



Date: 30th May, 2022

To,
Shri Anil Kumar Bhardwaj, Advisor (B&CS)
Telecom Regulatory Authority of India ('TRAI')
Mahanagar Doorsanchar Bhawan,
Jawaharlal Lal Nehru Marg,
New Delhi – 110002

Email: advbcs-2@traigov.in; jtadv-bcs@traigov.in

Sub.: Consultation Paper dated 7/05/2022 on Issues related to New Regulatory Framework for Broadcasting and Cable services

Dear Sir,

We write to you in response to the Consultation Paper promulgated by TRAI on 07/05/2022 on Issues related to New Regulatory Framework for Broadcasting and Cable services ("Consultation Paper").

At the outset, we would like to thank TRAI for providing us the opportunity to participate in this consultation process. Please find enclosed herewith our response to the issues raised by TRAI in the Consultation Paper in the interest of various stakeholders and the orderly growth of the/ distribution industry.

We hope that our submissions shall be considered favorably by TRAI while evaluating changes to be carried out.

Thanking you,

Yours Sincerely,
For Culver Max Entertainment Private Limited
(formerly Sony Pictures Networks India Private Limited)

Pranali Parekh
Senior Associate Legal



Encl: Comments on the Consultation paper

Registered Office Address:

Culver Max Entertainment Private Limited
CIN : U92100MH1995PTC111487
Interface, Building No. 7, 4th Floor,
Off Malad Link Road, Malad (West)
Mumbai – 400 064, India.
Tel: +91 22 6708 1111 | Fax: +91 22 6643 4748
sonypicturesnetworks.com

COMMENTS OF CULVER MAX ENTERTAINMENT PRIVATE LIMITED (FORMERLY SONY PICTURES NETWORKS INDIA PRIVATE LIMITED) ("SPNI") TO THE ISSUES RAISED IN THE CONSULTATION PAPER:

1. Should TRAI continue to prescribe a ceiling price of a channel for inclusion in a bouquet?
 - 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.
 - 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? Please provide detailed reasoning/ justifications for your comment(s).

SPNI Response:

Telecom Regulatory Authority of India ("TRAI/Regulator/Authority") must allow the market forces to determine the prices of a channel and/or bouquet. TRAI should in fact, conduct a research-based data-relevant analysis in order to deal with the issue in detail and in the interest of the stakeholders, which is also the mandate of the preamble to the TRAI Act.

In a free market scenario, the forces of demand and supply determines the price. The overall pricing is based on 2 strategies viz. value based & competitive pricing strategy. The value-based strategy ensures that consumers get maximum benefits while the competitive pricing strategy is based on the industry practices.

Since it is a free market with no advantage to any player, the Regulator should ideally abstain from taking any decision related to fixation of a ceiling price for a channel. It is pertinent to note that the New Regulatory Framework, 2020 ("NTO 2.0"), which was to be originally implemented w.e.f. 01.03.2020 was challenged by both - broadcasters and distribution platform operators ("DPOs") in view of certain unrealistic and unreasonable restrictions imposed by the Regulator and the foreseeable issues from the consumer's perspective, which would have adverse impact thereby compromising consumer interests. Thereafter in the challenge to NTO 2.0, the Bombay High Court set aside the second of twin condition being imposed by the Regulator to arrive at the bouquet pricing. This aspect of the order has not been challenged by TRAI. What is more surprising is that as on date even when the broadcasters have complied with their obligations and published their new reference interconnect offer (RIO) in compliance with the NTO 2.0, the DPOs have failed to comply with their obligations and have not come forward to execute the RIO in spite of sufficient time being given to them and despite the clear mandate by the Regulator vide its Notification dated 03.02.2022 directing the stakeholders to implement the NTO 2.0 w.e.f. 1st June, 2022. This again clearly demonstrates that stakeholders are dissatisfied with the NTO 2.0 and are looking for a light touch regulatory regime.

Also, basis the subscription data available with us, consumers prefer opting channels on the basis of bouquet as against choosing the same on ala carte basis. The preference of subscribers to select bouquets over a-la-carte channels is not linked to the price of channels.

Also, back in the year 2019, when upon the Regulator's request we had offered promotional scheme under which the MRP of certain channels on a-la-carte basis was reduced from INR 19/- to INR 12/- for a limited period of 90 days whereas the price of bouquets was maintained, it was observed that there was no increase in the subscription for a-la-carte channels, but the subscribers continued to opt for bouquets. This showcases consumers' preference of opting channels on the basis of bouquet as against choosing the same on ala carte basis in spite of reduction in the price for ala carte channels.



