

Introduction:

We have perused the Consultation Paper (“CP”) No. 7/2012 issued by TRAI on “Issues related to advertisements in TV Channels”. Please find herein our preliminary response to the same. We submit that our representations herein are without prejudice to our rights and contentions in any proceedings that we may opt for in this regard. We further submit that the instant response be read and construed harmoniously with our earlier communications, if any, on the subject. Our earlier submissions or communications, if any, in this regard are neither in derogation to nor in supersession of any of the submissions made herein. In the unlikely event of any ambiguity, our instant response hereto shall prevail. We also reserve our right and request the Authority’s leave and indulgence to submit any further representations, evidence or findings for its kind consideration.

Lack of Jurisdiction:

At the very outset, we submit respectfully that TRAI has no jurisdiction to regulate advertising as per extant laws, rules and regulations. Through the Cable Television Network Regulation Act, 1994 and the Rules (“CTN Act and Rules”) framed thereunder, Parliament has already laid down inter alia the maximum time for advertisements including promotions as 12 minutes per hour (viz. Rule 7). 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 Act and Rules and the IBF has already made its recommendations to the Ministry in the context of the proposed digitalisation of cable television. The purported notification issued by the Ministry of Communication in 2004 that has now been invoked by TRAI to regulate advertising is nonest and has long ceased to be of any legal effect, import or purport. The Notification was not even a piece of delegated legislation and was at best an executive order. The said Notification today is altogether devoid of the trappings of a mandate after the amendments made to the Cable Television Rules by the Ministry of Information and Broadcasting in 2006-07 as ratified by Parliament as aforesaid. It is submitted that till the time the notification was passed the field of advertising regulation was “unoccupied” however consequent to the amendment to the Cable Television Act that specifically laid down the minutage for advertising and other related matters - Parliament “occupied” the field and the notification that was at best an executive act got eclipsed in the process. We humbly submit that it is not within the remit or ambit of TRAI to override a Rule ratified by Parliament.

TRAI’s own stated position:

The instant paper is contra to TRAI’s consistent position of **not** regulating advertisements.

1. **TRAI Recommendations on Issues relating to Broadcasting and Distribution of TV channels** dated the **1st of October 2004**, given **herein as ANNEXURE A** --- Refer Page nos. 99 to 102 where TRAI had held:
 - a. Restrictions on advertisement time would adversely affect regional channels.
 - b. Such restrictions would drive up prices of Pay Channels.
 - c. Advertisement timing restrictions would adversely affect the quality of programming.
 - d. Over advertising would lead to loss of viewership and thus the market had a self-regulating mechanism in place.

Accordingly TRAI had concluded saying “There should not be any regulation, at present, on advertisement on both FTA and Pay Channels.”

2. The **Affidavit filed by the TRAI before the TDSAT** in the matter of **Utsarg vs. Union** of India, given herein as **ANNEXURE B**. TRAI had affirmed (refer para 8 to 11):
 - a. The advertising time is dealt with in the Advertisement code under the Cable Television Rules 1994
 - b. That the appropriate authority for enforcement is the authorised officer under the Cable Television Act and Rules.

Accordingly as per TRAI’s own submissions it has no jurisdiction whatsoever in the matter. Therefore all our subsequent submissions are without prejudice to our fundamental assertion that TRAI lacks inherent jurisdiction in dealing with the subject matter of the present consultation.

Erroneous Premise:

STAR stresses that the consultation paper has erroneously referred to “striking a balance between giving a consumer a good TV viewing experience and protecting the commercial interests of broadcasters.....” This premise is fundamentally flawed as it misconstrues the economics of television. Commercial interest of broadcasters far from militating against viewer experience is, on the contrary, an essential guarantee for ensuring a compelling value proposition for consumers to be rooted into television. Advertising revenues along with other revenues generated from investment in content are

further re-invested in programming to ensure viewer commitment by enriching their experience and feel.

Shifting goalposts:

We are not questioning the relevance of an outer limit for advertising minutage. We rather strongly submit that it should not be excessively rigid by being more than what it already is and if at all intervention is felt necessary, it ought to be through engaging with stakeholders and deliberating on regulations in the light of present ground realities. We submit that the industry is already interacting with the Ministry of Information and Broadcasting on this score and it is therefore all the more surprising that TRAI came up with such a paper at this particular juncture.

Viewer Fatigue:

It is important to recall that broadcasters are dependent on the tolerance threshold of viewers. In case of excessive advertisements or large scale breaks, the viewers would invariably switch to the other (numerous) channels available.

Advertisement Contributes To The Economy:

Needless to mention that all sectors of the Indian economy be it agriculture, manufacturing, trade or commerce find in television an affordable outlet to market offerings thereby stimulating demand that is essential to drive inclusive growth which is otherwise threatened by massive recession in advanced countries and the yawning deficit in India's current account. We submit that the debate on advertising and commercial communication should not degenerate merely into regulating duration and format of such communications in TV Channels. Rather, it should focus on ensuring the long-term competitiveness of not only the Indian media but also the entire spectrum of India's agricultural, manufacturing and services sector- in the face of profound technological, economic and market changes. Any shrinking of advertisement space is likely to impact the ability of important constituents of the Indian economy to reach out to its targeted consumers thereby irreversibly impairing economic activity. It is universally acknowledged that the level of advertising is one of the critical factors that influence economic development. We attach herein a comprehensive analysis of “Advertising and Economic Growth” adopted by the World Federation of Advertisers, marked herein as **ANNEXURE C** together with “The Contribution of the Advertising Industry to the UK Economy” A Creative Industries Report Conducted on behalf of Credos Prepared by Alexandra Albert and Dr Benjamin Reid, November 2011 given herein as **ANNEXURE D**.

Unpredictable State Of Economy:

However there are other factors too that influences economics. The TV industry in Europe and the US is facing unprecedented structural and cyclical changes that have profound implications for all players in the value chain. The implications for India are accordingly quite grim in view of the fact that the shrinking global village would ensure that India’s television story is scripted in line with worldwide trends. The emergence of devices such as personal video recorders, the increasing penetration of fixed and mobile broadband and proliferation of multiple media platforms are giving TV viewers unlimited flexibility. Consumer behaviors are undergoing a dramatic move towards time-shifted and on-demand content. A key consequence of these behavioral changes has been the impact on TV advertising revenues. With consumers increasingly shifting to online video aggregators and preferring short-form content, advertising dollars are also making a beeline to the new medium. From the other end, the current economic slowdown is having a significant impact on both advertising and TV subscription revenues. The result is a very challenging financial outlook with total TV revenues not likely to reach 2008 levels in real terms in the UK before 2014. These developments have far reaching implications for the fundamentals of the TV industry. ¹

These alarming trends have set in motion global debates and deliberations on alternative models for profitability that are altogether untested and untrodden.

A Piecemeal Approach:

The point that a regulator can ill afford to miss is that while it is easy to offhandedly curtail advertising revenues for broadcasters, it is impossible for regulators to immunize, protect and safeguard broadcasters from any economic downturn which would inevitably result in further shrinkage of the advertisement pie. Accordingly such piecemeal approach to control broadcaster revenues without paying heed to the larger economic forces at work or without advertent to input costs is likely to crush broadcasters under the weight of a seemingly micromanaging, highly intrusive and misguided regulation that will effectively impair consumer welfare by diminishing both the quantity as well as quality of television offerings not to speak of the resultant fall in investments and employment level that will have catastrophic consequences for the economy as a whole.

¹ CAPGEMINI “Future of Broadcasting”, Issue, 37, April 2009. http://www.capgemini.com/m/en/tl/Future_of_Broadcasting_A_New_Model_for_Profitability.pdf

India Has The Lowest Advertising Yield/Rates:

In any event India has the lowest advertising rates in the world. Indian companies are not used to spending anything near to what their European or American or for that matter rich South Asian counterparts spend on television marketing. The squeeze in minutagemay therefore not necessarily translate in a commensurate upward revision of advertising rates thereby leading to a toxic cycle of inventory accumulation and chronic beating down of prices. While incumbent broadcasters will be forced to undersell, new broadcasters will be hit the hardest and the advertising market will effectively shut out economically disadvantaged advertisers who have been hitherto availing television spots somehow on national/regional channels thereby further weakening their respective businesses.

Difference In Approach Between Ofcom And TRAI:

It may be pertinent to note that the only other regulator that has revisited advertising regulations in the recent past is OFCOM of UK. Without agreeing or disagreeing in any manner with all or any of the findings of Ofcom, the relevant portion of the executive summary of its report dated 15th December 2011² shows that it was at the very least alive to the fact that:

“1.4 There have been significant changes in how television is distributed and consumed since these rules were first put in place, including the growth of multi-channel TV and the take-up of digital video recorders (DVRs). Ofcom has, therefore, been considering whether there is an ongoing need for UK-specific restrictions on the amount of advertising on television, and whether the current rules are fit for purpose.....”

1.6 Any changes to advertising minutage regulation could have a significant impact on broadcasters, advertisers and viewers. There have been very different views expressed by different stakeholders on the need for, and nature of, any changes.

1.7 In 2007, in light of the above, Ofcom initiated the first of a number of consultations on advertising regulation. As part of this work we looked at the possible economic impact of different options for advertising minutageregulation and commissioned econometric research to inform the modelling of the impact of any changes.

1.8 It is important that, when looking at the advertising minutage rules, we consider how best to balance our various duties in this area. We have,

² OFCOM “Regulating the quantity of advertising on television”; 15.12.2011:
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/ad-minutage>

therefore, conducted additional work on the principles underlying the regulation of advertising to consider whether there is a case for moving away from the status quo. This document sets out our position on the regulation of advertising minutage in light of this analysis.”

Needless to mention where Ofcom had begun with a stated premise of questioning whether there was any need to continue with extant regulations; TRAI on the other hand has at the very inception revealed its preconceived bias towards further tightening existing regulations to the detriment of broadcasters, advertisers and by logical corollary even the viewers. There is no evidence of TRAI having conducted any kind of study econometric or otherwise to analyse the impact of any changes nor is there any evidence of “*additional work on the principles underlying the regulation of advertising to consider whether there is a case for moving away from the status quo.*”

Without concurring nor acquiescing in any manner with all or any of the findings of Ofcom, it may be pertinent to highlight that after a study spanning several years (from 2007 onwards) Ofcom was at the very least conscious of the fact that:

*“1.9.5 Ofcom must also have regard to the **desirability of promoting competition** in relevant markets, in this case the TV advertising market.*

*1.9.6 In carrying out our duties, **we must have regard to the likely impact** of regulation on stakeholders such as consumers, citizens, broadcasters and advertisers and, where appropriate, on others likely to be affected by regulation.*

1.10 These interests can potentially act in tension, for example, if we were only focused on protecting viewers from excessive advertising one approach might be to prohibit advertising within programme breaks and only allow advertising between programmes. However, restricting the amount of advertising to extremely low levels is likely to reduce the level of advertising revenue available to produce content, which in turn would be likely to reduce the range and or quality of programming available to viewers.”³

Lack Of Transparency:

No such considerations seem to be playing in the minds of TRAI when it says without substantiation or corroboration and in not adhering to the requirements of transparency as enshrined in Section 11(4) of The Telecom Regulatory Authority Of India Act, 1997 (“TRAI Act”) as amended from time to time, that⁴:

³ ibid

⁴ TRAI Consultation Paper

“(v) There have been several complaints from different quarters, including the consumers, regarding overplaying of advertisements, long duration of advertisements, overlaying of advertisements on the screen, increased audio level during advertisements etc. and the same has been raised at various fora. It has also been articulated that the advertisement duration and formats are not in accordance with the provisions stated above. It has often been pointed out that the advertisements are played/ repeated several times in between the programmes, which break the continuity of the programme and often done at crucial stages of a programme. In this context, there have been requests to at least restrict and regulate the duration, frequency and timings of the advertisements, especially on pay channels. Some of the consumer organizations put forth the opinion that since they pay subscription fees for viewing pay channels, there is little justification for these channels to show advertisements.”

Broadcasters were never made privy to such allegations, nor were any prior communications addressed to broadcasters by the Authority or by anybody from the Government to verify the veracity of such allegations if at all. All of a sudden the Regulator comes up with a paper purportedly with a stated singular agenda for regulating the manner and timing of advertisements thereby taking the broadcasters completely by surprise. It is clear from the Consultation Paper that the Regulator has already made up its mind and is now only paying lip service to the statutory requirements of transparency by inviting comments from stakeholders after having already taken a view and expressly stating its intent to regulate without empirically or factually arriving at a conclusion on the need or basis to regulate as such. If TRAI had indeed any reason to believe or cause to suspect that broadcasters were not abiding by the existing 10 + 2 Rule, it could have set up and constituted an independent enquiry and communicated its findings to the Nodal Ministry or the authorized officers under the Cable Television Act for appropriate action to be taken, instead none of this has been done and now a fait accompli is intended to be presented before the industry after going through the motions of an apparent consultation process and presumably an Open House Session of little consequence.

Regulator’s mind closed:

We find that the Authority is off-track when it states⁵:

“While the consumers tend to buy bigger and higher resolution screens to enjoy the best possible near life size images and clarity in programmes, they end up viewing larger than life commercials sharing the screen. All these factors, coupled with the fact that the consumer does not have a

⁵ Para 1.1 of the CP

choice to skip these advertisements, not only adversely affect the overall viewing experience of the consumers but also defeat the very purpose of television as a mass media. To address these issues, arises the need to review the existing regulatory provisions regarding advertisements in TV channels in India.”

This wide statement of the Authority that is again wholly unsubstantiated and uncorroborated gives out clearly that the Authority has prejudged the issue. The statement betrays the complete lack of understanding on the part of Authority when it laments on consumers not having a choice to skip advertisement. Little does the Authority realize that had this choice been ensured, no advertisers would have been found advertising in television.

The trade-offs from advertising:

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.

- a) 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. A case in point is the dependence of the government on Television medium to propagate socially relevant campaigns like the “JagoGrahakJago” which reaches out to millions of Indians
 - 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) 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) Capping advertising will lead to increase in the selling rates by broadcasters and will lead to an inflationary trend with advertisers having to shell out more to achieve the same erstwhile objectives.
- d) 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% sgreed that they were informed about the latest trends, fashion and products through television.
- e) 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.

TRAI misinterprets Data:

While the Authority holds that television advertising has been growing⁶, it fails to realize that over the years the number of channels and by logical corollary, the total available inventory has also increased drastically over the years. Further there has been audience fragmentation as internet gradually acquires critical mass and other multimedia avenues are also vying for the ever elusive advertising Rupee. The TRAI also steers clear of the fact that advertising yieldsin India are among the lowest and advertising rates are so low that they are nowhere comparable to international benchmarks in this regard. It also does not address the general vagaries of the economy that influences advertising and does not make out a prescription for broadcasters during lean times.

TRAI’s premature and misplaced reliance on digitalization:

While the Authority admits that under declaration in analog cable is the main reason why advertising revenues have a greater share in the revenue mix⁷ yet the same Authority over simplifies when it contends that digitization would be a panacea for all ills given that it’s a long way to go till we phase out Analog cable in full by 2014, if at all.⁸

Implementation of mandatory digitization of the Indian cable industry will make a good start at resolving some of the legacy issues. 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

⁶ Para 1.4 of CP

⁷ Para 1.5 of CP

⁸ Para 1.6 of CP

are fewer “free” channels and more “pay” ones. When subscription revenues in India suffer fewer artificial constraints, there will be more channels relying 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 to 12 minutes. 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. This is a classical situation of putting the horse before the cart!

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 the 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 decreased 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.

Digitization will bring positive market incentives to bear – broadcasters and advertisers will be able to clearly see which channels 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. Greater incentives will therefore exist for channels to moderate any excesses. In TRAI's October 2004 recommendations it had 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 content, and some will avoid advertisements altogether in favour of seeking a premium niche subscription.

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.

Averments have been made to suggest advertisements as “possible irritants” among others without a shred of evidence. References have been made to the ‘invisible’ consumer complaints to justify regulations in the absence of any independent work or study done by TRAI.⁹

The CMS Report:

A purported study allegedly conducted by one Centre for Media Studies (“CMS”) has been repeatedly relied ¹⁰upon by the Authority to cast aspersions on News Channels by castigating their alleged advertisement practices. The said Report is again in outright violation of Section 11(4) of the TRAI Act as the same has neither been put up in the public domain nor has been made available to respondents. Its not known whether such study was commissioned by the Authority. Neither has the antecedents of the said Study Center been shared with the public or the respondents. Going by the CP, the said CMS Report purports to be all about supposedadvertising minutageviolations in News channels. Surprisingly the Authority in a total display of non-application of mind and without adducing any reason thereof has, without stating as much, extrapolated the findings to apply to Non News channels as well, that too without any independent reference to advertising practices being pursued by such Non News/GEC Channels. As stated, even the CP does not contend anywhere that the said CMS Study has alleged any wrong doing on the part of GEC Channels on the issue of advertisingminutage, yet this attempt to tar all channels with the same brush is befuddling to say the least and smacks of a cavalier attitude on the part of the Regulator to arbitrarily regulate the television space.

The Case Studies from abroad:

The source of such references has not been provided so as to enable a comprehensible comparison by the stakeholders. Further TRAI has not stated 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

⁹ Para 1.8 of CP

¹⁰ Para 1.9 to Para 1.10 of the CP

that of developed nations. 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. 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 both “FTA” as well as “Pay” channels. 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.

Also international precedents cited in the CP¹¹ are redolent with errors. The references to Australia and New Zealand both refer to the ad limits for free terrestrial television. They are not the pay-tv limits. There is no government limit on ad minutes for pay-tv in either Australia or New Zealand. There are however self-regulatory Codes that the industry out there has evolved. The examples cited in the CP pertain to terrestrial television networks that are available to viewers free of cost. The narrative on international practices in the CP frequently confuses regulations for terrestrial broadcast channels (free) with those pertaining to cable TV and other pay-TV systems. In many jurisdictions, terrestrial broadcast channels are made to carry particular obligations primarily because of their greater social impact, and also because terrestrial broadcasters are usually publicly funded, or subsidized through free allocations of free, premium-value spectrum. Governments usually maintain different regulatory dispensations for terrestrial broadcasts that are usually free to the consumer and pay-TV.

¹¹ Para 1.11 of the CP

Indian cable TV channels, whether “free” or “pay,” do not avail public subsidies, nor do they carry any public service obligations. Most importantly no channel in India is free to the consumer unless he is receiving Doordarshan channels through a terrestrial network. It is therefore not appropriate to compare foreign FTA regulatory approaches that are essentially terrestrial with that of Indian Pay-TV. The CP when describing regulations prevailing in Australia refers to 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 Practice¹². 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.)

We will not attempt to enlist the complete errors in this regard, suffice it to say that allusions to such international practices are illinformed, mis conceived and ill directed.

Invisible consumer complaints:

The CP then again goes on to make a reference to so called complaints made by consumers¹³. None of these complaints were shared with us at any point of time, nor did the Authority in living memory write to us seeking any clarification on such complaints. The Authority has also not stated whether it had communicated with the concerned broadcasters nor has it alleged that it did not receive any favorable response. Reference has been made yet again to the CMS Study (on News Channels) and generalizations have been drawn by making unfounded allegations in order to build a case for regulating advertisements on a clock hour basis.¹⁴

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.

Such a proposal demonstrates the inherent deficiency where the unique case of niche channels such as sports broadcasters has 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

¹² http://www.acma.gov.au/WEB/STANDARD/pc=IND_REG_CODES_BCAST

¹³ Para 1.12 of the CP

¹⁴ Para 1.14 and 1.15 of the CP

advertisement would be appropriate would vary from sport to sport. There cannot be a universal measure as the sports event could be as varied as a one day cricket match, T20 cricket match or a soccer match.

Misinterpreting the MPA Report:

The Report ¹⁵ from MPA has been misinterpreted by the TRAI. The decline in advertising revenue as a percentage of total revenue has been triggered by increased audience fragmentation, the proliferation of new channels leading to a surfeit of ad inventory, sticky rates, emergence of new media like internet, social media, etc. TRAI regrettably instead holds this decline as an indicator of broadcaster's declining dependency on advertising revenues.

Different prescription for Pay and FTA:

The CP also proceeds to draw an artificial distinction between pay channels and FTA channels solely on the basis of payments made/not made to operators by broadcasters. The CP further goes on to say that the quantum of advertisement permitted in FTA Channels may be more than the pay channels.

It goes on to conclude that such channels are being offered to consumers at a comparatively lesser charge as compared to pay channels without submitting any empirical data whatsoever to support.

No worthy rationale has been provided to justify a 6 minute commercial break for Pay TV channels while recommending a 12 minute break for FTA Channels. The only reason forthcoming from TRAI is at best a conjecture that the dependence of Pay TV channels on advertisement revenues is expected to go down in the coming years.

We reiterate that it is premature to consider bringing in more stringent advertising 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 and 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.

It may be pertinent to mention that. 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, or tries to substitute one for another thus showing the highly arbitrary nature of the assertion.

¹⁵ Para 1.17 of the CP

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.

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.

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.

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 due to the limited exposure that can be assured to the advertiser. This would be a great disservice to the audience in the country.

Furthermore, sports broadcasters are a unique case unto themselves as they are also subject to the rigorous requirements of the Sports Broadcasting Signals (Mandatory Sharing with PrasarBharati) Act, 2007 under the terms of which their 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.

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 at frozen rates and digital platforms at 35 percent of analog rates that too after decreasing it from 50%, thereby foreclosing growth in distribution revenues and compelling broadcasters to rely upon 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.

Frequency/Time Gaps/Audio levels:

TRAI in the remaining paragraphs has pitched for regulating the frequency of advertisements by making wholly subjective assertions totally devoid of any objective enquiry or factual analysis. Certain advertisement breaks have been taken to be as major irritants while some have not been so taken. Minimum time gaps have also been laid down, not as a point for discussion with stakeholders but clearly as a fait accompli betraying thereby a total foreclosure of regulatory mindset on such critical issues. The Regulator also wants advertisement breaks to coincide with breaks/interruptions in the event being

telecast like half time in football or hockey or during lunch breaks, drink breaks in cricket and set changes in case of lawn tennis little realizing that advertisers are not naïve to book advertising spots in times when they know targeted consumers are least likely to be watching television. The Regulator then seeks parity between audio level of advertisement with that of programme without advertizing to the fact that identical provisions already exist in the Cable Television Act and Rules. TRAI’s attempt to regulate audio is 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. The Regulator goes on to lay down 10 percent of bottom portions of the screen as sufficient for displaying noncommercial information of vital importance without applying its mind that today television comes in different shapes and sizes and to specify a percentage in this regard would be impossible to implement.

We submit that there should not be a reduction in advertisement time or frequency of advertisements on pay channels. Broadcasters struggle to recover even 20% of the cost of a movie in the first year of telecast with no restrictions on ad duration. If the “3 break per movie” is implemented, it will become unviable for broadcasters to acquire C&S rights and thereby this will cause a domino effect on the entire movie industry (C&S rights account for almost 30% of the cost of production of movies) 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 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, diminished subscription revenue and huge content costs.

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. This 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 sports.

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. 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. 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.

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 strategically or risk consumer switch-off. Not all sporting events have breaks of any kind (e.g. Formula 1 races). The channel operator could 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.

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 has 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.

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.

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.

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.

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. In its previous recommendation TRAI impliedly acknowledged the distinction between live sports broadcast and other television formats. 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.

The broadcast rights in live sports are owned by the respective sports federations. 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

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.

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.

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.

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. 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.

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.

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.

In so far as TRAI's contention that there shall only be full screen advertisements. Part screen advertisements along with drop down advertisements will not be permitted except in exceptional cases as in News Channels 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.

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.

On TRAI permitting News and Current Affairs channels 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. We submit that 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 its content so long as it meets the law of the land.

Finally on TRAI's assertion that TV should be an “affordable” source of entertainment and information, and allegation that ads interfere with the same We submit that:

- 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 conclusion we submit that TRAI's instant exercise to purportedly regulate the advertising space is a colorable exercise that is altogether devoid of jurisdiction and hence arbitrary and illegal given that Parliament is the only constitutional authority that can consider this issue at the behest of the appropriate nodal ministry which in this case is the Ministry of Information and Broadcasting.

TRAI has also erred in comparing the Indian Broadcasting sector with that of developed nations, with more favorable regulatory regimes on tariff and interconnection. 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 regional broadcasters who operate in challenging regime of sky rocketing content acquisition costs (C&S rights cost for movies have grown by 300% in the last 3 years) and an onset of Carriage spends which makes mockery of the “Pay revenues” earned from the MSOs and Cable Operators (In Karnataka, the #2 General Entertainment Channel shells out a Carriage payout which is 142% of the Pay revenue and in Kerala, the Carriage outlays for the #1 GEC is almost 100% of the analogue pay revenues). While ARPU’s are “regulated” and the phenomenon of “under-declaration” is an accepted norm, there are also no regulations to ensure a “must carry” provision which leaves the broadcasters at the mercy of MSOs and Cable Operators.

It is pertinent to note that Regional broadcasters entirely depend on advertisement revenue and any attempt to rein in advertisement duration without addressing the anomalies in Pay revenue (Gross under declaration) and regulating costs (Carriage, Content) will sound a death knell for the industry. Smaller players will be forced to shut down and incumbents will spend lesser on content thereby depriving the viewer’s access to quality entertainment content. All investments by broadcasters in technology upgrade (High Definition with Dolby Sound) will be curtailed. The proposed move is regressive and is not holistic in approach. We believe that it is not only an attempt of regulatory over-reach but also an example of regulatory oversight without involving the views of the stakeholders. Lastly, the regional broadcasters play a pivotal role in the following

- contributing significant sums to Income tax and Service Tax,
- employment generation (technical, managerial)
- Providing a cost effective source of entertainment for the viewers
- growth of allied industries like Production Houses, Media Process Outsourcing Companies, Ad agencies, Talent, Movie Industry, Equipment manufacturers
- Providing a cost effective marketing platform for advertisers and thereby helping their business

Hence any move to de-stabilize the business model of regional broadcasters will have far reaching consequences on the entire eco-system

The Consultation Paper suggests a generic approach towards all broadcasters (News, Sports, Niche, General Entertainment, Regional Channels etc) without detailing the unique differentiators and constraints of each type of broadcaster 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 operate differently due to unique and periodic content availability, limited shelf life, mandatory sharing requirements, limited advertisement opportunities or regional channels which are characterized by huge content costs, high carriage

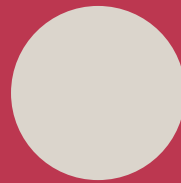
costs and near 100% dependence on advertisement revenue. It appears that most of the discussion relates to news channels while the proposed stipulations that have apparently stemmed out of such concerns seek to regulate the entire industry at large which is not a logical corollary.

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.

