IBF's RESPONSE TO THE TRAI's CONSULTATION PAPER ON ADVERTISEMENTS ON TV CHANNELS

SUMMARY

With respect we would like to state that the present Consultation Paper (CP) appears to have been issued in an injudicious manner in so far as it reflects on the authorities power to regulate content on television channels. Further the timing of the CP also appears to be unwise as it comes at a time when the broadcasting industry is on the cusp of defining changes through the digitization mandate, that the TRAI has ignored the challenges to be faced in implementing digitization while utilizing it as the basis of the present CP speaks of a hasty attempt by the Authority to over regulate. The authority has also cited consumer complaints and reports without providing access to the same. Furthermore the TRAI has erred grossly in comparing the Indian Broadcasting sector with that of developed nations, with more favorable regulatory regimes. The CP lacks in providing adequate justifications for a differential regime for Pay and FTA channels and also does not take into account the unique business model of sports broadcasters who operate in challenging regime of growing content acquisition costs while also being mandated to share their signals with the public broadcaster. The stated goal of this CP, which is to regulate content on television channels, is not only an attempt of regulatory over-reach but also an example of regulatory oversight.

INTRODUCTION

At the outset, we wish to submit that the ideal regulatory approach should be to simplify and minimize regulation given the goal of ushering in the evolution of a mature market where market forces and self-regulation would suffice. The efforts of the Authority towards establishment of a digitized regime are noteworthy in this context. However, it appears that the current Consultation Paper and the proposals set out therein to bring in more stringent and universal guidelines are not in sync with such a progressive approach, especially when there is an existing framework which has not been faulted in its essence.

TRAI's desire to make recommendations on regulating advertising time on television channels suffers from a fundamental lack of understanding of the dynamics of the television broadcasting business. The basic business model is that broadcasts are used as entertainment for viewers and these broadcasts also carry advertisements. Viewers are then exposed to advertisements as a side product of their consumption of the entertainment content. The entertainment content is paid for by advertisers who use the intermediary of the broadcast company to deliver messages to the advertising firms' prospective customers. This model may be described as "a two-sided market with network externalities" where the intermediary, the broadcast company, is a "platform" that needs to get both sides on board in order to generate revenues. That is, the broadcaster must deliver viewers to advertisers and does so by judicious choice of the level (and perhaps the type) of advertising it proposes along with an attractive enough vehicle to attract the prospective buyers of the advertisers products to watch. Competition with other broadcasters (other platforms), is also an important feature of the competitive landscape.

Market forces ensure that a broadcaster takes into account the extent to which increasing the number of advertisements shown will cause viewers to switch off or switch channels, and this decision also impacts the amount of revenue raised per viewer from the advertisers. No broadcaster will therefore increase the number of advertisements beyond a point that will cause viewers to switch off or move to another programme. Hence for TRAI to view advertisements as an inherent nuisance that impedes viewing reflects a basic lack of understanding of the business model of the broadcasting industry.

The present consultation paper posits that the heavy reliance of Indian broadcasters on advertising revenues is due to the "non-addressable nature of the cable TV networks," and "gross under declaration of the subscriber base." These phenomena are indeed part of the Indian landscape, but the under-representation of subscription revenues in the business model of Indian broadcasting is also due to a decade of excessive regulation of subscription models -- including tight retail rate regulation, increasing interference in wholesale rate-setting, and maintenance of "must-provide" mandates that prevent platform differentiation and unnecessarily restrain competition. The rate regulations remain in effect in blatant despite of the rise of six DTH-based competitors who have now successfully brought competitive forces to play in every Indian home, and in five short years have captured roughly 25% of the pay - TV market. Thus, government over-regulation and under-enforcement have played a leading role in creating the industry's current imbalances. The key to resolving the imbalances does not lie in imposing layers of additional regulation; it lies in progressively remedying the ills at their cause.

TRAI's STATED POSITION

TRAI's turnaround in its views on capping advertising time defies any rational explanation. As mentioned later in this response, in Petition No. 34(C) of 2011 in the TDSAT filed by a society called Utsarg against TRAI and several other broadcasters and content aggregators seeking 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:

> *"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 ... ."*
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> *10. That after following a consultation process (emphasis supplied), the answering respondent (TRAI), inter-alia, formulated its recommendations on the issue of maximum time for advertisements in TV (emphasis supplied). 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 (emphasis supplied) 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 (sic) on revenues of broadcasters may hamper growth and competition in the broadcasting industry (emphasis supplied)... ."*
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> *11.That considering all the aspects of the matter, the answering respondent (TRAI) in its recommendation dated 1.10.2004, had recommended as under:*
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> *8.15 .. (i) There should not be any regulation at present on advertisement on both FTA and Pay channels (emphasis supplied).*

The above summarises TRAI's considered position in February 2011. Hence it is indeed surprising and manifest in TRAI's unbalanced approach that in less than a year after making this submission to the TDSAT, TRAI now comes out with a recommendation proposing drastic curbs on advertising time, reducing the time for Pay Channels by 50% from 12 minutes to six minutes per hour and proposing various other restrictions on how broadcasters must telecast advertisements. TRAI has offered no explanation for this 360 degree about turn. There has been no cataclysmic event in the industry that could have remotely suggested such a drastic curb was necessary. There has been no change in this period in the regulations in any of the countries cited by TRAI in its Consultation Paper. As the Utsarg petition itself demonstrates, it is not that there has been a sudden surge of complaints by viewers. In short there are no developments to support TRAI's draconian step in reducing advertising inventory by a whopping 60%.