You would appreciate that it is the constant endeavour of the broadcaster to ensure that high quality content is provided to the consumers that too without any interruption. Towards the same broadcasters have to incur huge content costs as well as recurring costs - fixed and variable expenses like rent, salaries and wages, equipment hire, electricity, broadband, security, etc. In addition to providing good quality content on TV, ensuring cost-return balance is also imperative for the broadcasters. Hence, regulating a ceiling price for channels to be included in a bouquet will not be beneficial to the consumers since in view of any such ceiling the broadcasters will be compelled to keep certain channels out of bouquets and thus the consumers will be deprived from accessing quality content offered by such channels. Another effect of the ceiling will be direct impact on the industry as it will create severe cash flow problems to the broadcasters which in turn would adversely affect their ability to carry on business and provide uninterrupted superior quality content.

The formation of bouquets of television channels has been prevalent not only in the Indian television and broadcasting industry but across industry.

The purpose of a Bouquet and *à-la-carte* offering of television channels to the end consumers are completely different. They target different set of audience i.e., (i) those who choose to view a limited number of channels only and would opt for *à-la-carte* method; and (ii) those, particularly families having diverse preferences, who would want a mix of variety of channels prefer to opt for bouquets.

Also, India being culturally and linguistically diverse, a bouquet would be the most cost-effective solution for a consumer to receive a variety of channels. In India an average household is diverse with at least 4 individuals per household & these individuals are from different combination of age group & gender. Bouquets cater to all individuals in the household. Hence, we believe that there should not be any ceiling on the MRP of a-la-carte channel for inclusion in the bouquet as such compulsion would be detrimental to the interest of the end consumers and against the market forces.

Bundling of channels provides better service to subscribers allowing more consumer choice, variety and differentiation for subscribers, while enabling the broadcasters to cross-subsidize the costs of production, which would otherwise have increased the burden on the consumers. Imposing ceiling on bouquet pricing and also imposing a cap on the MRP of a-la-carte channel for inclusion in the bouquet will defeat the said purpose. The restrictions on bouquet pricing have also led to market disruptions including decrease in active subscriber base.

We recommend there should not be any ceiling price of a channel for inclusion in a bouquet and that fixation of prices of channels as well as bouquets should be left to market forces of demand and supply.

- 2. 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.**

SPNI Response:

The understanding of the word “popular channel” is vague as it would differ basis individual choice. We cannot put any channel under the head “popular” since it is difficult to set the defined statistics correct for the word “popular channel”, which is being coined by the Regulator since the same is subject to individual consumer choice. Every channel has an audience and every channel is popular in its genre. Hence any attempt to single out certain channels as “popular”, deeming other channels as not popular is an unscientific approach to regulatory policy and must be deprecated.



In fact, what is popular may differ across regions, languages and genres, as also in the same household depending on the particular consumer's preference.

Also, there should not be any price ceiling on the MRP of any pay channels since the channels cater to large segment of the viewers through both A-la-carte and Bouquet depending on consumer preference. Imposition of any price ceiling will defeat the purpose of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations 2017, The Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017, collectively 2017 ("NTO 1.0"), which aimed at promoting fair and transparent pricing structure. Also, in the current market scenario there has been extreme drop in the TV viewership vis-a-vis pre pandemic, which is evident from the statistics provided hereinbelow:

Particulars	*Jan'20 to Mar'20 (Week 01 - Week 13)	*Jan'22 to Mar'22 (Week 01 - Week 13)	*Drop %
	Pre Covid pandemic	Post Covid pandemic	
GRP (average weekly)	3,758	3,299	-12%

**Total TV viewership for all India market*

Online content viewing habit has grown substantially during Covid pandemic wherein over-the-top (OTT) platforms saw spike in viewership or subscriber additions and the OTT viewership never reverted to pre-covid levels. In small households as well, consumers viewed the content over the YouTube. Besides, theatre film release was also postponed owing to the restrictions during pandemic and consequently the films were available for premieres on OTTs. OTT offers varied genre content on one platform and hence it has become the first choice for many households across India and is slowly turning into a family service wherein fresh content and new releases lead to a spike in viewership. Also, a large number of viewers opt for annual subscriptions being the reason behind marginal additions in subscribers. The OTT these days has become primary platform of content consumption since a lot of the user base does not watch linear television. This digital revolution is disrupting linear TV. The pandemic has brought us to an inflection point, the beginning of a disruption. Since the launch of online video streaming services and the subsequent launch of internet-abled television sets, OTT has come into mainstream prominence around the world and is steadily gaining ground in India.