ADVERTISING AND ECONOMIC GROWTH



WORLD FEDERATION
OF ADVERTISERS



UNION
DES ANNONCEURS

ADVERTISING AND ECONOMIC GROWTH

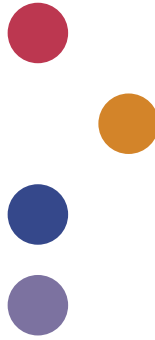
Doctorate Thesis in Economics

submitted by Maximilien Nayaradou to the University of Paris 9 - Dauphine

Synthesis and principal conclusions drafted by the author

**The English translation was prepared by and is the sole responsibility of the World
Federation of Advertisers (WFA)**

**UDA – UNION DES ANNONCEURS
(French Association of Advertisers)**



Doctorate Thesis in Economics

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Paradoxically, while advertising represents a major intangible investment on the part of companies, very little is known about its wider economic role. Economists, who have long been praising the virtues of R&D as a lever for economic growth, are practically silent on advertising spend, while the latter probably represents a greater amount (in the region of 700 billion euros per annum globally)! Addressing this omission has become a matter of urgency.

Maximilien Nayaradou, the author of a doctorate thesis for the University of Paris-Dauphine, undertook this task under the guidance of his thesis director Professor Jean-Hervé Lorenzi, President of the French 'Cercle des économistes'. There was one simple objective: **to contribute to a better understanding by economic and political actors of the mechanisms by which company investments in commercial communications influence the economic growth** of developed countries.

Because his approach was interesting and original, the UDA (the Union des Annonceurs or French Advertisers' Association), a body that had long been wishing to study this question, decided to actively support and finance his work. This work also benefited from the support and financing of the Ministry of Research, the World Federation of Advertisers (WFA) and the IREP (Institute of Advertising Research and Studies).

This thesis, officially submitted in 2004, was graded "with great distinction, with the Jury's congratulations", the highest possible award.

Interesting as they may be, academic works are often inaccessible to the ordinary reader, because they are voluminous (in some cases running to 750 pages). Accordingly, our request to Maximilien Nayaradou was to condense his work and to deliver the essential aspects of the conclusions to which it led in a "boiled down" format. However, should the reader wish to refer back to the original document – the thesis as it was initially presented – it is available upon simple request to the UDA.

By introducing Maximilien Nayaradou's principal findings in this document, **our wish is to promote knowledge and understanding of the economic mechanisms essential for growth** and to encourage researchers to pursue this subject in greater depth.

Finally, it should be taken into account that the work carried out by Maximilien Nayaradou adopts a macroeconomic point of view. Its findings are therefore valid only from this perspective and not from a microeconomic perspective. Indeed, each company taken in isolation has its own criteria for analysing the opportunity presented by advertising investments and the effectiveness of such investments.

Union des annonceurs

Dominique Reiniche
President (2004-2006)

Gérard Noël
Vice-President & Director General

Françoise Renaud
Marketing Research Director





Introduction

The following findings were obtained using the tools available in economic sciences (macroeconomics, industrial economics, statistical analysis, econometrics) following an in-depth analysis of the theories and studies available on both sides of the Atlantic – for the years 1990 to 2000. Then demonstrate the positive impact investments in advertising have on growth by means of four key mechanisms:

- **Consumption: the sectors in which advertising investments are highest are also those in which consumption is growing the most in terms of volume.** Accordingly, they contribute proportionally more to economic growth in general than other sectors;
- **Innovation: the sectors in which investment is above average both in advertising and in innovation and R&D, are also those in which the growth of added value is highest.** The contribution of those sectors to growth is therefore significantly greater than that made by the sectors in which investment activity is limited to innovation and R&D. **To obtain the best levels of economic performance, investment in innovation and R&D must go hand-in-hand with a similar effort in terms of advertising;**
- **Competition: those sectors in which the advertising investment rate is highest are also those in which the market shares of companies are least rigid and in which competition, a recognised driver of growth, is liveliest;**
- **Sectoral leverage effect: as an economic sector in its own right, advertising is a multiplier of economic growth. In this sector, added value is increasing twice as fast as it is in the economy as a whole** and its contribution to employment growth is four times greater than the average for the overall economy. This sector therefore exerts a positive leverage effect on growth.

One of the contributions of this study is the unveiling of positive correlations between “advertising investments” and “economic growth”, which sheds fresh light on the relationship between the two. **It demonstrates a positive correlation between the advertising investment rate and productive efficiency (itself an original indicator of the efficiency of economic growth). The greater the increase in the advertising investment rate, the greater the increase in productive efficiency (and vice versa).** Economic growth is significantly weaker in those developed countries where there is relatively low investment in advertising. **The conclusion is that advertising investment, and in particular media advertising investment, improves the economic efficiency of material investments.**

These findings should help those public authorities responsible for regulating the advertising market to take better account of the impact of an increase or a fall in the advertising investment rate in respect of general economic performance. Statistics demonstrate that the more extensive the advertising space available, the higher the rate of investment in media advertising and the greater the strength of economic growth. **From a strictly economic point of view, it is therefore appropriate to promote the emergence of a wide advertising offer to ensure that advertising investment is used to boost economic growth in the best possible way.**



Finally, two essential comments:

- While in the past the majority of economic studies have been limited to media advertising, **this study covers the entire field of advertising, namely that of traditional media advertising (press, radio, TV, posters, cinema, Internet, etc.) and non-traditional media (direct marketing, promotions, event-related, directories, public relations, sponsorship, etc.).** This approach thus also represents an enrichment of the economic knowledge available – extremely insufficient to date – in respect of non-traditional media investment. Regrettably, however, the reliability of the data available is inadequate and there is a lack of proven and standardised methodologies for understanding the weighting of non-traditional media elements in the various countries;
- This research work is based primarily on the French and American economies, however data relating to the other European countries and Japan have also been used, in particular in evaluating the various correlations.



INVESTMENT IN ADVERTISING AND THE ECONOMIC STAKES INVOLVED

Advertising investment is becoming an increasingly significant element in the GDP of the industrialised world, even if all countries have not yet reached the same level of development. Along with traditional media, non-traditional media communication has developed considerably. Non-traditional media and the Internet are making progress at the expense of the traditional media. To date, there has still been little analysis of these trends by economists, divided as they are into pro-advertising and anti-advertising camps.

➔ The economic stakes involved

Before analysing the impact of advertising investment on the economy, we should refer back to the basic data relating to advertising markets throughout the world. A few figures suffice to summarise the importance of advertising in the modern economy and in the creation of wealth.

- In 2002, companies' advertising expenditure already exceeded 700 billion euros worldwide, i.e. 2% of GDP.
- With 29 billion euros invested in advertising in France in 2002, i.e. the equivalent of 1.9% of the wealth created, the advertising investment rate (ratio of advertising expenditure to GDP) was halfway between that of the United States (2.66% of GDP) and that of Japan (1.13%).
- In France, the volume of advertising expenditure is thus much greater than the defence budget (1% of GDP) and practically the same as the expenditure on research and development (public and private sector).

table 1	Media and non-traditional media advertising investment and GDP in 2002		
		Proportion of advertising investment in GDP	Total spent on advertising in billions of euro
	World	2.06% ¹	714 ¹
	Main European countries	1.95% ²	142.5 ²
	United States	2.66%	295
	France	1.90%	29
	Japan	1.13%	48
Sources: CnuCED, Ad Barometer, Warc			
1 Estimates produced on the basis of data from CnuCED and hypotheses on the global total of non-traditional media advertising investment.			
2 Total of advertising expenditure for the year 2002 for the following countries: Germany, France, the United Kingdom, Spain and Italy.			

Taking media advertising expenditure strictly on its own, the following table illustrates its volume in 2004.

table 2

Media advertising investment and GDP in 2004

	Proportion of media advertising investment in GDP	Amount spent on media advertising in billions of euro
Main developed countries	0.92%	208
Main European countries	0.77% ¹	59
United States	1.12%	106
France	0.54%	11
Japan	0.87%	32

Sources: Ad Barometer

¹ Total advertising expenditure for the year 2004 for the following countries: Germany, France, the United Kingdom, Spain and Italy.

From an economic point of view, advertising is an element of investment referred to as “intangible”, a category which also includes patents, licences, R&D expenditure, software, training, technology purchases, etc. In modern economies, these intangible investments are becoming increasingly significant. Accordingly, over the period 1990 to 2000 in France, they developed at a rate 2.4 times faster than traditional material investment. Consequently, for the second half of this decade (1995-2000), intangible investment already represented almost one third of total investment in France (in the United States, the figure is well above this).

Now, this dynamism in intangible investment is currently being supported by advertising investment, which is a major component of it: in France, + 45% over the period from 1994 to 2000. Accordingly, since 1990, investment in advertising in France has been rising 1.7 times more rapidly than traditional material investment, today representing 15% of the total volume of investment (material and intangible).

SIGNIFICANT DIFFERENCES BETWEEN COUNTRIES

Advertising is a feature of a rich and developed society: those countries with high advertising expenditure display a high level of GDP per capita.

table 3

Comparison of advertising investment rate (media and non-traditional media) in 2002

Advertising investment rate	Total	Media	Non-traditional media
Base: 100, United States			
United States	100	100	100
Germany	79	60	92
United Kingdom	74	78	71
France	64	53	73
Spain	58	64	53
Italy	46	56	40
Japan	41	70	19

Sources: Ad Barometer



However, even in countries with extremely similar levels of development, one can discern great differences in terms of ad spend to GDP ratios.

As can be seen in Table 3, which compares the volume of advertising as a percentage of GDP in the major industrialised countries, the advertising investment rate in the United States is 2.5 times higher than in Japan and more than twice that of Italy. These differences are considerable and may be viewed as surprising. Indeed, one would have thought that the increase in exchanges between countries of similar development levels would have brought the share of advertising as a part of GDP more closely into line.

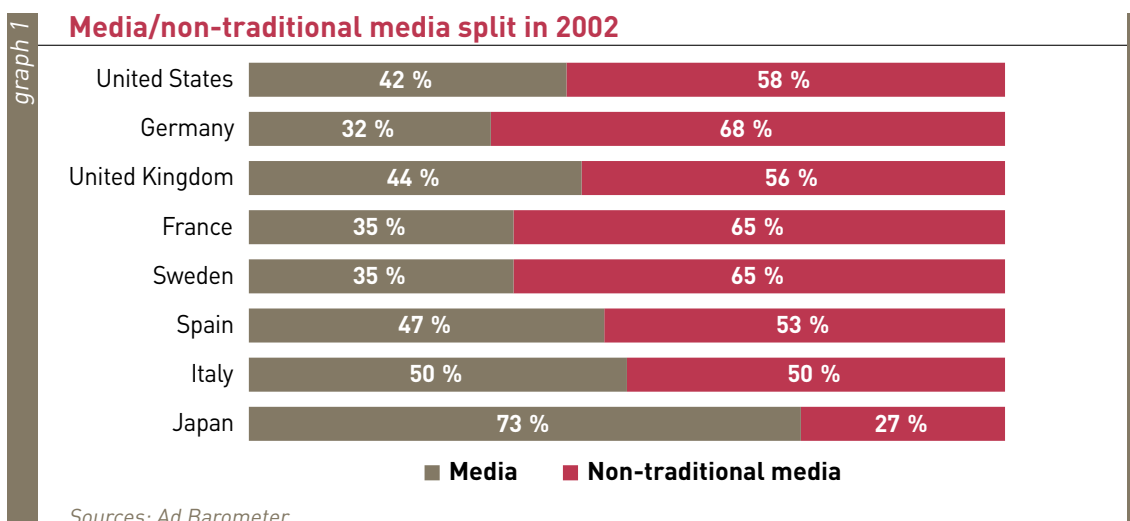
table 4

Comparison of media advertising investment rate in 2002 and 2005

Comparison of advertising investment rate	2002	2005
Base: 100, United States		
United States	100	100
Germany	60	65
United Kingdom	78	90
France	53	60
Spain	64	71
Italy	56	64
Japan	70	80
China	-	55
Russia	-	68

Sources: Ad Barometer

And these differences do not blur over time, as is shown in Table 4, even if it would seem that the developed countries (Europe, Japan) are gradually tending to fall into line with the American model. We can see even clearer differences between these countries when the advertising market is broken down into its two major components: media and non-traditional media (see Graph 1). In certain countries, the non-traditional media element accounts for two thirds of the advertising market (68% in Germany, 65% in France). Conversely, in Japan it is media investment (73% of the total), which enjoys the lion's share. The relationship is more balanced in the United States, in the United Kingdom and in the Latin countries such as Italy and Spain.



On the other hand, two basic trends are discernible throughout.

1. Non-traditional media advertising investment is growing more rapidly (see Table 5). This is a massive phenomenon and, over the period 1992-2002, has been identified in equal measure in those countries in which non-traditional media was already predominant as in those in which it was already on the wane.

table 5

Development of the proportions of media and non-traditional media advertising expenditure (1992/2002)

	Media		Non-traditional media	
	1992	2002	1992	2002
United States	68%	42%	32%	58%
Germany	40%	32%	60%	68%
United Kingdom	52%	44%	48%	56%
France	38%	35%	62%	65%
Spain	54%	47%	46%	53%
Italy	55%	50%	45%	50%
Japan	75%	73%	25%	27%

Sources: Ad Barometer

2. The growth in advertising investment benefits two specific areas in particular: non-traditional media (see Table 5) and television (see Table 6). The fact that media investment is less buoyant in comparison with non-traditional media is due to the significant and general decline of advertising investment in the printed press.

table 6

Development of the proportion of advertising expenditure by media, excluding Internet (1990/2002)

	Press	TV	Radio	Posters	Cinema
United States	- 17%	+ 12%	+ 16%	- 4%	-
Germany	- 16%	+ 37%	- 1%	+ 33%	- 7%
United Kingdom	- 20%	+ 4%	+ 105%	+ 95%	+ 141%
France	- 13%	+ 23%	+ 10%	- 16%	+ 34%
Spain	- 26%	+ 31%	- 9%	+ 4%	0%
Italy	- 19%	+ 15%	+ 43%	- 27%	+ 67%
Japan	- 10%	+ 22%	- 27%	- 24%	-

Sources: Ad Barometer



➔ Summary of post-war economic literature: existing theories

Do economists consider advertising a factor in economic growth or not? They are far from reaching an agreement on it and their differences of opinion cut across the major schools of thought.

Those economists who stress the positive impact of advertising on economic growth claim that it tends to promote:

- competition
- the spread of information available within the economy
- consumption
- a reduction in production costs
- the arrival of new competitors offering innovative products.

In contrast, those economists with a less favourable view of advertising underline that the conditions required for advertising to exert a positive influence on growth rarely occur together. According to these economists, advertising has a negative impact on growth, as it tends to promote:

- an increase in costs and therefore in consumer prices,
- the dominant companies,
- superfluous investments to the detriment of genuinely productive investments,
- the proliferation of falsely differentiated products.

If pro-advertising economists are more post-Keynesian or ultra-liberal, their anti-advertising opponents, on the other hand, tend rather to be institutionalist economists and in some cases neo-classicists.

- among the liberals, the Chicago neo-classicists (the ultra-liberals such as Stigler) tend to be pro-advertising, while the Harvard neo-classicists (the moderate liberals such as Comanor and Wilson) tend to be rather anti-advertising,
- in the interventionist camp, the Keynesians (Kaldor) are more pro-advertising, while the institutionalists (such as Galbraith) are more anti-advertising.

Ideological quarrels aside, in the final analysis we are able to judge the validity of these theories by putting them to the test in terms of facts and figures and, in doing so, answering in an empirical manner the central question of whether advertising represents a positive or negative factor in economic growth.





THE MECHANISMS BY WHICH ADVERTISING HAS AN EFFECT ON ECONOMIC GROWTH

The analysis of statistical data from the main industrialised countries shows that advertising investment has a positive effect on economic growth via four mechanisms: it stimulates growth in consumption, accelerates the spread of innovation, promotes competition, and the dynamism inherent in the advertising sector in turn boosts the average GDP growth rate.



The more a company disseminates information about its products, the more it can hope to sell them. By undertaking greater or lesser levels of advertising, it achieves an expectation, greater or lesser, of prospective sales.

So while accountants always treat them as expenditure, the sums dedicated to advertising may be considered as an investment, a specific, intangible investment. Indeed, advertising expenditure allows a company to acquire an asset that is otherwise very difficult to obtain: “symbolic capital”, an intangible value based on its general profile, reputation and the image it has acquired.

In today’s economy, where companies are engaged in a global competition and a search for increasing returns (the more production rises, the more unit costs are reduced), advertising investment becomes necessary to win or defend market shares. The more “symbolic capital” a company has, the better the chances its efforts will be crowned with success. The value placed on strong brand names today and the care taken to preserve them bear witness to this.

Advertising facilitates the emergence and spread of new consumer standards, as it affects the perception held by consumers of the utility, quality and advantages of a product. This impact affords it its own productivity, over and above the classic functions of traditional investment.

These specific characteristics of advertising investment also explain – in spite of the great progress made in recent years – why it is difficult to quantify its effectiveness accurately beforehand. For a company, having an expectation of additional prospective sales is not the same as having the certainty of selling more products. This is only a probability. In some cases, the increase in volumes does not match the agreed level of advertising investment.

It is precisely because advertising is an investment that is inherently productive that it is possible to study how it impacts on economic growth.

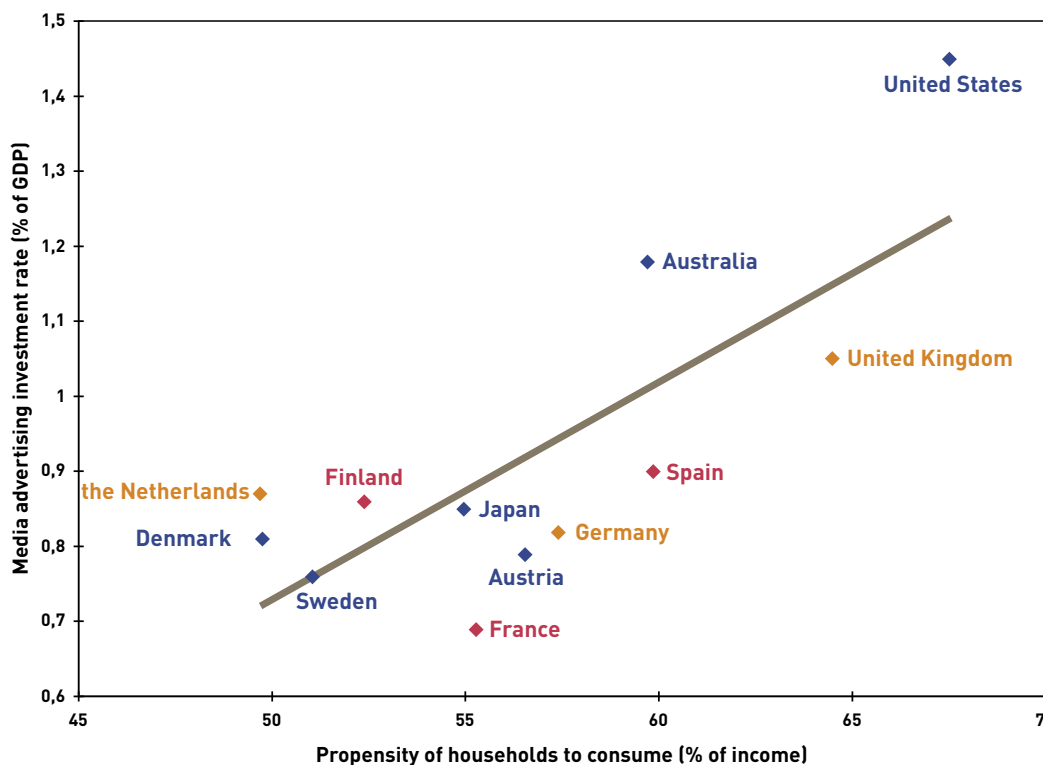
Accordingly, it is possible to identify four mechanisms by which investment in advertising communication has an indirect, but unquestionable, impact on economic growth, thanks to four levers recognised by most economists as being stimulating factors in terms of economic growth:

- consumption (in a developed country such as France, it accounts, on average, for 47% of growth in GDP),
- innovation (particularly the speed at which it is spread),
- competition,
- the financing of dynamic economic sectors associated with advertising: advertising activities in the strict sense, but also support media and non-traditional media service providers, etc.

➔ First mechanism: Advertising stimulates the growth of consumption.

Three correlations provide evidence of the genuine impact of advertising investment on consumption, one of the key elements of economic growth.

Correlation between the consumption propensity of households and the rate of media advertising investment (averages for the period 1991-2000)



Sources: World Bank, Ad Barometer, Warc



FIRST CORRELATION

THE COUNTRIES IN WHICH THE MEDIA ADVERTISING INVESTMENT RATE IS HIGHEST ARE THOSE IN WHICH THE PROPENSITY FOR CONSUMPTION IS ALSO HIGHEST

A comparison of a dozen industrialised countries (the United States, Japan, Australia and nine European countries, see Graph 2) shows that for the period 1991-2000, a strong correlation exists between a high media advertising investment rate (media advertising investment expenditure/GDP) and a high propensity for consumption (the proportion of income reserved for consumption).

A simple correlation certainly does not explain causality, and does not indicate what is acting upon what. Nevertheless, it is probable that the two elements of the correlation have an impact on each other.

SECOND CORRELATION

AN INCREASE IN THE ADVERTISING INVESTMENT RATE IS FOLLOWED SOME MONTHS LATER BY A RISE IN CONSUMPTION

Analysis of very short-term variations (monthly variations) in consumption in France in a number of key sectors for the period 1998-2001 (automobile, clothing, household electricals, retail distribution and furniture) is very revealing: here, increases in consumption have been systematically preceded – one to three months earlier – by a rise in advertising investment.

If deprived of their advertising investments, French companies would therefore not achieve the sales figures achieved. Advertising investment sustains the propensity to consume. Without advertising, the level of consumption reached in the country would not be the same – and this to the detriment of growth. This conclusion is underlined by the sector-based analysis of advertising investment in France during the 1990s.

THIRD CORRELATION

THE SECTORS WHICH EITHER UNDERTAKE EXTENSIVE ADVERTISING OR WHICH HAVE INCREASED THEIR EFFORTS IN THIS FIELD ARE EXPERIENCING GREATER GROWTH

A sector is said to be one of a “high advertising investment rate” or to be an “over-advertiser” if its share of total advertising investment is significantly higher than its share of global consumption. For example, the beauty products sector, which accounted for 9% of French media advertising investment in the 1990s, while only accounting for 2% of household consumption, is regarded as an over-advertising sector.

Analysis of the statistical data for the French economy for the period 1992-1999 throws up two striking results.

1. Those sectors with the strongest volume of growth in consumption (1.5 to 2.4 times higher than the average growth in consumption) are those sectors in which the advertising investment rate was highest. These sectors of a high advertising investment rate, “over-contributing” to the growth in consumption and the growth of added value are:

- telecommunications,
- services (banking, insurance, etc.),
- culture and leisure activities (games, toys, etc.).
- finance (financial products, financial information, etc.),
- industrial services with high added value (the environment, security, etc.).

2. The other sectors that also have a high advertising investment rate have a growth in consumption in terms of volume or a growth in added value that is 1.3 to 2 times higher, on average, than the growth in GDP:

- household appliances,
- maintenance,
- beauty products,
- audio, photographic, computing,
- sports equipment and hardware.

Accordingly, all of the sectors of the economy experiencing a high advertising investment rate (except for publishing) have benefited from a growth in consumption (by volume) greater than either the average growth in total consumption (by volume) or the growth in average added value (without inflation), or both of these.

As is shown by Table 7 below, the rate of growth in consumption recorded in the under-advertising sectors is significantly weaker than for over-advertising sectors.

table 7

Relative growth in respect of the share of total consumption of over-advertising and under-advertising sectors

	Proportion of total consumption (1992-1999)	Proportion of total growth in consumption (1992-1999)	Relative growth
Under-advertising sectors	74%	64%	0.87
Over-advertising sectors	26%	36%	1.38

Sources: INSEE, TNS Media Intelligence

The sectors subjected to a high advertising investment rate in France have therefore, over the period studied, “over-contributed” to the growth in consumption, and therefore to economic growth.

Investment in advertising communication therefore makes it possible for companies to sell their products and to achieve better performance levels in terms of growth in the production volume sold and in terms of added value.



➔ Second mechanism: Advertising speeds up the spread of innovation

For economists, innovation is a fundamental element of a dynamic economy. Advertising is a lever facilitating the conversion of R&D expenditure into profits. In fact, it plays an essential role in speeding up the transformation of technological progress, always susceptible to being left unexploited, into a profit-making product innovation, because it allows for demand to be tailored to supply as quickly as possible.

INNOVATION AND ADVERTISING INVESTMENT GO HAND IN HAND

Analysis of the sectoral statistics for the French secondary sector produces a double finding: the more a sector undertakes innovation, the more it will tend to increase its investment in advertising; and the more a sector invests in advertising, the more it will increase the share of turnover dedicated to innovation. We can, in fact, identify a double correlation:

- a strong correlation between a high level of advertising and increased innovation,
- a strong correlation between a high level of innovation and increased advertising.

To go into these results in more depth, the ratios measuring the intensity of innovation work (innovation expenditure/turnover and R&D expenditure/turnover) have been juxtaposed, for 14 sectors of industry, with the ratio measuring advertising pressure in each respective sector.

More or less innovative sectors

The ratios of innovation expenditure/turnover and R&D expenditure/turnover have been developed with the help of figures taken from the Ministry of Research's annual study of the resources devoted to research and development by companies in 2000 and its study of the financing of innovation.

These sectors can be classified into three categories based on the higher or lower percentage of companies stating that they are involved in innovative markets:

- **innovative sectors:** more than 50% of companies in the sector state that they are involved in innovative markets,
- **averagely innovative sectors:** between 35% and 50% of companies in the sector state that they are involved in innovative markets,
- **non-innovative sectors:** less than 35% of companies in the sector state that they are involved in innovative markets.