In 2004 TRAI took the position that capping advertisements would put additional costs on Pay TV Broadcasters and had stated in Para 8.11 of its report that ***" Besides regulating subscriptions, regulation on the advertisement time and its corresponding revenues for broadcasters may hamper growth and competition in the broadcasting industry."*** (emphasis supplied. 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 as relevant today as when they were made in 2004 and reiterated in 2011. Hence the volte face by TRAI in its March 2012 recommendation is completely inexplicable and not based on empirical data.

It is also pertinent to note that the Authority itself has in its "Recommendations on Issues relating to Broadcasting and Distribution of TV channels" of 1 October, 2004 stated in para 8.12 of Section 8 ("Advertisement") stated as follows :

> ***"Broadcasters that put sizeable amount of time on advertisement loses viewership which is detrimental for a TV channel as such loss of viewership would mean loss of revenue. This shows that the market has a means of correcting "over advertising". This is corroborated by a report provided by Edeilweiss Capital on Zee Telefilms. Moreover for sports, advertisements can be inserted only during the natural breaks like between overs in a cricket match or during lunch/tea time."***

The Consultation Paper suggests a generic approach towards general entertainment channels and sports channels without detailing the unique differentiators and constraints of sports broadcasters which prevail due to the essential difference in content. The discussions in the Consultation Paper do not set out any research or data relating to or addressing any of the relevant factors that ought to be considered while contemplating any regulation that will affect sports channels which are *niche* channels which operate differently due to unique and periodic content availability, limited shelf life, mandatory sharing requirements, limited advertisement opportunities and huge content costs. This demonstrates an inherent issue in the approach itself that needs to be rectified even if one were to embark on such an exercise. It appears that most of the discussion relates to news channels while the proposed stipulations that have apparently stemmed out of such concerns seek to regulate the entire industry at large which is not a logical corollary.

PARAWISE RESPONSE

ISSUE: TRAI has taken Suo Moto cognisance based on consumer complaints relating to over advertisement without reference to the MIB which is the nodal authority as regards the existing advertisement code under Rule 7 of the CTN Rules.

IBF RESPONSE

a) TRAI does not have the authority to regulate advertisements, at best TRAI may make recommendations specifically in relation to parameters for maximum time durations for advertisements. Even otherwise any such recommendation would have to be made to the Ministry of Communication and IT since it is this ministry that issued the 2004 notification by which TRAI is purportedly drawing its power to recommend on issues pertaining to advertising minutage. The Notification is not even a piece of delegated legislation and at best is an executive order. Therefore any such recommendation would not only be a colourable exercise of authority but would also be devoid of jurisdiction as the nodal ministry for regulating advertisements is the MIB and the relevant legislation is the CTN Act & Rules. TRAI fails to recognise that under an Act of Parliament namely The Cable Television Network Regulation Act, 1994 and the Rules framed thereunder, Parliament has already laid down the maximum time for advertisements including promotions as 12 minutes per hour viz. Rule 7 of the CTN Rules. The Ministry of Information and Broadcasting ("MIB") is the nodal ministry for implementing these rules. The MIB has in fact issued advisories regarding advertisements and the manner in which they are shown on screen. Further the MIB has been engaging with Industry bodies like the IBF about enhancing the self-regulatory role of these Industry bodies in ensuring compliance with the CTN Rules and the IBF has already made its recommendations to the Ministry in the context of the proposed digitalisation of cable television. If the MIB believed that the present regulations are not being adhered to, it is for the MIB to take action against channels that fail to do so rather than tar the entire Industry with the same brush and reduce advertising inventory by over 50%, a clear case of the remedy being worse than the disease.

b) Even otherwise the 9th January 2004 notification under which TRAI is deriving its power was subsequently eclipsed by the insertion of Rule 7 (11) of the CTN Rules by the Central Government (MIB) in exercise of its powers under Section 22 of the CTN Act.

c) Further interestingly TRAI as per their own affidavit filed in TDSAT in PIL titled Utsarg vs. UoI, where all broadcasters were made party, TRAI has admitted that it has no role in respect of advertising minutage rules.

ISSUE : TRAI refers to a CMS study to make a case for the need to regulate advertisement.

IBF RESPONSE

a) The study is not made available to stakeholders, thus hit by the lack of transparency as mandated by TRAI Act.

b) The study quoted was only in respect to news channels, as is borne out of the extracts quoted in the CP, and thus cannot be used to draw conclusions is respect of Pay TV channels.

ISSUE :TRAI asserts that television broadcasting should not be converted into a medium for marketing.

IBF RESPONSE

a) Advertisements are not just for marketing rather they also serve the purpose of informing consumers about the choices available for a product and service. TRAI's view of advertisements as a "nuisance" affecting the quality of a viewer's television audio visual experience and ignoring the benefits of advertising is most unfortunate. TRAI fails to acknowledge or even recognise the social benefits of advertising:

i. the fact that advertising educates customers about goods and enables them to exercise their choice based upon a better understanding of the product and of the availability of substitute and supplementary goods.

ii. The fact that advertising is a major source of revenue for broadcasters (particularly in a market like India with overly restrictive price controls and tariff regulations that cap channel pricing at abysmally low levels denying broadcasters a fair share of distribution revenue).

iii. The fact that advertising enables broadcasters to offer superior and differentiated content to their viewers at an affordable price.

b) Advertisements serve as a powerful tool for generation of sales of new products and services and hence contributes to growth of the Indian Economy. Capping advertising will lead to poor quality programming and absence of diversity as it will reduce broadcaster profitability. Reducing advertising time will reduce overall advertising inventory leading to a situation where fewer products will be advertised squeezing out smaller brands from the consumer's vision. In short it will be short sighted and fatally flawed.

c) An in depth report by the Indian Broadcasting foundation on the "Impact of Television on India" found that 89% people agreed that advertisements was a source of valuable information as it informed them of news products and services, 96% agreed that television informed them of the latest products and 97% agreed that they were informed about the latest trends, fashion and products through television.

d) Further TRAI in its recommendations dated 1st October 2004 has concluded that advertisements keep subscription fees low and also contributes to the enhancement of the quality of content.