India consumers are increasingly preferring OTT over linear TV for the flexibility it offers – the freedom to watch high-quality content of their choice at their preferred time. Large number of viewers in India do not watch broadcast content, but exclusively watch streaming content. OTT is growing to be a highly competing platform for television hence we need to look out for ways and plans to boost the growth of television broadcasting industry. Hence, providing a level playing field to television industry is the need of the hour.

In view of the foregoing, linear TV reach is fragmenting due to the increasingly competitive advanced TV space. Targeting is broad and less granular than on OTT. Hence, broadcasters will have no choice but to unbundle packages as they face growing competition from OTT platforms. Imposing ceiling on the MRP of pay channels will further narrow down the business prospects of the broadcasters. Hence, broadcasters should be given the liberty to price their channels and bouquets, basis the current market scenarios and considering competition at hand. It is pertinent to note that any proposal to impose a price ceiling on channel or bouquet prices effectively curtails the fundamental rights guaranteed under the Constitution to the producer of the content.



Channels must be made available in both Bouquet as well as a la carte to give the consumer his/her right to make a fair choice, depending on his/her needs and circumstances.

Any restriction on the rate of a channel leads to imposition of unreasonable constraints in the capability of the broadcaster to produce/license quality content and thus, provide wholesome value to the consumers of the channel and indirect restriction on the content, and in turn impacts the right of the consumer to receive such content through the medium of television channels.

As stated earlier, delivery of content to the consumers is not limited through linear feed i.e. from television sets only. With the rapid growth of broadband, internet penetration has increased and non-linear on demand OTT services are increasingly becoming the first medium for viewing content across devices, especially in non-TV households. Today broadcasters are facing stiff competition for viewership from OTT platforms and various other internet-based mediums. To attract subscribers, these platforms offer diverse content across demographics with excellent production values. In addition, technology allows them to offer accessibility options (CC, multilingual), anywhere any time content, cost effective, better video quality, no hassle towards installation cost, online payment options, easy renewals of subscriptions, etc. For broadcasters to compete with such platforms and retain their consumers/ viewers, they need to make huge investment to produce superior quality content by providing exciting visuals and graphics on TV. The market situation recognizes competition and derives its price functionality from such competition.

Consumer is aware of the content it wishes to watch. The consumer is not channel specific these days and is more content specific. Consumers would not hesitate in subscribing to a particular channel for a specific content. Similarly, within a television channel, not all programmes or content are watched by the consumer. It is the content which makes a channel popular and not otherwise. Hence, any restriction on the price of a channel is an indirect restriction on the content of the broadcaster.

It is pertinent to note that that the proposal for capping of á-la-carte MRP of pay channels was discussed and rejected by TRAI during the consultations, which were held prior to the NTO 1.0, as it was felt that broadcasters should be given freedom to monetize their channels.

TRAI understood that the prices of a channel could be priced at a rate which might seem high, but the freedom was given to the broadcasters to take the said decision. Thus, the two options of allowing the broadcasters to price their channels as per their commercial wisdom and also mandating that the channels be made available to the larger masses (by imposing a ceiling on ala carte price of channels for inclusion in the bouquets) cannot co-exist.

Broadcasters are competing with the OTT platforms and also to an extent with FTA channels. Hence, they will price their channels and bouquets to service the competition and will never go over broad considering the hard-hitting competition from OTT platforms. Hence, we believe that in the best interest of all the stakeholders, the prices of pay channels should be left to market forces for its determination from time to time. Therefore, there is no requirement for a renewed consideration of this aspect, and TRAI ought to instead move towards forbearance and de-regulation.



3. **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.**

SPNI Response:

Yes, broadcasters should be allowed to provide discounts on the sum of ala carte prices of channels forming part of bouquets while fixing MRP of bouquets. Broadcasters should have flexibility of providing such discounts and there should not be a “fixed discount” prescribed for the same.

Any discount is in consumer interest as it delivers better value for money and lowers the price at which consumers may avail services. Curtailing discount would be irrational. Also, the said fact has been acknowledged by TRAI in para 77 of the Explanatory Memorandum of The Telecommunication (Broadcasting And Cable) Services Interconnection (Addressable Systems) (Second Amendment) Regulations, 2020.

