

Shri. Arvind Kumar, Advisor(B&CS),
Telecom Regulatory Authority of India,
New Delhi

emailed to: arvind@traai.gov.in

emailed to: vk.agarwal@traai.gov.in

Sub: Consultation Paper No.: 10/2019 on Tariff related issues for
Broadcasting and Cable services dated: 16th August, 2019

I am a Member of the Public responding to the subject on Tariff related issues for Broadcasting and Cable services dated: 16th August, 2019 (Consultation Paper No:10/2019). My views, comments and suggestions are placed and are being sent in a PDF file named "TRAI_10-2019-psn.pdf" which is bookmarked for easier navigation. Please consider these views, comments and suggestions along with other responses.

Thanking you,
(P.S.Natarajan)
24-08-2019

emailed from: nspblitz@gmail.com

Contact No: +91 9445118935

Chapter V

Summary of Issues for Consultation

DISCOUNT STRUCTURE ON BOUQUET PRICING:

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.

(1.0) Yes...discounts ranging as mentioned here in this paper which has collected data and presented them graphically ranging from 33% to 62% and a higher 80-90 percent in reproduced quoted paragraphs of the Judgements would show a dismal picture for the subscriber's lot and a transgression of the sacrosanct right of the subscriber to make choices of channels that he wants to view and pay and in case some unwanted channels are thrust down his "viewing choice throat". Contentions might be raised in defence that the subscriber need not choose such a bouquet and can choose some other favourable bouquet or that he has opted (chosen) for such a bouquet and cannot now complain, or he can opt out also in case he does not "like" a particular bouquet but all these contentions would not change the ground

realities.

(1.1) The remedial measures are mentioned herein later on whilst answering other questions and it is requested that this paper should be viewed holistically and surely must not be expected to elicit a bland “YES” or “NO” answer from the response providing stakeholders.

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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?

(2.0)Yes....without naming anyone DPOs/DTH operators specificallyit is sad that non level fields are being created when the priority should be to raise the bar and not use exploitative methods to utilize a free rein pricing option available to them. Full flexibility has been given to broadcasters to declare price of their pay channels on a-la-carte basis to correct such situations if they do arise. Freedom to determine prices of a-la-carte channels, fixing Rs.19/- to qualify for bouquet inclusion, no discount caps, no limit on the number of channels on offer and freedom of revenue avenue generation all undermine subscriber’s interests as a combinatorial mix that operate collectively that is detrimental to the subscribers.

(2.1)A highly priced a-la-carte channel individually becomes a more economically viable option if that channel is packaged as a “bouquet” and by this process the link between them is severed. The link must continue even in the “bouquet” state. A dynamic link should go with the a-la-carte channel even in its new home or avatar of a “Bouquet” where there are to be ceilings or caps on discounts, ceiling on number of channels in a bouquet, number of bouquets and per channel individual pricing and so would discounts. A a-la-carte channel has its roots in the RIO as well as in the bouquet dispensation because after all, what is a bouquet but a collection of more than one a-la-carte channel. The sum of all a-la-carte individual channels must be compared to that offered in a “bouquet price” and that must have limits set that can be decided by TRAI after interaction.

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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?

(3.0)Yes....discount should not exceed 15% is my view.

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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?

(4.0)Yes....Please see under answer to Question 5.

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

(5.0)Bundling less popular channels with primary or driver channels meant offerings in the form of, and led to the formation of a bouquet package. Sometimes the DPO had no option but to push all unwanted channels to all subscribers as he had costs to recover and subsist. It meant that the subscriber “had no choice” in the issue which was a perverse situation. It also limited his choices and that again rang a bell of injustice. It also artificially added channels and clogged network capacities and deterred new entrants and that was against a competitive environment. It is a perverse pricing mechanism to which the subscriber is subject to in a skewed bouquet scheme of things.