ISSUE : Revenue ratio of broadcasters skewed in favour of Ad revenue due to non-addressability, however situation will improve post digitalisation and therefore advertisements need to be controlled

IBF RESPONSE

a) Implementation of mandatory digitization of the Indian cable industry will make a good start at resolving some of the problems. It is also to be expected that the gradual rebalancing of the industry's revenue model will also help re-balance the composition of the pay - TV channel bouquet, more along the lines evident in other countries. In other large pay - TV economies, there are fewer "free" channels and more "pay" ones. When subscription revenues in India suffer fewer artificial constraints, there will be more channels more reliant on subscription revenue. TRAI has assumed that the DAS mandate will be implemented successfully and basis this assumption has gone ahead and proposed to reduce the pay TV advertising to 6 minutes and control FTA advertising 12 minutes. The timing of the proposals in the current consultation paper is particularly inappropriate. The authority justifies its proposals of new measures that will have the effect of restricting advertising revenue on the concept that digitization may succeed and subscription revenues may rise. These are outcomes devoutly to be wished, but we submit that the government should avoid consideration of ad revenue constraints until after the full effect of digitization can be seen and felt by all industry players

b) Needless to say that the skewed ratio of advertisement vs. subscription has its basis in legacy issues such as under declaration and piracy and ad hoc regulatory interventions by TRAI in form of price caps and must provide which ensures that subscription fees are the lowest in the world and continue to decline. Further TRAI has not considered the impact of huge carriage & placement fees vis a vis increased advertisement minutage. TRAI in its recommendations dated 1st October 2004 has given the example of Thailand where restrictions on advertising led to a huge increase in subscription fees, the present CP contradicts the stand taken by the authority earlier while also being in variance with international experience.

c) Holding any regulatory proposals in abeyance is also warranted by the fact that digitization will bring positive market incentives to bear – channels and advertisers will be able to clearly see which are actually being watched by consumers. Digitization will therefore empower consumers. If they find the number or nature of advertisements on a given channel to be excessive, they will cease watching that channel, and the improved state of audience data flowing from digital systems will provide feedback, pushing both subscription and ad revenues down for that channel. Greater incentives will therefore exist for channels to moderate any excesses. In TRAI's October 2004 recommendations it has stated that the market has evolved a mechanism to regulate over advertising as any channel which over advertised would lose subscribers. This was based on a study done by Edelweiss Capital on Zee Telefilms. Hence TRAI has failed to explain any justifiable rationale to deviate from its earlier findings of 2004. Some channels will make a point of promoting their more reasonable content, and some will eschew advertisements altogether in favour of seeking a premium subscription niche. The current situation – where channels have only incentives to drive as many ads as possible onto channels that are available (even if not watched) in as many homes as possible, will change.

In Digitization, as is the case with extensive and large scale changes of this nature, there could be challenges in implementation and it may take time for the end results to accrue over a period of time. Therefore, to herald in radical changes of the nature proposed in the current Consultation Paper based on the assumption that digitization will be a game changer would be premature at this stage. In fact, it may also be noted that the current scenario where the revenue models and share in a digitized regime are yet to be prescribed, it is not possible to embark on a realistic assessment of the actual business impact that may manifest as a result of such radical changes. Thus introducing new regulations now, which – like the rate regulations introduced a decade ago and never relaxed – will risk further distorting the marketplace well into the future.

ISSUE : Reference to International Markets

IBF RESPONSE

a) The source of such references has not been provided so as to enable a comprehensible comparison by the stakeholders. Further TRAI has failed to state that in those international markets there are no price caps nor must provide mandates resulting in healthy ARPU's from subscription and consequently less reliance on advertising revenue. TRAI in its paper makes several allusions to regulatory conditions in developed countries. India cannot be compared with the US, UK and other EU countries as the economic environment and market conditions are completely different. The reference to some international markets which are fully digitised fails to take into account the market conditions in India, it is out of context to compare the Indian TV industry with that of developed nations.

b) The international practices that have been cited need to be viewed in the context of the larger frameworks within which they operate and cannot be viewed in isolation. The fact that most of these jurisdictions do not operate under regimes where prices ceilings prevail and thus allows broadcasters far more options even if advertisements are subject to regulation, is a critical factor which cannot be ignored. The recognition of the impact of the prevailing price ceiling regime in

India would also explain to some extent the difference in revenues earned from advertisements and subscription that has been observed by the Authority along with the historical challenges like under declaration.

