PURSUITEX LLP Views on Consultation Paper on Tariff related issues for Broadcasting and Cable services (CP No.: 10/2019)

INTRODUCTION

The predominant theme of the Consultation Paper (CP) is the relative pricing of bouquets vis-à-vis the pricing of a-la-carte channels. The Tariff regulation had aimed to cap the discount that a bouquet price could have vis-à-vis the sum of prices of constituent channels at 15%, but this was set aside following Court Cases. The CP focuses, on major part, on the actual discount being much higher and frets that this has stifled consumer choice (para 1.10 of CP). TRAI believed consumers are better off selecting channels a-la-carte. It also appears that, implicitly, TRAI was hoping that by imposing the 15% cap on discount, or by broadcasters voluntarily keeping the discount close to it, the end user prices would be lower than prevailing earlier.

Consumers want choice, and flexibility. Broadcasters prefer to sell their channels as bouquets. But these expectations and preferences are not at cross-purpose. We believe that the Broadcasters do understand consumer expectations and have priced their channels (a-la-carte and bouquet) with a strong marketing and economic rationale, that promotes bouquets, delivers value, and gives consumers enough options to choose from.

Before delving deeper into our assessment, we would like to revisit the historical perspective to bouquet selling.

During the analog era, when LCO capacity was limited and it was not possible to give channel selection choice to customer, bouquet selling at negotiated number of users was the only option. There was a continuous clamor about broadcasters and LCOs being unfair to each other – LCOs were accused of under-reporting and Broadcasters were accused of raising prices arbitrarily under the garb of more channels, territorial allocations, exclusivity clauses, etc. Broadcasters needed to raise prices largely to cover for the severe under-reporting which was as much as 90%.

The industry went through a wave of distribution level alliances amongst broadcasters to strengthen their bouquet offering and extract the desirable price from the LCOs.

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Digitization was introduced to bring transparency in consumer counting& industry revenue, and to give channel selection choice to customers. Even after digitization, broadcaster's preference for bouquets continued, partly as a legacy and partly with a business rationale.

As part of the regulations for digital networks, TRAI over the years, set different kind of rules to bring some degree of rationality between relative pricing of bouquets vis-à-vis the individual channels. However, channel selection at consumer level never got implemented. Even though, reference interconnection offers between broadcasters and platform operators were released with a-la-carte prices, but the relative pricing (bouquet vs individual) and lack of channel selection at consumer level, never made it practical for platform operators to buy a-la-carte. Agreements between MSOs and LCOs were even more bulked up. Further bundling up of all channels (across broadcasters) without even segregation of SD and HD STB users, to a single price per customer had been quite prevalent between MSOs and LCOs.

Thus, the last set of regulations had a strong preference for enabling choice at customer level. The Consultation paper suggests that, in the absence of the cap on discount on bouquet pricing, the objective of giving customer choice has failed, and some remedial measures are required.

We, on the other hand believe that the larger purpose of giving consumer choice has been met, and benefits are visible. Most importantly, the real option for channel & bouquet selection has been implemented at the consumer level. This in itself is a great accomplishment that the Industry and Regulator must cheer about.

We believe that the current scenario of the implemented regulations gives fair choice and flexibility to consumers. We do not find any significant evidence of motivated price setting by Broadcasters to push bouquets with the aim of either constraining value to customers or crowding out competition. Our responses to the questions in the CP explain our assessment.

Our responses to questions raised for consultation are furnished below.

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.
Q3. Is there a need to reintroduce a cap on discount on sum of a-la-cartechannels forming part of bouquets while forming bouquetsby broadcasters? If so, what should be

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appropriate methodologyto work out the permissible discount? What should be value ofsuch discount?