THE INNOVATION - ADVERTISING INVESTMENT PAIRING IS EFFECTIVE

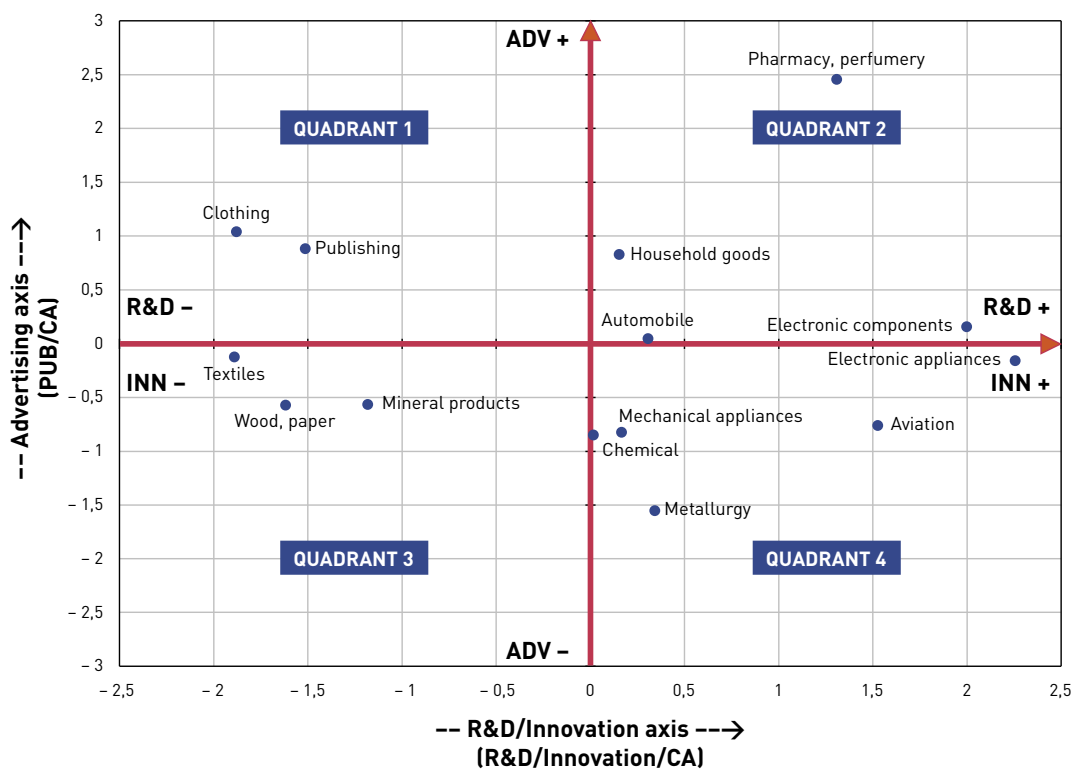
Do those sectors that invest more than average in both advertising and innovation/R&D reap the benefits, and do they report better performance levels than the others? In fact, those sectors that increase their level of advertising investment at the same time as their level of innovation/R&D do not necessarily do more advertising and innovation than average.

To answer this question, the various sectors have been positioned in relation to two axes, Advertising and R&D/Innovation. For this purpose, “analysis in terms of main component” has been used, allowing the sectors to be split into the four quadrants shown in Graph 3.

Analysis in terms of main component makes it possible to synthesise the relationships between quantitative data and to represent them graphically on sectoral plans. Essentially, this is a technique for visualising relationships between variables.

graph 3

Analysis in terms of main component and classification: ADVERTISING/TURNOVER, INNOVATION/TURNOVER, R&D/TURNOVER





The contribution towards growth made by each of these groups of sectors in relation to its total weighting in the relevant activity is examined in the table below.


table 8

Coefficient of contribution towards growth of added value (AV) and use of advertising in relation to innovation

	Level of investment in advertising and R&D in relation to average level	Proportion of entire AV (1)	Proportion of entire growth in AV (2)	Coeff. of contribution to growth of AV (3)=(2)/(1)	Way in which advertising is used
Quadrant 2 (pharmacy and perfumery, household goods, electronic components, automobile)	ADV+, INNO+	31.0%	39.5%	1.3	Advertising as factor for financing, protection and spread of innovation
Quadrant 4 (electronic appliances, mechanical appliances, chemistry, aviation, metallurgy)	ADV-, INNO+	48.5%	52.5%	1.1	Advertising as factor for protection and financing innovation
Quadrant 3 (textiles, wood and paper, mineral products)	ADV-, INNO-	12.2%	6%	0.5	No particular use of innovation and advertising
Quadrant 1 (clothing, publishing)	ADV+, INNO-	8.3%	2%	0.25	Advertising substituting for innovation

1. By comparing their coefficients of contribution towards the growth of added value (1.3/1.1), it is established that those sectors investing proportionally more than the average both in terms of advertising and innovation/research and development (those belonging to Quadrant 2, pharmacy and perfumery, household goods, electronic components, automobile) grow – in relationship to their weighting in GDP – 1.2 times (1.3/1.1) more quickly than those which, while certainly making a similar effort in terms of innovation and research and development, conversely do less in terms of advertising than the average (those belonging to Quadrants 4, electronic equipment, mechanical equipment, chemistry, aeronautics, metallurgy).

For the first group of sectors (Quadrant 2), it is necessary not only to finance innovation, but also to spread it and protect it. It is here that the pairing of innovation/advertising is particularly effective. Conversely, for the second group of sectors (Quadrant 4), it is possible to hypothesise that, for various reasons (the customer base is professional and therefore well-informed, etc.), there is relatively less need for advertising to spread the innovation.

- 
2. Advertising can sometimes serve to compensate for the lack of technological innovation. Indeed, in mature sectors where the advertising investment rate is above the average, but where there is less investment in R&D (the sectors grouped within Quadrant 1: clothing, publishing), it appears that the lack of genuine technological innovation results in a situation where it is less about discovering an innovative product than reminding the consumer of the actual existence of the product.

This way of using advertising remains limited to two sectors (clothing and publishing) out of the six undertaking more advertising than average (Quadrants 1 and 2 combined) and with a relatively low weighting: 8.3% of the added value of the industry as opposed to 31% for the other four sectors in Quadrant 2.

In conclusion, it is therefore clear that a large proportion of industry uses the double lever of innovation/advertising to grow more rapidly and enjoy the benefit of an above-average level of dynamism. As there is no spontaneous spread of innovation, these sectors rely on advertising to create awareness of the actual existence of the innovation among consumers.



➔ Third mechanism: Advertising stimulates competition

As with innovation, economists agree that competition stimulates economic growth. It is therefore essential to establish whether advertising promotes competition or if, on the contrary, it hinders it.

To answer this question properly, we must start from the actual situation. According to the sectors studied, competition may be:

- strong (arrival of new players, fluctuations in the distribution of market shares),
- in decline over the long-term (increasing concentration, the leaders enhancing their market shares, with few new players emerging),
- almost non-existent (absence of new players, stable market shares).

FIRST STATEMENT ADVERTISING DOES NOT HOLD BACK COMPETITION

The correlation analysis of the secondary sector in France has made it possible to demonstrate that a high or a growing level of concentration is a good indicator of competition becoming progressively more rigid. Now, the sectors in which concentration is high, or rising, are not those in which the advertising investment rate is the highest. In other words, there is no correlation between a high advertising investment rate and a high, or growing, level of concentration. So there are no sectors with a high advertising investment rate in which competition will be weak or declining. And, at the same time, we will not see any increase in advertising expenditure where there is a high, or growing, level of control over the market retained in the hands of the dominant companies.

In the “secondary” sector, advertising investment does not therefore act as a brake on competition. It remains to be established whether advertising investment can, conversely, accelerate competition.

SECOND STATEMENT ADVERTISING PROMOTES COMPETITION

It is possible to check the positive effect of advertising on competition in the home and personal care sectors, two sectors where market shares can be examined in detail and where advertising is frequently regarded as being profitable only for the dominant companies.


Accordingly, we note that in those sectors in which the leader companies are seeing a reduction in their share of the market, the advertising investment rate is higher than elsewhere (with advertising used here both by challengers looking to grow and by leaders defending their positions).

An in-depth analysis of the statistics available shows that:

- In those markets in which the advertising investment rate is high, market shares fluctuate severely, with advertising helping to challenge the dominance of the leading companies;
- In those markets where, conversely, positions are stable (a sign of weaker competition), the advertising investment rate is twice as low as elsewhere.

In other words, the more competitive the sector is, the higher the advertising investment rate.

Furthermore, it appears that advertising not only stimulates horizontal competition (companies belonging to the same sector) but also vertical competition.



Over the period 1997-2002, an overview of the food and drink sector shows that market shares fluctuate, above all, between the dominant industrial companies and the brands of retailers (who are new entrants). Advertising is therefore a factor intensifying vertical competition between producers and distributors. The fluctuation of market shares does not take place between the dominant companies in the sector, but between these companies and the retailers.

Within the framework of this vertical competition, the higher the advertising investment rate, the lower the shares of the market held by retailers. It therefore seems that in this sector advertising is being used as a defensive element making it possible to confront competition from the retailers. The more that concentration and competitive pressure from retailers intensify, the more the industrial company is encouraged to increase its advertising spend in order to maintain or develop the customer base that is least sensitive to price variation and most sensitive to quality and the attraction of a product that is strongly promoted and therefore considered better than retailer products. The company is also motivated to increase its advertising spend to persuade the retailer to stock its products.

Advertising plays its full role when a sector is subject to competition that plays simultaneously on the variety of supply, quality and prices (according to the segment). It makes it possible to safeguard the competitiveness of companies with quality rather than price as the priority concern. It also makes it possible to segment the customer base in accordance with objective criteria: low prices on the one hand, higher quality on the other. This therefore provides the consumer with choice.

THIRD STATEMENT AN EFFICIENCY FACTOR IN TIMES OF RECESSION

Advertising is particularly effective in stimulating competition in times of recession. This finding, which arises out of a study carried out in 2003 by the Boston Consulting Group in Germany, is confirmed by the research carried out in France – within the context of this thesis – on an even wider sample: in 75% of the sectors studied, companies that increased their advertising effort in a period of recession achieved increased market shares.

In conclusion, it is clearly shown that companies' effort to gain market share, supported by a high advertising investment rate, encourages competition and prompts them to increase the quality and volume of the offer, therefore tending to stimulate economic growth across the board.



➔ Fourth mechanism: The dynamism of the advertising sector enhances the growth of the economy

As we have seen, advertising contributes to economic growth as a result of its positive effects on consumption, innovation and competition. But, as a sector, does it add anything to the average growth of GDP, and in any significant way? Does it contribute towards the growth of value added in greater proportion to its share of GDP? In this last case, it would therefore be in the public interest to encourage (or at least not to discourage) its expansion as a sector and not solely for its indirect effects as analysed above.

To answer this question, we may consider the advertising sector in either its narrower or wider sense.

In the first case, according to public authority figures¹, it includes primarily media agencies and consultancy agencies (advertising, promotion, direct marketing, etc.). Its value added accounts for 0.44% of GDP.

In the wider sense, it includes all of those activities which, in whole or in part, owe their existence to income originating from advertising, and it therefore includes media financing² and activities of non-traditional media service providers³. Its value added then reaches the overall figure of 1.18% of GDP.

The examination of the advertising sector in the wider sense was carried out by weighting the economic results from these sectors on a pro rata basis in respect of their effective activity as associated with advertising.

It can be established (see Table 10) that if, over the period studied (1996-2001), growth in the advertising sector in terms of production has been only slightly greater than the average for the economy, the growth in terms of value added (41%) is twice as rapid here as that for the economy as a whole and the increase in employment (20%) 2.2 times greater than for the French economy on average.

table 10


Comparison of the growth of production in the sectors associated with advertising with that of the economy as a whole (1996-2001)

	Variation in production	Variation in value added	Variation in in jobs
Advertising activities in the wider sense	28%	41%	20%
Advertising activities in the narrower sense	30%	41%	36%
Activities within the entire economy	27%	21%	9%

1 Defined by Class 74.4 of the nomenclature of French activities (NAF rev. 1 2003, INSEE) which includes, for Class 74.A the following elements: the management of advertising spaces on all media or advertising regimes of the media, the placing of fixed or mobile (bus) posters, setting up and maintaining advertising panels, as well as air advertising, the distribution of brochures and advertising samples, etc. and for Class 74.B, the following elements: the design and implementation of advertising campaigns, the design of advertising items, advertising films, consultancy on media purchases, direct advertising by mail shot, telephone, visiting, etc., central advertising space purchasing offices.

2 Production to order (advertising films, etc.), television broadcasting, technical services, film production, the use of cinema halls, production of TV programmes, publishing of magazines and periodicals, distribution of films, radio broadcasting, newspaper publishing, newspaper printing.

3 Mailing, private post, post office, market studies, trade fair and salons, the printing of works apart from newspaper printing, bookbinding and finishing, composition and photo engraving.



In addition, in multi-activity sectors, the activities associated with advertising are frequently the most dynamic: for example advertising mailing as opposed to press mailing, or the production of films and programmes to order, in relation to the production of cinema films.

The investments made by advertisers contribute towards the financing of particularly dynamic economic activities.

- In the Anglo-Saxon countries, receipts from advertising finance from 25% to practically 100% of costs for the press, depending on the titles. Non-cable commercial TV channels and radio stations are almost 100% financed by advertising.
- Advertising financing makes it possible to supplement the financing of public TV channels (in France this represents at least 35% of their revenue), without increasing the tax burden (licence fees) imposed on the population.
- It also finances numerous cultural and sporting activities (sponsorship and patronage).
- The growth in value added for the activities directly or indirectly associated with advertising investment over the period (1996-2001) was twice that within the economy including all sectors. Growth in terms of employment is two to four times higher, depending on the perimeter applied.



Conclusion

In conclusion, whether for its impact on consumption, competition and the spread of innovation or for the stimulating effect of the growth of the advertising sector on average GDP growth, advertising investment has positive impact on the economy. The in-depth analysis of the statistics and data currently available generally comes out in support of the views of pro-advertising economists.



CORRELATIONS BETWEEN ADVERTISING INVESTMENTS AND ECONOMIC GROWTH

A number of statistical methods for processing data demonstrate the positive correlation between a lower or higher advertising investment rate in a country and its economic growth. The more advertising investment grows, the more the productive efficiency of a country increases (and vice versa). And those countries in which relatively little is invested in advertising are also those in which economic growth is weakest.



The preceding pages have made it possible to demonstrate the existence of correlations between higher or lower advertising investment in industrial sectors and their economic performance levels. Can one assume for the same period (the 1990s) similar correlations at global level between the economic performances of the industrialised countries and a higher or lower advertising investment rate within their economies?

For this, it is necessary to study comparable countries, namely newcomers at approximately the same level of development and in which tertiary activity has an equivalent weighting within the economy. This last point is essential because analysis shows that the greater the weight of the tertiary sector within an economy, the more highly developed advertising in the economy is. This is probably because the more important the tertiary sector is in an economy, the more it achieves growing returns and the more the problem becomes one of selling and not producing and therefore investing in advertising.

In order to calculate the correlations between media advertising investment and economic growth, the data from 14 countries (the United States, Japan, Australia and 11 European countries including the five major states: Germany, France, United Kingdom, Italy and Spain, the Netherlands, Sweden, Denmark, Belgium, Austria and Finland) have been used.

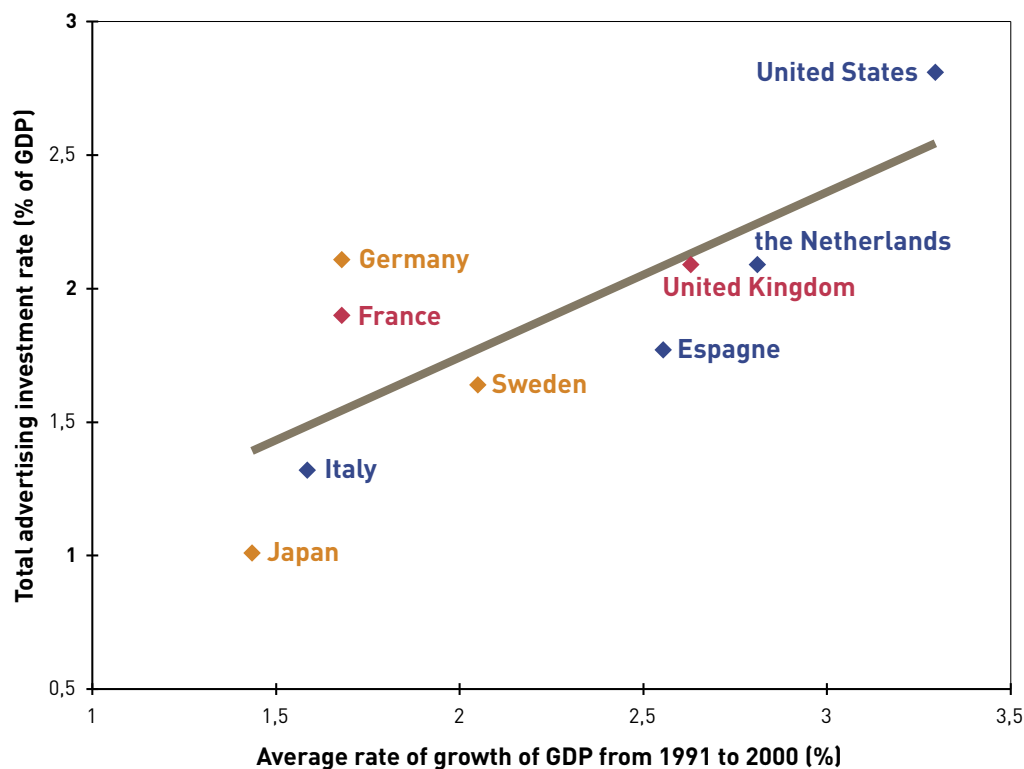
To undertake the same work for non-traditional media, only the data for nine countries could be used. These were the United States, Japan and seven European countries: Germany, France, the United Kingdom, Italy, Spain, the Netherlands and Sweden.

THE HIGH-GROWTH COUNTRIES ARE THOSE IN WHICH ADVERTISING IS WEIGHTED MOST HEAVILY IN RESPECT OF GDP

The correlation between the average rate in the growth of GDP in the countries studied during the decade of the 1990s (which makes it possible to even out economic variations) and their total advertising investment rate (media and non-traditional media advertising investment/GDP) over this period is high. Globally, the higher the rate of advertising investment rises, the greater is economic growth.

graph 4

Correlation between the rates of total investment in advertising (media + non-traditional media) and the average rate of growth in GDP (1991 to 2000)



Sources: Warc, Ad Barometer

One can go even further in the analysis by placing the advertising investment rate against a more interesting indicator than the rate of growth – the rate of productive efficiency – with a view to seeing if productive efficiency, too, rises along with advertising expenditure

Rate of productive efficiency = growth in GDP/rate of material investment.



THE COUNTRIES WITH EFFICIENT GROWTH ARE THOSE IN WHICH ADVERTISING IS WEIGHTED HEAVILY

Why the rate of productive efficiency?

As our starting point, we must take the economic definition of 'investment in advertising'. This is an intangible investment with the specific feature of only assuming its value when complementing the material investments of a company. From the economic point of view, advertising is aimed at making material investment more effective. Taken in isolation, the last factor is insufficient in terms of guaranteeing the survival of the company in a moderate and competitive economy.

This explains why it is interesting to juxtapose advertising investment against an indicator of economic efficiency for the material investments undertaken: the rate of productive efficiency, which is the ratio between the rate of growth in GDP and the rate of investment in means of production (referred to as "material"). This is a particularly significant indicator of the growth of an economy and of its productivity.

Indeed, what counts in the concept of productive efficiency is economic growth in relation to the total of material investment carried out: the lower the latter in relation to high results in terms of economic growth, the greater productive efficiency is, and vice versa.

A country undertaking much investment but achieving low growth has what is called low-efficiency growth. This was the case in Japan during the 1990s. Conversely, if a country invests little but achieves strong growth (Australia over the same period), it will display a high rate of productive efficiency.

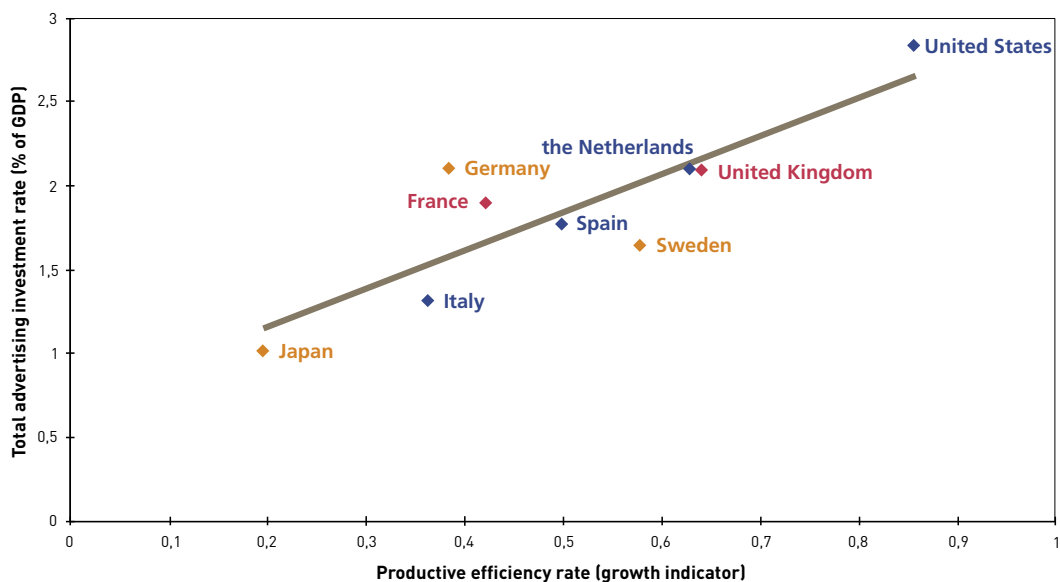
Table 11 sets out the comparative results for two important industrialised countries during the 1990s: the country displaying the weakest productive efficiency (Japan) is the one in which the advertising investment rate (the ratio of advertising expenditure to GDP) is low for both media and non-traditional media. Conversely, the country in which productive efficiency is strongest (the United States) is also the one in which the advertising investment rate is highest (media and non-traditional media).

table 11	The different ratios for Japan and the United States (1991-2000)		
		Japan	United States
	Rate of productive efficiency		
	Growth in GDP/Rate of material investment	0.2	0.86
	Rate of media advertising investment		
	Media advertising expenditure/total GDP	0.8	1.62
	Rate of non-traditional media advertising investment		
	Non-traditional media advertising investment/total GDP	0.22	1.25

By comparing the total advertising investment rate (media and non-traditional media) for the nine countries studied during the decade of the 1990s, with, in this case, the average rate of efficiency of their growth, the level of correlation is even better.

graph 5

The total advertising investment rate as a function of productive efficiency over the period 1991-2000



Sources: Warc, Ad Barometer



Correlation between productive efficiency and advertising investment rates

If the correlation between the global rate of advertising investment and productive efficiency (see Graph 5) is correct, what about the correlation between productive efficiency and each of the two elements making up the rate of advertising investment: the rate of media advertising investment and that for non-traditional media investment?

The two graphs below display these positive correlations and prove that the concept of productive efficiency explains the rate of advertising investment achieved by the different countries better than growth in GDP.

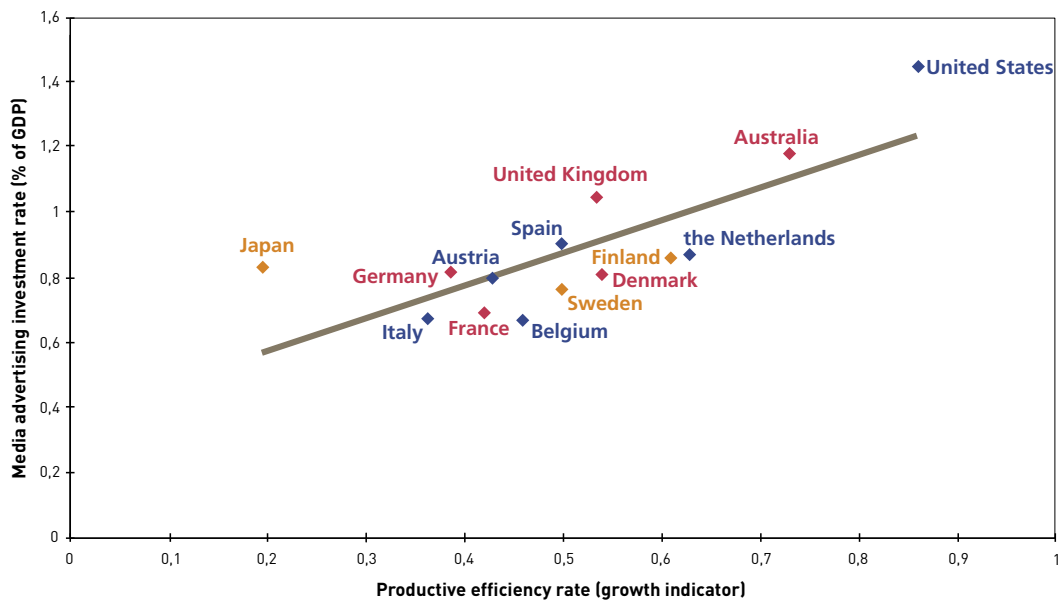
If this applies for the rate of media advertising investment, it applies even more for the rate of non-traditional media advertising investment: the growth in GDP is as unhelpful in explaining the rate of non-traditional media advertising investment in terms of statistics as productive efficiency is helpful in allowing for a better explanation of this investment rate.

Accordingly, the concept of productive efficiency makes it possible to take account of the specific productivity of intangible investments as represented by media and non-traditional media advertising investments.



graph 6

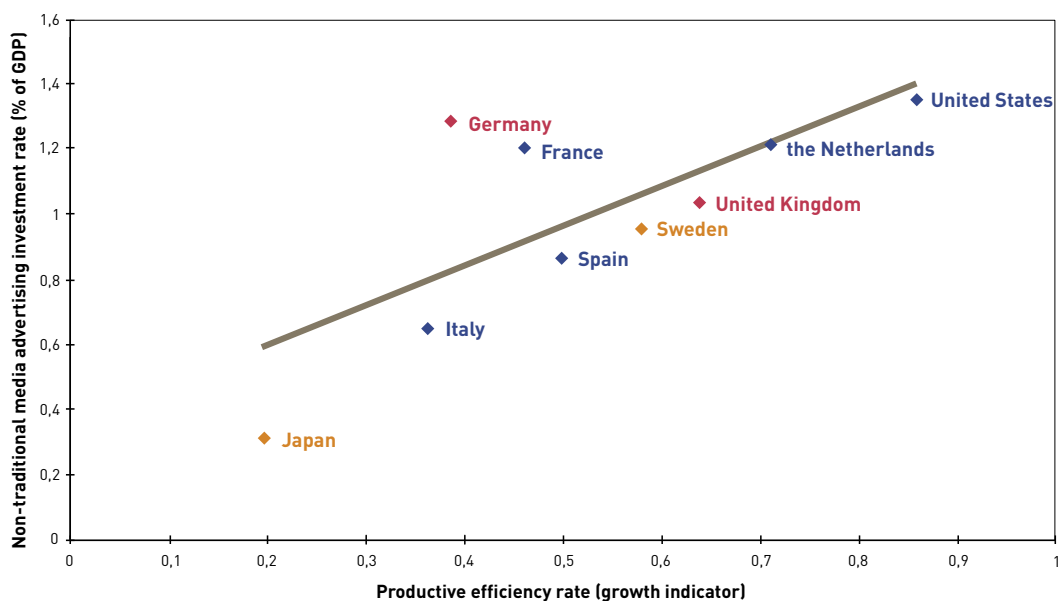
The rate of media advertising investment as a function of productive efficiency over the period 1991-2000




Sources: Warc, Ad Barometer

graph 7

The rate of non-traditional media advertising investment as a function of productive efficiency over the period 1991-2000



Sources: Warc, Ad Barometer



In what way does the correlation between productive efficiency and advertising investment rate, in both media and non-traditional media advertising, play a role? Seemingly, in both areas the correlation plays a role. The one invokes the other, as is the case for research and development and innovation. Certainly, economic growth is accompanied by investments in capacity and advertising investments but advertising investments – as for investments in capacity – also play a role in driving forward growth, as we have seen from the four mechanisms previously analysed (consumption, innovation, competition and the dynamic advertising sector).