(5.1)TRAI’s regulations stipulate in third proviso to clause 3 (3) of the Tariff Order 2017 where it is prescribed that the MRP of a bouquet formed by a broadcaster should not be less than 85% of the sum of MRPs of the a-la-carte pay channels forming part of that bouquet. There is a discount cap here of 15% which is a Regulation which has been held as arbitrary by the High Court of Madras and not decided by the Supreme Court directly but TRAI’s powers to regulate tariff is held to be valid. Forgetting the litigation for a moment the question we need to address is, and perhaps either re-define, re-present the case on a review on matters that have not agitated so far as being barred and covered by existing Judgment or pass laws, regulations or rules that are binding are, among others, listed below, in my view:-

- (a) Is “discount” not part of a pricing mechanism?
- (b) Is “discount” not part of price?
- (c) Should not the “discount” be given due consideration in any price and only the net amount after deduction is payable?
- (d) Should “discount” be not limited or capped?
- (e) Should “discount” not be real and reasonable and can it exceed the price

at any given point in time? If it does exceed, the price may be “negative” and there is no negative pricing practically speaking or if price- discount equals zero = then no price is payable or fixed = it is then called free and value assigned is zero)

(f) Can a scheme of “discount” not held to be invalid in law where in its implementation it is misused for ulterior objectives of profiteering or revenue generation at the cost of the subscriber when TRAI is committed to protecting all stakeholders but must not lose sight of the paramount subscribers’ interests?

(g) Is “discount” not part of “tariff” or fall within the definition of tariff as popularly understood and is not possible to distinguish “discount” from other components of pricing structures and TRAI not enforce the “tariff” (here “discount”)?

(h) When Broadcasters/DPOs exploit weak links by offering bouquets that are priced less even than a single a-la-carte channel or is excessively and heavily discounted so that many non driver non primary channels can get added which otherwise would be unsung channels in the digital wilderness is it improper for the role of the regulator such as TRAI to step in and remedy?

(i) One effect is that a long rope has been given to the Broadcasters to decide pricing and even then will discount not fall under “pricing” (or tariff regulations)

(j) Should the definition of “tariff” be amended to include “discount” as well because in that case all aspects of discounts including “capping” etc might be possible. A more comprehensive definition might be explored to take care of all contingencies for the future.

(k) If one buys a Rose for Rs.10/ per flower and adds 5 flowers in a bouquet plus gift wrapping and other charges, will the bouquet (now consisting of many single and individual) flowers be equal to Rs.10/- or less than Rs.10/- or should it not be at least Rs.50/-? In the channel scenario many other unwanted flowers are also being added to “push them in”.

(l) The wholesale deals between Broadcasters and DPOs should NOT be on bouquet basis.

(m) Rates declared in RIO and market deals to be revealed to TRAI as such

data would be required by TRAI in order to assess whether tariff compliances are in order and also whether competition is being impacted, thwarted or affected (This is independent of “discounts”). If RIO is quoted high and deals are lower it is a futile exercise indeed so far as RIO is concerned. If many Broadcasters join together at a stated price is that not “collusive pricing” and a “cartel” based on a fallback reduction to Rs.19/- though they would argue that it is permissible or approved by TRAI in order to walk into the bouquet offering. If so, where does it leave the subscriber whose interests have to be protected also? You have Broadcasters who have dropped the price from Rs.149/- to Rs.19/-. This also means that the price of Rs.149/- was unrealistic in the first place and the steep and free fall no parachute attached price to Rs.19/- was to enter the “Bouquet Garden”.

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NUMBER OF BOUQUET OFFERED BY DISTRIBUTORS/BROADCASTERS

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?

(6.0)The number of bouquets on offer are large and humungous as the paper mentions one instance of 4000 bouquets on offer. This and such a combination can overwhelm the subscriber who has to make a choice to view required channels as per his choice only. Numerous channels add to the costs of administration, create problems in application coding and IT related issues, brings in confusion, sucks more time for staff to sort out problems and would tax the support staff unless there is a very heavy degree of accurate information feed in and a robust programming scenario that automates all options/choices. In fact, a flood of bouquets is counter-productive to the subscriber’s interests in making a free and informed choice of channel selection for which TRAI has its avowed object in bringing many regulations.

(6.1)The same norms must apply throughout India as satellite viewing is involved.

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

(7.0)Let us assume that a Broadcaster has 15 channels to transmit.
2 are news based;
2 are entertainment based;
2 are movies based;
2 are cookery;

2 are music based;
2 are religious based;
2 are fashion and lifestyle and
1 is for shopping.....
Total = 15 channels

(7.1)The channels are in English and Hindi. The bouquet can be on the basis of Genre + Language with no repeats in each bouquet and not more than five to six channels per bouquet and it must honour the discount structure, cap limits and a-la-carte norms where the total price of the bouquet must reach 85% of the a-la-carte if computed individually and 15% individual discount for bouquet may be offered. We must all be aware that there is no genre wise ceiling on MRP decided or laid down by TRAI as that is still left to be fixed by the Broadcaster/DPO.

