

**RESPONSE OF TAJ TELEVISION (INDIA) PRIVATE
LIMITED**

ON

CONSULTATION PAPER

ON

**“ISSUES RELATED TO ADVERTISEMENTS
IN TV CHANNELS”**

ISSUED ON 16TH MARCH, 2012



From : Viresh Dhaibar
E-mail ID: viresh.dhaibar@tensports.com

RESPONSE ON CONSULTATION PAPER ON “ISSUES RELATED TO ADVERTISEMENTS IN TV CHANNELS” ISSUED ON 16TH MARCH 2012

In our opinion the issuance of Consultation paper on “Issues related to Advertisements in TV Channels by the Telecom Regulatory Authority of India (TRAI) is untimely and is an attempt to pre-empt issues concerning Advertisement in TV channels in the present Broadcasting regime which is yet to take off on the path of digitalization in full throttle. It is pertinent to point out that only four metros in the entire country would be digitalized in the first phase beginning 1st July 2012 and it is expected to be rolled out in four phases to be completed by 2014 with lot many more challenges along the way till complete digitization reaches every nook and corner of our Country. During this interim period the Broadcaster would be saddled with problem of under declaration of subscriber numbers (in the non - notified areas), high cost of acquisition of content which is spiraling every year. Therefore, TRAI’s assumption that digitization will be a game changer is totally premature and fallacious. Accordingly if at all any Consultation is required to be done on the premise taken by TRAI that digitalization would result in substantial increase in subscription revenue of the Broadcasters and hence some kind of regulation is required qua advertisements, it should be done only after the complete roll out of digitalization in the entire country i.e. only after 31st December 2014. This would enable TRAI and all stakeholders to have the data of actual impact of digitalization on various streams of revenue. Therefore, in our humble submission we put forth that there is no need to bring in any fresh regulatory norms for Advertisements in TV channels and let the channels self regulate the time span, format and frequency of the Advertisements.

Without prejudice to the above mentioned introductory submissions herein above, we are submitting our comments on the various issues raised by

TRAI in the Consultation paper of 16th March 2012. We would also like to mention that Indian Broadcasting Foundation of which we are one of the member, has also sent a detailed response to the said consultation paper. We are reiterating the said response and request that the same may please be treated as an integral part of this response as well.

At the outset we would like to dwell on the following preliminary tenets which justify that Advertisements in TV channels in the present formats do not hinder the viewers TV experience in any manner whatsoever and also validate the belief that restrictions on Advertisements in TV channels are not at all warranted at this juncture specially when the subscription charges of pay channels are already under freeze since, December, 2003.

We would also like to mention that in the prevalent regulatory regime the power and authority to regulate the content including advertisement duration, their format, etc is with Ministry of Information and Broadcasting (MIB) and not with TRAI. Even under the Order dated 9.1.2004 quoted in the consultation paper, at the best TRAI has only recommendatory power in this regard which is also accepted by TRAI time and again as detailed below in our response.

(I) Consultation paper is against the stated position of TRAI on Oath:

This Consultation paper issued by TRAI to cap the Advertisement time is contrary to the stand taken by TRAI in its reply Affidavit filed on 22nd February 2011 in *Petition No.34 (C) of 2010 in the case titled Utsarg v/s Union of India & Others*, wherein, the petitioner had sought a cap on television advertising time on the ground that these advertisements interfered with viewership of television programmes.

TRAI in its considered response as late as 22nd February 2011, articulated the following position:

- “8. That from the perusal of Sections 2,5,6,and 18 of the Cable Television Networks (Regulation) Act, 1995, it can be clearly seen that for any contravention of the Advertising code, the authority to file a complaint before appropriate court for violation of Advertisement code vests with the authorized officer. **This it is amply clear that a policy framework and audit mechanism as prayed for by the Petitioner is already in place under the provisions of Cable Television Network (Regulation) Act, 1995 and the Rules made there under. It is submitted that the answering respondent has no role to play in relation to the Cable Television Networks (Regulation) Act, 1995.**
9. That it is submitted that Government of India vide its order [S.O. 45(E)] issued on 9.1.2004 specifically sought recommendations of the answering respondent (TRAI) on “... the parameters for regulating maximum time for advertisements in pay channels as well as other channels”
10. That after following a consultation process, the answering respondent (TRAI), inter-alia, formulated its recommendations on the issue of maximum time for advertisements in TV. In Section 8 of the Recommendations dated 1st October, 2004, on “Issues Relating to Broadcasting and Distribution of TV channels”, at paragraph 8.9, the answering respondent (TRAI) mentioned that the Authority has obtained average advertisement time from the pay channel broadcasters. **Almost all channels have reported an average advertisement of 10 to 12 minutes per hour which is within the limits laid down in global regulations on advertisement time In paragraph 8.11 of the said recommendations it has been mentioned that “... The primary objective of the policy is to give consumer choice and good quality service at affordable prices. To ensure affordable services to the consumers, the Authority has regulated the subscription fees of television channels Besides regulating subscriptions, regulation of the advertisement time and its corresponding affect on revenues of broadcasters may hamper growth and competition in the broadcasting industry.....”**
11. That considering all the aspects of the matter, the answering respondent (TRAI) in its recommendation dated 1.10.2004, had recommended as under:

8.15 ... (i) *There should not be any regulation at present on advertisement on both FTA and Pay channels.*

In 2004 TRAI took a position that capping advertisements would put additional costs on Pay TV Broadcasters. In Para 8.10 after quoting from experience in Thailand, TRAI had observed “Additionally *the regulation of advertisement time, typically drives up subscription fees. Therefore, the advertising rates reduce subscription fees for consumers. The restriction on advertisement time would either result in increase in subscription fee or affect the variety and quality of programming.*” These pertinent observations of TRAI are relevant even today. Hence, the reversal of its own recommendation by TRAI in its 16th March 2012 Consultation paper is completely inexplicable and is without any basis or data to substantiate the same.

(II) Advertisement Insertion Essential for Channel Economics:

It is important to point out that the severe tariff restrictions on Channel’s distribution revenues imposed by TRAI since 2003 and in fact the tariff for digital addressable systems is also indirectly frozen as the same is derived from the tariff prevalent in non CAS areas (42% of NON CAS tariffs at present). Moreover till the entire digital roll out takes place which at present is scheduled for 31st December, 2014, the Broadcaster will have to live with the issue of proper declaration of subscribers by MSO’s/Cable operators in analogue transmission resulting in huge subscription losses. With the prices of Channels frozen at the broadcaster level, Advertising and sponsorships remain the main opportunity for Channels to try and obtain a reasonable return on their investment.

In an increasingly competitive environment, Channels have been required to develop new, creative ways of engaging with their viewership on behalf of advertising clients, and advertising and sponsorship Insertions represents an important strategic way in which Channels can seek to monetize their airtime. If the Channel's opportunity to offer programme or segment sponsorships is curtailed, it will lead to huge financial losses for the Sports channels like Ten Cricket, who acquires cricket telecast rights at huge cost running into several crores of rupees. It is pertinent to point out that recently BCCI has sold the telecast rights for the matches to be played in India for a whopping sum of Rs. 3,851 Crores which works out to Rs. 40 Crores per match.

It is worthwhile bringing to the attention of the Regulator that such advertising and sponsorship Insertions generate revenue for the Channels as well as for the state exchequer. Whilst this must no doubt be balanced against the interests of viewer, this is safeguarded by applying the test of whether the relevant Insertion adversely interferes with programme viewing. It is submitted that the advertisement in the present format telecasted by the Broadcasters does not cause any hindrance /interruption to the viewing experience of live cricket match/sporting event on any sports channel and/or any other General Entertainment/ News content on other channels by the viewer.

In a number of advanced regulatory jurisdictions, the legitimacy of sponsorship communications within programmes has been specifically recognized. Taking Hong Kong which is a matured market as an example, in-programme sponsorship messages are expressly permitted. In the case of licensed pay television services, Hong Kong law allows references to a sponsor's name, product/service, brand

name, trademark/logo, advertising slogan and attributes, and sponsored prizes in connection with contest programmes, provided that they are clearly identified, not obtrusive and do not have an adverse affect on viewing pleasure. The advertisement presently aired by Broadcasters in India as pointed herein above duly meet these criteria and it is reiterated that they are clearly identified, not obtrusive and do not have an adverse affect on viewing experience and therefore no change is warranted in norms for Advertisements in TV at the present juncture.

(III) Discriminatory against Television media

As you are aware that the operational costs of TV channels especially that of Sports channels are significantly higher than the operational costs of any other media. The cricket telecast rights are acquired by paying billions of dollars. However, the means available to meet such operational costs are few and limited. There is a tariff freeze by TRAI since 2003. Accordingly, the advertisements are the main source of income which enables TV channels having cricket telecast rights to meet major portion of their acquisition & operating cost. Pertinently, the airtime available to the TV channels is limited, during which TV channels have to telecast programmes and advertisements. The airtime cannot be increased and has to be utilized in the optimal manner. In contrast, newspapers can either increase or decrease the number of advertisements or articles, by adding or reducing pages. There are no specific pages dedicated to advertisements and the ads can be displayed on any pages including cover page or by adding a separate exclusive page on cover page. No restriction on print media is imposed as is sought to be imposed on broadcasting media. The print media like newspapers and magazines have no restrictions with regard to the placement of advertisements. Pages of

newspapers/magazines not only carry advertisements placed in the midst of articles/news, but also carry infinite numbers of advertisements.

