



Extraordinary Together

June 1, 2022

To:

The Telecom Regulatory Authority of India (TRAI)
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
Old Minto Road,
New Delhi- 110002

Kind Attention: Mr. Anil Kumar Bhardwaj – Advisor (B&CS)

Re: Consultation Paper on Issues related to New Regulatory Framework for Broadcasting & Cable Services (“CP”)

Dear Sir,

We, at Zee Entertainment Enterprises Limited (“ZEEL”), welcome the initiative of TRAI to address several issues raised by stakeholders with regard to the implementation of the New Regulatory Framework 2020 (NTO-2).

Please find enclosed ZEEL’s comments/suggestions to the CP for your due perusal and favorable consideration.

Your sincerely,

For **Zee Entertainment Enterprises Limited**

A handwritten signature in blue ink, appearing to read 'Aparna Choraria', with a horizontal line underneath.

Aparna Choraria
Compliance Officer

Zee Entertainment Enterprises Limited

Regd. Office : 18th Floor, A-Wing, Marathon ~~Futurex~~, N.M. Joshi Marg, Lower ~~Parel~~, Mumbai - 400 013, India
P: +91 22 7106 1234 | F: +91 22 2300 2107 | CIN: L92132MH1982PLC028767 | www.zeeentertainment.com

**RESPONSE OF ZEE ENTERTAINMENT ENTERPRISES LIMITED
TO THE CONSULTATION PAPER ON
ISSUES RELATED TO NEW REGULATORY FRAMEWORK FOR
BROADCASTING & CABLE SERVICES (CP).
ISSUED BY
THE TELECOM REGULATORY AUTHORITY OF INDIA (“TRAI”)
ON MAY 7, 2022**



PREFACE

ZEE Entertainment Enterprises Limited (“ZEEL”), welcomes the initiative of the Authority to address the several issues raised by stakeholders in the New Regulatory Framework 2020 (NTO-2) through this CP which, we believe, will enable the smooth implementation of the same.

As submitted by us earlier, the New Regulatory Framework, 2017 (NTO-1) had resulted in a paradigm shift in the distribution landscape. The stakeholders had after considerable efforts and after having encountered multiple challenges, managed to successfully migrate the end consumers to NTO-1 in 2019 without any disruption of services. At a time when the industry was just about adapting to NTO-1, the Authority within barely a few months after the commencement of the same, made significant changes to the channel pricing and bouquet formation by notifying the New Regulatory Framework 2020 (NTO-2) in January 2020 which led to a fresh round of chaos and disruption in the industry.

The lingering instability in the regulatory framework coupled with the Covid pandemic has severely impacted the growth of the broadcasters with stagnating revenues and limited investment pool to create quality content for the viewers. Be that as it may, we are happy to note that the Authority has taken note of our concerns and have given us the opportunity through this consultation process, to resolve the issues related to NTO-2. We are hopeful that this process will yield positive results and we would be able to recoup our revenues and grow.

Deregulation is key to industry growth

We would like to reiterate our position that a stable regulatory environment and ‘soft touch’ in regulatory oversight is an absolute necessity for the healthy advancement of the industry. Frequent review of the regulatory framework will create unwarranted hurdles which will be detrimental to the interests of the entire value chain including the end consumers. This is supported by the Government’s focus on ‘ease of doing business’ which requires minimum regulatory intervention.

The Broadcasting and Cable Services came under the purview of the Authority in January 2004 at a time when the sector was analogue and non-addressable. Since then, over the last 18 years the broadcasting industry has gone through several major regulatory changes moving from analogue to CAS, then to digital and addressable systems and finally to an MRP regime. All along the Authority during its several consultation exercises has always recognized that total forbearance was key for the growth of the industry and had assured the broadcasters that the price freeze which was imposed in 2004 and the related restrictions (introduced subsequently) were temporary and would be withdrawn once the sector achieves complete digitization and there is effective competition in the sector.

We submit that today the industry has more than 800 registered linear channels competing for eyeballs. In the present era of digital revolution, Pay channels not only compete with numerous Free to Air channels, but also with multiple content offerings that are available across multiple platforms/screens. Content today encompasses all forms of content including social media, user generated content, online shopping, gaming etc. The internet, coupled with innovative technologies have armed the consumers with easy access to a massive supply of content (domestic and global) and the freedom to watch the content of their choice at anytime and anywhere. Thus, there is adequate competition available in the market today which justifies the need for total forbearance.

At a time when consumers are getting ready to experience more personalized, immersive media offerings of “Metaverse”, there is absolutely no justification to continue regulating the pricing and packaging of linear channels. We would therefore urge the Authority to bring in the long awaited de-regulation and allow the broadcasting industry to grow and maximize its potential.