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CEILING ON MRP OF CHANNELS PROVIDED AS PART OF BOUQUET:

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

(8.0)Yes there is a chance of hedging....an individual channel that may not be selected at all, or is unknown or unpopular gets into the bouquet mainstream because the bouquet is priced at a lower price in comparison to a-la-carte which individually are priced to high to be selected by the subscriber. The price of a bouquet may equal that of a a-la-carte channel and sometimes even less than that of an a-la-carte channel. This is a very anomalous situation as such bouquet can introduce non driver less important channels that take a free ride on the driver or primary channel - reducing choices, deterring competitors, choking capacity and barring new entrants. This is not good for the subscriber and the Industry.

(8.1)Corrective measures have been discussed elsewhere.

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

(9.0)Yes... there should be a review. It is NOT about Rs.19/- or Rs.25/- or other figure as revised. If it is Rs.19/- all Broadcasters would reduce prices to that level and try to include that in the bouquet. In future, any stated figure will be adopted to try and bring that channel in the bouquet scheme.

(9.1) There is another radical way in which there is no ceiling set as even that ceiling figure is dynamic and would change down the road. The price of Rs.19/- is not mentioned to be able to be part of, or qualify to be in the bouquet. Any channel can be selected to be part of a “Subscriber’s Bouquet” where the individual channel’s pricing is taken and a 15% discount is given for a bouquet combination that would be chosen by the Subscriber. Radical as it may seem, this is the ideal climate where the subscriber chooses what he wants, views what he pays for and would take care of most methods that are now being employed to circumvent regulations of TRAI cleverly and ingenuously. In this dispensation FTAs, Mandatory channels and Non NCF channels are NOT to be covered

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NEED TO FORM BOUQUETS BY BROADCASTERS/DISTRIBUTORS

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

(10.0) Bouquet offering must be real and not illusory or there should be no perversity in pricing only transparency. Pricing done to garner more revenue, increase subscriber’s base or add advertisement or subscription revenue in the guise of bouquet packaging at lower or equal prices of standalone a-la-carte channels introduce the perversity. A statement that prices are advertised, published and relied upon and therefore transparent is just not enough where subscriber’s interests are hit. It must benefit the subscriber to view what he wants (choice) and he pays for that choice. He also gets what he wants and no unwanted channels must be thrust upon him. Each a-la-carte channel (pay) is a potential bouquet addition candidate if it reaches the magic figure of Rs.19/- (or should we say made to reach deliberately if found otherwise). The Broadcaster uplinks each channel individually and are later on down linked by the DPOs/others. It is a transaction of a commercial nature between the Broadcasters and the DPOs and is inked in an agreement on whether the covered channel is a stand alone “a-la-carte” channel or forming part of a bouquet.

(10.1) DPOs have an equally responsible role to play. They should not “push” unnecessary channels or promote “favoured” channels or DPO “preferred channels” or drop channels that have been chosen by the subscriber. All these transactions affect subscriber’s choice adversely. Please see under answer to question 13 also for other issues discussed there.

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

(11.0) Sometimes in a forced combination in a bouquet, he has no choice but to take an “unwanted channel” also which he has never chosen, opted or has viewed in the past. This adds to his cost there is no corresponding viewer benefit or viewer pleasure and this aspect defeats the role of the Regulator however hard they try and makes a mockery of the process besides denial of subscriber’s choice to pay for and choose what he wants to view.

(11.1) The advent and increased use of mobile and phone based software platforms are also an important factor in any assessment as viewers can watch TV channels on their phone live or even after a day and catch up if they have missed a serial on a particular day.

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

(12.0) Yes.....in various paragraphs discussed here in this paper as answers to questions.

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

(13.0) It must be stated that TRAI’s efforts have gone a long way to simplify, make easier, rationalize structures in prices and bring in clarity, as for instance, that the subscriber need not pay for viewing channels that he does not want to see and that he has the freedom to choose channels. If certain aspects can be fine tuned it would be better for the subscribers.

(13.1) Post TRAI if one is paying more that would be a tragedy as that is indicative of a failure or leakage somewhere. Bouquet concept must be revisited in depth, discounts caps, definition of tariff re-visited, better software applications that must be TRAI approved before release as that would be “TRAI Compliant Applications” and so many issues that TRAI has so rightly placed before the public for response would find meaningful answers to them if the response is good and there is value in content addition from the public, stakeholders and other associations.