With airtime being limited, TV channels are greatly constrained and have to come up with creative ideas to optimize the utilization of airtime for generating revenues without interfering with the quality of telecast and without causing any interruption to the viewing experience of the viewers. Accordingly, Sports channels have adopted a method of displaying advertisements through tags, pop-ups, teasers, scrolls or tickers, L shaped graphics, etc. during telecast of the cricket matches and the same are being displayed without disturbing the contents of main programme i.e. the live cricket actions. It is specifically ensured that the programmes are clearly distinguishable from such advertisements. Unlike, newspapers, Insertions/advertisements in the broadcasting sector, necessarily have to be carried during the telecast of programmes viz matches so that the same catches viewer's attention without disturbing/interfering with the viewing experience.

Furthermore non-television media platforms have complete freedom to package their respective services without interference from any statutory authority. Imposition of any kind of restrictions on the type & formats of the advertisements would curtail the freedom of Channels to package their services which are indispensable to sustain their operations keeping in view the huge acquisition & operational cost of telecast rights. This inequality in treatment and autonomy between the television space and other mass media platforms would be discriminatory and not in the interest of the Broadcasting sector.

(IV) **Regulatory safeguard in terms of Rule 7 (10) of the Rules read with Section 6 of the Cable Television Networks (regulation) Act, 1995, already in place.**

Rule 7 (10) reads as under:

“(10) All advertisements should be clearly distinguishable from the program and should not in any manner interfere with the programme, viz use of lower part of screen to carry captions, static or moving alongside the programme.”

The intent of the Rule 7 (10) is that the viewers’ experience should not be degraded. It is further stated that the intent of Rule 7(10) is to strike balance between viewers’ experience on the one hand and the channels right to exploit commercial opportunities on the other.

Further In this regard, we submit as follows:

Section 2(g) of The Cable Television Networks (Regulation) Act, 1995 defines “programme” as under:

- (i) “2(g) “programme” means any television broadcast and includes - exhibition of films, features, dramas, advertisement and serials through video cassette recorders or video cassette players;
- (ii) any audio or visual or audio-visual live performance or presentation and the expression “programme service” shall be construed accordingly;

The above-mentioned statutory definition, in our humble submission is the legislative recognition of the fact that advertisements are an

integral part of any programme transmitted to the viewers through the cable or any other platform.

In backdrop of the above we hereby offer our response on the following stipulations which TRAI has proposed for Advertisements in TV channels. You are requested to read our below mentioned response together with our preliminary tenets discussed herein above for our rational and substantiated viewpoint on the said Issues.

(i) The limit for the duration of the advertisements shall be regulated on clock hour basis i.e the prescribed limits shall be enforced on clock hour basis.

Response: In our opinion limiting the duration of the advertisement on clock hour basis is without any logic and cannot be made applicable in our country as the viewership pattern varies from one age group to another. Moreover, the percentage of viewers watching a particular programme at a particular point of time also differs in accordance to their favorite programme/event appearing at different timelines during the day. For instance Cricket enthusiasts watching live proceedings of a T-20 or One day International match and or a Test match being played in Australia, West Indies or England would view the match at different time zones in India. Also the periodicity and frequency of such matches would be limited to seasonal sporting events. It would be during the playing time of such matches/events, the advertisers would prefer to air their commercials to have maximum impact on the viewers. Hence, any restrictions on advertisements on clock hour basis would be devoid of any merit and would result in restricting a Broadcaster of its legitimate revenue earning opportunity in the present times of high acquisition cost for

content as well as cut throat competition to break even on the investments made.

- (ii) No FTA channel shall carry advertisements exceeding 12 minutes in a clock hour. For pay channels, this limit shall be 6 minutes.**

Response: In our opinion the proposal for a differential treatment for an FTA and Pay channel is without any compelling justification. The International scenarios in *Annexure - I* of the said Consultation paper do not reveal a practice of discrimination between FTA and pay channel. On the contrary the international practice prescribes an average of 12 to 15 minutes or more per hour.

