COMMENTS IN RESPONSE TO TRAI'S CONSULTATION PAPER NO. 05/2022 DATED 7 MAY 2022

"ISSUES RELATED TO NEW REGULATORY FRAMEWORK FOR BROADCASTING AND CABLE SERVICES"

Aakhya India*

Question

1. Should TRAI continue to prescribe a ceiling price of a channel for inclusion in the bouquet?

   a. If yes, please provide the MRP of a television channel as a ceiling for inclusion in a bouquet. Please provide the details of calculation 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 the consumer from perverse pricing?

   Please provide detailed reasoning/ justifications for your comment(s).

Response

TRAI must refrain from creating price ceiling for channels for inclusion in a bouquet and instead allow a free hand to the market forces so that actual value of TV channels may be discovered, and channels be priced accordingly.

The media and entertainment (M&E) sector in India has been under heavy regulation for the past 17 years. India is the only country in the world to impose price ceilings on inclusion of channels in bouquets. Due to the heavy discounts on bouquets, TV channel prices have remained low for 17 years. There has been no possibility of a proper price discovery of individual channels as a result.

A-la-carte and bouquet channels are different offerings catering to different target audiences having a different value proposition. Each channel has a unique value based on the size and preferences of its target audience. A one-size-fits-all pricing model would therefore be highly unsuitable. As per TRAI's own findings, 80% of consumers prefer channels in a bouquet.

It is of paramount importance that the best possible prices are made available to consumers. However, the pricing restrictions result in the bundling of a variety of channels, which may or may not be to the liking of the consumer. In order to better serve the consumer, it is necessary for channel bundles to be offered in an open market environment that is free from

*Aakhya India is a New Delhi-based organisation that is engaged in policy research, advocacy, and public relations. More information may be found at https://www.aakhyaindia.com.

pricing restrictions. Only then can the value of different TV channels be properly ascertained.

See also response to Q.7.

Question

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.

Response

Pricing of channels is a business decision taken by respective broadcasters based on extensive research of consumer preferences and price sensitivities. The utility value of a particular channel may depend on a number of factors such as type of content, quality of content, price of the channel (both ALC and as part of a bouquet), popularity with consumers and a myriad of other factors. India is the only country in the world that imposes price ceilings for pay channels. The industry as a whole and consumers in particular would be better served if TRAI were to abandon practices of this nature that intrude on free and fair voluntary transactions between M&E service providers and consumers.

See also response to Q.7.

Question

3. Should there be a 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.

Response

No, there should not be any ceiling on discounts on the sum of ALC prices of channels forming part of bouquets while fixing MRP of bouquets by broadcasters. TRAI has indicated in its Consultation Paper that ceiling on discounts is necessary to control “perverse pricing” in the market. However, it must be kept in mind that such “perverse pricing” is occurring due to the existing price restrictions on bouquets offered. Problems that arise out of regulation cannot be expected to be overcome with further regulation.

See also response to Q.7.

Question

4. Please provide your comments on the following points with justifications and details:

   a. Should channel prices in bouquet be homogenous? If yes, what should be the appropriate criteria for ensuring homogeneity in pricing the channels to be part of the same bouquet?

Response

No. Homogeneous pricing of channels in a bouquet assumes each channel to have the same intrinsic value as other channels in that bouquet. Such an assumption would be wholly incorrect by any rational metric.

Channel bouquets/ bundles are curated by broadcasters in a heterogenous fashion i.e. a combination of popular channels with relatively unknown ones. Introducing homogenous pricing would result in consumers having to pay more for channels they may not even watch or pay less than the fair market value for a popular channel. The very purpose behind having a differential bouquet and ALC pricing system would be defeated if all channels were to be priced in a homogenous fashion.

See also response to Q.7.

Question

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?

Response

It might be beneficial to review the efficacy of the entire pricing regulation regime, to understand the effect that it is having on the TV viewing market. Overzealous regulation and onerous pricing restrictions drive broadcasters to keep popular channels out of the bouquets that they offer and instead price them on an a-la-carte (ALC) basis, thereby substantially increasing end prices for consumers.

The ALC pricing regime was introduced in Canada in 2015. Almost immediately, the prices of ALC channels rose to such high levels that it made sense for consumers overall to stick with the old system of channel bundles.[1] The estimated loss to Canada's TV ecosystem was close to $670 million.[2] In India also, the TRAI had capped the prices of channels within a bouquet at Rs. 12 per channel. However, this only resulted in broadcasters taking all popular channels out of the bouquets and pricing them individually between Rs. 15-25, thereby increasing the overall cost to the consumers by almost 30-35%.[3]

ALC pricing should therefore be left untouched, as it is highly unlikely to become a popular consumption method. A consumer is likely to be far more inclined to stick to the existing regime of choosing bundles rather than curate for herself a set of channels from a pool of over 800 channels offered by broadcasters.

See also response to Q.7.

Question

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

---

[1]https://www.latimes.com/business/lazarus/la-fi-lazarus-canada-a-la-carte-tv-20161209-story.html
[2] ICRIER, 'Analysis of Competition and Regulatory Interventions' [2019] pg. 11, available at https://icrier.org/pdf/An_Analysis_of_Competition_and_Regulatory_Interventions.pdf
[2]https://economictimes.indiatimes.com/industry/media/entertainment/media/come-december-1-tv-viewers-may-have-to-shell-out-50-more/articleshow/87113603.cms

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.

Response

Refer to response to Q.4(b) above. See also response to Q.7.