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NCF FOR MULTI TV HOME

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

(14.0)Yes.....a Regulation can prohibit or enable. As the Regulations dated 08th February, 2019 (Press Release No:10/2019) **do not prohibit** the DPO and others from providing discount on the NCF or from lowering the present figures on the NCF on the second and additional STB connection it is hence been allowed. It is for the DPOs to put in place and provide such a discount. Due publicity must be given for this through the STBs or perhaps through a dedicated “communication” channel where all developments such as TRAI’s orders etc regarding DTH operations and having subscriber value, impact or information can be aired.

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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.

(15.0)If there are 35 pay channels being relayed for STB - 01 and STB - 02 and they are same it should not be counted as 35 + 35 channels = 70 pay Channels for NCF purposes. NCF is payable on the first STB alone in this case.

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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?

(16.0)Yes..... and discounts could range at rates of 40%, 45% and 50% for the second, third and fourth STBs provided the same content is distributed on ALL STBs and the place of installation is the same. There can a graded discount scale up to a maximum limit of connections in a multi home connection. The NCF fee should be for the first STB alone and it pre-supposes that the DPO also follow similar patterns. The discount structure should be implemented by the DPOs also for the second connection.

(16.1)It is technically feasible to identify and authenticate multiple connections provided the records of the Customer Acquisition Form (CAF) are well maintained and filled in properly. Technically a subscriber is allotted a subscriber ID, his email and mobile phone numbers are generally available (Registered Mobile Number or RMN as they are called by the DTH/DPO providers.

(16.2) Inside the Set Top Box (STB) is a Smart Card which is a 16 digit number and the service provider has control. If the service provider has the subscriber ID and the Smart card number he can activate or de-activate at his control, and at his will, as for example when the subscriber fails to recharge after the grace period is over. As each STB and subscriber ID is unique it is possible to identify multiple connections as the same subscriber number would be allotted to the same person and it is very unlikely for a person to change subscriber ID just because the STB is in a different room in the same house, unless his Wife wants to enter the records as a subscriber or when the couple want to make radical changes in the pack configuration that might warrant such changes for ease of use and convenience. In such a case both the STBs would become "Primary" packs and the discount might not be available for the second STB due to changes in subscriber ID, names and pack selection configuration.

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

(17.0) Yes.....the very purpose is to cater to different interest viewer groups.....A Son might like to watch football....His mother cooking or serials and his younger brother cartoons. It should be made mandatory to offer discounted rates for repeated channels on two STBs and each individual should be able to view what he/she wants. For example of "A" and "B" want the same channel of cartoon on two different STBs there should be discount for the second channel in a Multi TV setup at home provided the address ("Place of Installation") is the same.

(17.1) Inside the Set Top Box (STB) is a Smart Card which is a 16 digit number and the service provider has control. If the service provider has the subscriber ID and the Smart card number he can activate or de-activate at his control any choice of channels for STB "A" "B" "C" "D" though the chosen packages are different for each STB. It must be stated that each set top box is being considered as an active subscriber and there must be systems to identify multiple connections with the same subscriber ID and name combination.

(17.2) For example, "Mr.XYZ" has four connections under the same subscriber ID "12345678". Each is a separate subscriber yet the DPO/DTH provider would show that as "12345678" only as if there was only one connection. The channels chosen for the primary pack would be replicated for the three STBs and all three STBs would be showing the same chosen

channel configuration. Of course, there would be discounts for the three STBs but the purpose of a multi TV connection is lost as the subscriber has to watch the same channel configuration on all STBs. Therefore the need to have and provide for various channel configuration on different STBs in a multi room TV situation as that would be also in line with, and further promoting TRAI's subscriber's protection interests where they get to choose channels they want to view.

(17.3) It is imperative and crucial that for complete flexibility to operate, the option should be given to subscribers in selection of channels for each TV in a given household and allotted numbers as "12345678-1" "12345678-2" "12345678-3" and "12345678-4". The last numeral shows the connection number all in the name of Mr. XYZ.

(17.4) Another aspect is that multiple connections should NOT become an instrument and be allowed to obscure actual number of subscribers' data by showing lower figures and it must have details of all STBs that are "ACTIVE" for a DPO/DTH operator. For business reasons and to prevent competitors from cornering the market share there is little or no frank and fair disclosure. TRAI should make it mandatory to show "ACTIVE" subscribers in a Return to be submitted say once in six months and updated and also monitored, if not already done or insisted upon strictly if already present in the regulations and enforced.