Moreover, the prices of pay channels have been fixed based on certain parameters existing on a particular date including a revenue model based on certain expected returns without taking into account any such discrimination as contemplated by TRAI in this consultation paper. Also the present regulation would not permit the pay channel to hike up their prices to offset the revenue loss resulting from reducing the advertisement time to 6 minutes for a pay channel. Further, our revenue earning capacity from advertisements revenue that is normally shared with Prasar Bharti on sharing of sports content on Doordarshan platform which is FTA would be adversely affected as well. The primary objective to serve the consumer interest would not be achieved as the viewers watching a cricket match on a dedicated sports channel and Doordarshan would be exposed to the same set of advertisements. Any such arbitrary move to limit the advertisement time to 6 minutes for a pay channel would be totally detrimental to the Broadcaster who acquires content at exorbitant

cost. For example the recent acquisition of BCCI Broadcasting rights by Star India Private Ltd at a whopping price of Rs, 3,851 Crores for six year (2012 to 2018). The cost of rights per match works out to approximately Rs. 40 Crores. In this perspective, TRAI needs to introduce regulations which are in parity with the existing Revenue models adopted in the Broadcasting sector and not come up with suggestions as sought to be detailed in the consultation paper which would amount to retrograde regulations.

(iii) The 12 minutes of advertisements will not be in more than 4 sessions in one hour. In other words, there will be continuous airing of the TV show for at least 12 minutes each. Not more than three advertisement breaks shall be allowed during telecast of a movie with the minimum gap of 30 minutes between consecutive advertisement breaks.

(iv) In case of sporting events being telecast live, the advertisements shall only be carried during interruptions in the sporting action e.g half time in football or hockey match, lunch/drinks break in cricket matches, game/set change in case of lawn tennis etc.

Response: In the present scenario of intense competition amongst television channels, the individual Television Broadcaster should be given the freedom to decide the number of advertisement breaks and the manner in which advertisements should be displayed. Moreover it is pertinent to point out that acquisition cost for Movies as well as Sporting events have gone through the roof. In case of Movies putting in too frequent advertisement breaks at inopportune times in the

storyline will lead to progressive shift of the viewers from a particular television channel to another television channel.

In case of sports channel, the nature of sporting event is too diverse and distinct to prescribe a standard guideline aimed at limiting advertisements to only interruptions. It is necessary to have a general understanding about what would constitute an “interruption” or a “natural break”. Though TRAI has not defined interruption as such, it has recognized the notion of “natural break” in para 8.12 of Section 8 of its “Recommendations on Issues relating to Broadcasting and Distribution of TV channels” of 1 October, 2004 where it has identified *Over changes* and other breaks as “*natural breaks*” in the game of Cricket. Norms of such “natural breaks” outlined herein below have been recognized by International body regulating Cricket like International Cricket Council as well as the Doordarshan who carries the feed for a Cricket match in India.

Instances of “natural breaks’ in Cricket are as under:

- (a) Break between the time between the ball being dead and alive.
- (b) Break between end of an over and new over
- (c) Break due to injury
- (d) Break for lunch/drinks/tea
- (e) Break due to fall of a wicket
- (f) Break due to Ball being stuck on the roof of the stadium or is lost
- (g) Break due to ball not being in play.

In addition for other sports, ‘interruption” is normally defined by the International governing bodies for each of these sports for uniform compliance of Advertisement in TV channels. Also it important to note that sports channels are also governed by the Rights granted to

the Broadcaster(s) with regard to the Advertisements during “interruptions” which are followed by the Broadcasters in any case.

Further, as per the prevailing prices in International market, the subscriber to a sports channel pays more than 10 times for availing a single channel. e.g Fox Broadcaster have recently priced their two sports channels at £ 11 in United Kingdom, which would work out to approximately Rs. 447.75 per channel (£ 1 = Rs. 81.41). It is also important to take note that advertisement free channels in other international markets are priced much higher and an Indian subscriber would be reluctant to pay such hefty subscription.

In our view sports channels are niche channels and unique in its own class due to periodic content availability, limited shelf life, mandatory sharing of sports feed with Prasar Bharti and huge cost involved in acquiring content. Therefore, any attempt to prescribe any generic guidelines will have serious impact on ability of Broadcasters to find sponsors for sports events which in turn will result in a cascading effect hampering the growth and visibility of sports channels. In light of the above there should be no further regulation/restrictions in respect of advertisements as the market forces are adequately regulating the sports channels.

The argument of “viewers experience” etc is entirely misconceived and misplaced as the amount that a person has to pay in order to go to the stadium and watch cricket match is manifold than the amount he has to pay to avail a channel showing the said match which can be enjoyed by his entire family sitting comfortably at their home. This is possible only because of the subsidization done by the advertising stream of revenue and in fact the same is to the benefit of viewers so

as to make the channel showing the various sporting events at affordable price.