Conclusion

The results presented clearly demonstrate that, overall, growth in GDP – estimated by means of an appropriate indicator, namely productive efficiency – and media and non-traditional media advertising investment are correlated. In particular, strong and lasting economic growth is necessarily associated with a high rate of media advertising investment and one that grows in a sustainable manner. Indeed, statistical results are particularly “robust” in respect of media advertising investments for which the correlation is strong and significant.

Over the long term, this rate of media advertising investment is twice as high in an economy established in a system of high growth than in those in which this growth is weak, as is shown in particular by the results for the United States compared with those for Japan.

In order to move from a position of average growth to one of strong growth, we therefore require an increase in media advertising investment. This is one of the conditions for accelerating growth.



MEDIA SPACE AND INVESTMENTS IN ADVERTISING

What leverage tools are available to public authorities when they wish to use advertising investments to foster economic growth? We know that in many cases they regulate the space available for advertising, in particular in the audiovisual media. It is therefore important to check whether there is any correlation between the level of advertising investment and the space available.



The volume of media advertising investment within an economy depends on a number of phenomena: cultural habits, the level of activity among companies, but also on the quantity of available advertising space.

The increase in the role of television advertising within the major industrialised countries offers a good basis in terms of comparable data. One may reasonably assume that television has the effect of pulling other media along in its wake.

THE GREATER THE AVAILABLE ADVERTISING SPACE, THE LOWER THE PRICES

The space available for advertising is partly regulated, directly or indirectly, by the authorities. The differences revealed between countries in terms of available advertising space correspond to differences in terms of advertising investment volume and conditions for use. The greater the amount of available space, the lower the cost of the media (defined as cost per thousand). In economics, prices are a good indicator of relative scarcity. In the case of the audiovisual media, the cost per thousand is therefore a good indicator of the abundance of available advertising space. A country like the United States, where advertising space is enormous, features, for example, among those countries in which the cost per thousand for radio/TV is lowest.

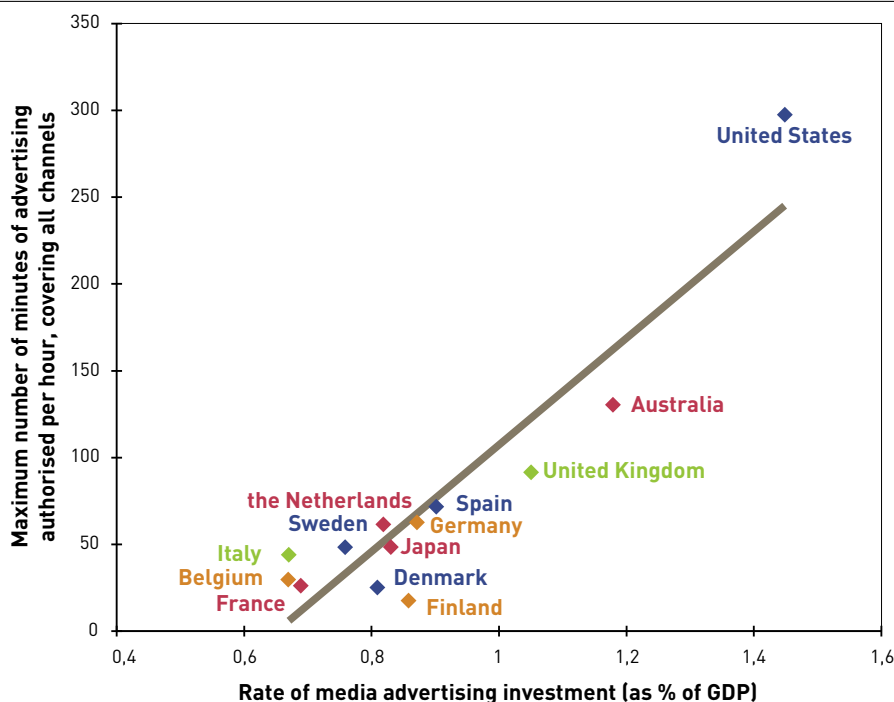
Accordingly, in 1998 the United States is numbered among the three least expensive countries (among the 14 countries studied previously: the United States, Australia, United Kingdom, the Netherlands, Finland, Spain, Denmark, Sweden, Germany, Austria, France, Belgium, Italy and Japan), for advertising screening in prime-time television, advertising screening in off-peak times on television and prime-time on radio.

THE MORE ABUNDANT ADVERTISING SPACE, THE HIGHER THE RATE OF MEDIA ADVERTISING INVESTMENT

In the countries in which advertising space is extensive (the maximum total number of minutes authorised on television is an indicator of this, for example), and with a low cost per thousand, companies are encouraged to invest in the media and the global rate of media advertising investment is high. Conversely, it is in those countries in which advertising space is most restricted, with a high cost per thousand, that the rate of investment in media advertising is lowest.

graph 8

Correlation between the rate of media advertising investment and the maximum number of minutes of advertising authorised per hour covering all channels (non-cable television and major cable channels)



Sources: Informa Media Group, BIPE, Kagan's World Media LTD, Média&Société (retired)

Graph 8 shows the correlation between the maximum number of advertising minutes authorised per hour across all non-cable channels and the major, generalist cable channels¹ and the advertising investment rate (ratio of ad spend to GDP) recorded in each of the 14 countries studied. The position of the United States in the graph is revealing: the rate of media advertising investment (as a percentage of GDP) is highest; the number of minutes of advertising authorised per hour is also highest in this country.

Increasing the available advertising space is therefore a simple and inexpensive means of increasing the rate of media advertising investment: a classic example of the supply available resulting in falling prices and stimulated demand.

¹ Taken into account are the generalist cable channels with a large audience in the countries in which the rate of cable equipment is approaching 100% (the Scandinavian countries, United States, Belgium, etc.).



Any increase in media advertising investment is directed towards television as a priority. When an economy is expanding and enjoying a growing productive efficiency, it requires greater advertising space and an effective means of responding to this situation is therefore to facilitate an increase in the advertising investment rate in television: as was demonstrated in the first section (refer to Table 6), television today represents the main source of absorption of the growth of media and advertising investment. This may be implemented, in particular, by increasing the number of authorised minutes at high-audience times or by increasing the number of powerful channels (non-cable or cable channels broadcasting to a wide audience).

The other media also benefit from dynamic investments on the part of advertisers. In particular, all of those countries enjoying strong productive efficiency are also countries in which the press holds an extremely significant share of media advertising.

RESTRICTED MEDIA ADVERTISING SPACE FAVOURS THE NON-TRADITIONAL MEDIA

If the media advertising space on offer is insufficient, we find development in the non-traditional media sector. Indeed, at certain levels of productive efficiency, there is a process of substitution between media and non-traditional media: when the rate of growth in media investment stagnates, the share of non-traditional media investment grows vigorously; when the rate of growth in media investments increases, the share attributable to non-traditional media is reduced.

Certainly, non-traditional media investments favour economic growth and grow along with productive efficiency. However, the allocation of advertising resources runs the risk of being less than optimal if there is excessive growth in non-traditional media, to the detriment of media. Indeed, the positive correlation established between productive efficiency and media advertising investment is stronger and more significant than the correlation between productive efficiency and non-traditional media advertising investment. This means that media advertising investment participates with a greater degree of certainty in achieving high levels of productive efficiency. It would therefore appear prudent, from a global economic point of view, to direct advertising investment towards those media where they have the greatest chance of being efficient; in the case in point, towards the media, as opposed to non-traditional media sector.

The statistical data make it clear: the greater the availability of media advertising space, the more advertisers use this means of communication and the less the rate of non-traditional media advertising increases. France and Germany are two countries in which, conversely, the rate of non-traditional media advertising investment has grown due to restricted media advertising space.



Conclusion

When the space made available to advertisers in the media is too restricted, it is the non-traditional media sector which is favoured.

However, this is significantly less correlated to the efficiency of economic growth. It is therefore preferable, in the light of the statistical information available to us today, to encourage the development of media advertising investment, which is more directly associated with growing productive efficiency.



Conclusion

Analysis of all of the objective data relating to the developed countries clearly demonstrates that the media and non-traditional media advertising investments carried out by companies stimulate and promote consumption, innovation, competition and the dynamism of specific economic sectors associated with advertising: media service providers, non-traditional media, etc.


From a macro-economic point of view, the statistical processing of this data demonstrates that these investments thus contribute to the dynamism of economic growth, as they promote better use of, and better productivity from, material investments (referred to here as “productive efficiency”).

In order to promote growth, the public authorities should therefore encourage advertising investment in all of its forms, as this improves the productive efficiency of an economy.

Companies should, in particular, be encouraged to invest in media advertising, as this displays a more specific correlation with productive efficiency, and therefore with economic growth.

Public authorities wishing to optimise their country’s growth potential should therefore ensure that their policy for regulating the media provides companies with an adequate volume of advertising space to allow it to be accessible to the greatest number of these companies, under the best possible conditions of flexibility and cost.

Certainly, national economic growth does depend on a number of variables other than media advertising space. However, the results of this research demonstrate that similarly to other determining factors (for example research and development expenditure), access to adequate advertising space, allowing for an increase the rate of media advertising investment, is a necessary condition for the economy to achieve high and sustainable performance levels. Such a policy presents the additional advantage of being rapid to implement and low in cost.

This conclusion appears to apply to all developed countries. 



TELECOM REGULATORY AUTHORITY OF INDIA

Recommendations on
Issues relating to Broadcasting and Distribution of
TV channels

New Delhi
October 1, 2004

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Executive Summary

Background

1.1 Broadcasting and Cable Services came under the purview of Telecom Regulatory Authority of India (TRAI or Authority) with effect from 9.1.2004, after the amendment to clause (k) of Sub Section (1) of Section 2 of Telecom Regulatory Authority of India Act (TRAI Act), 1997 as amended. This amendment added a proviso below clause (k) to include Broadcasting Services and Cable Services within the scope of 'Telecommunication Services'. Further, the Government of India also issued an order on 9.1.2004 under section 11(d) of the TRAI Act which mandated TRAI to make recommendations regarding terms and conditions on which the 'Addressable Systems' shall be provided to customers and the parameters for regulating maximum time for advertisements in pay channels as well as other channels. The order also provided powers to TRAI to specify standard norms for, and periodicity of revision of rates of pay channels, including interim measures.

1.2 This document contains the recommendations of TRAI on various identified issues relating to Broadcasting Services and Cable Services including the areas specifically referred to by Government of India vide its order-dated 9.1.2004. TRAI has also issued with these recommendations a revised Tariff Order. A regulation on interconnection will be issued shortly. The recommendations also include draft amendments to the TRAI Act, the Cable Television Networks (Regulation) Act, 1995 (Cable Act) and the Rules under the Cable Act.

1.3 Section 1 briefly traces the history of developments, including regulatory aspects, in the Broadcasting and Cable Industry, prior to mandating TRAI to regulate the services in January 2004. It also lists the regulatory interventions undertaken by TRAI as interim measures pending finalisation of various issues.

1.4 Before finalising the recommendations TRAI had carried out a process of consultation with the Stakeholders by floating a detailed consultation paper and holding a series of meetings, with various stakeholders. TRAI also constituted a committee consisting of the representatives of the state governments of Delhi, Tamil Nadu, Maharashtra and West Bengal under the Chairmanship of Secretary TRAI to consider the various issues in regulating Cable TV. The inputs received in the process of consultation have been examined and taken into account while making the recommendations. International practices have also been studied. A survey was also

commissioned through M/s IMRB to study the characteristics of the Indian Market. The findings of the survey have separately been released.

Directions for Regulatory Intervention.

2.1 The basic objective that regulation in this sector needs to address is the need to promote growth and competition in the sector so that consumers have affordable prices for their home entertainment and can choose between alternative platforms and channels.

2.2 The cable industry has developed in an unregulated manner since 1991. The industry has grown rapidly and the size of the industry is now about Rs.15,000 crores per annum. This remarkable growth of the industry, owes in a large measure, to the entrepreneurial skills of the cable operators. The growth of this sector has, however, brought in its wake problems that have called for increasing regulation.

2.3. Pay channels in the country, initially came as free-to-air channels but starting from 1995 these free-to-air channels, increasingly became pay channels leading to rising consumer bills. In mature economies, pay television came along with Set Top Boxes and hence the pattern of development of the industry in India has been very different. According to one estimate the total pay out for pay channels has increased by 1100 per cent over the mid 90s. At the same time the consumer invariably has no choice in selecting his/her operator. The combination of increasing pay outs to the broadcasters, the lack of competition in the last mile and inability to choose between alternative platforms and channels has led to increasing consumer bills which have fuelled growing consumer dissatisfaction and a demand for regulation.

2.4 In terms of consumer choice, the present system does not provide any choice to consumers or at best offers very limited choice to consumers except in Chennai. In the current scenario, the broadcasters provide a bundle of channels to cable TV operators who either take and carry the entire bundle or carry nothing. Besides limiting the choice to what the cable operator offers, the consumer has no choice in most cases to even change the operator. In this context, it is viewed that regulatory intervention is required to bring in a radical change and to stimulate the market to provide choice of viewing.

2.5 Price increases in the Cable TV industry have been severe since the mid 90s driven largely by increases sought by pay channels offered by broadcasters. The estimate of price inflation of pay channels at 1100% over mid 90s is, of course, both because of increase in the prices of channels as

well as increase in the number of pay channels. The increases are ultimately passed on to the consumers by the cable operators. The vulnerability of the consumers was the reason for TRAI to intervene, by imposing a price cap in the form of prevailing prices as on 26.12.2003.

2.6 Sometimes, the objective of growth could come in conflict with the ultimate objective of providing consumers services at affordable prices. Yet, in the long run, the growth of the Industry is tied to the interests of consumers. Firstly, there is a need to extend coverage of cable and satellite TV to remote rural areas and secondly there is a need to provide choice to existing and potential consumers, in terms of either more number of operators in the same platform or alternate platforms and increased content availability. Alternate platforms could come either through DTH or other media like telephone lines. Both options are permitted even at present. To make different platforms compete on an even keel there is a need to attract investment on network/ infrastructure access, digitalisation, programming and content depth. Therefore, the industry needs to continuously grow backed by investible resources so as to provide choice to the consumers. At the same time, technology has been progressing rapidly with convergence taking place at both the consumer end as well as at the service provider end. With this convergence it would be possible for the cable industry to provide other services as well. Thus, already internet services are being provided by cable operators. In addition, telecom services could also be provided – in several countries like USA, UK and Korea, cable operators have made considerable progress in providing telecom services. This would be facilitated in the unified licensing regime.

2.7 Against this background the vision that the Authority has of how the television broadcasting and distribution business should grow in the future is as follows:

- The objective of the regulation would be to promote and facilitate competition amongst channels, operators and platforms
- Consumers should have the freedom to choose their content and their operator/platform- this would mean ease of exit from one operator/platform to another operator/platform
- The other platform could be DTH or other media like telephone lines. Both options are permitted even at present.
- Addressability must come on all TV channel distribution platforms
- As competition increases and the consumer has multiple choices, price regulation would gradually withdraw.

2.8 The key element of this vision is that the best regulatory framework is one that allows the industry to grow so that consumers have multiple choices giving them freedom to choose their content and operator/platform.

This competition together with addressability would empower the consumer to control his/her expenditure on viewing television channels. It is this vision that has guided the Authority in its task of developing a regulatory framework for this business.

Consumer Choice

3.1 In section 3 of the document, the following issues relating to consumer choice have been examined and analysed:

- i. Whether it is desirable to have a single method to provide choice to the consumer and addressability across all regions of the country
- ii. If not, what are the options
- iii. Whether there is a need for transitory options before finally graduating to a Conditional Access System as proposed by the Task Force set up in Sept 2001.
- iv. Whether the Conditional Access System and Addressability, be introduced through a legal mandate or allowed to be introduced voluntarily.

3.2 One of the ways that the objective of affordable TV services for the consumer can be met is if flexibility permitting a consumer to exercise his choice, is available. This implies that affordability will come if a consumer is able to decide what his total bill should be through the method of selection of channels. One method of doing so is to introduce CAS and set top boxes. The immediate question that comes up is that why, barring to some extent in Chennai, this scheme could not be implemented. Despite the advantages of CAS, the implementation had run into difficulties for the following reasons:

- State Governments had not been consulted at the decision making stage and so there was not much support for the new system at the implementation stage.
- There are certain areas where consumers were getting services at nominal prices. With implementation of CAS the consumer prices for pay channels were actually increasing instead of decreasing.
- One of the intended benefits of CAS is that the consumer is able to choose channels of his choice. He could either opt for the package of FTA channels or take his choice of pay channels. But post CAS, individual pay channels against bouquets were priced in such a manner that consumers had little choice of selecting individual pay channels.

- STBs were non-interoperable. Consumers apprehended that their STB would be of no use when they change residence or service provider. STBs were not easily available on rent
- Most of Broadcasters, MSOs and Cable Operators were not able to arrive at revenue share arrangements amongst themselves.
- Some MSOs had brought out pamphlets regarding sale/rental schemes of STBs. But this information did not percolate down to actual consumers. At the same time, there was considerable variation of pricing of STBs fixed by various MSOs.
- There was considerable uncertainty about continuity of the CAS scheme.

3.3 When CAS was introduced last year, the expectation was that it will help the customers. But, what actually happened was that it only helped the FTA subscribers, while others who wished to watch pay channels ended up paying higher bills. In Chennai where FTA channels were the main interest of a large majority of subscribers, CAS had a clear advantage of reducing the tariffs for FTA subscribers and therefore, was welcomed. In other cities where pay channels were more popular, the effect was opposite. Thus it is only in Chennai that CAS has been successfully implemented and upto May 2004 around 23,000 (less than 3% of the city's population) STBs were installed. The Authority had found in its interaction with Chennai consumers that the vast majority of consumers are happy with the system of CAS. The IMRB survey has also revealed that consumers in Chennai have choice and are able to control the cable bills. The CAS has also brought in transparency in the system and meets the objective of bringing addressability in the system.

3.4 Another method of providing choice to consumers is through the medium of traps .This was brought up during the consultation process. Against the digital set top box, which costs around Rs.5000/-, a trap is said to cost around Rs.100 to Rs.500 and also allows the consumers to have a choice of whether or not to watch pay channels, either in full or in one or two packages. However, there is a major problem that traps can be bypassed, violated and hacked and therefore the problem of piracy is far greater than in the usage of STB technology. Another major disadvantage is that it does not provide a transparent method of accounting for the number of consumers having access to a particular channel and this may continue to result in disputes on revenue sharing amongst service providers.

3.5 Considering both sides of the argument and its successful deployment in some parts of India it does appear that traps can be used wherever it is found feasible and as a transitory phase to the use of STBs. Thus, while existing pay channels could be seen as it is, it can be mandated that all new

pay channels will be shown only through a STB. Further provision can be made that the existing channels can also move to the new class of channels

3.6 While CAS did not succeed entirely in the last attempt at deployment and traps have their own limitations the continuation of the existing system also has its problems. The key features of the existing system are:

- The consumer gets one bundle of channels supplied by his cable operator
- The cable operator in turn gets a fixed bouquet of channels from a broadcaster
- Thus both the consumer and the operator have very little choice

The drawbacks of this system are as follows:

- The consumer does not have any choice in viewing channels or in choosing his/her operator
- Prices for consumers would tend to increase as and when a new pay channel is launched or an FTA channel turns pay. Price Regulation can only control this to a limited extent.
- Consumers would have to pay for even those channels which he/she is not willing to view.
- Consumers will have no choice to control content and thereby control his/her cable bills.
- There would be continuing disputes on revenue sharing between service providers

In this model price control through regulation is difficult. It requires a decentralized enforcement mechanism. It also has severe drawbacks given the fact that the content is not homogenous, there are a large number of consumers and operators and the interconnection agreements are a highly complex set of systems. Therefore it is necessary to look at alternative models.

3.7 One of the suggestions that has been made is that choice should be provided to the consumer in terms of the last mile cable operator. This suggestion has been examined. However, even today there is no restriction on the number of last mile operators - yet this has not led to the consumer having significant choice. In the rest of the world also there is a similar pattern. It is unlikely that competition in the last mile can be fostered except through the introduction of alternative platforms. While this issue of fostering competition is dealt with in more detail in section 6 it is necessary to keep this in mind while dealing with the issue of choice in the cable industry.

3.8 Through the process of consultation, analysis and a thorough examination of international practices, the Authority has formulated its recommendations keeping the failure in the first instance in mind. The Authority is of the view that:

- A gradual transition to addressability is a must.
- Uniform or identical solution is not applicable across the board all over the country.
- The interest of FTA subscribers as also subscribers of pay channels has to be protected.
- It is to be remembered that pay channels came to India initially as free to air channels and later were converted to pay channels without set top boxes. All over the world pay channels came through set top boxes permitting the subscriber the choice whether he/she wanted to watch and pay for or not to watch any specific pay channel. This inversion of the logical process in India has led to the present set of problems
- Any change in the system, in a country as large and diverse as India, to be sustainable must come after consultations with the State Governments as well as local stakeholders. The transition to any new system also has to be smooth. Till this process is completed the present system will have to continue.

Although addressability should be the ultimate objective it cannot be done immediately throughout the country. Considerable preparation would be required before introducing it in a particular area specially through a mandate. It is therefore necessary to develop transitory models that would allow a smooth transition to addressability and also provide some incentives for this movement. While evolving transitory models, the need to provide incentives in these models have been kept in view to facilitate smooth transition to addressability. The details of these models are described in Para 3.19 to 3.28 under section 3. The salient features of these models are briefly brought out as under:

Model I

- No compulsory CAS and STB, for watching pay channels.
- To stabilise prices and to motivate the stakeholders to move towards CAS, Regulations would be introduced providing for.
- Price cap at the level on 26.12.2003. The prices to be reviewed periodically by the Authority to make adjustments for inflation.
- New pay channels or converted FTA channels to pay channels coming after the date to be notified by GOI, designated as 'Premium Channels' can be offered only through STB and would be subject only to limited

price regulation of maximum allowable discount on bouquet of channels. Existing channels can also migrate and become premium channels.

- For pay channels launched or FTA channels becoming pay channels before the date to be notified by the GOI for introduction of premium channels but after 26.12.2003 broadcasters would be required to report their prices along with other details to the Authority. After reviewing the information the Authority would intervene in the matter, if necessary. To maintain the sanctity of the ceiling on the monthly cable rates specified by the Authority, these pay channels shall not be allowed to become part of an existing bouquet of channels and should be offered on a stand alone basis.

It could be seen, that the primary objective is to ensure price stability in this model. The drawback of this model is that consumers do not have choice, price regulation would be difficult and disputes between service providers would continue as there is no transparent method of revenue sharing. The price regulation shall be done by the Authority through tariff orders under section 11(2) of the TRAI Act.

Model -II

- Use of Traps to provide limited choice vis-à-vis model I. Traps could be used to divide customers into basic and pay customers. The consumers can be presented additional choice by offering more than one tier of pay channels, but for technical reasons this may not be able to exceed 2 or 3 tiers.
- Traps to be installed purely through market initiative.
- Basic tier service rates to be regulated by the TRAI in consultation with State Governments with Rs.72/- per month (exclusive of taxes) being the default rate.
- Pay Channel prices will be unregulated. Their stability would depend upon the number of consumers opting to view pay channels – the more consumers that opt for pay channels the less would be the price paid by the pay consumers.
- .New pay channels or FTA channels converted to pay channels coming after the date to be notified by GOI, designated as 'Premium Channels' can be offered only through STB and would be subject to no price regulation, except the limited regulation on maximum allowable discount on a bouquet of channel vis-à-vis individual channel rates.
- Existing pay channels would be free to become premium channels, if they choose to do so.

As already stated though this model gives some choice to consumer but would be plagued by fears of piracy. As the price of pay channels would be left to the market, in a situation of relatively very high FTA subscribers, the pay subscribers may be forced to share the burden of price increase.

Model –III

- Mandatory CAS and STBs for viewing pay channels.
- This can be implemented in Mumbai, Delhi and Kolkata after consulting the State Governments taking into account the groundwork already done in these cities
- CAS can be introduced in other areas after consulting the State Government.
- The existing provisions for providing a mandatory rental option for STBs should be insisted upon.
- Basic tier service rates to be regulated by the TRAI in consultation with State Governments with Rs 72/- per month (exclusive of taxes) being the default rate.
- Limited price regulation of the pay channels to the extent of regulating the maximum allowable discount on the bouquet of channels vis-à-vis individual channels.
- Regulations would be required on Interconnect arrangements since these were a matter of dispute when CAS was tried last year. Revenue share can be regulated on the request of service providers if parties are not able to arrive at an agreement within one month of initiation of the negotiation. The revenue share arrangement between service providers shall be regulated under Section 11(1)(b) (ii) and (iv) of the TRAI Act.
- Wherever CAS is to be introduced a minimum of six months time should be provided to ensure that all preparatory steps are taken for smooth implementation of CAS. If during the roll out period certain problems are found the notification should be amended accordingly. As there are conflicting views on the applicability of Section 21 of the General Clauses Act it would be appropriate for the legal position to be made clear so that Government should be able, after recording the reasons in writing, to postpone, advance, suspend, amend or revoke the notification in public interest.

3.9 In the current recommendations, it is being suggested that all new channels are necessarily introduced through set top boxes in Models I and II. Gradually over a period of time viewing of pay channels should only be possible through set top boxes. The key to the success of this approach will

be how well the transition model is designed and implemented. There are distinct advantages and disadvantages in these models and the use of a particular model would be dependent on local conditions and tastes.

3.10 The Authority through its interactions with consumers has found that there are vast differences in the requirements of consumers in different parts of the country. This has been confirmed through a market survey that the Authority had commissioned. Accordingly, no single model can be applied across the whole country. Further, as already noted, implementation of the regulations in various models can only be done through a decentralised enforcement machinery which has to draw on the resources of the State Governments which has already been recognized in the Cable Act. In other large countries like USA also local authorities regulate the cable industry in terms of local functions. It is therefore of paramount importance that the decision in respect of the precise system in each area should be taken only after consultations with the State Governments and local stakeholders. Further there are always new technologies that are coming up and these can provide more solutions: thus these three models should not be regarded as static but rather would be a dynamic set which would change with evolving technologies. The need for changes in the model can also be periodically reviewed on similar lines i.e. after due consultations with State Governments and local stakeholders. So far as Chennai is concerned, since CAS has been implemented and is continuing no change is contemplated. The Model already implemented in Chennai is essentially Model III of these recommendations

3.11 The consultation process as well as the analysis of the entire problem of affordability and availability of choice to the customer has clearly demonstrated that some kind of inter-operability of set top boxes is required. There are two ways in which this can be achieved. One relates to having technical specifications and equipment matching those to ensure inter-operability. Extensive views have been expressed and it was found that there is a need for further study before technical inter-operability could be insisted upon. The other possibility is to have commercial arrangements which obviates the need for inter-operability, that is, an arrangement in which the set top boxes is owned by the cable operator and he makes it available to the customer on rent. The Authority is of the view that availability of rental scheme of set top boxes from all MSOs/Cable Operators is a fundamental requirement for the success of this scheme.