c) It is illogical as to how TRAI compares vastly different markets and comes to a common conclusion. Markets such as Malaysia, Philippines, USA, Canada, France, Germany, Australia, New Zealand, UK, Sweden, Norway have been compared with India to arrive at the formula for capping television advertisement time. None of these markets have price regulation on distribution of television channels. In many of these markets there is a clear distinction between "public" broadcasting and "pay" television. "FTA" in these countries means "free" to the consumer, unlike India where TRAI defines "FTA" as "free to the cable operator". In India subscribers pay for "FTA" as well as "PAY" television. Yet TRAI treats all these markets as homogeneous and draws its comparisons. TRAI is oblivious of the fact that in most of these countries there are no restrictions on "PAY" television. TRAI ignores the fact that Markets closer to India like Malaysia and the Philippines the maximum time permitted for advertisements is 15 minutes to 18 minutes per hour. Even in so called "developed" markets like Australia it varies from 13 minutes to 15 minutes; in the USA there is NO regulation at all (except for children's programmes at specified times); in New Zealand it is 15 minutes, etc.

d) We wish to point out that the consultation paper's examination of international precedents suffers from a fundamental distortion that makes it in many ways inaccurate. The descriptions of international practice in the paper frequently confound regulations for terrestrial broadcast channels (free) with those pertaining to cable TV and other pay-TV systems. In many countries, terrestrial broadcast channels bear particular obligations, because of their greater social impact, and because terrestrial broadcasters may be publicly funded, or subsidized through free allocations of free, premium-value spectrum. Governments usually maintain different regulatory regimes for free terrestrial broadcasts and pay - TV.

e) Indian cable TV channels, whether "free" or "pay," do not benefit from public subsidies, and do not bear public service obligations. It is not appropriate to compare foreign FTA regulatory approaches with Indian pay - TV approaches. The confusion on this point introduces substantial errors of fact; for example the paper's description of Australia quotes the wrong Code of Practice – the Commercial TV Industry Code of Practice. The latter does not apply to the cable TV industry, which is governed by Subscription Broadcasting Codes of Practice. In fact, contrary to the paper's assertions, Australia imposes no regulatory restriction on ad-minutes on any pay - TV channel (whether "free" or "pay" in the Indian sense of those words.)

f) We will not attempt to catalogue the errors in all the descriptions of foreign markets in the consultation paper. Instead, we provide for the record and for the Authority's greater information, the attached summary of regulations for pay - TV systems developed during CASBAA's recent research for its "Regulating for Growth 2011" study. The factual state of affairs is that most governments in Asia do not impose constraints on advertising minutes on pay - TV channels. Where there are limits, only in rare cases are they lower than the 10-minute limit already imposed by Indian regulations. International precedent in fact provides scant support for the strict limit proposed by the consultation paper.

ISSUE : No FTA channel shall carry advertisements exceeding 12 minutes in a clock hour. For pay channels, this limit shall be 6 minutes.

IBF RESPONSE

a) No rationale has been given for the same except the traditional TRAI mechanism of drawing a golden mean between two un related figures, a practice heavily criticised by the TDSAT judgement dated 16th December 2010 in the Digital addressable tariff matter. It is also not clarified as to what the allocation of time towards the different categories of advertisements (commercial, self-promotional and educational) would be if there was indeed a prescription of 6 minutes for pay channels. In fact, given that the Authority has recognized that there are three categories of advertisements, the consideration ought to be to increase the timeline upwards from 12 minutes as the current laws prescribing this limit allow for 10 minutes of commercial advertisements and 2 minutes of self-promotion without an allocation for educational advertisements. As explained above in the introduction to this response, we would reiterate that it is premature to consider bringing in more stringent guidelines placing reliance on digitization as a solution to under declaration and revenue loss as the exercise is yet to commence and will take no less than 2 years to achieve fruition if all goes well and we have to wait to appreciate an analyse the end results. Therefore, there does not seem to be any basis to conclude that digitization would solve all issues of revenue and hence, that may be sufficient justification to curb advertisement revenues.

b) No justifiable standard has been given to arrive at the arbitrary figure of 6 minutes for pay channels. There appears to be no logic to reduce the existing permitted limits and thus depriving a certain class of broadcasters of an existing flexibility merely because there is another class of broadcasters who are voluntarily choosing to transmit their channels on FTA basis. In fact, this does not benefit the broadcasters of the FTA channels either since the permitted timelines remain the same for them while merely creating a chimera of an artificial benefit that does not exist. Even conceptually, it does not appear sound to argue that resolution of under declaration could logically flow into a need to curb advertisement revenues since they are two separate business streams and models and not substitutable.

c) TRAI has also failed to take into account the different target audience of FTA and Pay channels as well as the substantial higher cost for acquisition / generation of content for Pay channels. The historical fact of price fixation that is referred to in the Consultation Paper also evidences that the prices for all pay channels existing at the time were arrived at on the basis of relevant factors, including a certain revenue expectation from advertisements without contemplation of a later discrimination on this basis. Due to the existing ceilings, the broadcasters would not be at liberty to alter pricing of channels and the revenue loss arising out of such a drastic reduction in advertisement time will be huge. No case has been made out by data or principle that could justify such an excessive impact.

d) TRAI has ignored that the consumer is not aware of which channels are FTA and which are Pay, chiefly due to non-enforcement by TRAI of the QoS for Non-CAS systems dated 24th February 2009. No consumer currently pays more for a "pay" channel than for a "free" one and therefore there is no justification for – and no evidence for – a consumer feeling that "pay" channels should be treated any differently because someone somewhere up the value chain is paying one type of fee or another. Consumers care what they pay, not what is paid at the wholesale level. If the primary objective is to serve consumer interest, then the wisdom of such a measure would be further suspect given that the consumer would continue to have the same exposure to advertisements on FTA channels because of which he/she is not really benefitting assuming viewership is influenced by the content of each channel as much as the frequency of advertisements.