ISSUE-WISE SUBMISSIONS OF ZEEL:

Please find below ZEEL's issue-wise responses as detailed below-

<p>1.</p>	<p><u>CEILING ON MRP OF CHANNELS PROVIDED AS A PART OF BOUQUET</u></p> <p>Q1. Should TRAI continue to prescribe a ceiling price of a channel for inclusion in a bouquet?</p> <p>a. If yes, please provide the MRP of a television channel as a ceiling for inclusion in a bouquet. Please provide details of calculations and methodology followed to derive such ceiling price.</p> <p>b. If no, what strategy should be adopted to ensure the transparency of prices for a consumer and safeguard the interest of consumer from perverse pricing?</p> <p>Please provide detailed reasoning/justifications for your comment(s).</p>	<p>No, the TRAI should do away with prescribing a ceiling price of a channel for inclusion in a bouquet.</p> <p>As explained above, the time has come for the industry to move to complete forbearance to effectively compete and survive in the new world. Excessive regulation and frequent changes to the regulatory framework will be counterproductive to the interests of consumers and threaten the very survival of the sector.</p> <p>As highlighted by the Authority in the CP, during last more than one year, there has been a significant decrease in the total active subscriber base of DPOs. Similarly, the revenue of broadcasters and DPOs has also decreased. Given that the Broadcasters have been unable to revise their prices for almost 3 years i.e. since January 2019, the decrease in revenue and active subscriber base can only be attributed to the excessive regulations which have taken away the flexibility of the broadcasters to price and offer customer friendly bouquets that the market demands. The restrictions have instead led to market disruptions, thus depriving the consumers the market driven prices.</p> <p>It is therefore time that the Authority looks at the issues raised in the CP in the right perspective and usher in the era of complete forbearance as envisaged in 2004 and leave the fixation of prices of a-la-carte and bouquet</p>
-----------	---	--

	<p>of channels to market forces of demand and supply. Market forces are the best parameters for determining prices of channels, and broadcasters seeking to ensure highest market penetration will be incentivized to invest in high quality content and to price the same competitively. Market forces will also ensure that these prices remain stable.</p> <p><u>We are hopeful that the Authority will pave the way for forbearance and allow market forces to prevail.</u></p>
<p>Q2. What steps should be taken to ensure that popular television channels remain accessible to the large segment of viewers. Should there be a ceiling on the MRP of pay channels? Please provide your answer with full justifications/reasons.</p>	<p>Firstly, we submit that the categorization of channels as “popular” / “unpopular” for the purpose of access is a myth and is not in the interest of the consumers, who have the unfettered right to access the most diverse views, irrespective of such views being acceptable, popular or wanted.</p> <p>Moreover, what is “popular” may differ across consumers, regions, languages and genres. In fact, popularity of a particular channel may even change seasonally or on the happening of a particular event/events like sports events, festivals etc.</p> <p>Lastly, the Authority must appreciate that regulations cannot be the answer to ensure that popular channels remain accessible to the large segment of viewers. Given that popularity of a channel is determined by consumer preference which itself varies across the consumers, any regulatory embargo to make available “popular” channels to consumers will result in an impossible and illogical scenario requiring broadcasters to offer all channels to all consumers. In fact, such a restriction will take away the</p>

		<p>freedom of choice from the consumer and impose unwarranted costs. Most importantly, it will be in the broadcasters' interest to ensure that their channels reach the widest audience to maximize reach and revenue.</p> <p>If there are not enough subscribers opting for the channel at that price, it will automatically lead to correction in pricing in due course. Therefore, the principal of economics of pricing being linked to the demand of the product will come into play leading to the market-based price discovery.</p>
<p>2.</p>	<p><u>CEILING ON DISCOUNT STRUCTURE ON BOUQUET PRICING:</u></p> <p>Q3. Should there be ceiling on the discount on sum of a-la-carte prices of channels forming part of bouquets while fixing MRP of bouquets by broadcasters? If so, what should be appropriate methodology to work out the permissible ceiling on discount? What should be value of such ceiling? Please provide your comments with justifications.</p>	<p>There should not be any ceiling on the discount on sum of a-la-carte prices of channels forming part of bouquets while fixing MRP of bouquets by broadcasters. Imposition of discount ceiling adversely impacts the content being offered by the broadcasters, which in turn affects a-la-carte prices of channels forming part of bouquets while fixing MRP of bouquets.</p> <p>It is pertinent to note that the reasoning for imposing such a cap on viz., that high discounts force the subscribers to take bouquets only and thus reduce subscriber choice has already been considered and rejected by the division bench of the Madras High Court in <i>Star India Private Limited v. Department of Industrial Policy and Promotion</i>, wherein the court struck down the ceiling of additional discount of 15% over and above the 20% discount on MRP, on account of the same being arbitrary, which decision was not interfered with by the Umpire Judge as well as by the Supreme Court of India. Accordingly, the reasoning cannot now be used to bring in a cap on discounts.</p> <p>The Authority's attempt to reintroduce restrictions on bundling by</p>