3.12 On prices of Set Top Boxes (STBs) as well as rental schemes of STBs, it has been proposed that details of various charges associated with STB installation would be announced by MSOs/Cable Operators at least ninety days prior to the implementation of CAS, if and when implemented, and would be available on TRAI's Website. Specific complaints of high prices/

rents, if required, would be addressed through a tariff order under section 11 (2) of the TRAI Act.

3.13 In order to ensure that bundling of channels through bouquets with a scheme of discounts does not nullify individual choice, a regulation specifying the maximum allowable discount on bouquet of channels vis-à-vis individual channels is required in CAS areas. The Authority would issue a tariff order to regulate the maximum allowable discount on the acceptance of the recommendations by the government.

3.14 The following is the summary of recommendations in regard to the issue of Choice for Consumers:

- The existing system will continue all over the country till the process of consultation with the State Governments and local stakeholders is completed and an acceptable model is found for each area. The alternative to the present system within the cable industry is to introduce consumer choice through various options including addressability. There could be three alternative sets of systems in the country – the existing system with price regulation and use of Set Top Boxes for premium channels, a system using Traps with a combination of Set Top Boxes for Premium channels and a Mandatory CAS based system. The decision in respect of the precise system in each area can be taken by the Government of India after consultations with the State Governments and local stakeholders. So far as Chennai is concerned, since CAS has been implemented and is continuing, no change is contemplated.
- In Non CAS areas (Model I) and in cable networks where Traps are being used (Model II), new pay channels can be introduced only through a STB and such channels will be designated as 'Premium Channels'. The date from which such a restriction will be imposed will be notified by Government of India. Existing Pay /FTA channels can move to the premium range if they choose to do so.

3.15 The tariff orders for the basic tier service, both for CAS areas and the networks deploying traps, maximum allowable discount on bouquet of channel and regulations for interconnection issues in CAS areas shall be issued by the TRAI on acceptance of the recommendations by the GOI.

Pricing

4.1. The Authority is separately issuing a tariff order whose salient features are described below.

4.2 The tariff order is aimed primarily at the situation arising out of the new pay channels and FTA channels converting to pay. This issue of the price of new pay channels or FTA channels that have converted to pay has been carefully considered by the Authority. Since new channels will be coming into the market a mechanism has to be provided for pricing of these new channels. At the same time, there is a need to conserve the protection provided to the consumers by the Tariff Order dated 15.1.2004. To maintain the sanctity of the ceiling, it has been decided that pay channels launched after 26.12.2003 should not be allowed to become part of the bouquet of channels being provided on 26.12.2003. A similar rule would apply for those channels that were free-to-air on 26.12.2003 and later convert to pay. It is expected that this would give choice to the operators and through them at least some choice to the consumers.

4.3 These new pay channels may be offered to the cable operator individually or as a new bouquet of channels which are not covered by the ceiling specified by the tariff order dated 15.1.2004. Thus for those consumers who do not get the new pay channels the ceilings already prescribed would continue. Where the consumers get the new pay channels, the extent to which the ceilings referred to above can be exceeded would be limited to the rates for the new pay channels.

4.4 The Authority has, for the present, forborne to prescribe the ceiling rates for new pay channels that have been introduced after 26-12-2003 and for those channels that were free to air channels on 26-12-2003 but subsequently converted to become pay channels. However the Authority expects that the rates for the new pay channels would be similar to the rates prevalent on 26.12.2003 of similar channels. The Authority has, therefore, included in the tariff order a provision requiring the broadcasters of all pay channels, introduced after 26-12-2003, including FTA channels converting to pay, to submit information regarding the new pay channels and the Authority would, if necessary, amend the prices of these channels. The ultimate objective of this exercise would be to ensure that the consumers are not subjected to unwarranted price increases on the pretext of introduction of new channels. It has also been decided that if there is a decrease in the number of pay channels as compared to the number of such channels being shown on 26-12-2003, the ceiling charge shall reduce taking into account the price of similar channels.

4.5 In the background of the discussion on the models described in section 3, the Authority shall issue the following regulations relating to pricing for the 3 new models described above on the acceptance of the recommendations by the government. Till such time prices would continue to be regulated according to the existing tariff order as amended from time to time.

For CAS Areas and Networks Deploying TRAPS (Model II & III)

- There shall be no price regulation on pay/premium channels except a limited regulation on the maximum allowable discount on a bouquet of channels at both the wholesale and retail level. Price regulation for those taking the basic tier of only FTA channels will continue.

For Non CAS areas (Model I)

- The ceiling rates at which the charges will be paid by the cable subscribers to cable operators, cable operators to MSOs and MSOs to Broadcaster will be those prevailing on 26.12.2003. The ceiling shall be reviewed from time to time to make adjustments for inflation.
- No price regulation in respect of a Premium Channel except a limited regulation on the maximum allowable discount on a bouquet of channels at both the wholesale and retail level
- The Pay channels launched after 26.12.2003 or existing FTA channels converting to pay channels after 26.12.2003 would be regulated as per the tariff order being separately issued.

4.6 On the issue of pricing of basic service tier, it has been recommended that:

- Basic Tier Rates should be fixed by TRAI in consultation with the State Governments. Till new rates are decided upon the existing rate of Rs.72/- per month, exclusive of taxes, will continue as the default rate.
- Different states can have different rates depending upon the demographic, topographic conditions etc.
- At present Government has the power to fix the basic tier rates under the Cable Act while TRAI has these powers under the TRAI Act. The dual jurisdiction of deciding basic tier rates should be done away with and exclusive powers be available with TRAI.

4.7 The regulation of prices as outlined above is only intended to be temporary and till such time as there is no effective competition. The best regulation of prices is done through competition. Therefore as soon as there is evidence that effective competition exists in a particular area price regulation will be withdrawn. TRAI will conduct periodic reviews of the extent of competition and the need for price regulation in consultation with all stakeholders..

4.8 It has also been proposed that there can be different rates for the basic tier service for different states. Keeping in view the factor of diversity based on local conditions, the Authority does not propose to issue any regulation for Uniformity of Cable Rates. The Authority has however noted that uniform rates shall start emerging after the introduction of addressability and non-discriminating interconnect agreements.

Interconnection Agreements and Revenue Sharing

5.1 In areas where CAS is introduced, implementation of CAS can be held up if parties are not able to arrive at mutually accepted revenue share agreements. In order to ensure implementation of CAS, regulations will be issued at appropriate time on the following lines:

- The revenue sharing arrangements among broadcaster, MSO and LCO shall take place out of the proceeds of the amount payable by the subscriber.
- The interconnect agreements should clearly indicate the maximum retail price (MRP) of a pay channel or bouquet of channels, distribution margins for MSOs/ICOs. Similarly the agreements between MSOs and LCOs should clearly indicate MRP and margins for Local Cable Operators (LCO).
- The service providers shall mutually negotiate and decide on the revenue arrangements
- Where parties are not able to arrive at an agreement within 30 days of initiating such a process for revenue sharing, the Authority on the request of either of the party, will issue regulations under the powers conferred upon it under section 11(1)(b)(ii) and (iv) of TRAI Act.

5.2 Registration of Interconnect Agreements.

- All MSOs and LCOs will file interconnect agreements between them with the Authorised Officers for registration.
- All Broadcasters, DTH operators, HITS operators, and MSOs will file agreements between them to deliver the TV channels, with the Authority for registration
- TRAI will shortly come out with a revised regulation on registration of interconnection agreements.

5.3 Disconnection of Signals

- No broadcaster or MSO shall cut off the signals to an MSO or cable operator without giving at least one month's notice giving in brief the reasons for the proposed action. Such notice shall also be given in two

local newspapers having wide circulation so that consumers are also aware of the dispute and can take steps to protect their interests. The Authority will shortly be issuing regulations on general principles of interconnection. These will also include the provision relating to disconnection of signals.

Promotion of Competition in the Distribution of TV channels

6.1 Though Cable TV industry is fragmented at the last mile level, yet, it is characterised by a few dominant broadcasters and large MSOs, some of whom have a degree of vertical integration, resulting in disparities in bargaining powers amongst various players in the distribution chain.

6.2 The option of not allowing vertical integration at the root would impede investment and would not facilitate the objective of promoting competition. Therefore, the alternative route, of intervention when the situation warrants, has been explored and for this to happen regulations have been framed, so that they may be invoked at the appropriate time.

6.3 The Authority will shortly be issuing regulations on general principles of interconnection under Section 11 (1) (b) of the TRAI Act which provide the following: -

- Every broadcaster shall provide on request signals of its TV channels on a non-discriminatory basis to all distributors of TV channels including Cable Networks, Direct To Home, Head Ends in the Sky.
- No exclusive contracts permitted between broadcasters and distributors of TV channels.
- Broadcasters will not be held to be in violation of the 'must provide' condition if it is ensured that the signals are provided through a particular designated agent/distributor or any other intermediary and not directly.
- Volume based discounting schemes would be allowed if there is a standard scheme applicable to all similarly based distributors of TV channels.
- The 'must provide' shall not apply for those distributors which have defaulted on payment.

6.4 In addition the Authority has also recommended that the following conditions may be added in the license of the DTH operators including the existing DTH operator:

- a). *“ Licensee shall not carry the signals of a broadcaster who has been found by any regulatory body or court of law to have*

- (i) refused access on a non-discriminatory basis to any other DTH operator as laid down in the Regulations of TRAI or*
- (ii) violated the provisions of any law relating to competition including the Competition Act”*
- b) *“Licensee shall not enter into any exclusive contract for distribution of TV channels.”*

It is expected that this regulation will help promote competition both within the cable TV market as well as between cable TV and other platforms.

6.5 On the issue of ‘Must Carry of TV Channels’ the existing scenario of capacity constraint in carrying signals in analogue mode and its consequences of competition for space on the Cable Spectrum has been kept in view. Since digitalisation is a long-term goal, no fresh regulation on ‘Must Carry Obligations’ is proposed apart from the ones already there in the Cable Act and Rules. As and when capacity is augmented the ‘must carry’ regulation will be introduced. For the present therefore there will be no regulation on carriage charges.

6.6 For the DTH services, the Authority has recommended that in view of the licensing condition 7.6 of the DTH license which makes it obligatory for the licensee to provide access to various content provider/channels on a non-discriminatory basis, further regulation regarding must carry is not required.

6.7 Another issue that has arisen in recent times is the broadcast of popular events like cricket matches. To provide for this, the Convergence Bill had a provision making it mandatory to provide access to the public broadcaster for such events. Accordingly it is recommended that there should be legislation on the lines of Clause 31 of the Convergence Bill, according to which events of general public interest to be held in India will have to be carried on the network of the public service broadcaster.

Rationalization of License Fee and Taxes

7.1 There is a fundamental difficulty in providing competition within the cable industry in the provision of last mile services. In some parts of the world this has been explicitly recognized and the local operator has been given an exclusive franchise in a given geographical area. This is not feasible in India given the way the industry has grown and evolved. The most

feasible way of giving competition to the cable industry in the short run, is through DTH.

7.2 If there has to be competition between the two platforms then license fees, taxes etc. should all be made as uniform as is possible. To some extent given the differences in size, technology and reach, complete uniformity is not possible.

7.3 Keeping in view the above and also TRAI's recommendation on DTH segment on 'Accelerating Growth of Internet and Broadband Penetration', the following recommendations are made:

- The Authority has already proposed a reduction of 2% in the revenue share license fee for DTH in its recommendations on "Accelerated growth of internet and broadband penetrations" in line with the reduction in the license fee given for other telecom operators.. The principle of application of license fee on the Adjusted Gross Revenue (AGR) as in the case of telecom may also be followed. The AGR in case of DTH service should mean total revenue as reflected in the audited accounts from the operation of DTH, as reduced by
 - Subscription fee charges passed on to pay channel broadcasters.
 - Sale of hardware including Integrated Receiver Decoder required for connectivity at the consumer premises.
 - Service tax /entertainment tax paid to Central/State Govt if the gross revenue is inclusive of these taxes.
- DTH operators shall have to carry out detailed accounting separation so that revenues accrued from DTH operations and from other services, sale of hardware etc. could be separated. The operator should follow accounting separation guidelines issued by TRAI from time to time.
- DTH operator shall produce on demand all such books of accounts and documents which have a bearing on the verification of revenue for the purposes of calculating License fees and Auditing by the CA&G in accordance with the provisions of Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act 1971.
- The GOI should recommend to all State Governments to consider cable TV and DTH services at par and impose the same Entertainment Tax on these services. Similarly there should be parity in imposition of Service Tax.

- Foreign Direct Investment (FDI) limit in Cable TV and DTH should be reviewed and a consistent policy provided.
- The customs and excise duties on the equipment used to provide DTH and Cable Services should be similar to those used to provide other telecom services.

Advertisement

8.1 Section 8 deals with the issue of regulation of advertisement time. The Authority while deciding on the recommendations has taken into account the following factors:

- Consumers have voiced strong complaints over frequent and long duration of advertisement breaks and have also suggested a total ban on advertising on pay channels.
- There is a direction by Delhi High Court in CW no 8993-4/2003 to the Union of India to consider if there is a need put restriction on advertisement time and explore the feasibility of notifying the channels receiving lot of advertisement revenue as FTA channels.
- Most countries have regulation on advertisement time and the nature of regulation varies. The time limit on an average is in the range of 10-12 minutes per hour. But globally, in most of the countries the percentage of revenue from subscription is on even balance in relation to advertisement revenue.
- In India the ratio is in favour of revenue from advertisement and not from subscription. The former constitutes 100% in FTA channels and it is about 70% in the case of Pay channels.
- The average time reported by Broadcasters to TRAI on advertisement is seen to be within the global scenario.
- Regulation of advertisement time can adversely impact the subscription fees, as broadcasters would attempt to neutralise the revenue loss. This may be against the objective of providing affordable prices.
- Excessive advertisement by itself is detrimental to the service providers as it may result in loss in viewership and the market has a self-correcting mechanism.
- The recommendation on CAS and Traps providing a choice not to view pay channels may have an impact on viewership of pay channels and in this background, regulation of advertisement time may push up subscription rates.

8.2 Keeping the above in view TRAI has recommended that

- There should not be any regulation, at present, on advertisement on both FTA and Pay channels.

- The Cable Act should be suitably modified so that powers are available with the Government to regulate this, if found necessary, at a later stage.
- Broadcasters would also be required to give information on advertising time to TRAI and the Government and this would also be made available to the public through the TRAI web site.
- Broadcasters should be free to decide which channel should be FTA and which should be pay.

Regulatory Enforcement

9.1. In Section 9, the extent of effectiveness of the System of enforcement of regulations under the present regulatory arrangement has been examined.

9.2 The features of the proposed regulations are as follows:

- The duties to be assigned to Authorised Officers appointed by the state government and the central government should be clearly demarcated so that there is no overlapping of jurisdiction and responsibilities. The following recommendations are for additional duties of the Authorised Officers to be appointed by the State Governments:
- The Registration of Cable Operator should be done by the Authorised Officer and not by the Head Post Master. The existing cable operators may not be asked to obtain fresh registration but the next renewal of registration should be done with the Authorised Officers.
- The registration amount should be deposited by the Authorised Officer in the Post Office or under a central head in a nationalized Bank.
- The Authorised Officer should have power to revoke registration if a cable operator has been convicted of a criminal offence and imprisoned for the same.
- Information under Section 4A(9) should be submitted to the Authorised officer and not the Government of India as at present. The consolidated information may be sent to the central/state government. Formats for these can be separately prescribed.
- Consumers and operators should have the option to approach the Authorised Officers for implementation of the regulations/orders issued under the TRAI Act. The Authorised officers should be given powers with respect to the cable TV services to file complaints against violation of the orders/regulations issued under the TRAI Act.

- All Cable Operators and Multi System Operators shall maintain a register of subscribers containing the names of the subscriber, address, and monthly fee to be charged. The Register shall be furnished for inspection to the Authorised officer whenever he considers it expedient to inspect such a register.

9.3 There are a large numbers of cable operators operating in far flung areas. They need a local dispute resolution mechanism which they can easily approach. Disputes being very common in this service sector, the government may consider setting up an alternate dispute resolution mechanism for cable operators at the local level. For multi system operators and broadcasters there need be no change in the present arrangements.

Quality of Service

10.1 The purpose of laying down Quality of Service (QOS) parameters is to provide a framework whereby Multi System Operators/Cable Operators would be required to meet certain guidelines for delivery of services to the consumers. This regulation will be issued after the Authorised Officers have been empowered to file complaints for violation of TRAI's regulations as indicated in para 9.2.

10.2 The Authority has decided to issue the Quality of Service Regulation and the following shall serve as QOS codes and guidelines for the Cable TV Industry:

Information to be provided to consumer at the installation of Cable TV connection

- i. Detailed information must be provided to consumers at the time of installation and activation of cable services and at least annually to subscribers and at any time upon request about:
 - Products and services offered, i.e number of channels and names of individual channels being offered.
 - Prices and option of programming services.
 - Installation and service maintenance policies.
 - Billing and complaint procedures including the address and telephone number of the customer service centre.

Complaint handling procedure and benchmarks to redress complaints.

- ii. A Cable Operator shall improve the network quality and the complaint redressal infrastructure to meet the following benchmarks:
 - 90% of complaints will be corrected within 4 hours.
 - No more than 3% of customers should require to lodge complaint against service interruption each month.
 - 90% of 'No Signal' calls received should be corrected within 24 hours.
 - 90% of all other types of service calls will be corrected within 48 hours.
- iii. Each Cable Operator must maintain a customer service centre or help desk 8 hours a day, 6 days a week. All complaints shall be registered and complaint number issued for each Complaint.
- iv. A Cable Operator shall maintain record containing all complaints filed by the subscriber. The records shall include name and address of the complainant, date and time of filing complaint, type of complaint and redressal date and time with the confirmation of the consumer that the complaint has been redressed. The cable operator shall present records whenever called upon by the Authority or the Authorised officer.
- v. A cable operator shall take all necessary steps like provision of alternate power supply to eliminate the incidence of service interruption for power failure.
- vi. For the purposes of maintenance and repair, a cable operator must ensure that its representative(s) carry proper identification along with a photograph.

Billing Procedure and Complaints

- vii. Cable subscribers must be billed monthly with statements being clear and transparent. Where a customer does not view pay channels via a Set Top Box, a bill should be itemised clearly indicating cable charges and taxes. Where a customer does view pay or premium channels via a STB, a bill should be itemised and clearly indicate the price of the basic Fee to Air tier, the price of pay channels or bouquets, STB rental and deposits and taxes.
- viii. The billing system should be such that the following benchmarks are met:

- Complaints shall be addressed within 7 days of notice from the consumer to the operator.
- Refunds must be issued no later than either the customer's next billing cycle or 30 days following the resolution of the complaint, whichever is earlier.

Set Top Box related Complaints.

- ix In cases where there is a malfunction of a Set Top Box provided by the operator on rent, the operator must repair or replace the STB within 24 hours.
- x. In cases where a customer chooses to return a STB, the refund must be made within 15 days, subject to proper working condition of the STB.
- xi. If a customer chooses to subscribe to pay channels via a Set Top Box, then STB installations and subscriber activation must take place within 48 hours of the receipt of the subscriber's request.
- xii. Rebate for deficient service: In case the installation and activation of the STB is delayed beyond 48 hours of the receipt of the Subscriber's request, the multi system operator/cable operator shall in the monthly subscription give a rebate of Rs.15 per day for the first 5 days and Rs.10 per day for the subsequent period.

Change in positioning of channels

- xiii Change of positioning of TV channels should not be normally be done. In case of pressing technical reasons requiring changes of TV channel position is required, the cable operators shall notify subscribers at least two days in advance of such occurrence.

Technical Standards

- xiv A Multi System Operator and Cable Operator shall match the technical standards set by Bureau of Indian Standards (BIS) of Cable TV Network.

10.3 Though regulation on Quality of Service will be issued by the Authority after the regulatory enforcement machinery has been put in place as proposed in Section 9, in the meantime cable operators and MSOs can

take action to ensure that these standards will be met, once the regulation are in place.

Gist of Amendments proposed to the Cable Act and Rules and the TRAI Act

11.1 The major points on which amendments to the Cable Act/Rules and the TRAI Act have been proposed are as follows:

Cable Act and Rules

- Amendment of definitions to include various terms as well as cross-reference to the Telegraph Act, Wireless Telegraphy Act and the TRAI Act.
- Amendment of Section 4A to provide explicit powers to the Central Government to postpone, advance, suspend or revoke a notification already issued, after recording reasons in writing for the same.
- New section to be added to make it mandatory for new pay channels to come on an addressable system, after date to be notified by the Government.
- New section to be added to give powers to the Central Government to specify maximum time of advertisement.
- Amendments to give the authorised officers more powers and to make them the Nodal Officers in the field for implementation of the Act, including registration.

TRAI Act

- Amendment of definitions to clarify various terms like service provider, broadcaster, MSO, etc.
- Amendment of Section 13 to provide for directions to be issued in respect of all functions of the Authority.
- Amendment of Section 29 to provide for penalty for contravention of directions of the Authority as well as its orders and regulations.
- Amendment of Section 34 to provide for authorised officers to file complaints in respect of violations of any regulation reported by consumers or Cable Operators.

11.2 For ease of reference, all the proposed amendments have been put together at Annexure-II&III of the Recommendations giving the precise wording of the amendments. In addition, it has also been proposed that there should be legislation on the lines of Clause 31 of the Convergence Bill, according to which events of general public interest to be held in India will have to be carried on the network of the public service broadcaster.

SECTION 1: BACKGROUND

Cable TV Industry Development and Initial Steps For Regulation

1.1 The India cable TV industry has been in existence for over 15 years. Although Satellite Master Antenna TV (SMATV) systems for delivering multiple channels to consumer homes had been in existence prior to 1991, it was the advent of the Gulf War in 1991 and its coverage on international news channels which kick-started the spread of cable television in the country. After 1992, the proliferation of cable television was further fuelled with the broadcast of localized India-specific programming by various television channels.

1.2 In India, the cable TV industry has developed in an unregulated manner and has grown rapidly. Today, the market remains fragmented with over 150 cable TV channels and 30,000 cable TV systems although clear market leaders have emerged in both categories. The National Readership Survey 2002 (Source: NRS 2002) indicated that there were 38.6 million cable TV homes in India. More recent estimates indicate that, at calendar year-end 2003, there were more than 47 million cable TV homes in India, representing in excess of 50% penetration of television households (Source: Media Partners Asia, Asia Pacific Cable & Satellite Markets 2004).

1.3 Because of its unregulated growth, the cable industry continues to face problems in sustaining the delivery of high quality services to the consumer. This has increased the need for a new regulatory framework to support the industry's next stage of growth and consolidation and to protect the interests of the consumer.

1.4 The market is characterized by a large number of operators some of whom are very small. In recent times there has been some consolidation with a few vertically integrated operators where broadcasters have equity investments in the Multi System Operators. There has also been a steep increase in fees charged for pay channels in recent years, both on account of increase in the number of channels and the price per channel. The combination of these factors has driven the need for industry regulation so that consumers obtain quality services at reasonable prices, competition is promoted and anti-competitive trade practices are checked.

1.5 The regulation of the cable TV industry in India began with the promulgation of the Cable Television Networks (Regulation) Ordinance, 1994 on September 29, 1994, which was converted into the Cable Television Networks (Regulation) Act (hereinafter "Cable Act"), on March 25, 1995. The Cable Act, inter alia, provides that:

- To operate a cable television network, a cable TV operator has to be registered with the registering authority (head post-master of the head post office of the area) as a cable operator.
- No person can transmit or retransmit programmes and advertisements through the cable network unless they conform to the programming code and the advertisement code respectively prescribed under the rules.
- Cable operators have to use equipment that conform to the standards prescribed by the Bureau of Indian Standards, on and from the expiry of a period of three years from the date of establishment and publication of such standards.
- Seizure and confiscation of equipment of cable operators if they are unregistered or breach the programming or advertisement code or fail to transmit Doordarshan channels, as prescribed under the Cable Act.
- Contravention of any of the provisions of the Cable Act could result in imprisonment up to two years and/or fine up to one thousand rupees for first offence and for every subsequent offence imprisonment up to five years and fine up to five thousand rupees.
- Under the Cable Act, the authorized officer can seize the equipment of a cable operator in case of violation of section 3, 5, 6 and 8 and in terms of Section 18 of the Cable Act courts are not to take action for any offence punishable under the Act unless there is a written complaint by an authorized officer. In Section 2 of the Act which gives definitions of various terms, “authorized officer” means, within his local limits of jurisdiction:- (i) a District Magistrate, or (ii) a Sub-Divisional magistrate, or (iii) a Commissioner of Police, and includes any officer notified in the Official Gazette, by the Central Government or the State Government, to be an authorized officer for such local limits of jurisdiction as may be determined by that Government.

Thus, the Cable Act provides for concurrent jurisdiction by the Centre and the States in enforcing the Act through authorized officers.

II. Task Force for The Introduction of CAS

1.6 Initially, most cable TV broadcasters in the country were Free To Air (FTA). Over the last few years, starting from 1996, the cable TV broadcasters begun to turn pay and charge subscription fees. Broadcasters have formed pay channel bouquets to increase distribution revenues. These bouquets align around popular domestic mass-market channels with other niche-type local and international channels. The bouquets are generally one bundle of channels belonging to a broadcaster but in some cases the broadcasters team up with each other to make a bouquet of pay channels. The cost of

these bouquets are borne by the cable operator and then passed on to the consumer. As more channels turn pay, subscription fees are rising and monthly cable TV bills for consumers have grown rapidly.

1.7 To address issues relating to the cable industry, the Government of India had, on 25-9-2001, constituted a Task Force consisting of representatives from the Indian Broadcasting Federation, MSOs, Content Creators, Cable Operators, Broadcasters, Infrastructure Providers, Ministry of Consumer Affairs, Representatives of Consumers Activities and Technical Experts. The Task Force submitted its report dated 27-2-2002 and unanimously said that conditional access systems (CAS) was necessary to provide and ensure transparency at different levels of the industry and as a solution to the outstanding issues. The implementation of the CAS was envisaged as beneficial to all concerned industry stakeholders including consumers, MSOs, cable operators, broadcasters and the Government.

1.8 The Task Force was of the strong view that there was an urgent need to educate consumers on the operation of cable television and the cost of various services, including the operation and cost of STBs. The task force observed that in the existing arrangement, the consumer was paying for all channels, irrespective of what he actually watched or desired to watch. There was a need to make the system transparent in respect of the pay channels that could be viewed by subscribers. The subscription of all pay channels would be transparently known and the payment receivable by individual 'pay' channels would be fully determined. This transparency would also allow entitled revenue to accrue to the different links in the distribution chain of Cable TV.

1.9 The Task Force also proposed an enabling provision in the Act to prescribe basic minimum technical standards and performance parameters through the Bureau of India Standards (BIS). These recommendations can be summarized as follows:

- The Conditional Access System and the supporting subscriber management system should be mandated under the Cable Act.
- The STB shall be required for "Pay" Channels and the FTA channels shall be receivable by the subscribers in the current mode, without STB.
- The technical parameters of the STB shall conform to the Indian standards, to be prescribed by the Bureau of India Standards, in accordance with provisions of the Bureau of Indian Standards Act, 1986. While doing so, the Bureau of Indian Standards may take into account the internationally acceptable standards and obtain recommendations from technologists and manufacturers of equipment.