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DISCOUNTS ON LONG TERM SUBSCRIPTIONS

Q18. How should a long term subscription be defined?

(18.0) Any scheme over 6 months can be accepted as a long term subscription. A maximum of one year (12 months) must be laid down. There may be a scheme where no discounts in cash or outgo may be offered but they may offer 2 months free viewing in its stead and in effect for a long term subscription of one year he effectively pays for 10 months only but views for 12 months. The question is what would happen to the already collected money in the event of a DPO/Broadcaster/ etc "failing" or closing down with large amounts of collected long term subscription amounts. We leave aside the Insolvency and Bankruptcy Code for the moment and it is best left to a wise subscriber who would have to choose a financially and technically equipped DPO. Portability/inter-operability/ of DTH would help salvage the situation to an extent regarding transfer of funds provided they are parked with a regulator like TRAI up to a certain percentage - something like a security deposit and fund commitment to serve the interests of the subscribers and there is no need for the Broadcasters and

the industry to moan and groan as these are all reputed media houses with diversified interests or reputed companies or chain of companies with political connections or party sponsored/backed media houses and are well laden with cash as it were. In other words, funding or finance is not a problem for these entities.

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

(19.0)Multiple price structuring layering might add complexities and the existing model might be followed as there would be some discrepancies in a Broadcaster >> DPO pricing option and would hit the end user – here, the subscriber. If adopted there should be no detriment to the subscriber or the cost increases should not be passed on to the subscriber. There is another view possible where the DPO decides that issue as a business decision and he should be given the freedom to offer discount on the DRP but that should be subject to a “cap” limit and the discount should be 15 to 17%. On the NCF as it is a fee the DPO might be allowed more “room”. As DRP and MRP are interlinked by a common interconnection agreement it is also possible to record all long term subscriptions, provided, records are properly maintained and the entire duration of the long term subscriber has to be in an “active” mode to avail this discount. Even future smart cards can be manufactured to capture all information such as long term subscription so that monitoring is possible. The scheme should spell out the consequences of an early “pullout” by the subscriber by not going through the entire duration, how much will be retained, how much will be returned, and how, will the cash be refunded or adjusted in future viewing months, what happens in a complete “exit” from a DTH/DPO...these are some of the issues.

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

(20.0)Yes and it is to be transparent, reasonable, not perverse, and well publicized and not “hidden” away or obscured in a maze of figures that is difficult to find out the actual figure or amount of discount.

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PLACEMENT OF CHANNELS IN EPG

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

(21.0) There really cannot be a template or standardization on the placement of channels on a EPG. Each person has their own preferences and each access in different ways. The point is there need NOT be any Law, Regulation etc **for placement of channels in EPG alone.**

(21.1) However, a better organized user friendly say remote or EPG will indirectly and subconsciously attract more subscribers and that is in the interest of the DPO or manufacturer of STB. If the placement of the channels were to cause confusion in access, or take more time to access, or otherwise involve any extra charges or even create a sense of “loss” that an otherwise available on-air channel is “lost” because of inability to access those need to be addressed. It is really a question of preference. We cannot ask someone to wear a tan coloured shirt all the time just because we like it....unless it is part of a uniform as per an organizational requirement or is mandated by law for Uniformed Services Personnel. If it is possible to arrive at a consensus based on the response from stakeholders, a “Template EPG” can be approved by TRAI.

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

(22.0) Genre, language etc and yet it would provide ease of use if channels are organized as – Say under

- “Movies” >> “English” >> Channel Selection >> Specific Movie
 - “Comedy” >> “English” >> Channel Selection >> Specific Movie
 - “Drama” >> “English” >> Channel Selection >> Specific Movie
 - “Romedy” >> “English” >> Channel Selection >> Specific Movie
- [*Romedy = Romance + Comedy]

and so on..some DTH/DPO follow as:

- “English” >> “Movies” >> Channel Selection >> Specific Movie
 - “English” >> “Comedy” >> Channel Selection >> Specific Movie
 - “English” >> “Drama” >> Channel Selection >> Specific Movie
 - “English” >> “Romedy” >> Channel Selection >> Specific Movie
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PROMOTIONAL OFFERS BY DPOs:

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

(23.0) Yes...transparency, clear terms and monitoring might help safeguard consumer’s interests.

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Q24. 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?