		<p>stipulating the twin conditions in the NTO-2 was once again impaired as the Hon'ble Bombay High Court vide its judgement dated 30th June 2021, set aside the second twin condition on the ground that it is manifestly arbitrary and infringes upon the broadcasters' fundamental rights under Article 14 of the constitution and that the same is contrary to clause 11(4) of the TRAI Act which mandates the Authority to ensure transparency.</p> <p>The formation of bouquets of television channels, or bundling of channels, is very common across goods and services and is not limited to the channels alone. Bundles exist and are popular with consumers across a range of goods and services: Computer software (e.g. Microsoft Office sold as a bundle comprising of Word, Excel and PowerPoint), automobile trim and option packages, restaurants (e.g. buffet and <i>a la carte</i> meals), gym memberships, amusement park tickets etc. Even the DPOs bundle their Platform Services offerings alongside broadcaster channel bundles.</p> <p>As has been observed by the Authority in paragraph 2.22 of the CP, there is sufficient data/economic analysis which have analyzed the positive effects of bundling on consumer welfare. <i>A la carte</i> offering increases costs to consumers, since un-bundling of channels impacts broadcasters' income and consumers are then required to bear higher cost of the channel.</p> <p>Further, Authority's own data indicates that majority of consumers prefer bouquets as against a-la-carte option as it enables them to opt for a diverse pack of multi-genre channels at a significantly lower price as against a-la-carte option. An average household in India which is largely</p>
--	--	---

		<p>single TV household consumes a wide array of multi-genre channels, ranging from GEC, Movies, Sports, Kids to News, Music, Infotainment Devotional etc. to cater to the tastes of different individuals in the family.</p> <p>If made to opt for a <i>la carte</i> channel prices the family will have to pay up to 50% more than earlier to obtain the same variety of channel offerings.</p> <p>Bundling not only enables consumers the opportunity to sample diverse content, but also allows ease and simplicity in exercising choice. Thus, so long as a-la-carte is available as an option, there should be no ceiling or restrictions on the discount.</p> <p>In almost all other countries, and certainly in all major television markets, channel bundling is standard and widely-accepted as it is regarded as generally beneficial to consumers. Bundling is a widely prevalent market practice in Malaysia, Hong Kong, Singapore, Indonesia, South Korea, Japan, Taiwan, United Kingdom, South Africa, Ireland, United States of America, Russia, Canada and Australia, and restrictions on bundling exist only in India.</p>
	<p>Q4. Please provide your comments on following points with justifications and details:</p> <p>a. Should channel prices in bouquet be homogeneous? If yes, what should be an appropriate criteria for ensuring homogeneity in pricing the channels to be part of same bouquet?</p>	<p>Its highly impractical and unviable to prescribe channel prices in bouquet to be homogeneous. A channel bouquet is an array of diverse channel offering which could be a mix of multi genre and/or multi language offerings comprising of either a single or multi broadcasters' channels. To stipulate homogenous pricing would mean treating all channels in the bouquet as equals which itself is fallacious as each channel is an exclusive and distinct offering and cannot be treated as the same.</p>

	<p>b. If no, what measures should be taken to ensure an effective a-la- carte choice which can be made available to consumers without being susceptible to perverse pricing of bouquets?</p> <p>c. Should the maximum retail price of an a-la-carte pay channel forming bouquet be capped with reference to average prices of all pay channels forming the same bouquet? If so, what should be the relationship between capped maximum price of an a-la-carte channel forming the bouquet and average price of all the pay channels in that bouquet? Or else, suggest any other methodology by which relationship between the two can be established and consumer choice is not distorted.</p>	<p>The Authority must appreciate that channels are creative service offerings and cannot be compared with commodities.</p> <p>Any mathematical formula/model for price fixation will only cause market distortions and prevent the real price discovery which is not in the interests of the end consumers. Any such exercise will be ultimately unworkable and is also likely to lead to increased market uncertainty, which is ultimately harmful to the consumer. If bouquets are to be formed on a homogeneous basis, effective consumer price will become much higher for majority of the consumers. Consumer preference is for bouquet/bundling, with or without any price ceilings. Accordingly, so long as the option of a-la-carte is available, there is no need for any measures to push <i>a la carte</i> choice.</p>
	<p>Q5. Should any other condition be prescribed for ensuring that a bouquet contains channels with homogeneous prices? Please provide your comments with justifications.</p>	<p>No. In view of explanation given above, there are no such conditions required.</p>
<p>3</p>	<p><u>ADDITIONAL DISCOUNT OFFERED BY BROADCASTERS TO DPOS:</u></p>	<p>NTO 1 permitted broadcasters to provide discount of upto 15% on both <i>a la carte</i> and bouquet offerings. The decision of whether to offer such discounts, subject to the maximum ceiling prescribed, and the exact quantum of the discount was left to broadcaster's discretion.</p>