More so, there is no scientific way to calculate a cap on discount on sum of ala carte prices of channels while forming a Bouquet. Since bouquets are formed by all broadcasters and the size of such bouquets may vary due to various reasons, it is not possible to ascertain the content costs in order to derive a standard bouquet price.

It is also pertinent to note that prior to NTO 1.0, the “twin conditions” did exist, but only at the wholesale level when agreements were executed between stakeholders *inter-alia* on a fixed fee basis. It was never implemented at the retail level, nor it was mandatory to comply. Importantly, the “twin conditions” were in varied forms, and were never concurred to by the stakeholders. The earlier twin conditions were arbitrary, whimsical and without any basis, and as such, cannot be used as a precedent. In fact, twin conditions did not even find its place in the NTO 1.0 since these were consciously rejected by the Regulator while formulating NTO 1.0 Regime. Further, it is also pertinent to note that when the Authority introduced the “twin conditions” for the first time in NTO 2.0, the second of the “twin conditions” (referred to as Average Test condition) was struck down by the Bombay High Court vide its order dated 30.06.2021 on the ground of it being invalid which order was not challenged by TRAI.

Discounts are prevalent in other industries too like FMCG & Hospitality to enlarge their consumer base. Across the globe, bundling & discounts is a prevailing market practice to upsell/cross-sell related products. Upsells involve persuading the customer to upgrade whereas cross-sells involve promoting related products that are in-line with other products. Bundling of channels has been shown to improve the quality of service provided to subscribers by allowing more consumer choice, variety and differentiation for subscribers at an affordable price.

If the consumers are forced to opt for channels on *ala carte* basis, it will result in higher prices for consumers. Consumers choosing to retain the wide selection of channels available to them under bouquets would be required to pay more to do so and would end up paying higher subscription charges than they currently pay for hundreds of channels which they have opted under bouquet subscription.

An average Indian family consisting of parents, grandparents and children seeking a variety of content as per the preferences of all members of the family, if made to opt for *à-la-carte* channels, subscription fees will be much more than that being paid by them to obtain similar channels under bouquet offerings.



Further, on the aspect of pricing under the current tariff order i.e. NTO 1.0, the Madras High Court held the cap on discounts that could be offered by broadcasters on their bouquets to be arbitrary. This aspect of the order has not been challenged by TRAI.

Also, the judicial finding of Madras High Court's judgment (dated 02.03.2018 in Writ Petition No. 44126 of 2016 and Writ Petition No. 44127 of 2016) on the provision was not on the quantum of the discount, but on the cap on the discounts on MRP of bouquet of channels, which fact is also been reproduced in para 12 (iv) of the Explanatory Memorandum of The Telecommunication (Broadcasting And Cable) Services (Eighth) (Addressable Systems) Tariff (Second Amendment) Order, 2020.

In para 31 of the Explanatory Memorandum, the Authority itself, had come to a conclusion that there is no scientific method to arrive at a single figure to operate as a cap on discounts and it's possible impact on the regulatory framework. There is no logical reasoning as to why discount on a-la-carte should only be permissible, while the same benefit should not be given to the subscriber opting for bouquets. There is no intelligible differentia in the two classes of consumers and their respective choices.

Reach and content generate advertisement revenue and reach in a price sensitive market like India is dependent also on "value for money" and can be sustained only if sufficient advertisement revenue is generated through reach to compensate the discounted price of the channels.

Therefore, it is imperative to appreciate the fact that in media, it is the market forces that determine price discovery for the respective markets viz advertisement market and Pay TV market. These two markets are strongly interlinked.

We are therefore not in favour of imposing 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.

- 4. Please provide your comments on following points with justifications and details:**
- 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?

SPNI Response:

Price of a channel in a bouquet can never be homogenous in view of the following reasons:

- i. The price of a channel depends on several factors, viz. (a) content; (b) target market; (c) cost incurred by the producers from the stage of producing the content to the stage of making it available to the subscribers; (d) advertisement revenue garnered by a particular channel depending on the various contents/programmes available on the said channel.
- ii. Similarly, the composition of a bouquet takes into account various factors, viz. (a) different age group in an average family; (b) varied preferences of the different family members; (c) geographical location, etc.

Pricing of a channel is decided basis multiple parameters

- Genre of channels
- Content Cost
- Original hours of programming
- Geographical traction



There is no empirical basis to suggest that the choice between *à-la-carte* channel and bouquets has any basis in the price of the channel as opposed to the composition of the bouquet and diversity of content of the channels.