Response:-

As the CP states, the purpose of prescribing MRP for channels also available in bouquets (besides a-la-carte) and a cap on discount on bouquet vis-à-vis total of individual prices was to ensure that broadcasters do not price their a-la-carte channels very high and push channels through bouquets by offering huge discount reducing a-la-carte choice. (para 1.5 of CP)

Even though the proposed cap of 15% on bouquet discount was withdrawn following Court cases, we see that the larger objective of ensuring that the broadcasters do not price the a-la-carte channels too high with the intent of pushing bouquet has been achieved, when we assess the revised a-la-carte prices:

- Amongst the 286 pay channels mentioned in Annexure I to the CP, 2 channels are priced above Rs 19 (these are not in any bouquet), 63 are priced at Rs 19 and 221 are priced below Rs 19.
- On an average, MRP has been reduced by 48%. Excluding the 2 channels that do not form part of any bouquet, the average reduction is 50%. There is reduction in all genre (see more details in table below).
- Pricing has been reduced for 224 of the 286 channels. The average reduction is 63%. Of these, prices have been reduced (from above Rs 19) to Rs 19 in 41 cases, essentially to comply with the regulatory requirement on price caps. In the remaining 182 cases, the reduction is voluntary. In 44 cases, price has been reduced from over Rs 19 to under Rs 19. And in 138 cases, the price was already below Rs 19, but has been reduced further.In 1 case, price has been reduced, but still remains over Rs 19 (this is not part of any bouquet). If the regulatory imposed element of the price reduction is removed from these channels (41 cases fully, and 44 cases partially), the voluntary reduction is 24%. Even on the overall basis for the listed channels, the average reduction is 13%, down from 48%. Excluding two channels not in any bouquet, the average reduction is 14%, down from 50%.
- Pricing has been increased for 62 channels. Of these, prices have been increased to Rs 19 in 22 cases. In 39 cases, prices have been increased, but remain under Rs 19. In 1 case, price has been increased to over Rs 19 (this is not part of any bouquet). The average price for these channels after increase, excluding the channel not in any bouquet, is Rs 13 and the average increase is 91%.

Average Price Change across Genre (excluding 2 channels that are not part of any bouquet):

Genre	Channels	Avg. Change	Voluntary Change*
GEC	90	-28%	7%
Movies	59	-57%	-9%
News	45	-83%	-83%

Sports	23	-51%	-13%
Infotainment	23	-77%	-51%
Music	20	-59%	-34%
Kids	18	-58%	-36%
Lifestyle	5	-86%	-36%
Devotional	1	-24%	-24%
Average	**284**	**-50%**	**-14%**

** excluding change to meet a-la-carte price cap of Rs 19*

The table above shows that the price reduction, overall as well as voluntary, is almost across the entire genre. Only in case of GEC, the average voluntary price change is positive. In this genre, prices have been increased to the maximum permissible (Rs 19) for 22 channels. Interestingly, these include many popular/ category leader channels, like:

- Hindi GEC (5): Star Plus, ZEE TV, Sony Entertainment Channel (SET), Colors, SAB
- Regional GEC (12): Sun TV, Gemini TV, Zee Kannada, Zee Marathi, Zee Bangla, Zee Telugu, Zee Sarthak (Odia), Colors Kannada, and few others
- Sports (4): Star Sports 1, Star Sports 1 Hindi, Star Sports Select 1, Ten 1
- Regional Movies (1): KTV

Quite likely, broadcasters were earlier not able to have the right price for these channels relative to other channels due to historical capping/ restrictions on prices, and have now raised these prices to reflect the fair value and not to game the rules set under the regulations. One would also appreciate that value of a particular regional channel to a customer of that region is no different than the value of a Hindi channel to a Hindi region customer.

We believe that, even without the cap on bouquet discount, this is a significant reduction in prices, and a major positive outcome of the intent of the regulations. Indeed, if weightage were assigned to channel popularity, the weighted change would be different.

However, it appears that the broadcasters have not attempted to game the rules to push bouquets to the consumers over a la carte, and TRAI's concerns about motivated actions by broadcasters is not perhaps evident from the data.