(24.0) It is difficult to state, as region wise and by that I mean that States in the Union of India celebrate different festivals at different times in a year such as *Diwali* or *Sri Ganesh Chaturthi* that might hold prominence in one State or the other and these are occasions that might give rise to promotional events opportunities.

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

(25.0) Transparency and a pre-TRAI approved filing of the entire scheme before it gets out. Fees would be charged by TRAI for this purpose and this would add to TRAI's revenues. It is a small pittance for Broadcasters or DPOs. It has the added advantage that the promotional scheme is approved by the Regulator and then "released" to the subscribing public on the lines of the Insurance industry Regulator, IRDA that approves and vets policies before circulation into the market. Such schemes as approved, it is suggested, would be better if there are put up on the website of TRAI as well

as the DPO/DTH operator for transparency and governance norms.

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FLEXIBILITY IN OFFERING NCF:

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

(26.0) The NCF fee should be constant and consistent all over the Nation and a variable region wise NCF fee would indirectly introduce unwanted regional or parochial prejudices which the Nations' interests can ill afford. As it is technology related and channel driven there can be no problem by addressing NCF as a fee that is determined and collected for "technical purposes" or as "technical fees" [Satellite erases all geographical barriers and with added digital technology being deployed overall, it can be argued that such fees are "technical" in nature or involve elements of technical issues]

(26.1) The NCF fee must not be linked to "affordable" or "poor" region customer nor should the NCF be reduced as one is watching only 100 channels as that would give a chance to either push another *25 FTAs* of

the DPO's choice and NOT the subscriber's choice and yet there is no additional NCF fee charged for this additional 25 channel slab from the subscriber. This basically under the guise of a "free" regime pushes another 25 "unwanted" not chosen but "preferred" channel of the DPOs (maybe these are revenue driven to catch more eyeballs or waiting to join a bouquet or a pay channel at a nominal cost in the future and is being "field" tested before launch.) Most importantly this cuts off the opportunities for competitors and chokes network capacity building or optimum utilization of existing capacity.

[* excludes mandatory channels]

(26.2) A DPO might thus "push" an additional 25 FTAs on the ground that it is free or as a "promotional" offer or as a "Complimentary" offer and one has to be vigilant on "promotional" excessive fawning offers where preferential channels are waiting to be launched at all levels – bouquet inclusion packages, conversion of FTA to Pay and Pay to FTA and candidates for future bouquets inclusions.

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

(27.0) 100 channels is a reasonable and practical figure and DD channels being excluded would make it "125" channels. The arbitrary 1 HD = equivalent to 2 SD must be removed as it adds to the count within a set 100 channel limit. In the future will introduction of one 4k resolution = mean equivalent to four SD channels?

(27.1) It is all right to so state in a TV showroom to show how much better a 4K resolution TV would be compared to a SD TV but not for channel counting purposes. Anyone who has a HD TV views that as HD or a SD is also viewed as SD on a HD depending on the transmission – SD or HD.

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MANDATORY DD CHANNELS:-

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

(28.0) DD mandatory channels should be excluded from the count of 100 and should be made available always Free-To-Air in the interests of this Great, Unified, and Cohesive Nation despite its bewildering diversity and rich cultural heritage.

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

(29.0) This DD inclusion process should be viewed in the larger interests of a Nation. A person from West Bengal may be staying in Karnataka or a person from Tamilnadu may be staying in Uttar Pradesh. DD would help cement this bond. DD should always be Free-To-Air, Mandatory and not counted in the “100 Channel” limit and therefore there is no NCF for these channels as already stated above in answer to question 28 and TRAI is requested to make this recommendation to the MIB for its approval and then perhaps formally be included as a Regulation under the TRAI Act.

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ANY OTHER ISSUES

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

(30.0.1) This paper presented by TRAI is important as it deals with numerous issues concerning subscriber’s interests who do experience these issues on a “daily viewing basis”. The Data has been collected from various sources and presented here in this Consultation Paper and many Judgements have been quoted to highlight important legal issues. TRAI itself states in this Paper that they are taking a closer look whether Competition is being thwarted already by blocked capacity that bars new entrants or is it un-Subscriber friendly.

(30.0.2) I do not claim better legal knowledge than TRAI or its legal team/legal professionals but I have attempted to list out laws that might have been brushed past on the way by Broadcasters, DPOs and DPHs in the over speeding bouquet traffic lane. The prevalent situation that has been so vividly spelt out in this Paper by TRAI has many parallels in the extracted provisions below that can still be considered “alive” and re-litigated (either now or for the future).