e) This proposed stipulation does not recognize the basic and inherent differential factors that characterize sports channels to which a universal and generic guideline that may suit general entertainment channels cannot apply. Factors such as unique and periodic content availability, limited shelf life, mandatory sharing requirements and huge content costs that have been stressed above merit repetition in this context. There has to be a difference in approach in dealing with live sporting content and recorded general entertainment programming. Sports broadcasters typically invest huge amounts towards content acquisition which has to be recovered within a very limited period of time on a seasonal basis and even under the current laws, there are very limited advertisement opportunities. Therefore, an additional restriction linked to timing that is far more excessive and does not respect the nature of the content would challenge the business models on which such channels operate.

f) It is quite usual for content holders to stipulate certain minimum advertisement revenues based on which they grant broadcast rights and any prescription that is so substantially different from prevailing norms within the country and outside for pay channels could compromise contractual commitments and attract consequences under existing rights agreements. Needless to mention the losses which will be suffered by broadcasters who have entered into multi-year agreements based on such estimates. In fact such extreme guidelines could restrict the ability of broadcasters to acquire content going forward and will also limit sponsorship avenues for sports broadcasting in India due to the limited exposure that can be assured to the advertiser. This would be a great disservice not only to the audience but also to the growth and development of sport in the country.

g) Furthermore, sports broadcasters are also subject to the rigorous requirements of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007 under the terms of which our ability to earn revenues through telecast of notified events are curtailed by the content sharing requirements and revenue sharing arrangements with the national broadcaster, thereby being subject to an additional burden that is not applicable to the general entertainment channels.

h) It is indeed ironic, nay perverse that TRAI as the regulator introduced tariff and pricing restrictions on distribution of television channels in 2004, and complex "must provide" and other inter-connect obligations, putting caps on the MRP of television channels in CAS areas at Rs. 5 per channel (since increased by 0.35 paise after seven years- out of which the broadcaster's share is Rs. 2.25 per channel) and capping distribution revenues on analogue and digital platforms thereby foreclosing growth in distribution revenues and compelling broadcasters to increase advertising revenues to survive. And now without any change in the tariff structure on distribution, TRAI proposes drastic curbs on advertising revenue also which questions TRAI's role as an unbiased industry regulator. These new recommendations will sound the death knell of the broadcasting industry, struggling as it is in a highly fragmented and price sensitive market, with extortionate carriage and placement demands from operators.

Therefore, in light of the absence of any compelling commercial arguments, market data, international precedents or actual betterment of viewers or any class of broadcasters that would be achieved by the proposed differential treatment, we submit that there is no reason or grounds for differential treatment between FTA and pay channels in this regard.

ISSUE: Connecting the DAS CP and Tariff with the advertisements on TV channels

IBF RESPONSE

a) The earlier tariffs have never considered advertisement revenue, further as the tariffs lacked proper research they are all currently disputed. There is no evidence in the CP which proves a connection between the tariff and the advertisements, thus showing the highly arbitrary nature of the assertion.

ISSUE : 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.

In case of sporting events being telecast live, the advertisements shall only be carried during the 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.

IBF RESPONSE

a) There should not be a reduction in advertisement time on pay channels. Further sports channels are *sui generis* in nature due to various factors including unique and periodic content availability, limited shelf life, mandatory sharing requirements and huge content costs, we reiterate that a generic guideline of the nature proposed in this stipulation would not be appropriate or logical for sports channels. We submit that the nature of sporting events is too diverse and distinct to prescribe a generic guideline aimed at limiting advertisements to 'interruptions' in the sporting action where the notion of 'interruption' itself is not defined, other than a couple of incomparable illustrations. It may be more appropriate to stipulate a norm based on 'natural breaks' in an event where the game is not in play without any intervention by the broadcaster. This would of course be unique to each sport and must be assessed accordingly. The Authority itself has recognized this notion in para 8.12 of Section 8 ("Advertisement") 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'.

b) For instance, in a match of cricket, such natural breaks would occur during the time between the ball being dead and alive, which would include end of an over, injury time, lunch/drinks break, fall of a wicket, ball crosses the boundary, ball is lost or stuck (such as in a helmet) and other situations when the ball is not in play. These are times when the game is not in play and there is no sporting action taking place. Therefore, using this time for advertisement does not in any manner adversely affect the viewership experience. It is pertinent to note that the national broadcaster, Doordarshan, also follows the same approach. These norms are also recognized by international bodies regulating the sport such as the International Cricket Council.

c) Therefore, we cannot stress enough on the importance of adopting a customized approach that recognizes the uniqueness of each sport which precludes the viability of a generic guideline across sports. It is reiterated that the discussions in the Consultation Paper do not set out any research or data relating to or addressing any of the relevant factors that ought to be considered while contemplating any regulation that will affect sports channels which are niche channels which operate differently due to unique and periodic content availability, limited shelf life, mandatory sharing requirements, limited advertisement opportunities and huge content costs.

d) Restriction of advertisements to lunch/drinks break only during a cricket match would mean serious and far reaching impacts when one considers that such timings are when the audience also may not be committed and advertisers willing to procure spots during such time will be very limited. It is important to revisit the approach suggested by the proposed stipulation and move to an approach that relies on natural breaks for other reasons as well. If the norms do not respect the unique nature of each sport and attempt to prescribe generic guidelines, it could have serious impacts on the ability of broadcasters to attract sponsors for events, which in turn will have a ripple effect that will ultimately affect the development and visibility of sport. Further, the rights agreements under which sports content is procured generally prescribe the advertisement norms and restrictions that are in accordance with international practices in sports broadcasting. This in itself is the biggest regulator and also assures parity with international norms.