- It shall be mandatory for the Equipment Provider/ manufacturer to declare, in a transparent manner, the capability of the STB and its interoperability on other networks.
- In order to ensure transparency in the operations between MSOs, Cable operators etc., the Government must be empowered to obtain detailed information, on regular basis, from each level of operation. This may include information on total subscriber base, on individual programmers, viewer ship of independent channels, subscription rates, charges fixed by the broadcasters, Content Creators for each channels etc. Each subscriber shall be kept informed in a transparent manner of the subscription rates for each individual channel.

1.10 The recommendations of the Task Force resulted in Parliament amending the Cable Act of 1995. A new provision in the form of Section 4A was inserted and Sections 9, 11, 16 and 22 were suitably amended. These amendments empowered the Central Government, in public interest to make it obligatory for all Cable operators to transmit or retransmit programmes of every pay channel through an addressable system. Under this provision, the Ministry of Information and Broadcasting vide notification dated 14-1-2003, specified 15-1-2003 as the date within six months of which these obligations were to be complied within the areas of Chennai, Municipal Council of Greater Mumbai Area, Kolkata Metropolitan Area and National Capital Territory of Delhi. Six months time given in this Notification was to enable the cable operators/MSOs to import the necessary equipments. This Notification also records that the Central Government is satisfied that it is necessary to have this addressable system for the aforesaid areas.

Implementation of CAS- constitution of another Task force

1.11 In order to implement CAS in an orderly and timely fashion, the Central Government constituted another Task Force to examine the relevant issues on 28th January 2003. The recommendations given by the Task Force are as follows:

- There is a need to specify a “Basic Service Tier” of FTA channels by the Government so that the viewers in the metros are not deprived of viewing FTA channels, in the current mode.
- The ‘Basic Service Tier’ must have a minimum 30 FTA channel package and the same number must be specified in each of the four metros. This will include 3 “must carry” channels.
- The FTA channels, in the ‘Basic Service Tier’, must be in English, Hindi or the regional language, subject to availability in the area.
- The ‘Basic Service Tier’, must include channels on the genres of entertainment, news, sports, children programmes and music,

depending upon availability of such genre in the FTA channels, available in the particular area.

- All the FTA channels, over and above the 'Basic Service Tier' would be available to the subscribers within the maximum amount fixed for programmes in the 'Basic Service Tier'. No extra charge would be recoverable from the viewers, by the Cable Operators Broadcasters/MSO's, for viewing any additional FTA channels, in the area.
- All the members (except the cable operators) agreed that the maximum amount which a cable operator could charge a subscriber for receiving channels transmitted in the basic service tier, be fixed at Rs.72/- per month plus taxes. This maximum amount should be the same for all the four metros.
- The Task Force should continue to deliberate on other important issues relating to the problems of the Broadcaster, MSO and Cable Operators, to introduce addressability. Broadcasters/MSO's should be encouraged to transparently reveal their plan regarding pay channels after introduction of addressability, the bouquet being proposed and indication of the cost of pay channels/ pay channel bouquet.
- An intensive multi-media campaign should be launched by the Government/Broadcasters/MSO's/Cable Operators in order to educate the consumers on the provision of the Amendment Act and regarding the cost and utility of the STB's.

1.12 The Task Force held several meetings attended by the MSO's as well as the Cable Operators Association. In these meetings, it was stressed that the date of 15-7-2003 was sacrosanct and would not be postponed and all the cable operators were asked to ensure that necessary hardware for implementing CAS is installed in their respective networks well in time. The MSOs were also asked to furnish from time to time details with regard to status of the CAS hardware being procured by them. The Government attempted to facilitate import of the necessary equipments and in the process it issued Notification dated 28-5-2003 under the Custom Tariff Act, 1975 substantially reducing the custom duty payable on specified CAS hardware including STB's from 51.8% to 5%.

Problems on Implementation of CAS

1.13 In order to ensure smooth implementation of CAS in four metropolitan cities, discussions with representatives of stakeholders of cable industry i.e manufacturers, broadcasters, MSOs and cable operators were held. During the course of deliberations MSOs/Cable Operators were confident of meeting the demand of STBs. Subsequent review revealed that adequate number of STBs were not available. The government in consultation with the MSOs staggered implementation of the CAS to 1st Sept 2003 in a phased

zone wise manner in three metros of Delhi, Kolkata and Mumbai. The CAS implementation in Chennai was to be done in one go.

Suspension of CAS in Delhi

1.14 On 29 August 2003 the Ministry of Information and Broadcasting issued a notification deleting Delhi from the notification dated 10th July 2003. The impact of this was to defer the implementation of CAS in Delhi.

Appeal in the Delhi High Court and Order dated 4.12.2003

1.15 A writ petition was filed by the Cable Operators and MSOs against this in the Delhi High Court saying that whereas the CAS has duly been implemented in Chennai, Mumbai and Kolkata w.e.f. 1.9.2003, the Notification dated 29.8.2003 has deleted the specified areas of Delhi as mentioned in earlier Notification and thus CAS has not been implemented in Delhi. High Court Delhi vide its judgement dated 4.12.2003 quashed notification dated 29.8.2003.

Writ filed by Consumers Groups and Delhi High Court Judgment dated 26.12.2003

1.16 Delhi High Court in CW No. 8993-4/2003 ordered on 26.12.03 refused to restrain the government from implementing CAS in Delhi and decided also to review the situation after three months. The Delhi High Court also directed to look into the framing of policy with regard to those channels that generate substantial advertising revenues as to why these channels should not be notified as FTA channels. The Government was to consider whether a limit needs to be put in respect of time for advertisement. The High Court also ordered that “there has to be some regulatory body in terms of the synopsis of comments which have been filed by the respondent to see the implementation”.

Appointment of Regulator for Broadcasting and Cable Services

1.17 The Government of India issued a Notification No. 39 dated 9th January 2004 under the proviso to clause (k) of sub section (1) of section 2 of the TRAI act 1997 as amended, whereby the scope of the expression ‘telecommunication services’ under the TRAI Act was expanded to include broadcasting services and cable services also. Thus, the broadcasting and cable services also came under the purview of Telecom Regulatory Authority of India. With the issue of the notification dated 9.1.2004, an alternate dispute redressal mechanism also became available for the broadcasting

and cable industry. Under Section 14 of the TRAI the disputes between service providers, service provider and group of consumers are to be adjudicated by the Telecom Dispute Settlement Appellate Tribunal (TDSAT).

Order Dated 9.1.2004

1.18 The Government of India also issued an order dated 9th January, 2004 under Section 11 (1) (d) of the Act, which mandated the Authority to make recommendations regarding terms and conditions on which the “Addressable systems” shall be provided to customers and the parameters for regulating maximum time for advertisements in pay channels as well as other channels. The order also added to Sub-section (2) of Section 11 the function of specifying the standard norms for, and periodicity of revision of rates of pay channels, including interim measures.

Regulatory Interventions by TRAI

Regulation on Price Cap

1.19 Immediately after the broadcasting and cable services came within the purview of the Telecom Regulatory Authority of India, the Authority found that there were no standard rates or conditions at which cable operators provide services to subscribers. The Authority also received reports that there may be an increase in the rates charged to subscribers. To bring some certainty in the rates prevailing for these services, it was considered necessary by the TRAI to intervene in the matter. On 15th January, 2004 it specified as ceiling the rates at which the charges will be paid by cable subscribers to the cable operator, by cable operators to multi system operators and by multi system operators to broadcasters, as those prevailing on 26th December 2003 with respect to both FTA channels and pay channels, and for both CAS and non-CAS areas, until a final determination by the TRAI on the various issues involved.

Press Release dated 19 February 2004

1.20 After the announcement of the Telecommunication (Broadcasting and Cable) Services Tariff Order 2004, a number of doubts were raised on the impact of the order. To clarify these doubts a press release was issued on 19th February, explaining the word ‘charges’ and provisions relating to this.

1.21 According to the clarification given by this press release, the term ‘charges’ means and include the charges/ tariff rates payable by one party to the other by virtue of the formal/ informal Agreement prevalent on 26th December 2003. The principle applicable in the formal/ informal Agreement

prevalent on 26th December, 2003, should be applied for determining the scope of the term 'charges'.

1.22 It was also explained that the ceiling charges are specified in terms of products that they pertained to, namely the channels that were shown on 26th December, 2003. Normally, there should not be a reduction in the number of channels shown on 26th December, 2003. If this were so then there should be a pro-rata reduction in the charges

Regulation on Inter-connect Agreements

1.23 TRAI issued an amendment to the Interconnection Regulations of 1999 on 3 February 2004 making it mandatory for all Broadcasters and Multi System Operators to provide their interconnection agreements to TRAI.

1.24 All major broadcasters and Multi System Operators have filed agreements for registration with the Authority. Service providers have been asked to file these agreements in a specified format for easier reference.

Interim recommendation on CAS

1.25 TRAI provided its Interim Recommendations on CAS on 23rd February 2004 to the Government. Based on a number of factors that were mentioned therein, TRAI recommended that the Government Notification No. SO 792 (E) dated 10th July 2003, which notified the areas for implementing CAS, be kept in abeyance for at least three months.

1.26 The recommendation was accepted by the Government and vide Notification No.S.O.271 (E), dated 27 February 2004, the Government suspended the mandatory operation of CAS until such date as may be notified by the government. Due to this Notification there are no separate CAS or non-CAS areas and such distinction has been withdrawn in this Amendment. The notification however was not operated in Chennai on account of the stay given by the Madras High Court in Writ Petition numbers 4863, 4890, 4936 and 4919 of 2004. The interim order granted by this Court on 04-03-2004 was subsequently made absolute by the Court Order dated 30.4.2004.

Consultation and process for finalizing recommendations

Consultation Note

1.27 The objective of the Consultation Note was to obtain feedback from stakeholders on the issues regarding tariff of broadcasting and cable service and problems arising out of the application of Conditional Access System

(CAS) in certain areas. It was issued on 15th January 2004. This consultation note sought inputs on a number of policy issues, so as to prepare a more detailed Consultation Paper. These policy issues broadly include:

1. The norms for fixing rates for cable subscribers/ cable operators/ multi system service operators (MSO) for individual pay channels, bouquets and the distribution of FTA channels (whether uniform in CAS and non-CAS area)
2. Periodicity of change of monthly cable charges in non CAS area
3. Revenue sharing between broadcasters, MSO's and cable operators
4. The extent of bundling of pay channels
5. The standard terms and conditions for providing STB's
6. Provisions regarding the return of STB's (whether purchased or taken on rent)
7. Compensation to the subscribers in case of the interruption in pay channels for more than specified period
8. Standards relating the Quality of Service
9. Measures to increase competition, promote efficiency and encourage wide consumers choice
10. Measures relating to the development of broadcasting and cable services
11. Advertisement on the TV channels- issue relating to maximum permissible advertisement time to be permitted on pay channels and FTA channels.

The comments and inputs for the consultation note were called for up to 30th January, 2004.

Consultation Paper

1.28 Taking into account the inputs received in response to the Consultation Note TRAI issued a Consultation Paper on April 20, 2004 for giving its recommendations to the Government. The objective of the Consultation Paper was to provide consolidated information to stimulate the discussion. The paper provided the necessary platform for discussing the important issues relating to the regulations for the Cable TV Industry. The paper called for the comments of various stakeholders on different issues. The comments on the Consultation Paper were called for up to 7th May 2004 and a large number of responses were received.

1.29 TRAI also held discussions with various stakeholders on the consultation paper, on 7th, 11th and 15th May 2004, in Chennai, Delhi and Mumbai respectively. In addition a seminar was also held in Mumbai on 19th June 2004, on Broadcasting and Distribution of TV channels. In

addition, TRAI also held a series of smaller meetings with Broadcasters, MSOs, LCOs, Consumer organizations etc.

Special Committee of TRAI and State Government

1.30 TRAI had also constituted a Committee consisting of representatives from the State Governments of Delhi, Tamil Nadu, West Bengal and Maharashtra and was chaired by Secretary, TRAI. The Committee met on 10.3.2004, 31.3.2004, 28.4.2004, 3.6.2004 and 14.7.2004. The Committee considered various issues including Pricing of Pay Channels, Bundling of channels, STBs, Advertisements and Gradual and voluntary introduction of STBs. The Committee also considered the measures to improve implementation of the policy and suggested that the State Governments should be given necessary powers to notify areas for implementation of CAS and Authorised Officers to be given powers to solve local disputes. A copy of this report is at *Annexure I*.

1.31 The Authority had also engaged a consultant – M/s IMRB - to carry out a survey to understand the channel preferences, prices, acceptability of CAS, etc. in the country. A copy of the report has been put on the website of TRAI along with these recommendations. A reference has been made to the report wherever found relevant. The Authority also studied in detail international practices and experiences; wherever relevant these have been referred to in these recommendations.

SECTION 2: DIRECTIONS OF REGULATORY INTERVENTIONS

2.1 Given the background of the cable TV industry, it is necessary to first set out the broad objectives that policies and related regulations need to address. The basic objective that regulation in this sector needs to address is the need to promote growth and competition in the sector so that consumers have affordable prices for their home entertainment and can choose between alternative platforms and channels.

2.2 The cable industry has developed in an unregulated manner since 1991. The industry has grown rapidly and the size of the industry is now about Rs.15,000 crores per annum. This remarkable growth of the industry, owes in a large measure, to the entrepreneurial skills of the cable operators. The growth of this sector has, however, brought in its wake problems that have called for increasing regulation.

2.3. Pay channels in the country, initially came as free-to-air channels but starting from 1995 these free-to-air channels, increasingly became pay channels leading to rising consumer bills. In mature economies, pay television came along with Set Top Boxes and hence the pattern of development of the industry in India has been very different. According to one estimate the total pay out for pay channels has increased by 1100 per cent over the mid 90s. At the same time the consumer invariably has no choice in selecting his/her operator. The combination of increasing pay outs to the broadcasters and the lack of competition in the last mile and inability to choose between alternate platforms and channels has led to increasing consumer bills which have fuelled growing consumer dissatisfaction and a demand for regulation.

2.4 Though affordable prices is a primary objective but at the same time prices should also be maintained at levels that stimulate competition and further growth of the industry, which should lead to furthering the objectives of giving consumers more choice and higher quality services. These objectives may conflict in certain cases. For example when prices do not provide fair return on the investments, the operator may not like to make further investments to upgrade or expand the network.

2.5 Against these objectives, it is imperative to examine the efficacy of the present system in addressing these objectives and subsequently, what are the major problems that require regulatory intervention. Such intervention can take two directions: firstly encourage competition and secondly introduce regulation to enhance competition or counter the imbalances resulting from a lack of competitive market structures.

2.6 In terms of consumer choice, the present system does not provide any choice to consumers and offers limited choice to operators. One notable exception is Chennai where the introduction of CAS has resulted in a greater degree of choice for consumers and cable TV operators. In the current industry context, broadcasters provide a bundle of channels to cable TV operators, who can either accept the entire bundle (irrespective of ratings and viewership) or be forced to carry nothing. The end result is that consumers have a much lower freedom of choice – they simply have to take the entire bundle provided by the operator or not take the service at all. In most cases the consumer does not even have the choice to change his operator. Therefore, there is a need for radical change in the system to provide the consumer with greater choice, both in terms of choosing operators and in choosing channels. Regulatory intervention is required to stimulate the market to provide such choice and where necessary to directly intervene so that greater choice is available.

2.7 The issue of affordability or reasonable prices has been at the forefront of the current debate about reform in the cable TV industry. As already noted, price inflation in the cable TV industry has been severe since the mid-1990's, driven by both the increases in the number of pay channels offered by broadcasters and the increase in their prices.

2.8 As has been explained earlier the price increases have been largely absorbed by the consumer. It has also inflated the cable operator's cost, causing grievance to both parties. These increases were the principal reason for TRAI's first regulatory intervention – the tariff order of January 15, 2004 imposing a ceiling on prices at the level of December 26, 2003. This was a temporary first step ahead of a more detailed examination and the adoption of a more permanent system. The new system must address not only the end consumer price but also the interconnection arrangements between the various players in the distribution chain including local cable operators (LCOs), multi system operators (MSOs) and broadcasters. If these structural problems in the distribution chain are not addressed, they will ultimately impact the consumers in the form of price increases or loss of content and programming.

2.9 The need for the industry to grow is tied to two essential requirements for consumers. Firstly, there is a major need to extend the coverage of cable and satellite TV to remote, rural homes and areas. For instance, Direct To Home (DTH) satellite television can prove viable transmission to rural areas, enjoying cost efficiencies over cable TV operators, which are typically reliant on high population densities (i.e. urban areas) in order to build networks with economy. Secondly, there is a great need to give consumers choice in terms of operators and programming. The numbers of cable operators that can function in a

particular area are limited given the cost of laying a network. True choice in this regard can only perhaps come once there is an alternative platform like DTH. In order for competition to succeed, the business must be attractive enough to attract investors with sizable funds, network/infrastructure access, programming depth and technology expertise. Similarly, if the cable industry is to grow, prosper and provide consumers with choice and quality services, significant funds are required to be invested in STBs and digitization. Digitization can also help to clearly combat piracy, bring basic addressability to the industry and provide consumers with additional programming channels and new interactive TV services. At the same time, technology has been progressing rapidly with convergence taking place at both the consumer end as well as at the service provider end. With this convergence it would be possible for the cable industry to provide other services as well. Thus, already internet services are being provided by cable operators. In addition, telecom services could also be provided – in several countries like USA, UK and Korea, cable operators have made considerable progress in providing telecom services. This would be facilitated in the unified licensing regime. It is imperative that the industry therefore continues to grow and there are powerful incentives for investments that enhance competition and consumer choice

2.10 Against this background the vision that the Authority has of how the television broadcasting and distribution business should grow in the future is as follows:

- The objective of the regulation would be to promote and facilitate competition amongst channels, operators and platforms
- Consumers should have the freedom to choose their content and their operator/platform- this would mean ease of exit from one operator/platform to another operator/platform
- The other platform could be DTH or other media like telephone lines. Both options are permitted even at present.
- Addressability must come on all TV channel distribution platforms
- As competition increases and the consumer has multiple choices, price regulation would gradually withdraw.

2.11 The key element of this vision is that the best regulatory framework is one that allows the industry to grow so that consumers have multiple choices giving them freedom to choose their content and operator/platform. This competition together with addressability would empower the consumer to control his/her expenditure on viewing television channels. It is this vision that has guided the Authority in its task of developing a regulatory framework for this business.

2.12 With this as the perspective the following are some of the major problems that have been identified. These issues are discussed in the later sections and wherever necessary regulatory interventions are suggested.

- **Consumer Choice**

2.13 The lack of addressability in the industry today is a major concern. The core issue here is consumer choice. Greater choice will provide the consumer with more control over content and correspondingly will give the consumer better control over the price that he/she is charged. This was sought to be rectified by direct intervention in the form of a legislative mandate. To what extent was this a correct strategy needs to be examined along with the alternatives. This is done in Section 3.

- **Pricing**

2.14 At present there is no regulation of prices except for the tariff ceilings imposed by the Authority and the fixation of the ceiling price of Rs.72/- per month for the basic tier in CAS notified areas. Another important issue is to look at the prices of individual channels vis-à-vis the prices of a bundle of channels and to see if the present system offers adequate choice and if not what kind of regulatory intervention is required. These issues are discussed in Section 4.

- **Interconnection agreements and revenue share**

2.15 The need for price regulation not only at the end consumer point but also all along the value chain has to be examined. Lack of proper revenue sharing arrangements is a major issue today and unless this area is reformed consumers can be affected adversely by interruptions of channels. These issues are discussed in Section 5.

- **Promotion of competition in the broadcasting of TV channels**

2.16 Competition is the key to the success of any regulatory framework. By easing entry and exit barriers, providing access to content across all competitors and by providing choice at every level regulation can spur new investments and promote competition. This should over a period of time lead to lower levels of regulation and allow all the players, both in the industry and amongst consumers, to exercise choice and decide what is best for them. Competition issues are discussed in Section 6.

- **Rationalisation of License Fee and Taxes**

2.17 There are several alternatives to cable TV which need to be promoted to provide effective competition. To this end rationalization of taxes, license fees etc. needs to be looked at to provide a level playing field to the extent possible given the divergence in technologies and scale of operations.

- **Advertisement**

2.18 Consumers have voiced strong complaints over the frequency and long duration of advertisement breaks. They have pleaded for regulation of advertising time. This issue also needs to be addressed suitably. This has been done in Section 8.

- **Regulatory Enforcement**

2.19 The efficacy of any system of regulatory enforcement depends crucially on the extent to which the regulations can be enforced on the ground. This is specially so for the cable industry where the number of operators and consumers are large and spread all over the country. There is need to reorganize the present regulatory system for effective implementation of the regulations. These issues are addressed in Section 9.

- **Quality of Service Standards**

2.20 At present quality standards exist only in the form of technical standards laid down by the BIS. These need to be expanded to provide service standards on fault rectification, billing complaints etc. A framework has been devised by the Authority and discussed in Section 10

2.21 For all the above issues a detailed discussion is provided in the following sections. The discussion draws on valid international experience along with the views of stakeholders and the recommendations of the special committee. After analyzing the issues in the light of this material, solutions are offered in terms of recommended amendments to the TRAI Act, the Cable Act and Rules made under the Act. In some cases the solution lies in terms of amending the existing Regulations or issuing new Regulations under the TRAI Act. **Since some of these regulations would be based on acceptance of the recommendations and changes in the legal structure, these will be issued after relevant changes have been made in the law.** A regulation on interconnection and a revised tariff order are being separately issued.

SECTION 3: CONSUMER CHOICE

3.1 Under the existing regime, the consumer has little choice. The consumer's only choice is to subscribe or not to subscribe to the service being offered by the local cable operator. Once the consumer has decided to subscribe, he/she is left with no choice and has to subscribe to all the channels being offered by the local cable operator. The local operator can be persuaded to show a particular channel or a group of channels. However in a large and heterogeneous community it would be impossible to cater to all choices. Additionally under this system consumers would necessarily pay for channels that they do not watch. Similarly operators have limited choice – they cannot choose individual channels but have to pick up the entire bouquet offered by a broadcaster. One way out of this problem would be to adopt CAS. This was the solution recommended by the Task Force as already indicated in Section 1. Brief details of how it was implemented have already been described in that Section.

3.2 In this section the following issues relating to consumer choice have been examined and analysed:

- i. Whether it is desirable to have a single method to provide choice to the consumer and addressability across all regions of the country
- ii. If not, what are the options
- iii. Whether there is a need for transitory options before finally graduating to a Conditional Access System as proposed by the Task Force set up in Sept 2001.
- iv. Whether the Conditional Access System and Addressability, be introduced through a legal mandate or allowed to be introduced voluntarily.

Stakeholders' Comments

3.3 All stakeholders have provided their comments for the implementation of CAS. Different groups have different views regarding its implementation. Some prefer voluntary and other prefer mandated CAS, giving their views in favour of their preferences. These are briefly summarized below:

- *Most pay broadcasters and some cable operators favour the voluntary implementation of CAS and have recommended that the adoption of CAS for accessing pay content should be left to market principles. According to them this should be introduced by the service provider but also suggest the full availability and deployment of STBs. Some also*

suggested that CAS should be accepted by subscribers on its own compelling value proposition at the offered price.

- *The majority of FTA broadcasters, all MSOs and majority of cable operators prefer a mandated CAS because of the following reasons:*
 1. *Without mandating by law no regulation will work in the beginning in India.*
 2. *Pay channels have to be paid on the basis of actual viewership and the subscription thereof, and there are no methods to measure the actual viewership other than a proper addressable system.*
 3. *Voluntary CAS may lead to lot of confusion as some of the LCOs will be offering CAS and others will not be, hence the customers in the area where CAS is not being offered by LCO will be deprived of all the benefits of CAS and the purpose of CAS will be defeated.*
 4. *CAS will bring uniformity in the Industry and Trade if it is mandated by law.*
 5. *MSOs have argued that under the current system the sharing of subscription revenue is biased towards the LCO and the pay channel broadcasters. The MSO who provide the uninterrupted services are sandwiched between the two. A proper revenue sharing model is required in any service so as to ensure continuity of the service to the customer. Only a proper addressable system can bring about the same.*
 6. *Shortly we will have DTH and other delivery platforms in our country. Those service providers will target the same cable TV customer. While DTH and other platforms will be addressable and digital, cable TV cannot remain non addressable and analogue. Such a piquant situation will lead to further disputes between stakeholders on pay TV revenue. There cannot exist two types of systems in the industry- viz. addressable and non-addressable.*
- *There are some other opinions as well - a consumer organization has suggested that either way implementation can be adopted provided that all the objectives are met. Another suggestion is that CAS should be mandated only if TRAI fails to convince pay channels and broadcasters to earn only advertisement revenue. In Chennai there appears to be an overwhelming consensus amongst operators and consumers that CAS has benefited them and should continue. In other cities like Mumbai and Delhi the response of the consumers is not so*

uniform and there are a number of concerns on CAS, mainly the cost of the STB and the monthly cable bill.

Conditional Access System

3.4 One of the ways that the objective of affordable TV services for the consumer can be met is if flexibility permitting a consumer to exercise his choice, is available. This implies that affordability will come if a consumer is able to decide what his total bill should be through the method of selection of channels. One method of doing so is to introduce CAS and set top boxes. The immediate question that comes up is that why, barring to some extent in Chennai, this scheme could not be implemented. Despite the advantages of CAS, the implementation had run into difficulties for the following reasons:

- State Governments had not been consulted at the decision making stage and so there was not much support for the new system at the implementation stage.
- There are certain areas where consumers were getting services at nominal prices. With implementation of CAS the consumer prices for pay channels were actually increasing instead of decreasing.
- One of the intended benefits of CAS is that the consumer is able to choose channels of his choice. He could either opt for the package of FTA channels or take his choice of pay channels. But post CAS, individual pay channels against bouquets were priced in such a manner that consumers had little choice of selecting individual pay channels.
- STBs were non-interoperable. Consumers apprehended that their STB would be of no use when they change residence or service provider. STBs were not easily available on rent
- Most of Broadcasters, MSOs and Cable Operators were not able to arrive at revenue share arrangements amongst themselves.
- Some MSOs had brought out pamphlets regarding sale/rental schemes of STBs. But this information did not percolate down to actual consumers. At the same time, there was considerable variation of pricing of STBs fixed by various MSOs.

- There was considerable uncertainty about continuity of the CAS scheme.

3.5 When CAS was introduced last year, the expectation was that it will help the customers. But, what actually happened was that it only helped the FTA subscribers, while others who wished to watch pay channels ended up paying higher bills. In Chennai where FTA channels were the main interest of large majority subscribers, CAS had a clear advantage of reducing the tariffs for FTA subscribers and therefore, was welcomed. In other cities where pay channels were more popular, the effect was opposite. Thus it is only in Chennai that CAS has been successfully implemented and upto May 2004 around 23,000 (less than 3% of the city's population) STBs were installed. The Authority had found in its interaction with Chennai consumers that the vast majority of consumers are happy with the system of CAS. The IMRB survey has also revealed that consumers in Chennai have choice and are able to control the cable bills. The CAS has also brought in transparency in the system and meets the ultimate objective of bringing addressability in the system.