Question

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

Response

In the first place, it is not desirable either for the consumer or for the broadcaster to ensure homogeneity of channel prices. All channels cannot be considered to have uniform utility across consumer bases. For example, a sports channel would have exponentially more viewers in India than a channel providing infographic content about travel. Both of these channels, if priced similarly, are more likely to distort consumer choices than if left to the market forces to determine their value based on content televised and the corresponding demand for it.

Secondly, homogeneous pricing would kill any incentive for broadcasters to invest and develop innovations to improve overall consumer experience. In a highly competitive sector like M&E, growth depends on the ability of businesses to adapt to changing circumstances brought about by technological development and constantly evolving consumer demand.

See also response to Q.7.

Question

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 and conditions for providing such discount? Please provide your comments with justifications.

Response

As is the case with B2C model, a hands-off approach is also recommended for B2B businesses. Whether there should be a discount on MRP of bouquet and ALC channels needs to be a business decision taken by broadcasters and DPOs and not a regulation to be imposed by TRAI. The TRAI's role as a regulator must be confined to ensuring a free and transparent market that operates with a light touch regulation. This is not only possible but also realistic, given the high level of competition in this sector. Overburdening the industry with pricing regulations in this manner will have the effect of choking the sector at large and will be detrimental to fair competition.

See also response to Q.7.

---

[4] *See EY and FICCI, 'Indian M&E rebounds with a customer-centric approach' [March 2022] at pg. 14, available at https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2022/ey-ficci-m-and-e-report-tuning-into-consumer.pdf*

Question

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

Response

The M&E sector in India is expected to reach Rs. 2.3 trillion by 2024.[4] Already the sectoral performance in 2021 has indicated a sharp V-shaped recovery of 16% from the Covid-19 pandemic period. Growth rate of M&E is projected at 13% CAGR, with television, digital media and films together contributing to 65% of the total growth.

The impact of the Covid-19 pandemic on the M&E sector is also one that requires some serious consideration. During the pandemic years, 11 crore households migrated to tariff pricing under NTO 1.0 via TRAI's "Best-Fit-Plan" which allowed DPOs to select channels and packages for subscribers. The implementation of NTO 1.0 was disastrous for the industry as it reduced the number of pay TV subscribers by 28 million. Due to the declining reach, many channels were forced to shut down. Further, direct to home (DTH) subscribers decreased from 70.99 million to 68.89 million. MSO subscribers also fell from about 47.58 million in the pre-pandemic era to 45.55 million. The sector in total lost 6 million active pay TV subscribers and Rs. 102 billion in revenues as a result.

With the pandemic slowly receding into endemic stages and people returning to offices, TV viewership has also shown a slight decline from 2020 to 2021, especially for younger audiences.[5] Even so, TV subscription revenues are projected to grow at a CAGR of 2%. Rapid electrification of rural areas coupled with a return to normalcy after lockdowns would mean revival of deactivated connections and an increase in demand for TV sets. However, the fact remains that stringent price regulations like NTO 2.0 could continue to impact average revenue per user (ARPU). 90[6] million households in India are yet to own TV in India which at an ARPU of INR 223[7] translates into INR 24,084 crores yearly.

BARC data suggests that 98% of TV-owning homes in India are single-TV homes,[8] meaning that there is scope for a variety of players to cater to the needs of individual consumer preferences in a single household alone. According to BARC, there are about 2%[9] (approx. 4 million) multi-TV households out of the total 210 million TV households in the country. Thus, there is a huge potential for growth in multi-TV homes with growth in household incomes.

On smart TV market penetration, there are about 5 million smart TVs in India. While television households are expected to grow over 5% till 2025, it is expected that growth would be driven by connected TVs which could cross 40 million by 2025, thereby making TV a more massified product than it was previously. The digital revolution (which has accelerated in recent years) has transferred more control to consumers, completely transforming the market

---

[5] Based on statistics provided by Broadcast Audience Research Council (BARC) India
[6] Available at https://barcindia.co.in/whitepaper/impact-of-co-viewing-on-tv-viewership.pdf
[7] FICCI-EY M&E Report 2022
[8] Available at https://barcindia.co.in/whitepaper/impact-of-co-viewing-on-tv-viewership.pdf
[9] BARC India Report on "Impact of Co-viewing on TV Viewership"

into a buyer-centric business worldwide, not just in India. Competing businesses are constantly needing to innovate and invest heavily in research and development to better understand the content and pricing needs of the customer.

With the arrival of new and formidable players like Freedish and OTT who offer better prices and benefit from newer user-friendly technology with low switching costs, it is necessary for TRAI to take stock of the possible effects of NTO 2.0 and its effects on the linear broadcasting sector, which is being squeezed out of its market space by restrictive price regulations. Moreover, the industry is currently in a period of flux, as indicated by the increasing number of competitors as well as the increasing inclination of large companies to invest in mergers and acquisitions to expand on their content creation and optimisation capabilities.

Pricing restrictions in an increasingly competitive and dynamic market will therefore likely force consumers to reorient their choices in favour of a particular technology. What the M&E sector really needs today is for competing market forces to be given complete forbearance to optimize their content and determine its value in an unrestricted environment that allows for fair and free competition between rival businesses. Ultimately, it is the consumer whose interests remain paramount and for whose benefit such stringent pricing regulations have been introduced. The market today is perfectly poised to provide the consumer with a wide range of choices at competitive prices. Allowing the market forces to fully play out with minimal light-touch regulation to boost fair competition would provide the best possible boost for growth and development of the M&E sector in India.

CONTACT US:

B4/69A, Ground Floor, Safdarjung Enclave, New Delhi - 110029

+91-011-46405200

info@aakhyaindia.com