e) We are also concerned that the Authority's approach to ads on sporting events is too restrictive. In a competitive environment, we see no need for regulation of commercial interruptions – a channel which wishes to retain its viewers will schedule advertising during half-time or game breaks, or risk consumer switch-off. We would also note that not all sporting events have breaks of any kind (e.g. Formula 1 races) and any regulations must offer operators sufficient flexibility to cope with the particular nature of such events. One approach to coping is for the channel operator to use part-screen advertisements, which have the virtue of allowing the viewer to watch the action even while the advertisement airs. If part-screen advertisements are banned, it will be necessary to interrupt the coverage, and this is not of benefit to consumers.

f) TRAI in its present recommendation fails abjectly to understand or appreciate the dynamics of live sports broadcasting and its historical nexus to sponsorship- both broadcast and on ground. TRAI fails to consider empirical data that sports events globally survive and thrive only because of sponsorship. Ticket sales no matter how variably priced cannot meet the cost of organising events on the scale of a Cricket World Cup, an FA Cup, a World Cup Soccer, the English Premier League, the Europa League, Wimbledon, Formula 1, etc. Without sponsorship none of these events would have become the iconic world famous events they now are. It is primarily through funding from sponsors that the quality of these competitions have become world class attracting the world's best athletes to compete fiercely with each other much to the viewing pleasure and delight of spectators on the ground and around the world watching television. Sponsors on their part advertise in these events to reach a heterogeneous and diverse global audience. No sponsor will advertise on television if it is restrained from advertising its products or services during the live event/match which is "prime time" for viewers. Without sponsorship no game whether it is cricket, football or hockey can survive at the highest level, a fact TRAI seems to have ignored completely.

g) All major sporting events look to zealously protect their "brand" and increase their audience even if this means putting contractual obligations on the various rights licensees to ensure uninterrupted live coverage of the event. Later in this response we have explained the manner in which certain event organisers do this. Suffice to state that these contractual obligations ensure that viewers are not short changed and get to watch the live event as it unfolds. Much more than TRAI it is the event organisers who realise the value of retaining their viewers: no amount of regulation can have the same effect.

h) TRAI also fails to comprehend a fundamental aspect of sports rights licensing. Broadcast rights for marquee sports events are usually bid for 5 to 7 years at a time. These rights encompass entitlements to advertising inventory based on which the broadcaster evaluates the cost and benefit and makes his bid. When the bid is made, the broadcaster has assumed a certain amount of advertisement inventory which he will monetise to recoup his investment in acquiring the rights. A sudden and abrupt regulatory change in capping advertisement time can lead to contractual defaults depriving broadcasters of their rights affecting their fundamental rights to carry on business.

i) TRAI recommends that advertising in sporting events may only be inserted in interruptions during scheduled breaks during live sporting action. These interruptions are exemplified by making references to half time in football or hockey match, lunch/ drinks break in cricket matches, game/set change in case of lawn tennis, etc. In proposing the aforementioned recommendations for insertion of ads in live sports TRAI appears to have relied on the

Norwegian regime of sports broadcast. As per TRAI (without substantiating or providing the source of such regulation), Norway permits the ad insertion only in ‘natural breaks’ in live sports broadcast.

j) We respectfully submit that TRAI’s interpretation of ‘natural breaks’ is erroneous and the recommendations for ad insertion in live sports as captured in Para A above are misplaced. The term ‘natural breaks’ in the context of sports is subjective and TRAI has failed to define it in the CP while borrowing it from an unsubstantiated Norwegian regime. By way of an example, in cricket, when a ball is called a “dead ball”, it signifies no match play is in progress. Please refer Law 23 of ICC attached as Annexure 1. A “dead ball” can happen at different times during a match: when the ball crosses the boundary line, when a batsman is declared “out”, when the ball is collected by the wicket keeper, at the end of an over while the wicketkeeper changes ends, etc. No balls can be bowled or runs scored when the ball is dead as per ICC Law 23. When the ball is “dead” and there is no live action on the field, the host broadcaster switches to static images to enable licensees to go into commercial breaks in their respective territories. Hence local broadcasters cannot be expected to continue showing no live action on the ground.

k) The standard norms followed for live cricket broadcasts is to show advertisements at the end of each over while the keeper changes ends and the field placing’s change. Advertisements shown at this time usually have some nexus to the live action either as products or services and use well known players as endorsers. This keeps the viewer glued to his seat while at the same time providing him with information about the product/service. In short these advertisements serve a dual purpose: of providing relevant information about products and services and generating revenue for the broadcaster. Hence such advertisements cannot be termed a “nuisance” to consumers that needs to be curbed.

l) TRAI in its present recommendation has failed to take cognizance of the difference between regular programming (movies, regular television soaps, etc.) and live sports. In fact the present recommendation is a drastic departure from the recommendation made by TRAI in 2004 to the MIB and which recommendation it reiterated before the TDSAT in February 2011. In Para 8.12 of its 2004 recommendation TRAI did not make any recommendation on capping advertisement time for sports channels by observing that “ Moreover for sports, advertisements can only be inserted only during natural breaks, like in between overs for a cricket match or during lunch/tea.” (emphasis supplied). In its previous recommendation TRAI impliedly acknowledged the distinction between live sports broadcast and other television formats. In games like hockey and football, on field action is continuous from kick off till half time. Even when the ball goes out of play during a match there is an immediate throw in and hence no question of broadcasters cutting to commercials. In other sports like Formula1 and Golf there are no natural breaks. In short in live sports it is the run of play that dictates cutting to commercials and viewers are never allowed to lose live action as it happens. Hence there is no need for a regulation that pre-determines when advertisements should be played during live telecasts.