Traps

3.6 Traps are an alternative way of giving choice to consumers. Traps can either be used to block certain channels or to allow certain channels to enter a home. These devices are being used extensively in the USA and Canada and in parts of Europe.

"The most common method to block programming (in the United States) is through the use of a set-top box. An alternative method that some cable companies use for blocking channels is an electronic filter that "traps" out a particular channel. This filter is physically installed on the cable equipment outside a customer's home and provides complete blocking of the specific channel until the device is removed."

(Source: National Cable & Telecommunications Association, "Cable Puts You in Control)

"Certain cable networks (in the United States) are transmitted unscrambled and trapping devices are used outside of the customer's home to keep networks that the home has not purchased from transmitting to the customer's televisions."

(Source: U.S. General Accounting Office, "Issues Related to Competition and Subscriber Rates in the Cable Television Industry," October 2003)

"The majority of cable companies (in Canada) serving 6,000 or more subscribers have chosen to offer some of the Canadian specialty and foreign satellite services in a discretionary tier, or tiers, where the signals are not

scrambled. Cable companies typically distribute these tiers in an unscrambled mode throughout their entire systems, but then install a 'trap' or 'filter' outside the premises of those subscribers who do not wish to receive the package(s). These packages of services are added to basic cable and marketed by cable companies under a variety of names, including 'Cable Plus' and 'Full Cable Service'.

(Source: Canadian Radio, TV & Telecommunications Commission, "Distribution of Cable TV Services in Canada," October 2001)

3.7 Considering the current market situation in India, the most feasible option seems to be in using negative traps that can block the entire set of pay channels. This would allow consumers to have a choice of whether or not to watch pay channels. Those who do not want to do so can bring down their cable bills by having traps placed outside their residence while the others can continue to watch these channels. It is also possible to divide consumers into 2-3 tiers with different packages – more than this would not be possible due to technical reasons.

3.8 Against a digital STB, which costs around Rs.5000/- a trap is said to cost between Rs.100 to Rs.500/-. Thus it provides a more cost effective method of providing limited choice. However, there is the major problem that traps can be bypassed, violated and hacked and therefore the problem of piracy is far greater than with the usage of STB technology. Another major disadvantage is that it does not provide a transparent method of accounting for the number of consumers having access to a particular channel. Thus disputes about revenue sharing are likely to continue when using traps. These problems will be less in networks where there is not much demand for pay channels or where an operator is confident of meeting these challenges.

3.9 Considering both sides of the argument, and its successful deployment in some parts of India, it does appear that traps can be used wherever it is found feasible. This could be also used as a transitory phase to the use of STBs. Prior to the deployment of digital STB technology in the late 1990's in USA and Canada, traps were used in the 1970's and 1980's to enable viewers to block or access an expanded basic tier of pay channels alongside analogue STBs (to allow consumers to view premium channels). Traps continue to be in use in USA and Canada.

3.10 Thus while existing pay channels could be seen with the help of traps it can be mandated that all new pay channels i.e all channels that are introduced after a specified date to be decided by the GOI, will be shown only using the STB. Further provision can be made that the existing channels can also move to the new class of channels. A note on traps is given at the end of this Section.

Mandatory versus Voluntary CAS

3.11 While all sections of the industry welcome CAS there is no agreement on whether this should be done on a voluntary basis or through a legal mandate, as was attempted last year. As already noted the opinions of consumers differ—while some support it, others object to it. Ideally, it should be left to the market to decide and individual consumers should have the choice of whether or not to rent or buy a STB and view pay channels. This is how STBs were promoted in mature media economies and how they are being promoted in emerging media economies. In both instances, where CAS has been deployed, consumers have also typically seen an increase in their monthly cable TV bills.

3.12 In emerging media markets such as China, Korea, Indonesia, Taiwan, Philippines, Sri Lanka, and Thailand, while the government has attempted to foster STB penetration, there has been no mandate for the deployment of STBs. Instead operators, most of who command last mile control, have relied on funds from domestic and international investors and market demand from consumers, to begin deploying STB technology. In mature media markets (USA, UK, Australia, Japan) the usage of analogue STBs prior to launch of digital STBs allowed consumers to become more familiar with STBs and premium channels ahead of the launch of two-way digital STBs that today offer consumers value-added interactive services such as video-on-demand (VOD) and digital or personal video recording (DVR or PVR).

3.13 In India, the development of the cable TV industry has run contrary to the pattern evident in mature media markets and as a result the industry is unique. Consumers are already used to watching pay channels without either analogue or digital STBs and do not want to pay any extra amount to rent or buy STBs. At the same time, alternative platforms such as DTH will have addressable systems that give consumer choice and give it greater competitive edge over the cable industry in the long term and potentially deprive the latter of any viable commercial future. A weak cable industry will not be able to offer meaningful competition and thus consumers, especially those watching pay channels, will be hurt.

3.14 Given the existing structure of the industry and the experience of last year when even after a mandate, CAS deployment faltered, it may be necessary to provide a legislative mandate for introducing consumer choice through STBs and CAS.

Role of State Governments

3.15 In the context of CAS, the role of State Governments is crucial. The Authorized Officers come under the State Governments. The entire burden of enforcing any legislative mandate lies with them. The Special Committee has also recommended a greater role for the State Governments specially in deciding whether or not to mandate CAS in a particular area. **There is a wide divergence between different areas of the country in terms of viewership habits and preferences. It would be difficult to mandate a national solution that is appropriate for all parts of the country. Different strategies can work in different areas. Therefore it should be ensured that the state governments are taken into confidence and consulted at every stage.**

Transition

3.16 While CAS did not succeed entirely in the last attempt and traps have their own limitations the continuation of the existing system also has its problems. The key features of the existing system are:

- The consumer gets one bundle of channels supplied by his cable operator
- The cable operator in turn gets a fixed bouquet of channels from a broadcaster
- Thus both the consumer and the operator have very little choice

The drawbacks of this system are as follows:

- The consumer does not have any choice in viewing channels or in choosing his/her operator
- Prices for consumers would tend to increase as and when a new pay channel is launched or an FTA channel turns pay. Price Regulation can only control this to a limited extent.
- Consumers would have to pay for even those channels which he/she is not willing to view.
- Consumers will have no choice to control content and thereby control his/her cable bills.
- There would be continuing disputes on revenue sharing between service providers

In this model price control through regulation is difficult. It requires a decentralized enforcement mechanism. It also has severe drawbacks given the fact that the content is not homogenous, there are a large number of

consumers and operators and the interconnection agreements are a highly complex set of systems. Therefore it is necessary to look at alternative models.

3.17 One of the suggestions that has been made is that choice should be provided to the consumer in terms of the last mile cable operator. This suggestion has been examined. However, even today there is no restriction on the number of last mile operators – yet this has not led to the consumer having significant choice. In the rest of the world also there is a similar pattern. It is unlikely that competition in the last mile can be fostered except through the introduction of alternative platforms. While this issue of fostering competition is dealt with in more detail in section 6 it is necessary to keep this in mind while dealing with the issue of choice in the cable industry.

3.18 Through the process of consultation, analysis and a thorough examination of international practices, the Authority has formulated its recommendations keeping the failure in the first instance in mind. The Authority is of the view that:

- A gradual transition to addressability is a must.
- Uniform or identical solution is not applicable across the board all over the country.
- The interest of FTA subscribers as also subscribers of pay channels has to be protected.
- It is to be remembered that pay channels came to India initially as free to air channels and later were converted to pay channels without set top boxes. All over the world pay channels came through set top boxes permitting the subscriber the choice whether he/she wanted to watch and pay for or not to watch any specific pay channel. The existing situation is such that it is one reason why the earlier attempt to introduce such set top boxes did not succeed.
- Any change in the system, in a country as large and diverse as India, to be sustainable, must come after consultations with the State Governments as well as local stakeholders. The transition to any new system also has to be smooth. Till this process is completed the present system will have to continue.

3.19 Although addressability should be the ultimate objective it cannot be done immediately throughout the country. Considerable preparation would be required before introducing it in a particular area specially through a mandate. It is therefore necessary to develop transitory models that would allow a smooth transition to addressability and also provide some incentives for this movement. While evolving transitory models, the need to provide

incentives in these models have been kept in view to facilitate smooth transition to addressability. The salient features of these models are briefly brought out as under:

Model I

3.20 In this model there would be no compulsory CAS- thus existing pay channels can be watched without a STB. To stabilize prices and incentivise stakeholders to move to a system that gives more choice and addresses the other problems of the industry the following regulations can be introduced:

- Price cap at the level on 26.12.2003. The prices to be reviewed periodically by the Authority to make adjustments for inflation.
- For pay channels launched or FTA channels becoming pay channels before the date to be notified by the GOI for introduction of premium channels but after 26.12.2003 broadcasters would be required to report their prices along with other details to the Authority. After reviewing the information the Authority would intervene in the matter, if necessary. To maintain the sanctity of the ceiling on the monthly cable rates specified by the Authority, these pay channels shall not be allowed to become part of a bouquet of channels existing on 26.12.2003 and should be offered on a stand alone basis.
- New pay channels and converted FTA channels to pay channel, from the date to be notified by the GOI, can be offered only through STBs. These channels would be called premium channels. Existing channels can also migrate to this category of premium channels. This would require amendment of the Cable Act and Section 4(A)(9) is proposed to be amended along with a new section 4(B) which will give the central government powers to notify a date after which a new pay channel can come only via a STB.
- The premium channels would be subject to price regulation only to the extent that the maximum allowable discount on the bouquet vis-à-vis sum of a-la-carte channel price will be regulated by the Authority.
- In this model therefore there will be four types of channels:-
 - (i) FTA channels - these will be channels that do not charge a subscription
 - (ii) Pay channels – channels that charge a subscription and existed on 26.12.2003
 - (iii) New pay channels – channels that charge a subscription, but did not exist on 26.12.2003
 - (iv) Premium channels – channels that charge a subscription fee and have come into existence after a date to be notified by the

Government. Existing channels can also migrate and become premium channels

The advantages of this model are as follows :

- (i) it ensures price stability
- (ii) no additional investment is required and it can be implemented straight away
- (iii) It does support STB installation through the incentive of no price regulation for premium channels

The disadvantages of this model are the following:

- (i) This involves considerable Regulation as both consumer price and broadcaster revenues are being controlled.
- (ii) The choice available to a consumer is minimal
- (iii) Disputes on revenue share would continue as broadcasters could claim higher connectivity
- (iv) There would be no addressability implying weak competition with DTH
- (v) Existing channels are unlikely to come on the STB as they would suffer a loss of revenue and thus there would be slow digitization

3.21 It could be seen, that the primary objective is to ensure price stability in this model. The drawback of this model is that consumers do not have choice, price regulation would be difficult and disputes between service providers would continue as there is no transparent method of revenue sharing. This should be seen as a transitory model leading to addressability.

Model II

3.22 As an alternative to Model I a system of using traps can be considered as another alternative transitory model. The essential features of this model are as follows:

- Traps could be used to divide customers into basic and pay customers. The consumers can be presented additional choice by offering more than one tier of pay channels but for technical reasons this may not be able to exceed 2 or 3 tiers.
- Basic tier service rates to be regulated by the TRAI in consultation with State Governments.
- Pay Channel prices will be unregulated. Their stability would depend upon the number of consumers opting to view pay channels – the

more consumers that opt for pay channels the less would be the price paid by the pay consumers

- New pay channels and converted FTA to pay channel, from the date to be decided by the GOI, can be offered only through STBs. These channels would be called premium channels. Existing channels can also migrate to this category of premium channels. This would require amendment of the Cable Act and Section 4(A)(9) is proposed to be amended along with a new section 4(B) which will give the central government powers to notify a date after which a new pay channel can come only via a STB..
- The premium channels would be subject to price regulation only to the extent that the maximum allowable discount on the bouquet vis-à-vis sum of a-la-carte channel price will be regulated.
- Traps would be installed purely through a market initiative and no mandate should be given for this.

3.23 In this model therefore there will be three types of channels:-

- (i) FTA channels - these will be channels that do not charge a subscription
- (ii) Pay channels – channels that charge a subscription and existed prior to the date to be notified by the government as indicated in (iii) below.
- (iii) Premium channels – channels that charge a subscription and have come into existence after a date to be notified by the Government. Existing channels can also migrate and become premium channels

3.24 The major advantage of this model is that it provides a cost effective solution for dividing consumers into FTA and Pay categories leading to lower prices for FTA consumers and higher market penetration through such consumers.

3.25 The major disadvantages of this model are that traps are prone to high levels of piracy and this is one of the main reasons why operators are generally against it. It could also lead to price increases for pay consumers. This is because those consumers who opt for traps and watch only FTA channels would pay less and this burden would get transferred to the consumers watching pay channels. It would be very difficult to regulate this as the extent of increase would depend crucially on the percentage of consumers opting to stay with pay channels in a network. The more of such consumers the less would be the price increase. Finally there would be no improvement in Revenue share arrangements amongst the various players in the distribution chain. In contrast STBs provide a better method of revenue accounting and also provide the platform for value added services.

3.26 Like Model I this should also be seen as a transitory model which can lead to addressability at a later stage. It has the advantage over Model II of providing limited choice but at the same time is susceptible to a high degree of piracy. Thus this may be suitable in areas where operators are confident of combating piracy or in areas where the demand for pay channels is limited and therefore both price increase and piracy problems would be less.

Model III

3.27 This model assumes that voluntary CAS would not succeed and that this can be introduced only by a legislative mandate. This can be implemented in Mumbai, Delhi and Kolkata after consulting the State Governments taking into account the groundwork already done in these cities. CAS can be introduced in other areas after consulting the concerned State Governments.

3.28 In Section 1 it has been noted that the mandatory introduction of CAS was to begin from 15.7.2003. Subsequently it was felt that sufficient STBs are not available and therefore the date of implementation of CAS was postponed to 1.9.2003. Even after 1.9.2003, the CAS could not be implemented in the three metros of Delhi, Mumbai and Kolkata. Given this experience it would be better if the government has clear powers to reschedule the introduction of CAS whenever it is felt that the implementation is not possible in the prescribed time frame and public interest requires that it may be implemented from a subsequent date. There are conflicting views on the power available with the government under section 21 of the General Clauses Act to add, to amend, to vary or rescind any notification, orders, rules or bye-laws, issued by it. Therefore to remove all doubts it is proposed that the government should have clear powers under section 4A(1) of the Cable TV Act to change the notified date of implementation of CAS, if found necessary, in the public interest. To avoid arbitrary exercise of such powers reasons for such change should be recorded in writing.

3.29 The other features of this model would be:

- Regulations would be required on Interconnect arrangements since these were a matter of dispute when CAS was tried last year. Revenue share can be regulated on the request of service providers if parties are not able to arrive at an agreement within one month of initiation of the negotiation. The revenue share arrangement between service providers shall be regulated on the request of either of the parties under Section 11(1)(b)(ii) and (iv) of the TRAI Act.
- The Basic Tier Price would be decided by the TRAI in consultation with the state governments. This would be done by TRAI under the

provisions of section 11(2) of the TRAI Act. This would require deletion of Section 4A(4) and (5) of the Cable Act

- The existing provisions for providing a mandatory rental option for STBs should be insisted upon.
- Limited price regulation of the pay channels to the extent that the maximum allowable discount on the bouquet of channels vis-à-vis individual channels will be regulated.
- Wherever CAS is to be introduced a minimum of six months time should be provided to ensure that all preparatory steps are taken for smooth implementation of CAS. The information on STBs would be made available at least 90 days before actual implementation of CAS.

The advantages of this model are as follows :

- (i) Consumers gets wide choice and can use this choice to reduce their cable bills by reducing the number of channels that they subscribe to
- (ii) It would lead to a stable and transparent revenue share mechanism
- (iii) More channels can come if digitisation accompanies the mandating of CAS
- (iv) There would be better quality of transmission
- (v) Cable TV would be able to provide more effective competition to DTH.

This model also has several disadvantages which are listed below:

- (i) The prices for pay consumers will increase unless they reduce their content i.e. the number of pay channels that they watch. Consumers typically want price stability without loss of content and this clearly would not be possible as has been seen in Model II.
- (ii) This model implies heavy regulation in the initial phase – more than Model I or II – and this could lead to confusion unless the regulation is properly implemented

3.30 In the current recommendations, it is being suggested that all new channels are necessarily introduced through set top boxes in Model I and II. Gradually over a period of time viewing of pay channels should only be possible through set top boxes. The key to the success of this approach will be how well the transition model is designed and implemented. Considering all the new models it can be seen that each has its advantages and disadvantages. The use of a particular model must depend upon local conditions and tastes. For this reason no one model is being recommended.

An enabling framework is set out in the following sections. This would support all the three new models.

3.31 Broadly the following would be the guidelines for adoption of the three new models:

- a. Where consumers and the State Government feel that the paramount consideration is to keep prices stable and where considerable preparation would be required for introducing CAS Model I can be chosen
- b. Model II would be appropriate where there are strong operators and demand for pay channels is not very large and yet not insignificant
- c. Model III would be best where consumers want to exercise choice and consider that this is the best way of controlling their cable bills. It would also require preparation in terms of equipment, organization of the operators and suitable interconnection arrangements amongst all service providers.

3.32 The Authority through its interactions with consumers has found that there are vast differences in the requirements of consumers in different parts of the country. This has been confirmed through a market survey that the Authority had commissioned. Accordingly, no single model can be applied across the whole country. Further, as already noted, implementation of the regulations in various models can only be done through a decentralized enforcement machinery which has to draw on the resources of the State Governments which has already been recognized in the Cable Act. In other large countries like USA also local authorities regulate the cable industry in terms of local functions. It is therefore of paramount importance that the decision in respect of the precise system in each area should be taken only after consultations with the State Governments and local stakeholders. Further there are always new technologies that are coming up and these can provide more solutions: thus these three models should not be regarded as static but rather would be a dynamic set which would change with evolving technologies. The need for changes in the model can also be periodically reviewed on similar lines i.e. after due consultations with State Governments and local stakeholders

3.33 As far as Chennai is concerned, the CAS has been successfully implemented and upto May 2004 around 23,000 STBs were installed. The Authority had found in its interaction with Chennai consumers that the vast majority of consumers are happy with the system of CAS. The CAS has also brought in transparency in the system and meets the ultimate objective of bringing addressability in the system. Therefore it is recommended status quo may be maintained in Chennai. In the case of Delhi, Mumbai and Kolkata a writ petition has been filed in the Delhi High Court by three MSOs seeking directions to implement CAS in these three cities. Depending on the

outcome of this case the further course of action would have to be decided upon.

Recommendations

3.34 Keeping the above in view the following is recommended:

- Any change in the system, in a country as large and diverse as India, to be sustainable, must come after consultations with the State Governments as well as local stakeholders. The transition to any new system also has to be smooth. Till this process is completed the present system will have to continue. The alternative to the present system within the cable industry is to introduce consumer choice through various options including addressability
- CAS can be implemented in Mumbai, Delhi and Kolkatta after consulting the State Governments and local stakeholders taking into account the groundwork already done in these cities
- For other cities, the Government may notify an area for mandatory introduction of CAS under section 4A of the Cable Act only after consulting the concerned State Government and local stakeholders
- Government may notify areas where new pay channels can be introduced only through a STB and such channels will be designated as premium channels. Existing pay/FTA channels can move to the premium range, if they choose to do so. This would require amendment of the Cable Act and Section 4(A)(9) is proposed to be amended along with a new section 4(B) which will give the Central government powers to notify the date after which a new pay channel must only come via a STB. This date can be different for different areas of the country.
- The decision in respect of the precise system in each area can be taken after consultations with the State Governments and local stakeholders. This process could use the guidelines suggested in para 3.31 above.
- So far as Chennai is concerned, since CAS has been implemented and is continuing, no change is contemplated.
- Wherever CAS is to be introduced a minimum of six months time should be provided to ensure that all preparatory steps are taken for smooth implementation of CAS. Government should have clear powers not only to specify the date from which CAS is to be introduced but also the power to postpone, advance, suspend, amend or revoke the notification, in public interest after recording reasons in writing. Section 4A(1) of the Cable Act should be amended to provide for this.

3.35 The tariff orders for the basic tier service, both for CAS areas and the networks deploying traps, maximum allowable discount on bouquet of channel shall be issued by the TRAI on acceptance of the recommendations by the GOI.

3.36 A copy of proposed changes in the Cable Act and the TRAI Act for concurrent running of the three systems in the country are at Annexure II and III respectively. Some additional amendments have also been proposed which have been discussed in the subsequent sections.

3.37 It is expected that with this flexibility the wide diversity that exists between different parts of the country will enable the Governments in the States to recommend whatever appears best suited to them. GOI will also have the flexibility of choosing from among different options keeping in view the recommendations of the State Governments and local conditions.

Set Top Boxes

3.38 In implementing CAS, consumers have expressed their concern that they would be forced into a situation that would limit their ability to shift locations or operators once they have signed up with the initial one. Furthermore, consumers want to be assured that the commercial terms associated with acquiring and using STB are reasonable and not monopolistic in nature.

3.39 The Authority held many consultations to gather the necessary inputs for its recommendations on inter-operability. These sessions surfaced a number of issues which are discussed below.

3.40 One major concern of consumers is that deployment of conditional access systems should not negatively impact their ability to move or switch providers of television services. This concern stems from a situation where operators would each deploy a distinct proprietary CAS, and therefore would require usage of specific set top boxes containing the same proprietary CAS to work with those systems. As a result, the consumer is locked in by the cable operator and/or MSO to use the technology and equipment being provided to him. If the consumer is forced to purchase the STB, he does not have any use for it once he shifts out of the coverage area of that operator or wants to switch operators.

3.41 Another concern with this arrangement is that it also creates a potential monopolistic situation that leaves the consumer with no choice but to accept the offer being presented by the operator. If the consumer is forced to purchase the STB, the consumer does not typically even have an option to find a better price from another vendor. Even in the case of rental,

lease or other commercial arrangements that do not force the consumer to purchase the STB, or allows him to return it for a predetermined amount when he no longer requires its use, the commercial arrangement still creates a situation of unequal strength where the operator can govern the terms.

3.42 This dependence on the operator has driven consumer apprehension about CAS, particularly in relation to the fact that he/she would not be treated fairly, could be overcharged and also could be given poor service. As a result, consumers have demanded STB interoperability so that they could be free to use any kind of STB purchased or rented from the open market.

3.43 The debate about interoperability is rooted in the fact that cable operators, MSO's and broadcasters would like to prevent customers from seeing content that they have not paid for. While there are agreed upon standards, which BIS also recognizes, for carriage and coding of the content, the proprietary portion of CAS deployments comes in coding the information that is needed to access the scrambled or encrypted content. This part of the coding is not specified in standards, and therefore companies have developed their own solutions to achieve security.

3.44 There are many situations when this security is breached by hacking. When hacking occurs, depending on the type of hack, what is hacked, and the design of the actual CAS, the results could be limited to one specific subscriber, to a group of subscribers, or the complete network. In all of these situations, containing hacking requires replacing at times just the Smart Card used in the CAS deployment, but sometimes the entire set top box. This is a risk and expense that is borne by the operators, especially since the consumer does not have a choice in choosing a particular CAS system. The commercial ramifications are significant when hacking occurs as the costs and logistics of replacing hardware can be tremendous. Therefore the decision of which CAS to choose is significant for the operator.

3.45 From the above discussion, it can be seen that inter-operability is not purely a technical discussion, but also needs to be addressed with commercial considerations. On the technology aspects, there is a specific scope within which inter-operability has been considered. This scope is only for cable TV networks, and does not include DTH, for which interoperability regulations already exist.

3.46 In cable TV networks, the traditional type of transmission is analogue, which would require using analogue set top boxes. Today, most networks are of this type, and because LCOs today send unscrambled signals, these networks can directly be plugged into TVs without a need for descrambling or converting the content signal. CAS can be implemented on analogue networks, but would require the consumer to use an analogue set top box in

addition to the current arrangement. All stakeholders agreed that analogue networks do not provide for inter-operability because it is technically infeasible to implement while maintaining sufficient levels of security.

3.47 Instead of analogue transmission, most new networks are being deployed in digital platforms because of the superior capacity, quality and flexibility. Digital networks can have inter-operable CAS systems, which is where the discussion is focused.

3.48 The existing provisions in the Rules in relation to STBs are set out below:

- The government had on June 6 2003 issued a notification amending the Rules which inter alia added the following provision as Rule 13.

“The cable operator shall make provisions for the rent and security deposit or refund thereof as well as warranty, repair and maintenance in the manner notified by the Government”

- Through a further notification dated 8th September 2003 the Rules were further amended which inter alia provided a new provision as Rule 14 which is as below:

“Manner of making provisions for rent, security deposit, etc. for Set Top Boxes – (1) The Cable Operator will intimate to each cable subscriber in writing and at least fifteen days before the introduction of ‘Conditional Access System; in the specified area of service, the following details of Set Top Boxes:-

- (a) Type of Set Top Box, whether analogue or digital, its Main physical functions and its conformity with the Bureau of Indian Standards.*
- (b) Details of payment schemes, including validity period of the offers on sale, hire, purchase, or rent of Set Top Box and amount of refundable security deposit payable by the cable subscriber.*
- (c) Maximum time for refund of security deposit to any cable subscriber who returns the Set Top Box.*
- (d) Details of maintenance facility available with the cable operators.*
- (e) Maximum time to repair/replace the Set Top Box.*
- (f) Period of warranty of the Set Top Boxes.*

2. The Cable Operator shall also furnish the information required in sub-rule (1) above to the Ministry of Information and Broadcasting, duly authenticated by its authorized signatory.”

3.49 Both the above mentioned rules provide that an operator must give a rental provision. This would address the problem of those consumers that change residence and also gives them a chance to change operators where this is feasible. They can return the set top box once they change residence/operator and take a new box from the new operator. However there is no provision to regulate the prices of STBs, the rental rates and other charges. The question of whether these should be regulated or not needs to be decided. This issue is discussed below.

3.50 The argument in favour of regulation is based on the following :

- (i) At present consumers are not paying for a set top box and with CAS they would have to pay for it either on outright purchase basis or on a rental scheme.
- (ii) Since consumers do not have a choice they will have to pay on whatever terms the local operator offers. This lack of choice requires that STB prices/rental schemes should be regulated

The argument against regulation is that

- (i) There has been a great deal of consumer resistance to purchase or rent a STB. In Chennai, only about 3% of the consumers have a STB. This number could be higher in other metros (where popular pay channels command greater viewership) were CAS to be introduced there again. It would be in the interest of operators to offer more attractive STB schemes, leading to higher STB penetration thereby providing sustainable business models for all industry stakeholders. As a result, it is in the interest of operators to promote attractive STB rental schemes and promotional discounts.
- (ii) Additionally, there is also the problem that there is a large variety of STBs (and varying prices, ranging between Rs 2,000–Rs5000 for both analogue and digital STBs) coupled with a number of schemes to promote their usage. With such variety it would be difficult to provide any uniform benchmarks.