If broadcasters had attempted to game the rules to push bouquets to the consumers over a la carte, one would have witnessed a lot more channels being priced at Rs 19, and very few cases of changes in prices below that level. As mentioned above, only **22%**

(63/284) of the channels going into bouquets are priced at Rs 19, and that in 182 channels (**64%**), the prices have been reduced beyond the regulatory requirement – 44 from over Rs 19 to under Rs 19 and 138 from under Rs 19 to further down.

In para 3.15, the CP refers to data in Annexure II and concludes that since the uptake of channels on a-la-carte basis still continues to be very less as compared to the bouquet subscriptions, the causal factor is highly disproportionate a-la-carte rates of channels in comparison to bouquet rates. TRAI believes that there is no well-defined relationship between these two rates exists in the new framework, and that bouquets are being offered at a discount of upto 70% of the sum of a-la-carte rates of pay channels constituting these bouquets.

The higher uptake of bouquets could also be attributed to the value benefit and selection convenience that consumers see in the bouquets. Satisfied customers do not generally voice their satisfaction. The representations that TRAI has received ***initiate a periodic comprehensive Customer Satisfaction Measurement Survey to assess the views of customers may*** not be representative. ***Industry inputs, should also to be taken and considered .***

In the previous version of the regulations, TRAI had stipulated that "sum of a-la-carte rates of all the channels in the bouquet shall not exceed three times the bouquet rate.". This tantamount to bouquet price being discounted by upto 66.67% vis-à-vis the individual prices. In reality, in very few cases, have the broadcasters gone beyond this level of discounting.

As the CP shows, the major broadcasters have kept the bouquet discounts are 40-50%. A deeper assessment of every bouquet of major broadcasters shows that the discount varies from under 15% to a little over 60%. There is a logical pattern to deciding the bouquet discounts. Discounts tend to be higher, at 50-60%, when channels straddling multiple regional languages. Discounts are also somewhat higher for bouquets with more English language channels. Discounts are generally lower at 35% or even lesser when bouquet constituents in GEC/ Movie genre are of single language.

Our assessment is that, even if the discount cap of 15% had been enforced, broadcasters would not have reduced their overall pricing significantly in order to protect their revenues. In fact the possibility of overall prices being higher would have been higher.

Broadcaster approach could have been any of the following scenarios:
- Individual channel prices would have been reduced further proportionately while keeping the bouquet price same or perhaps a little higher, and hardly any channel would have been priced at Rs 19.
- Segment leading channels in GEC & Movie would have remained at Rs 19. Second offerings of a broadcaster and other second rung channels would have been priced at 25-50% of ceiling and a large number of channels in the news, infotainment and music genres would have been converted to free.

Net result would have meant more choice but little additional value to customers. It would have resulted in lot more work for customers, and a total bill which would perhaps been higher than the current market scenario.

Voluntarily, we have seen the channel prices being fixed based on market dynamics. Prices of channels in Infotainment , Lifestyle, Music and Kids genre are quite lower as compared to GEC and Movie genre. News channels are priced even further lower. Overall, 96 channels (including those converted from FTA to pay) are priced below Rs 1. Another 72 are priced between Rs 1.5-5, and 57 are priced between Rs 6-10.

With so much variation in channels, consumer preferences, etc., a lot more flexibility (than the 15% cap) is required. Voluntarily, the broadcasters are way below the cap of 66.67% in the previous set of regulations.

In para 3.16, the CP refers to BARC viewership data to argue that since there is significant skew in channel viewership (most channels, beyond the few popular ones, have very insignificant viewer-ship), bouquet formation is not based on consumer demands, it has least consideration for consumer choice and is purely driven by the motive of earning higher revenues at the cost of consumers.

As mentioned in the paras above, channels in Infotainment, Lifestyle, Music and Kids genre are generally priced much lower than as compared to GEC and Movie genre. News channels are priced even further lower. Further, the bouquets have discounted the prices further down by 40-50%. This is quite a logical approach that gives full consideration to consumer behavior.

If bouquets are discounting individual prices by 40-50% against the proposed cap of 15%, it is clearly not a case of earning higher revenue at the cost of consumers.