m) The broadcast rights in live sports are owned by the respective sports federations. Find attached as Annexure 2 containing the list of sports federations for some of the well-known sporting events in various countries. These sports bodies organize the matches at high costs which include payment of match fees to the players, referees, security, cost of infrastructure like stadia, travel, accommodation, training, medical facilities, etc. The cost of organisation is then recouped by monetising various rights around these events, including the broadcast rights. It is a fact that without broadcast sponsorship marquee sporting events cannot be brought to our viewing public

n) Organization of sporting events shall not be possible if these sports federations are not able to recoup their high costs and make reasonable profits to sustain themselves. There arises the need for having sponsorships and commitment to such sponsors for coming on board and funding the sporting events. Unlike monetization by broadcasters of regular programming like made for television shows and licensed movies, the sports broadcast has different dynamics. Broadcast rights only contribute to the recoupment of high costs of sporting federations which help them to make available tickets at affordable prices to the masses. The broadcast rights are granted by these sports bodies at a substantial license fees as this is one of the largest component for recouping their costs. To enable the respective broadcasters recoup the license fees paid by them and other costs like broadcast, the sports event rights organisers/rights holders contractually allow the broadcasters to put ads of specified duration at certain places while the live match is telecast by the sports broadcasters.

o) These sports federations sign contracts with the sponsors to commit them agreed upon exposure so that the sponsors can get the value out of their money. Some of the commitments of the sports federations are also passed on to the sports broadcasters which mandatorily have to provide exposure to such sponsors of the sports federations by way of inserting their ads, tags etc. Such obligations of a sports broadcaster are recited unambiguously in the broadcaster guidelines of such sports federations which are made part of the broadcast rights contracts. It must be noted that the sports federations for each respective sport do not allow a broadcaster to insert ads at any time and place in the discretion of the broadcaster. These sports federations control the sports and are highly motivated to provide a great viewing experience to the spectators of their respective sports. Accordingly, these sports federations categorically provide stringent broadcast guidelines to the sports broadcasters to streamline the ad insertion, duration of each ad break, the time and place where such ads can be inserted (in the same television window showing the match or by way of taking a commercial break), the brands that can be permitted for ads etc. In a way, these sports federations regulate virtually every aspect of advertisements that can be broadcast while broadcasting the live sports.

p) Find attached Annexure 3 that contains the broadcaster guidelines for IPL, Annexure 4 contains the broadcaster guidelines for live domestic and international cricket matches to be played under the auspices of BCCI, Annexure 5 contains the broadcaster guidelines of UEFA Champions League and Super Cup, Annexure 6 contains broadcaster guidelines for Europa Cup. These broadcaster guidelines are framed by the sporting federations of some of world's most popular sports, cricket and football, and Annexure 7 contains the broadcaster guidelines for ICC world cup. It may also be noted that these broadcaster guidelines form an invariable part of the broadcast license agreement between the sport federations and the sports broadcaster. Any breach of these guidelines is considered to be material by such sports federations.

q) TRAI's recommendations to regulate the ads in live sports are not only misplaced in the light of the aforementioned but also interfere with the copyrights and other rights of the Sports federations which own and control the format of the game in which TRAI has no authority whatsoever to recommend how the live sports should be telecast with ads. Without prejudice to IBF's submissions to challenge the jurisdiction of TRAI to make recommendations under the consultation paper, it may also be added here that if TRAI's recommendations were to become law, it would seriously impair the ability of the sports broadcaster to broadcast live sports. This is for the simple maths that it involves: if sports broadcasters are not able to recoup the exorbitant license fees that they pay to acquire the live match rights, the live sports may not be available the way it is now in the country. It is submitted TRAI's recommendations will make live sports broadcast in the country almost non-viable.

r) IBF fails to understand that while the live sports broadcast is already heavily regulated in terms of ad insertions by the respective sports federations as demonstrated above, TRAI's attempt to further regulate it is not only non-jurist but against the principles of equity. The sports federations while imposing their broadcaster guidelines balance the interest of the sports viewers and the broadcasters. While the sports broadcaster guidelines make sure that the broadcasters must not void the viewing experience and at the same time allowing them to recoup the license fees when no action is taking place in the sports.

s) One of the facets of TRAI's recommendations in regulating the ads in live sports harps around 'viewing experience'. It is pertinent for the authorities to note the way the sports broadcast is produced by the sports federations. When no action takes place on the play-ground, let it be any sports, the host broadcaster which is producing the live feed of the matches moves the camera to a still/static frame. By way of an example of live cricket production, the host producer at the end of an over, fall of wicket, freezes the camera to a wide long shot which stays on the field and the live feed typically shows players crossing over, getting ready for the next playing action etc. which has no intrinsic live sport action. Not only this, the commentators pause and don't speak until cued to do so by the host producer and certainly not before the match action resumes. Therefore the sports federations themselves allow the broadcasters to take breaks only at a time when no sporting action takes place. It may be argued that the viewership interest will be more in watching the animated, informative ads in which information is presented in a creative manner rather than watching frozen, static frames.

In light of the above, we submit that there ought to be no further regulation with respect to advertisements during live sporting action as it is uniquely dependent on the nature of each sport, is sufficiently governed and regulated by existing market forces and there is no data or basis that has been shared to justify changes that would effectively overhaul the status quo.