	<p>Q6. Should there be any discount, in addition to distribution fee, on MRP of a-la-carte channels and bouquets of channels to be provided by broadcasters to DPOs? If yes, what should be the amount and terms & conditions for providing such discount? Please provide your comments with justifications.</p>	<p>However, NTO 2.0 restricted discounting to a <i>la carte</i> channel prices alone, and prohibited discounting on bouquets, thereby taking away a broadcaster's discretion to extend such discounts to bouquets.</p> <p>It has already been established that consumer choice is in favour of bouquets. As the ultimate beneficiaries of discounts are consumers, TRAI should allow discount on bouquets also.</p>
<p>4.</p>	<p><u>ANY OTHER MATTER RELATED TO THE ISSUES RAISED IN PRESENT CONSULTATION</u></p> <p>Q7. Stakeholders may provide their comments with full details and justification on any other matter related to the issues raised in present consultation.</p>	<p>Other points for consideration-</p> <ul style="list-style-type: none"> a) In multi-TV homes, infrastructure to the home is common; only STB and additional wiring are required to provide additional connections. Hence, discount on NCF is justified. However, consumers opt for multiple connections within same home to view different set of channels at their convenience. Therefore, there should not be any discount on MRP of pay channels on multi-TV connections. b) LCN placement of channels should not be allowed to be changed during the validity of the agreement. c) Audit regulations need to be strengthened. d) Provision of DPO-caused audit under Regulation 15(1) ("DPO Caused Audit") should be discontinued; only broadcaster-caused audit process should be implemented. e) All CAS & SMS vendors to be certified within defined time-frame of 6 months, even for existing implemented systems. f) Besides CAS & SMS, other addressable systems directly impacting subscriber reporting, should also be brought under regulations. g) The cornerstone of NTO was trust-based audit regime through third party empaneled auditors However, DPO Caused Audit has not been

		<p>successful; having done Audits of only 20% of DPO's in last 3 years and more than 40% of these Audits not being as per regulations, effectively means that only 13% audit reports have been received.</p> <p>h) Around 78% DPO's have not shared audited report even once.</p> <p>i) The DPO Caused Audit has merely become a tool in the hands of erring DPO to not allow broadcaster-caused Audit under Regulation 15(2) ("Broadcaster Caused Audit"); or even in cases where Broadcaster Caused Audit is completed then the DPO causes Audit under Regulation 15(1) and challenges the finding of BroadcasterCaused Audit.</p> <p>j) It is very crucial to note that when systems are audited in DPO Caused Audit, there are negligible or no compliance /under reporting issues found, while in BroadcasterCaused Audit the same TRAI empaneled Auditor is able to find under reporting and non-compliances with adequate proofs.</p> <p>k) Broadcasters have been invoicing DPO's based on reports submitted by them for last more than 3 years even in NTO regime, however considering the nature of business, it is important that previous practice of only broadcaster-caused Audits is reinstated albeit through a TRAI empaneled Auditor so that these monthly subscriber reports can be properly verified by the impacted party.</p> <p>l) Interconnect regulations provide for "Must Provide" signal clause to the broadcasters, this has led to a situation where a lot of non-serious players and some rogue players have set up headend and taken multiple sets of IRD's from the broadcasters. These DPOs, despite being operational for more than 2 years, report less than 500 subscribers to the broadcasters. A basic cost /income comparison</p>
--	--	---

		<p>would reveal that a DPO cannot earn more than Rs. 1 Lakh and cost of running a headend and operational costs would be multiple times than that of cost incurred. Therefore, TRAI must set some process wherein Broadcaster could decline Signals to these non-serious players after 1 year if the DPO does not make any business viability. Need of end-customers could well be served by DTH Operators or HITS operators.</p>
--	--	---