In para 3.20, the CP indicates at popular channels being priced at Rs 19 to be eligible to be a part of a bouquet (by corollary, not being priced higher and kept out of bouquet) and then bundled with marginally priced non-popular channels. TRAI believes that this approach is designed to maximize reach for not so popular channels, and increase subscription revenues. TRAI also believes that this *"perverse pricing strategy"*(emphasis added) renders the a-la-carte subscription meaningless and reduces option of choice, and that consumers end up subscribing to channels not of their original choice and even paying for those channels which they are not inclined to watch without even taking notice of. TRAI believes that heavy bouquet discounting makes the a-la-carte prices of channels irrelevant in comparison.

As we noted above, if bouquets are discounting individual prices by 40-50% against the proposed cap of 15%, it is clearly not a case of earning higher revenue at the cost of consumers.

If TRAI expected the individual prices to be further lower, it could prescribe a lower ceiling to individual prices after undertaking a detailed costing exercises as Rs 19 was fixed based on last prevailing wholesale ceiling. If TRAI wants to fix a lower ceiling it should be supported by detailed costing exercise to arrive the new ceiling.

And if TRAI expected popular channels to kept out the bouquets, besides lower individual prices, then the need for bouquet discounting would have been higher. Consider a near real situation of a bouquet priced at Rs 50, priced at 33.33% discount to the sum of a-la-carte prices of constituent channels whose a-la-carte prices add up to Rs 75, and includes two popular channels in GEC/ Movies/ Sports genre. If the popular channels were to be kept out without disturbing the total bouquet + standalone price, then the resulting bouquet would have to be priced at Rs 12 (50-19*2), and the sum of a-la-carte channels would be Rs 37 (75-19*2). Keeping the total same, the resulting bouquet would now be at 68% discount. Individual prices could have been reduced to reduce the bouquet discount, but reaching 15% would not be possible without disbanding the bouquet altogether.

Bouquet discounts can be lower only when popular channels are bundled with the not so popular ones.

In para 3.18 and 3.24, CP points out that in some case broadcasters have declared bouquet price to be equal to or less than the MRP of a single channel present in that bouquet.

We find that such cases are very few. For leading broadcasters, we find just 2 such instances amongst few hundred bouquets. We find this practice quite illogical. **We suggest that TRAI prescribe that the bouquet price cannot be same or lower than the price of any constituent channel.**

In para 3.35, The CP points out that many channels have been converted from FTA to pay, and priced at token amounts to enable inclusion in a bouquet (as FTA channels cannot be part of a bouquet now). It lists 17 channels which have been converted to pay and priced at Rs 0.1 to Rs 1.0. There is an implicit argument that, this has been done with the ulterior motive of pushing such low-interest low-value channels to consumers, and is part of a larger broadcaster design of pushing packages over a-la-carte.

First, given that these channels have been priced at notional prices and not something close to Rs 19 reflects only a genuine interest in getting these channels subscribed in the hope that the viewership would improve with time as consumer's tendency to surf channels is very common. Consumers may get interested in such channels while surfing. This is a classic merchandising approach to marketing, and could be compared with the merchandising approach at retail stores, where consumer attention to low-value and/ or discretionary spend items is drawn by placing these products near the check-out counters.

This is also not burdening the consumer in any manner. There is nothing to suggest that the bouquet price could have been lower if these were excluded from the bouquet or kept as FTA. Though one could argue about potential increase in Network Capacity Fee (NCF) @ Rs 0.8 per channel (Rs 20 for 25 channels) on account of additional channels pushed to consumers. As we understand, major DPOs have waived incremental NCF. Had these channels not been subscribed (if kept as FTA or outside bouquet), consumers would have seen blank screen with subscription inviting message while surfing through. That is no way more interesting than skipping a running channel.

This is also not inhibiting consumer choice in any manner. This is giving more to the consumer at the same price. Consumers would anyway not view the channel if it of no interest to them.

Lastly, it is more convenient for a consumer to subscribe such channels as part of bouquet rather than individually. A-la-carte selection of channels (FTA as well as pay) requires more activity than selecting packages.

