. The Authority must, therefore, allow sufficient time to analyse the best results that the new regulatory regime may offer at an appropriate stage. From the trends seen in the past 3 to 4 months basis the monthly subscriber reports that have been received from the operators, we have observed that the consumers are now more aware of their rights and have been choosing channels rationally. Choices for channels on ala carte basis have also increased in respect of majority of our channels. Further time would have to be given so that consumers can take their own decision in selection of the channels which they desire to view. The Authority, acting in haste, is seeking to conclude what actually cannot be reasonably seen or perceived at this stage. The TV market in India currently offers multiple choices to consumers. A light touch regulation approach may naturally nudge the industry towards the optimal equilibrium. Over regulation in a competitive market may force consumer choices towards a particular technology, like the evolving Over The Top (OTT) technology, which in turn would have serious impact on the television and broadcasting industry.

Q.11 How this provision has affected the ability and freedom of the subscribers to choose TV channels of their choice?

IBF response:- Please refer to our response to Question no. 10 above. As stated, the Authority must wait patiently for some more time and then analyse basis the factual data and thereafter come to the conclusion as to whether the ability and freedom of subscribers have been affected or not.

Q.12 Do you feel the provision permitting the broadcasters/Distributors to offer bouquets to subscribers be reviewed and how will that impact subscriber choice?

IBF RESPONSE:- NO.

The manner in which broadcasters offer their channels to consumers is part and parcel of their fundamental right to carry on business enshrined in the Constitution of India. As reiterated earlier in our response, the global practice is for broadcasters to offer bouquets giving consumers a choice of channels at a competitive price. There is no question of reviewing this right of the broadcasters/distributors to offer bouquets to subscribers. The manner in which the channels are presented to the subscribers is a prerogative of the broadcaster itself.

Q.13 How whole process of selection of channels by consumers can be simplified to facilitate easy, informed choice?

IBF RESPONSE:- Well designed mechanism in the shape of technological dissemination of information by various means including the internet have already been put in place in the regulations. In fact, the Authority has taken various steps to educate the consumers from time to time, and issuing clarifications



by way of Press Releases from time to time. In today's digital world, the consumer is well informed as the news for any change in law or its effects and ramifications by way of varied studies are readily available on internet.

B. Network Capacity Fee for multi TV home

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

IBF RESPONSE:- The present regulatory regime permit the DPOs to offer discounts or charge lower Network Capacity Fee in case of any additional connection in a household. The regime further mandates the DPOs in this context that any such discount offered on additional connection has to be uniform across its target market area and the same has to be declared by the DPO. Thus, there are regulatory provisions enabling discounts on NCF for multiple TV in a home.

However, similar provision does not exist in context of DRP for multiple channels, the reason being DRP is based on the MRP of a channel. Hence, the DRP should not be discounted for any additional connection in a household.

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.

IBF RESPONSE:- A DPO identifies the households where there is more demand of TV services, in context of number of connections, choice of number of channels, number of viewers in the household, etc. Further, the tariff regime existing as on date read with the Authority's clarification dated 08.02.2019, it is clear that the DPOs have the liberty to charge discounted NCF for each additional TV connection. To maintain equilibrium in the market, the DPOs have also been restricted from arbitrarily charging the full NCF from one household having multiple connections and charging discounted NCF from another household.

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?

IBF RESPONSE:- NO.

In the present regulatory framework, each Set Top Box (STB) has been identified as a consumer. The DPO is mandated to provide weekly subscriber report to the broadcasters, and at the end of each month, the monthly subscription of the channel is calculated as an average of the four weeks' subscriber numbers. In fact, the Interconnection Regulations, 2017 in the "Note" under Schedule VII clarify that-

"Each set top box, located at a place indicated by the subscriber for receiving the subscribed broadcasting services from the distributor of television channels, shall constitute one subscriber."

There is no mechanism in the regulatory framework at this stage which can assist or suggest that the broadcasters can identify any household which has additional connection, thereby enabling the broadcaster to even think of offering any such discounts. Hence at the present stage differential MRP by the broadcasters for multiple TV connections should not be allowed.



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

IBF RESPONSE:- YES

As stated aforesaid, the purpose of identifying each individual STB as an individual customer is inter-linked directly with the intent of identifying consumer choice as supreme. If at all this was not the purpose of the regulatory framework that changed the entire industry, the emphasis in the Regulation would not have been on considering each STB as one subscriber. Hence, DPOs should provide the choice of channels for each TV separately, in multi TV connection home, the Authority can seek enforcement of the relevant provision of the Regulation by way of issuance of a Direction to the said non compliant distributor.

C. Discounts on Long term subscriptions

Q.18 How should a long term subscription be defined?