Channel pricing and Bouquet construct are two separate events. Bouquet construct should not influence pricing of channels. In India a household is diverse with around 4 individuals per household & these individuals are from different combination of age group & gender. Bouquets cater to all individuals in the household.

Further, the broadcaster should be entitled to give incentives/discounts on both Ala carte and Bouquets to DPOs, which can in turn be further passed on to the end consumers. This would also achieve one of the important objectives for which the TRAI regulation was formed viz. ensuring the interest of the subscribers.

Creating any kind of restriction on the composition of bouquet basis the rates of channels would create chaos in the industry, as it will be unrealistic expectation from a broadcaster to meet so many restrictions and sub-restrictions while forming a bouquet.

Also, the Constitution of India gives complete freedom to the broadcaster to charge a price towards subscription of its channels by a consumer. Also, the broadcaster can give its channels for (i) free or for a price (ii) on a-la-carte basis or through a bouquet. Hence, there shouldn't be any restriction on channel pricing. The broadcaster should be given freedom to put such price for its channels as it may deem fit based on its study and market research.

- 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?**

SPNI Response:

So long as TRAI continues to perceive bouquet pricing as “perverse” and against consumer interest, it would be futile to attempt to address the issue at large.

While introducing the NTO 1.0 regime, TRAI's main focus was to enable the customers to exercise their rights to opt for channels on a-la-carte basis. Once the said right has been made available to the consumers, the other side of the coin, i.e. the interest of the broadcasters also need to be taken care of, and hence their right to bundle channels as per their commercial wisdom and in exercise of their legal right, cannot be diluted by any further attempt to coerce them and offer channels on a particular rate and in a particular format only.

Consumers already are exercising their right to opt channels on a-la-carte basis, and wherever they need, they opt for bouquets as well.

In fact, it is not the broadcaster's bouquet that is offered to the subscribers directly at all times, it is the DPO which further goes ahead and adds more channels (of other broadcasters) and formulates its own bouquet which is thereafter offered to the subscribers.

If at all any prescription is required, TRAI should ensure and control the menace that is sought to be created by the DPOs by overburdening the number of channels in the bouquets offered by them.



- 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.**

SPNI Response:

There is actually no link between the price of a channel offered on a-la-carte and average price of all pay channels forming a bouquet. Further, once any link/relation is sought to be established between the a-la-carte channel and average price of pay channels, it creates an artificial differentiation between the class of consumers who opt for a channel on a-la-carte basis and the other class of consumers who opt for a particular bouquet which consist of the said channel. Any attempt to create such linkage would be without any footing and would result in creating artificial linkage.

Offering of bouquets facilitates subscribers who may not be able to afford *à-la-carte* offerings yet are desirous of plurality and diversity of views and may be keen to explore different content, thereby enabling them to enjoy variety of quality content by means of opting for bouquet of channels. We feel that linking the price of bouquet of channels with its *à-la-carte* prices or imposing a cap on the discount on the sum of *à-la-carte* would have an adverse impact on consumers who prefer bouquets.

Bouquet composition is primarily driven by content composition and not by price of channel forming part of bouquet. Hence there is no requirement to have a relationship between maximum price of an a-la-carte channel forming the bouquet to be capped and average price of all the pay channels in that bouquet. Consumer choice distortion is prevented by the rule wherein the price of a bouquet cannot be less than price of any channel forming part of the bouquet.

5. **Should any other condition be prescribed for ensuring that a bouquet contains channels with homogeneous prices? Please provide your comments with justifications.**

SPNI Response:

Please refer to response to 4(a) above for detailed explanation.

6. **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.**

SPNI Response:

The incentive scheme which are being offered to the DPOs in addition to the mandatory distribution fee is sufficient to take care of the DPOs interests. The incentive schemes, currently offered by the broadcasters are in the form of (a) Penetration Discount for subscribed bouquet(s) and (b) LCN Discount for subscribed bouquet(s). Some broadcasters also offer Subscriber Volume Discount for subscribed bouquet(s).

Further, to give consumer a fair choice between Bouquet and Ala carte, it is very important that incentives should be applicable both on a la carte & bouquets. There is no scientific methodology to arrive at an incentive range for DPOs. The current cap of 35% (i.e.



maximum 15% incentive (as stated aforesaid) and minimum distribution fee of 20%) also do not have any economic or empirical basis of calculation.

7. **Stakeholders may provide their comments with full details and justification on any other matter related to the issues raised in present consultation.**

SPNI Response:

There are no additional comments.