The only argument against such moves can be about choking of DPO capacity and crowding out of other channels. However, the CP has not offered any insights into DPO capacity getting impacted or DPO complaining to this extent. Even if it appears that this low-value channel bundling or bouquet promotion in general is impacting DPO capacity, then TRAI could consider allowing DPOs to not carry any channel even if it is part of a bouquet. To this extent, DPOs should be allowed to alter the broadcaster's offering (but no alternation in the price).

In summary, we believe that there is no visible evidence to prove that broadcasters have misused the flexibility on relative pricing of bouquets vs a-la-carte channels. Voluntarily, they have priced channels judiciously based on their popularity, and given bouquet discounts to pass-on value to customers and not to fleece them. In the process, they have rightfully attempted to generate viewership gains for their not

so popular channels. Thus, we believe there is no requirement now to reintroduce cap on discount on bouquet prices vis-à-vis sum of a-la-carte channels.
We however agree that a bouquet should not be priced at or less than any of its constituent channel.
We also suggest that TRAI, should initiate a periodic comprehensive Customer Satisfaction Measurement Survey to assess the views of customers on impact and implication of bundling &pricing.

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?

Response:-
In para 3.23, the CP refers to smaller independent broadcasters being put at disadvantage by the bundling approach of larger broadcasters, and some having to convert their channels to FTA.
We are not sure of the conclusion. Bundling only makes the marginally priced channel selected by default and available, but does not guarantee viewership. If an independent broadcaster's channel has attractive content and is prices attractively (or FTA), it will find audience.

As mentioned earlier, the CP has not offered any insights into DPO capacity getting impacted or DPO complaining to this extent. Even if it appears that low-value channel bundling or bouquet promotion in general by larger broadcasters is impacting DPO capacity, then TRAI could consider allowing DPOs to not carry any channel even if it is part of a bouquet. To this extent, DPOs should be allowed to alter the broadcaster's offering (but no alternation in the price).

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

Response:-
The DPOs should be governed by the discount they get from the broadcasters. DPOs should not be permitted to disturb the market playing field by offering any pricing below the price they get from the broadcasters.

Q5. What other measures may be taken to ensure that unwantedchannels are not pushed to the consumers?
Q6. Do you think the number of bouquets being offered bybroadcasters and DPOs to subscribers is too large? If so, shouldthe limit on number of bouquets be prescribed on the basis ofstate, region, target market?
Q7. What should be the methodology to limit number of bouquetswhich can be offered by broadcasters and DPOs?

Response:-
It does seem that the number of bouquets is large and can be confusing. Selection tools, like the very useful tool deployed by TRAI makes it possible for a customer to discover the right bundle that offers better value than a-la-carte prices based on genre & channels selected.

Given the larger number of parameters – Genre, Language/ Region, SD/ HD, the number of combinations is very large and leads to this scenario of large number of bundles , a numeric ceiling would be perhaps an arbitrary restriction on broadcaster's flexibility.

Q.8 Do you agree that price of individual channels in a bouquet gethedged while opting for a bouquet by subscribers? If so, whatcorrective measures do you suggest?
Q.9 Does the ceiling of Rs. 19/- on MRP of a a-la-carte channel to bepart of a bouquet need to be reviewed? If so, what should be theceiling for the same and why?

Response:-

With reference to our response to earlier questions and the general overall view, we believe there is no reed to review the ceiling of Rs 19 unless there is solid proof with sound costing backup to prove the new ceiling price . This existing price has a logical reference point in the wholesale prices prevailing under the previous regime. TRAI should undertake a detailed costing exercise to arrive the new ceiling. Any change in the existing ceiling must be supported by detailed costing methodology to arrive the new ceiling price.

Any price fixation based on genre or popularity or being niche would be arbitrary. Broadcasters have priced the channels at different levels based on their assessment of market situation and business dynamics. Just about 20% of the channels are prices at the ceiling. The flexibility should continue and no change would be required to be made at this stage.