IBF RESPONSE:- The present regulatory regime has primarily been brought about with the intent to revolutionise the entire broadcasting sector where the consumer choice is supreme, and on the basis of that choice making power, the consumers have been asked to pay what they choose. In this canvass, the DPOs and the broadcasters have to fit in with the rights that have been made available to them. While the broadcasters have to declare the MRP of their channels, and give a share of the MRP as distribution fee to the DPO, the DPO can charge Network Capacity Fee from the subscribers as prescribed in the tariff Order.

Further, as has been rightly pointed out by the Authority, subscribers are identified by active set top boxes and the possibilities of manipulations cannot be ruled out. This further has to be coupled with the consumer's choice, which is always subject to change on month on month basis. Hence, allowing DPOs to offer discounts on long term subscription cannot be a possible option.

Now, consideration is to permit the DPO to give discount for Long term subscription on the NCF, the situation where a consumer does not wish to take any services for a month or more than one month, gets ruled out. In that case, the entire calculation gets affected and the manner in which the discounting is to be given, also gets lost. In this situation, the consumer is then being mandated to continue with its subscription for the entire period of long term subscription.

Thus, considering the above, it is difficult to define a "Long Term Subscription".

Q.19 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?

IBF RESPONSE:- Refer our response to Q.18.



Q.20 Whether Broadcasters also be allowed to offer discount on MRP for long term subscriptions?

IBF RESPONSE:- NO -

The authority does not require to further regulate this aspect, as broadcasters MRP offers are already regulated in terms of special offers and the incentives that are offered to the DPO, who are responsible to properly use that flexibility to pass on the discount to the consumer. The broadcasters have no privity of contract with the subscriber, and thus are only able to consider discounts to the DPO, which are based on the incentives as provided in the RIO itself. DPO has the ability and the flexibility to offer the necessary incentives, in adjusting the NCF and making Bouquet offering to enable consumers to subscribe.

D. Placement of channels in EPG

The Authority in Regulation 18 of the Interconnection Regulations, 2017 already has in place provisions to control and regulate any menace sought to be conducted by way of arbitrary placement of channels.

What has been mandated is-

- i. Broadcaster to declare the respective genre of its channels;
- ii. The distributor of TV channels must “place” the channels in the EPG in such a way that channels of the same genre are placed together and consecutively;
- iii. One channel must appear only at one place in the EPG;
- iv. All TV channels of the same language within the same genre must be “placed” together consecutively;
- v. The Local Channel Number once assigned to a particular TV channel shall not be altered by the distributor for a period of at least one year from the date of such assignment

Thus, from the above, it becomes apparent that there is already an order prevalent in the industry with respect to placement of a channel of a particular genre and a particular language. Needless to point out that this practise also existed as such in the Interconnect Regulations, 2012. If a channel of a particular language falling under a particular genre is placed together and consecutively, then there is no point that the Authority seeks interference. However, if any deviation from this regulatory mandate is seen by the Authority, it can seek enforcement of the regulations by way of issuance of a direction.

Q 21 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?

IBF RESPONSE:- Every party is entitled to enjoy the benefits of his rights, if such activities are carried out within the legally permissible limits. The DPOs are entitled to place the channels as per their understanding with the broadcasters, as far as such placement does not violate or disturb the regulatory compliances.

Hence, it cannot be concluded that the DPOs are misusing their power to place channels on the EPG. If the Authority feels that there is any violation of any regulatory provision, it may seek enforcement and compliance of the said provision by issuing a Direction under Section 13 of the TRAI ACT.



Q 22 How the channels should be listed in the Electronic Program Guide (EPG)?

IBF RESPONSE:- There are adequate measures already prescribed in the interconnect Regulations, 2017 as stated above and hence no further changes/modification to same are required at this stage.

However, It is submitted that DPOs should be clearly curtailed from including within the genre placement on the EPG, any Platform Services, VAS such as local news or shopping channels, religious channels etc, which are outside TV Broadcast regulations, and not permitted as TV channels under the uplinking and downlinking guidelines. Effectively, the EPG must provide the logical channel numbering only for the broadcast TV channel to be placed together consecutively, by genre and language, as per the regulations governing broadcast TV channels and provide placement and numbering for any VAS/ platform services separately.

E. Promotional offers by DPOs

Q 23 Whether distributors should also be permitted to offer promotional schemes on NCF, DRP of the channels and bouquet of the channels?

IBF RESPONSE:- Under the NTO, the broadcasters have been given the liberty to determine the maximum rate of their channel that could be charged from its consumer/subscriber. The distributors of TV channels, who provide the said channel after taking the signals of the same from the broadcasters, cannot charge anything over and above the MRP of the channel. In addition to this, every broadcaster has been mandated to declare a minimum 20% of the MRP of pay channel or bouquet of pay channels, as the case may be, as the distribution fee.