<u>ISSUE:</u> The audio level of the advertisements shall not be higher than the audio level of the programme.

<u>IBF RESPONSE</u>

a) These issues are out of the purview of TRAI and it is not empowered to recommend or regulate on these issues. The issue of volume of ad breaks is already addressed vide Rule 7 (6) of the CTN Rules. Assuming that the real concern would be of controlling and limiting loudness rather than establishing comparative standards, it is submitted that there is no demonstrated need for further regulation in this regard.

<u>ISSUE:</u> The limits for the duration of the advertisements shall be regulated on a clock hour basis i.e. the prescribed limits shall be enforced on clock hour basis.

<u>IBF RESPONSE</u>

a. We submit that the limits for the duration of advertisements should not be regulated on a clock hour basis and may continue to be regulated on a 24 hours basis in accordance with the extant laws. No basis or data to support the benefit of such a stipulation has been put forth in the Consultation Paper. At a conceptual level, a change in the existing laws in this regard would not in effect serve the consumers as it is widely known that the viewership patterns differ throughout the day due to which a clock basis approach that would apply universally to all hours would not be logical.

b. Such a proposal demonstrates the inherent deficiency where *niche* channels such as sports broadcasters have not been considered. A clock hour basis measure would not suit this *genre* of channels where live content is seasonal, limited to a specific period and the natural breaks where advertisement would be appropriate would vary from sport to sport. There cannot be a universal measure when the sports could be as varied as a one day cricket match, T20 cricket match or a soccer match.

ISSUE: There shall only be full screen advertisements. Part screen advertisements will not be permitted. Drop down advertisements will also not be permitted.

IBF Response

a. In this regard, it is pertinent to clarify the articulation of the objective of such a requirement in relation to sports broadcasters, which is presumably to ensure that the viewer is not deprived of the sporting action on the field and there should not be any interference with or interruption of the visuals of the telecast of the sporting action. If that be so, then the only stipulation ought to be that the play onscreen is clearly visible and distinguishable from the advertisement which should not interfere with or cause any impediment in viewing and enjoying the telecast of a match. To mandate that part screen advertisements are altogether prohibited to achieve this objective would be a disproportionately excessive measure.

b. Further, Rule 7(10) of the Cable Television Networks Rules, 1994, already captures the legislative intent and mandate in this regard by stipulating that advertisements must be clearly distinguishable from the programme and should not interfere with the programme. Therefore, there appears to be no need for further regulation. The extensive international reference points cited in Annexure I to the Consultation Paper also seem to suggest that the prevailing global practice does not favour total prohibition or even regulation in most cases. It is also noteworthy that this practice is also followed by the national broadcaster, Doordarshan, during its telecast of sporting events.

ISSUE: 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.

IBF Response

a. We submit that this proposed stipulation over reaches the mandate of making recommendations on maximum time for advertisement and enters the realm of content regulation which is clearly not within the powers of the Authority. Furthermore, Rule 7(10) of the Cable Television Networks Rules, 1994, already lays down the parameters for screen space in as much as it requires that the advertisement must be distinguishable from the programme and there should be no interference. Ultimately, it should be the broadcaster's prerogative as to how it regulates it content so long as it meets the law of the land.

ISSUE: TRAI asserts that TV should be an "affordable" source of entertainment and information, and that ads interfere with the same

IBF RESPONSE

a) The affordability of Indian TV is not in question as India has one of the lowest monthly ARPUs in the world (under USD 4 vs USD 60-120 for developed nations) – refer FICCI-KPMG Indian M&E Industry Report 2012 (pg 17,18)

b) As per IBF study on Television TV fulfils an important role in informing, educating and entertaining consumers both through content as well as advertisements. Advertisements make consumers aware of new products and services that exist in the market – thereby fulfilling an information gap

c) Many advertisements are "entertaining" and a reflection of popular culture and society. Creatively designed ads can boost entertainment value for viewers. Many behavioural scientists and international studies back this assertion

d) Ads also play an indirect role in boosting quality of content and programming and larger monies become available for quality production

CONCLUSION:

In light of the above, we submit that while the stated objective of the Authority in serving consumer interests better and improving viewership experience are certainly worthy pursuits, the need and basis for the current Consultation Paper merit reconsideration for the plethora of reasons elaborated above. It is submitted that in order for a legal prescription to be effective and visionary, it would be more appropriate to focus on implementation of existing regulations and monitoring of the intended effect rather than bring in extreme and unwarranted measures to address only few practices that may be currently prevalent and perhaps even misused by some broadcasters. It is submitted that TRAI's proposed recommendations are retrograde, will substantially increase the costs to consumers, will burden advertisers with higher costs, drive out marginal and smaller advertisers from advertising their products on national television, result in regulatory over-reach and is therefore strongly opposed.

Further, it is also reiterated that sports broadcasters have to be considered as a group whose constraints and concerns also deserve due consideration regardless of historical practice. It is perhaps a more urgent need of the hour to rectify such historical anomalies than usher in more generic guidelines.

Lastly, it is important to consider that any balanced assessment of advertisements would not be possible unless we recognize that the ultimate goal in regulation of advertisement time is perhaps not elimination of commercials altogether but to ensure judicious telecast of commercials which have their own role in spreading information and awareness about different options available to viewers and also serve a certain educational and/or artistic purpose. Such an approach would serve the purpose of generating maximum value to a viewer who can benefit from the commercials as well as the programming.