Q.10 How well the consumer interests have been served by theprovisions in the new regime which allows theBroadcasters/Distributors to offer bouquets to the subscribers?
Q.11 How this provision has affected the ability and freedom of thesubscribers to choose TV channels of their choice?
Q.12 Do you feel the provision permitting thebroadcasters/Distributors to offer bouquets to subscribers bereviewed and how will that impact subscriber choice?
Q.13 How whole process of selection of channels by consumers can besimplified to facilitate easy, informed choice?

Response:-

With reference to our response to earlier questions and the general overall view, we believe bundling serves the interest of both broadcasters and consumers.
From a situation of very limited options, consumer level selection of channels and bouquets has been successfully implemented after several years of efforts.
We believe market should be given more time to stabilize before any changes are considered
As mentioned earlier, we believe selection tools, like the one made available by TRAI makes it possible for a customer to discover the right bundle that offers better value than a-la-carte prices based on genre & channels selected.

Q14. Should regulatory provisions enable discount in NCF and DRPfor multiple TV in a home?
Q15. Is there a need to fix the cap on NCF for 2nd and subsequent TVconnections in a home in multi-TV scenario? If yes, whatshould be the cap? Please provide your suggestions with justification.
Q16. Whether broadcasters may also be allowed to offer differentMRP for a multi-home TV connection? If yes, is it technicallyfeasible for broadcaster to identify multi TV connection home?
Q17. Whether Distributors should be mandated to provide choice ofchannels for each TV separately in Multi TV connection home?

Response:-
We believe DPOs should be allowed flexibility in deciding NCF and DRP for multiple TVs in a home. However, for the broadcaster such flexibility would not be feasible or practical to measure or track.
At present, each TV is being considered separately. In addition to being treated as stand-alone, DPOs should be allowed to offer a mirror offering on additional TVs at flat fee or a defined discount on the charges for first TV.

Q.18 How should a long term subscription be defined?
Q.19 Is there a need to allow DPO to offer discounts on Long termsubscriptions? If yes, should it be limited to NCF only or it couldbe on DRP also? Should any cap be prescribed while givingdiscount on long term subscriptions?
Q.20 Whether Broadcasters also be allowed to offer discount on MRPfor long term subscriptions?

Response:-
Long term subscriptions can be defined in terms of 3, 6, and 12 month subscriptions. We believe DPOs should be allowed flexibility in offering discount on long term subscriptions, both on NCF and DRP. Broadcasters should also be allowed flexibility in offering discount on MRP long term subscriptions.

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

Response:-
We suggest a detailed study on this issue including taking consumers feedback before taking a decision.

Q 23 Whether distributors should also be permitted to offer promotional schemes on NCF, DRP of the channels and bouquet of the channels?
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?
Q 25. What safeguards should be provided so that consumers are not trapped under such schemes and their interests are protected?

Response:-
We believe promotional schemes should be limited to the ones offered by Broadcasters.

Q 26 Whether DPOs should be allowed to have variable NCF for differentregions? How the regions should be categorised for the purposeof NCF?
Q 27 In view of the fact that DPOs are offering more FTA channelswithout any additional NCF, should the limit of one hundredchannels in the prescribed NCF of Rs. 130/- to be increased? Ifso, how many channels should be permitted in the NCF cap of Rs130/-?

Response:-

We believe that there is very little correlation with or impact on DPOs cost on account of number of channels subscribed. DPOs have, in general, given benefits to consumers. Hence, we believe DPOs should be given flexibility in deciding NCF on any transparent basis within the prescribed ceiling.

Q 28 Whether 25 DD mandatory channels be over and above the Onehundred channels permitted in the NCF of Rs. 130/-?
Q 29 In case of Recommendations to be made to the MIB in this regard,what recommendations should be made for mandatory 25channels so that purpose of the Government to ensure reachability of these channels to masses is also served withoutany additional burden on the consumers?

Response:-
We believe that the mandatory channels should be over and above the 100 channels permitted in the NCF of Rs 130.

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