Further, under the Tariff Order, 2017 the distributor of Tv channels has also been given the liberty to charge Network Capacity Fee (NCF) from the subscribers in terms of the provisions as provided under the Tariff Order. This NCF is over and above the Distribution Fee that a distributor of TV channels is bound to receive from the broadcaster of TV channel.

The Authority has already considered in the past as to on what basis any discount has to be given and the flow of discount should flow where to where. The Authority had, in the interest of subscribers only, has restricted grant of discounts by the broadcasters to the distributors of TV channels on the MRP of the channels. In the words of the Authority itself, the basic purpose of putting a cap on discounts on business to business transactions is to persuade service providers to declare realistic prices for their products/ services and ensure level playing field.

Needless to say, under the tariff Order, 2017, the DPOs have the liberty to charge lesser NCF or no NCF from their subscribers, hence that already is a point of incentive that a DPO can offer to attract customers.

In view of the foregoing, it is respectfully submitted that we do not believe that there is any need to prohibit DPOs from offering promotional schemes on NCF and/or DRP of *a-la-carte* and/or bouquets, and that the same should be left to the discretion / prerogative of DPOs, provided that such schemes, do not directly / indirectly impact the Broadcaster's revenue share or results in broadcasters being compelled to give discount in MRP of their channels / bouquets. It is further submitted that in-line with the submission made in the preceding sentence, restrictions on broadcasters regarding promotional schemes too should be removed. In the unlikely event, the Authority is of the view that restrictions on broadcasters regarding promotional schemes should continue, then *inter-alia* for the purposes of



maintaining level playing field between broadcasters and DPOs, restrictions in respect of promotional schemes on NCF and DRP should be brought in that are in sync with stipulations pertaining to promotional offers that apply in case of broadcasters.

Q 24 In case distributors are to be permitted, what should be the maximum time period of such schemes? How much frequency should be allowed in a calendar year?

IBF RESPONSE:- Please refer to our response to Q.23.

Q 25. What safeguards should be provided so that consumers are not trapped under such schemes and their interests are protected?

IBF RESPONSE:- In view of the above response, there is no need to respond to this issue.

F. Flexibility in offering Network Capacity Fee

Q 26 Whether DPOs should be allowed to have variable NCF for different regions? How the regions should be categorised for the purpose of NCF?

IBF RESPONSE:- Network Capacity Fee has been defined in the Tariff Order, 2017. Further, in terms of Clause 4(6) of the Tariff Order, 2017, there is a complete bar on the distributor of TV channels from charging any amount other than Network Capacity Fee from its subscribers for subscribing to a-la-carte FTA channels or bouquet of FTA channels. Further, the Authority has prescribed a ceiling of Rs. 130/- maximum for carrying 100 FTA channels as Network Capacity Fee. For every additional 25 channels, the distributor can charge Rs. 20/- additionally. However, the discretion has been given to the distributor to charge this network capacity fee or not.

Thus, the DPOs, in view of their freedom to price the Network Capacity Fee, should be allowed to charge different Network Capacity Fee for different regions.

Q 27 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/-?

IBF RESPONSE:- NO.

The number of channels of 100 is good enough at this stage, and the Authority must study the growth of the market over for at least 2 to 3 years, before interfering with this aspect.

Q 28 Whether 25 DD mandatory channels be over and above the One hundred channels permitted in the NCF of Rs. 130/-?

IBF RESPONSE:- NO. It should be a part of the 100 channels.

In view of the aforesaid regulatory regime already existing, it is in the best of interest of the subscribers, the Authority allows the system to grow at the current existing practices and then review after a period of two years, as enumerated in Paras 80 and 81 Explanatory memorandum appended to the Tariff Order, 2017.



Q 29 In case of Recommendations 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?

IBF RESPONSE:-There is no need for any new recommendations to be made to MIB in this regard.

Q 30 Any Other Issue

IBF RESPONSE

We request the Authority to enforce compliance and implementation of the QOS regulations.

It is necessary to effectively implement the audit provisions in the interconnect regulations (ref. Reg 10(6) and Reg 15(1) requiring DPO to commence their annual audits. 8 months have already elapsed post implementation of the new regulatory framework, wherein the entire exercise of carrying out audits will be rendered futile if the said audits are not conducted without any further delay. It will not be feasible to conduct audits and evaluate reports submitted by approximately 1000 distributors in the last quarter of the calendar year i.e. October 2019 to December 2019 by the 9 Auditors empaneled by the Authority so far. Any failure to conduct audits immediately will not only fall short and be in violation of the mandatory provisions as laid down in the Regulations but will also result in huge losses to the entire industry, the broadcasting service providers and the government exchequer.