(30.0.3) The following laws and their applicable portions have been extracted and other portions have been blanked by dotted lines as they may not be germane to this Consultation Paper. The issues and my comments relating to this paper *is highlighted in red with italics:-*

(30.1) PART – A

(30.1.1) Section 2(41) of The Consumer Protection Act, 2019 concerning restrictive trade practice

"restrictive trade practice" means a trade practice which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include—

(i) -----

(ii) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent for buying, hiring or availing of other goods or services;

[A subscriber has to watch “unwanted” channels in a bouquet in case a suitable bouquet combination is not available to him though he may or may not pay more]

(30.1.2) Section 2 (46) of The Consumer Protection Act, 2019 dealing with unfair contract.....

"unfair contract" means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer, including the following,

namely:—

(i)----- or

(ii) -----or

(iii) -----or

(iv) -----or

(v) -----or

(vi) imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage;

[This situation might apply as the subscriber is put to a “disadvantage” when his choice is illusory or if impaired to view and pay for those channels of his choice.]

(30.1.3)Section 2(47) (j) Explanation (iii)(a) of The Consumer Protection Act, 2019 dealing with unfair trade practice

"unfair trade practice" means a trade practice

(iii) permitting—

(a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the

amount charged, in the transaction as a whole;

[Maybe attracted in “promotional schemes” or if stated that free channels are being offered when already offered under the FTA or mandatorily included.]

Part – B

(30.1.4)Explanation (b) to Section 4(2) (e) (b) as per The Competition Act, 2002 (CA, 2002)

"predatory price" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

Under Section 19 the Competition Commission of India (CCI) can inquire into matters that are referred to it by any Statutory Authority (here by TRAI) to examine agreements and exclude dominance aspects and have regard to the following factors namely, among others:-

- (a) creation of barriers to new entrants in the market;
- (b) driving existing competitors out of the market;
- (c) foreclosure of competition by hindering entry into the market;
- (d) accrual of benefits to consumers;

[Does the paper by TRAI not state that the primary reason for prescribing the maximum permissible discount in formation of the bouquet was to enable customer choice through a-la-carte offering and prevent skewed a-la-carte and bouquet pricing. This was also intended to check pushing of those channels that are not the original choice of the subscribers and the available capacity of distribution platforms should not get choked with intention to reduce competition at broadcasters’ level. In this case, is “predatory pricing” not being followed by the herd of DPOs, Broadcasters and Service Providers acting in harmonious concert and adhering to the Rs.19/- levels and whether that price is approved or fixed by TRAI or not, does it not carry with it a tangential, if not direct effect of, reducing competition or eliminating competition by acting as entry barriers to new entrants if network capacities are choked by the rapacious offered discount, FTAs, free of charge additional channels, promotional, bouquet etc.]

To quote from Para 37 of the Judgment of The Hon’ble Supreme Court of India as mentioned by TRAI in its paper on Page 7 and 8 in its total of 95 page Consultation Paper dated 16th August,2019 (No:10/2019)

.....Quote.....

For example, when high discounts are offered for bouquets that are offered by the broadcasters, the effect is that subscribers are forced to take bouquets only, as the a-la-carte rates of the pay channels that are found in these bouquets are much higher. This results in perverse pricing of bouquets vis-à-vis individual pay channels. In the process, the public ends up paying for unwanted channels, thereby blocking newer and better TV channels and restricting subscribers' choice. It is for this reason that discounts are capped

.....Unquote.....

The CCI can examine “Customer preferences” while dealing with “relevant geographic market” and “relevant product market” and enjoys the privilege of exclusion of jurisdiction as per Section 61 of the CA, 2002

Exclusion of jurisdiction of civil courts

61. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

[It is suggested that TRAI still has options to re-examine issues afresh on all issues (or other issues that may crop up) that have not been directly decided so far by The Hon'ble Supreme Court of India and the Hon'ble Madras High Court and also where issues have not been considered as “already been decided by a Court earlier or what we loosely call as “Res Judicata” as the Special Leave Petition filed by TRAI is treated as withdrawn in January 2019.]

I thank you for this opportunity for providing my views, comments and suggestions,

Thanking you,
(P.S.Natarajan)
24-08-2019
emailed from: nspblitz@gmail.com
Contact No: +91 9445118935

Ends Here