- (v) There shall only be a full screen advertisements. Part Screen advertisements will not be permitted. Drop down advertisements will also not be permitted.**

Response: The attention in this regard is invited to the comments made herein above at Para (III) pertaining to the insertions, scrolls, L shaped advertisements etc. In addition it is also submitted that rapid technological advancement is also an integral part of the broadcasting industry. Wide and bigger screens are a matter of common experience not only globally but also in India. The technology has made it possible for the viewer to view / see a number of programmes at the same time with the user of the latest technologies capable of splitting a TV screen into various parts.

In any event such a right gives to the broadcasters to run Insertion(s) including an advertisement on any part of the screen when any other programme is also simultaneously being transmitted on the same screen, which does not affect the quality of telecast or in any manner create a hindrance to their enjoyment while viewing the live cricket action. In fact these kinds of insertions are in complete conformity with the rules stipulated by MIB in this behalf.

- (vi) In so far as News and Current Affairs channels are concerned, they are allowed to run not more than two scrolls at the bottom of the screen and occupying not more than 10% of the screen space for carrying non- commercial scrolls, tickers, etc.**

Response: it is our respectful submission that it is the clear understanding of the MIB and all the broadcasters in the country including all 24 hours news and other channels that continuous running of scrolls at the bottom of the screen does not, in any manner, impinges upon or violates any of the applicable norms on advertising on any news or sports channels. In fact the viewers demand that they should be well informed on the latest developments on the stock markets, commodity markets or Bullion markets in addition to any breaking news so as to be abreast with the most recent happenings in the country as well across the globe.

In case of the sports channel, the scrolls run at the bottom of the screen provides information stacked with statistical data relating to the sport event. In case of cricket match additional information on the scroll provides supplementary data to the viewers for e.g. Total runs scored by the opposite team, average run rate, number of over's bowled, number of over's remaining, present strike rate, strike rate required to achieve the target, number of runs to be scored in the remaining number of balls, Bowling/ Batting average of player, number of centuries/half centuries scored at the playing venue by a particular Batsman, Highest runs scored by each team/any particular batsman at the playing venue. Number of matches won/lost/drawn/tie at the venue, previous record for each wicket partnership, number of times toss won or lost by the captains of playing side, etc, makes the viewing experience more fulfilling, thrilling, memorable and above all educates the cricket enthusiasts on all the aspects of the game. Likewise, information with regard to matches relating to Tennis, Hockey, Soccer, Rugby, run on the scroll

during the matches also captivates the viewers to the Television screens.

In fact, such additional information run on the scroll is demanded by the viewers to make their viewing experience enthralling and as such there should not be any regulation to curb this practice during the broadcast of a News or Sports channel.

Such a clear understanding of the applicability of the norms on advertisement obviously establishes and demonstrates that the continuous running of scroll on all 24 hours news and other channels have never been found by the MIB as non-compliance with the applicable advertisement norms. There is a clear understanding of everyone in the industry that almost all Sports channels, while telecasting sports events where the content cost is mind-boggling, that a portion of the content cost is recovered from similar insertions as are being also carried out by 24 hours news and other channels without causing any adverse impact on viewing experience.

Furthermore, Rule 7(10) of the Cable Television Networks Rules 1994, has already laid down the parameters for screen space in as much as it requires that the advertisement must be distinguishable from the programme. The said Rule already takes care of this aspect and hence no further interference is required from the regulatory angle.

(vii) The audio level of the advertisements shall not be higher than the audio level of the programme.

Response: There is an existing regulation in place in terms of Rule 7(6) of the Cable Television Networks Rules 1994 which stipulates

that the audible matter of the advertisement shall not be excessively loud. The said Rule already takes care of this aspect and hence no further interference is required from the regulatory angle.

Conclusion:

It may also be mentioned that any kind of attempt to regulate/restrict the duration of the advertisement or the format thereof would also be violative of the Article 19(1) (a) of the Constitution. Attention in this regard is invited to the judgment of Hon'ble Supreme Court in the case of Sakal Newspaper and also in Bennett Coleman & Co. Ltd. Accordingly we are of the firm view that the regulation on advertisements on television channels should be left to the Indian Broadcasting Foundation (IBF) and the News Broadcaster Association (NBA) who have been working in close co-ordination with the Ministry of Information and Broadcasting as the said bodies would come out with self regulatory mechanism to put to rest all concerns raised by TRAI in their Consultation paper of 16th March 2012.