3.51 Considering all this it would seem to be counter productive to issue any regulation at this stage. However each operator would be asked to furnish to the Government and TRAI details of the various charges associated with STB installation fees, fees for the smart card, any one-time deposit, and monthly STB fees. These would be displayed on TRAI's website as well as the web sites of MSOs and cable operators, wherever the operators are maintaining a website. The information on STBs would be made available at least 90 days before actual implementation of CAS. This would give consumers the opportunity to see STB-related rental fees and other fees in different geographical areas so that if the rates anywhere appear to be too high consumers can take this up with TRAI. Appropriate

regulations would be issued by TRAI suo motto or on the complaint of consumers, if found necessary, under Section 11(2) of the TRAI Act. **This would also mean that the Cable Rules would need to be amended to enable TRAI to obtain such information from the operators. Accordingly Rule 14 of the Cable Television Networks Rules has been proposed to be amended to give effect to this recommendation.**

3.52 Thus, in order to ensure that consumers will not be overcharged for STBs, information on the rates for various charges associated with the STB will be put on the web site, if any, of the operators and TRAI's web site. If it appears that an operator is overcharging a particular consumer(s), TRAI would issue appropriate regulations.

3.53 In an ideal situation, the solution to this problem lies in having a STB that would not have a proprietary design and would be freely interoperable. Consumers would be able to buy or rent this from any store, just as they do for any other product, or have it integrated into other media devices like TV's and/or VCD players. However, there are technical problems in ensuring this type of interoperability, and such a system has not been introduced in any part of the world yet, though some countries have made efforts in that direction. A limited form of interoperability already exists in the form of STBs that have the capability to accept an external conditional access module (CAM). This module contains the required CAS components, and can be changed and plugged in to STB's that can accept CAMs whenever the operator changes. This system is however more expensive and has also not been mandated by the BIS. Thus, the BIS standards today do not prescribe inter-operability for cable TV set top boxes.

3.54 The consultation process as well as the analysis of the entire problem of affordability and availability of choice to the customer has clearly demonstrated that some kind of inter-operability of set top boxes is required. There are two ways in which this can be achieved. One relates to having technical specifications and equipment matching those to ensure inter-operability. Extensive views have been expressed and it was found that there is a need for further study before technical inter-operability could be insisted upon. The other possibility is to have commercial arrangements which obviates the need for inter-operability, that is, an arrangement in which the set top boxes is owned by the cable operator and he makes it available to the customer on rent. **The Authority is of the view that availability of rental scheme of set top boxes from all MSOs/Cable Operators is a fundamental requirement for the success of this scheme.**

Bundling of Channels

3.55 A major advantage to a consumer having a STB is that he/she can choose the channels that he/she wants to watch and thus pay for the

selected channels. However the current commercial practice in the industry is that channels are not sold as such but only in the form of bundles or bouquets of channels. Each broadcaster puts all its channels in one bundle that is sold en bloc. Operators do not have the choice to choose individual channels which are part of a bouquet. Without addressability the consumers have no choice but to get all the bouquets that an operator is offering. With CAS consumers should have the choice to watch:

- Individual channels
- The bouquets offered by the Broadcasters
- Specialised bouquets formed by the operator from the channels offered by different broadcasters

3.56 If the discount on a bouquet is very large then no one would buy individual channels. When CAS was introduced, many consumers complained that compared to a bouquet of channels, an individual channel was priced in such a manner that subscribers did not have a real option to choose channels on a-la-carte basis. It is for this reason that the Cable Television Network Rules have a provision that discounts should not be offered in such a way as to render the choice of individual pay channels illusory. Clearly the advantage in introducing CAS would be lost if the pricing of pay channels is such that the consumer only has the limited choice of choosing or not choosing a bouquet offered by a particular broadcaster or operator. It is essential that he does have an effective choice in choosing the individual channels. For this purpose, it is proposed to impose a reasonable limit on the amount of discount that a broadcaster can offer on a bundle of individual channels. This limit would also apply to the discounts being offered by the MSO/cable operator to the consumer. **The Authority would issue appropriate regulations in this regard under Section 11(2) of the TRAI Act on acceptance of the recommendations by the Government.** The issue has been discussed in greater detail in Section 4.

Note on Traps

3.57 Trap technology can be used to provide FTA channels to those customers who do not want to subscribe to Pay Channels. The technology provides a limited cheaper option as compared to STB. Trap is a small passive device having a length of about 5 to 10 cms. It is mounted before the Cable TV enters the customers' house.

3.58 There are two types of Traps - Negative Trap and Positive Trap. Negative Trap removes/attenuates the signals of those Pay Channels which are not subscribed by the customer. One can remove a group of TV

Channels from the lower or middle or higher part of Cable TV Radio Frequency (RF) spectrum from a single Trap.

3.59 Under the Positive Trap system, at the headend of the cable TV, a jamming carrier is suitably inserted into the RF spectrum of the Pay channel rendering the channel unviewable. If a customer subscribes to the Pay channel, the cable operator inserts a Positive Trap which being a notch filter removes the jamming carrier thereby making the channel again viewable.

3.60 To discourage/prevent tempering, plastic and metal shields are sometime used to encapsulate traps.

3.61 In Principle, provision of Negative Traps is suitable in a cable system where majority of the customers subscribe to pay channels. On the other hand when majority of the customers subscribe to FTA channels, provision of Positive Traps is recommended. In practice Negative Traps are extensively used as compared to Positive Traps.

3.62 The Trap technology has been perfected over a period of time to prevent deterioration in its performance due to temperature and humidity. The utilization of Trap is common in USA, Canada, Europe, China and Middle East. The cost of a typical Trap which distinguishes between FTA and Pay channels lies approximately between US \$ 4 to 5 in international markets.

3.63 Over the years, Addressable Taps technology has evolved as an improvement over Negative and Positive Traps. Those Pay channels for which customer do not want to pay can be filtered out by remotely controlling the addressable tap. The cable connection to the customer who has not paid the subscription can also be switched off remotely from the Headend. The Addressable Tap is mounted outside the customer's house just like normal trap is mounted. The Addressable Tap is remotely controlled from the Headend. A computer takes care of the Subscriber Management System, Billing etc. The cost of the Addressable tap is around US\$20. In addition, the cable operator is also required to make additional investment at the Headend equipment to individually address the taps.

3.64 Traps are not an exact substitute of CAS/STB technology. In fact, Trap being a passive and analogue device is technically much inferior to digital CAS/DTB technology which has several provisions like superior technical quality, choice of hundreds of channels, Video on Demand (VOD), Electronic Programme Guide (EPG), Pay-Per-View, Internet access/E-Banking/E-Commerce, Other Interacting applications etc.

Indian Experience of manufacturing and deploying Traps

3.65 It has been seen that locally manufactured traps are in use in some parts of southern India. These traps provide consumers a choice of viewing a few selected channels at a reasonable price instead of subscription to all the channels at prices which their income levels would not otherwise permit. Given the current system of revenue sharing arrangements between the various players in the distribution chain, this also gives the LCO an opportunity to increase the penetration of cable services.

3.66 The local traps in use are seen to be covered by a shield and are designed in such a way that they can be fixed or removed only with a special tool. This makes tampering difficult though not impossible and coupled with frequent site inspections some amount of safeguard against piracy is possible. The use of traps shows that although the problem of piracy exists it is not so serious as to make the option completely unviable.

SECTION 4: PRICING

The Issues

4.1 Initially, most of the TV channels were FTA. Over the last few years, channels are turning into pay channels and have begun charging subscription fees. As more channels turn pay, subscription fees are rising and monthly cable TV bills for consumers are growing rapidly. In the present system, new pay channels generally join the existing bouquet of channels and customers have no choice but to pay higher subscription fee for the new expanded bouquets.

4.2 As has already been discussed in section 3 the consumer today has no choice, except to some extent in Chennai, to choose channels and therefore control the cable bill. Addressability is crucial to protect consumers against frequent price increases. In the absence of addressability, the consumers have no choice and therefore when a new pay channel is launched or an FTA channel converts into a pay channel, the Cable bill for consumers increase. It is to be expected that consumers will always be burdened with price hikes even if they do not want to view additional pay channels. This may aggravate the existing discontent amongst consumers against frequent price hikes. To give protection against the price rise, the TRAI on 15th January, 2004 had put a ceiling on cable charges as those prevalent 26th December, 2003 until final determination by the TRAI.

4.3 Due to frequent increases in cable TV subscription fees, Government amended the Cable Act for the introduction of CAS. The primary objective was that the consumers will have the choice to choose the pay channels and pay only for those channels, which they wish to watch. But post-CAS, a-la-carte channels against bouquets were priced in such a manner that consumers had little choice of selecting individual channels.

4.4 In most of the areas, the cable services are available from just one cable operator and consumers do not have the choice to select a cable operator. In the absence of competition, there is need to regulate the prices of basic tier services. Presently the government has fixed the basic tier service charges for CAS areas as Rs.72 per month exclusive of taxes. The Authority has received many representations for revision of the basic service tier charges. Considering the fragmented nature of the cable TV distribution, and cost of networks being dependent on the topography, demography etc, the issue that has emerged is whether there could be a single rate for basic tier service for the whole of the country based on national averages.

4.5 The following issues have been examined in this chapter:

- (I) Pricing of pay channels
- (II) Prices of a-la-carte channels vis-à-vis bouquet of channels
- (III) Price of Basic Tier
- (IV) Uniformity of Cable TV rates
- (V) Periodicity of revision of rates

International Trends on Price Regulation

4.6 The general pattern that emerges from the study of different countries is that there are regulations for basic Cable rates while the other packages are generally not regulated. A notable exception is Taiwan where both the basic and other channels are also regulated. In UK, there is no regulation even for the basic tier. In Canada, there is provision for removing the basic tier control if the existence of competition can be established – either if the basic service package of one or more competitors is available to 30% or more of the households in its service area and it has lost at least 5% of subscribers since the competing service was introduced. In Japan, approval is required at the initial stage of commencing operations but later, operators only need to notify the tariff changes.

I. Pricing of Pay Channels

Stakeholder's Comments

4.7 The issue of the regulation of the pay channel prices divides the parties in two major groups, one supporting the need for regulation and the other opposing it.

- *Pay Broadcasters say that if the prices of the pay channels are regulated that will reduce the competition. with the other alternatives, as the cost structures are different for cable and DTH. Moreover the regulation of price of pay content with the ceiling price, will have a negative impact on the quality and the diversity of programming – price regulation limits the broadcasters ability to select business models based on the market demand and competitive environment. It is also pointed out that there exists enough competition at the broadcasting end and thus there exists no need for regulation. In addition it has been argued that regulation can distort the market and can lead to a misallocation of the resources. If prices are set low – there exist insufficient incentives to produce copyrighted work and also there will be under investment in future. The broadcasters will not invest in new programming and new channels and this will affect the consumer's*

choice. If prices are set above – copyright owners are over compensated and thus there will be over investments.

- A modification of this position taken by some stakeholders is that the prices should be market determined and if the number of channels is high then automatically this will reduce the prices to the economical level. However, if there exists monopoly then there should be regulation.*
- An alternative view is that there should be market determination of the prices but advertisements on the pay channels should be either banned or regulated. Another suggestion is that broadcasters should not be allowed to increase the prices more than once in a year and even that must be related to the rate of inflation.*
- The other group which favours the regulation of the pay channel prices suggests that there should be price regulation until greater transparency in the sector is achieved. One suggestion has been to use the cost plus method.*

Authority's Analysis

4.8 Globally, where pay channels and pay tiers have been offered, they are generally not capped or regulated. The major exception in overall trend of deregulated prices is Taiwan, where there is a basic rate cap, a ban on tiers and a provision to offer premium or pay channels only as a-la-carte, capped at between US\$3-US\$9/month.

CAS Areas

4.9 In the CAS scenario, consumers have the choice to leave or to choose channels via a STB. This gives consumers the choice to control their cable bills. The one metro in which CAS deployment has taken shape, namely in Chennai, has given consumers considerable satisfaction. The Chennai market (1.14 million cable TV homes, according to NRS 2002), is largely dominated by FTA channels but consumers have historically been obliged to receive both FTA and pay channels in a single package. Subsequent to CAS rollout, only around 23,000 (as of May 2004) acquired an STB in Chennai to access pay channels, implying less than 3% of the cable TV universe in the market.

4.10 As per the IMRB report for Chennai the average cable rates for Non-STB users is Rs.98 per month. Similarly STB using subscribers are also able to control their cable bills. Presently 74% of STB subscribers in Chennai pay between Rs.151-200 and only 12% subscribers pay more than Rs.250.

4.11 The Authority considers that since consumers have the choice to accept or reject pay channels available via a STB, these should not be subject to price regulation. A limited regulation may, however, be required on maximum discount on bouquet of channels so that the discounting scheme does not nullify the choice of selecting channels on a-la-carte basis.

Non-CAS Areas

4.12 In non-CAS areas consumers are not able to choose what they want to watch and do not have the option to maintain cable bills at affordable levels. Consumers have been protesting against frequent price hikes and available evidence suggests that this increase has been far more than the rate of inflation in the recent past. Thus there is need to regulate the pay channel prices in Non-CAS areas at least till competition ensures that consumers have adequate choice.

4.13 TRAI had specified as the ceiling the rates at which the charges will be paid by the cable subscribers to cable operators, by the cable operators to multi service operators and by multi service operators to broadcasters, as those prevailing on 26th December 2003. The Authority has decided that for Non-CAS areas the ceiling rate of 26.12.2003 would be reviewed periodically to make adjustments for inflation.

4.14 To maintain the sanctity of the ceiling rates prescribed by the Authority, the Pay channels launched after 26.12.2003 or existing FTA channels converting to pay channels after 26.12.2003 would have to be offered on stand alone basis i.e these channels cannot be part of the bouquets existing on 26.12.2003. These channels may be offered individually or as a bouquet of channels not covered by the ceiling specified by the tariff order dated 15.1.2004. It is expected that this it would also give choice to the operators and through them at least some choice to the consumers. The Authority has, for the present, forborne to prescribe the ceiling rates for new pay channels that have been introduced after 26-12-2003 and for those channels that were free to air channels However the Authority expects that the rates for the new pay channels would be similar to the rates prevalent on 26.12.2003 of similar channels. The Authority has, therefore, included in the tariff order a provision requiring the broadcasters of all pay channels, introduced after 26-12-2003, including FTA channels converting to pay, to submit information regarding the new pay channels and the Authority would, if necessary, amend the prices of these channels. The ultimate objective of this exercise would be to ensure that the consumers are not subjected to unwarranted price increases on the pretext of introduction of new channels. It has also been decided that if there is a decrease in the number of pay channels as compared to the

number of such channels being shown on 26-12-2003, the ceiling charge shall reduce by the average price of pay channels

4.15 The Authority had considered various alternatives to price control. Given the large number of operators and the extent of price variation it would be difficult to formulate a uniform price policy except in terms of general principles. Cost based pricing would be difficult since the product is not homogenous and this could damage the incentive to improve quality of content. It is for this reason the Authority has decided to continue with the approach of regulating prices using historical prices.

Cable TV Networks deploying Traps

4.16 In section 3, the use of Traps in the cable TV networks was discussed. Traps can be used to divide consumers into basic and pay consumers. The pay consumers could also be provided limited additional choice by offering various tiers of pay channels possibly limited to 2 or 3. However, regulation in these networks would be difficult for the pay tier as the “correct” level of prices would depend upon the number of consumers opting for the “only FTA” package. As has been noted in Section 3 the larger the number of customers subscribing to pay channels, the less would be the price increase.

4.17 In non-CAS networks and, for networks deploying Traps all new pay channels and existing FTA channels becoming pay channels would have to be re-transmitted from the date to be specified by the government in the encrypted form. The subscribers would be able to view these premium channels through STBs. Since the consumers would have the choice to accept or leave the premium channels, the Authority has decided not to regulate prices of premium channels, except the maximum allowable discount on a bouquet of channels.

4.18 Though the Authority has decided to forbear price regulation for CAS areas and networks deploying traps, it will be closely monitoring the interconnect agreements between different service providers and its impact on retail prices. The Authority may intervene if prices cannot be maintained at reasonable levels in CAS areas and increases are exponential rather than incremental.

4.19 To summarise the Authority has decided the prices would be regulated in the following manner:

(a) CAS Areas and Networks Deploying Traps

- **There shall be no price regulation on pay/premium channels except the limited regulation on maximum allowable discount on a bouquet of channels. Price regulation for those taking the basic tier service of only FTA channels will continue. (discussed in subsequent paras under the heading II).**

(b) Non-CAS Areas

- **For Non-CAS areas the ceiling rates at which the charges will be paid by the cable subscribers to cable operators, cable operator to the multi system operator and multi system operator to a broadcaster will be those prevailing on 26th December 2003. The ceiling shall be reviewed periodically to make adjustments for inflation. The next review would take in November'2004 so that the new rates are implemented from 26.12.2004.**
- **The Pay channels launched after 26.12.2003 or existing FTA channels converting to pay channels after 26.12.2003 would have to be offered on stand alone basis i.e these channels cannot be part of the bouquets existing on 26.12.2003. These channels may be offered individually or as a bouquet of channels not covered by the ceiling specified by the tariff order dated 15.1.2004.**
- **Broadcasters of all pay channels, introduced after 26-12-2003, including FTA channels converting to pay, are required to submit information regarding the new pay channels and the Authority would, if necessary, amend the prices of these channels.**
- **It has also been decided that if there is a decrease in the number of pay channels as compared to the number of such channels being shown on 26-12-2003, the ceiling charge shall reduce taking into account the price of similar channels**

4.20 The Authority has issued a Tariff Order along with these recommendations under section 11(1) and (2) of the TRAI Act.

II. Price of Bouquet of Channels Vis-à-vis individual channels

Stakeholder's comments

4.21 The majority of the stakeholders prefer bundling for one reason or the other. There is ,however, no agreement on whether the discount to be offered on the bundle vis-à-vis the price of individual channels should be regulated or not. The summary of the stakeholders' view is given below:

- *The argument of those who prefer regulation,(mainly consumers groups and operators), of the discount point to the need for having a genuine choice available to the consumers. Most have preferred a discount to be set at not more than 15% of the price of individual channels. An alternative view is that the price of any channel in the bouquet should not be 5-10% more than the average price of the channel .One view is also that not more that one channel in the bouquet should be priced more than twice the average price of the channels. Yet another suggestion has been that the ceiling rate of the individual channel should not be more than double the average price of the channel in the bouquet.*
- *Pay broadcasters have argued that the free market mechanism provides the best means to set prices of the individual channels. Discounts are given for bouquets on account of the various administrative and distribution costs of selling content. There should be no regulation on this aspect.*

Authority's Analysis

4.22 Globally, bundling and tiering of pay channels is allowed and not regulated except in Taiwan where bundling is currently prohibited. In Taiwan pay channels are offered on an a-la-carte basis between US\$3-US\$9/month. With the exception of Taiwan, tiering and bundling of pay channels has typically driven pay television growth globally, on both cable TV and DTH satellite platforms.

4.23 However, globally, broadcasters generally license their channels individually (or in some cases, in a small group) to operators who then tier these channels in a package to consumers at a price they typically set based on market demand and market forces. This does not occur in India as broadcasters indicate prices and tiers to MSOs and LCOs who then pass on the cost or most of the cost to consumers. Since the distribution chain is fragmented and most MSOs and LCOs have weak bargaining power and

brand recognition compared to broadcasters with pay channels, the operators have had little choice but to accept the bouquets.

4.24 In CAS areas the choice of selection is required at two levels. Firstly, at the cable operator level and secondly, at the consumer level. The cable operator should have the freedom to choose and package channels as per local demand and the consumer should have the choice to either select any of the bouquet of channels offered by the operator or to choose a set of channels as per his/her liking. The Central Government has specified in the Cable Television Networks (Regulation) Rules, 1994 that the price of an individual choice vis-à-vis bouquet of channel should not be such that it nullifies the choice to individual channels. The relevant rule is reproduced below:

Rule 9 (2)(a)

“Rates of subscription for each individual pay channel provided by the cable operator and discount, if any, offered on subscribing to minimum number of channels or more:

Provided that discounts so offered for subscribing to minimum number of channels or more shall not be such as to dilute/nullify the choice to individual channels.”

4.25 When CAS was introduced, many consumers complained that compared to a bouquet of channels, an individual channel was priced in such a manner that subscribers did not have a real option to choose channels on a-la-carte basis. The reasons for these complaints were that the rule quoted above has not been followed by many broadcasters in spirit. The problem lies in the fact that the rule is not specific enough and does not provide a precise guidance. This is because the maximum amount of allowable discount was not specified. Stakeholders have suggested various benchmarks for the maximum allowable discount on bouquets which have been discussed in para 4.21 above. Higher discount is normally seen to dilute the consumer choice for the individual channel. The past experience has revealed that in order to give genuine option to the consumers for selection of individual channels, the maximum allowable discount on the bouquet of channels needs to be capped.

4.26 To study the industry practices of discounting schemes on the bouquet of channels in the wholesale and retail market, major pay broadcasters and MSOs of Chennai were requested to provide the information on prices of individual channels and bouquets of channels. In addition the Authority also referred to the discounting scheme offered by a MSO in the erstwhile CAS area of Delhi. The information available with the Authority revealed that the discounts range from 20.73% to 62.5%.

4.27 There is thus a need to have a regulation on the maximum allowable discount on a bouquet of channels at both the wholesale and retail levels in CAS areas. The Authority would issue appropriate regulations in this regard under Section 11(2) of the TRAI Act on acceptance of the recommendations by the Government.

4.28 Non-CAS consumers have no choice to choose individual pay channels and therefore no limit on the maximum discount on bouquet of channels can be laid down. Moreover, if the maximum allowable discount is prescribed for Non-CAS areas, it would not be possible to regulate the prices with respect to the ceilings specified as of those prevalent on the 26th December, 2003.

4.29 The Authority shall however regulate the maximum allowable discounts on bouquet of premium channels in the non-CAS areas or those areas deploying traps. **The appropriate regulations shall be issued by the Authority after acceptance of the recommendations on the introduction of premium channels by the government**

III. Price of Basic Tier Service

4.30 The Cost Accounting Branch, Ministry of Finance carried out an exercise for working out economic cost of delivery of channels in the Cable Networks. Based on this costing exercise, the government specified the ceiling price of Rs 72/- per month (excluding taxes) for the Basic Tier Service.

Stakeholder's comments

4.31 The price of the Basic Tier Service fixed at Rs 72/- per month (exclusive of taxes) has become a issue among the different stakeholders. Three distinctive viewpoints have emerged

- *Consumer groups have argued that this amount is excessive and should be brought down*
- *Cable operators have opposed this saying that this is grossly inadequate to cover the operational and running expenditure of the last mile. They suggest that this amount should be Rs180 per month. There should also be a mechanism to correct these prices for rise in input costs like electricity*
- *The third view is that the price of Rs.72/-per month was fixed after due deliberation and should not be changed – changes in technology can also help to bring down the costs. It has also been suggested that this amount is applicable to the whole country as the cost of infrastructure will be the same.*

- *One suggestion is that the fixing of this price is necessary only in areas where the cable operator is having more than 25000 connections and does not have any other competitor i.e. fixing should be allowed to avoid monopoly.*
- *Yet another suggestion is that if an operator can offer more than the minimum prescribed number of channels -30- then a differential system should be used.*

Authority's Analysis

4.32 The need for a basic tier price control arises only in CAS areas and networks using traps. The cost of carriage of channels depends on a number of parameters which vary from region to region. Historically too the price of cable services have varied from area to area even though broadcaster prices have been uniform. For these reasons it is considered that there needs to be flexibility in the regulation of this price.

4.33 The cost of a cable network for a particular area largely depends on the topography, population density and demands for cable services and therefore would vary from one area to the other. For example, the cost per subscriber would be much higher in sparsely populated area when compared to the densely populated area. Considering the fragmented nature of the last mile operators, it may not be appropriate to decide price of basic tier service based on the national averages. The cost of one cable operator may be substantially different from the other cable operator. It has therefore been found appropriate that the basic tier service price should be determined by the TRAI in consultation with the state governments under the powers conferred upon it under Section 11(2) of the TRAI Act. There could be a single price or multiple prices for a state.

4.34 Many MSOs have requested that they may be allowed to offer bigger bouquets of FTA channels at a higher price than Rs.72 per month. This issue is linked to the issue of digitization of the cable system. This is an issue that can be separately pursued. The only point to be noted here is that some incentives need to be provided to promote digitization.

4.35 At present Basic Service Tier can be regulated both under the TRAI Act and The Cable Act. Since TRAI is already regulating the prices of cable services, it is recommended that the prices of basic tier should also be regulated by TRAI alone and the provisions under the Cable Act may be deleted.

4.36 To summarise the Authority recommends that:

The Basic Tier Service rates should be decided by TRAI under the powers conferred upon it under Section 11(2) of the TRAI Act. The basic tier rates shall be decided in consultation with the State Governments. The dual jurisdiction of deciding basic tier rates should be done away with and exclusive powers be available with the TRAI. This would require deletion of section 4A (4) and (5) of the Cable Television Network (Regulation) Act.

IV. Periodicity of Revision of rates

4.37 Stakeholder's view:

- *One view is that there should be no regulation in this regard. However, any revision should be notified to the consumer 30 days before to enable him to make his choice to subscribe to the channel or not.*
- *An alternate view has been that the prices should not be changed more than once every year. Some have suggested that this can be relaxed in exceptional circumstance like rise of input costs. Another suggestion is that the one year period can be applied to pay channels and for the basic tier this could be once in two years.*

Authority's Analysis

4.38 In India, cable prices have been increasing mainly due to many existing FTA channels turning into pay channels and launch of new pay channels. Since the Authority has put a ceiling on the prices of pay channels in Non-CAS areas a decision on periodicity of revision of pay channel prices for Non-CAS areas is required only to the extent that there will be new pay channels leading to price increases. These prices are also proposed to be regulated. For CAS areas and in networks using traps there are two options. Either some periodicity is maintained or this issue is left unregulated. The advantage of fixing some periodicity is that consumers know when to expect changes and are not taken by surprise every few months. On the other hand as input costs change, taxation rates change or some other facts change there would arise a need to change the prices either at the wholesale level or retail level. After considering both options the Authority considers that there could be complications arising out of fixing the periodicity for the unregulated segment. The only need is to ensure that consumers are given enough time to make choice. **Therefore a period of one month should be given before the prices are changed. Since consumers will have choice only under CAS or for premium channels this regulation will only be for CAS areas and for premium channels.**

4.39 To give effect to the change an appropriate tariff order shall be issued by the TRAI after these recommendations are accepted.

V. Uniformity of Cable Rates

Stakeholder's comments

4.40 The views of different stake holders vary in this context also as some prefer uniform rates and the others do not, giving their own reasons.

- *One view is that there should be an equal playing field and so a uniform rate is essential. A variation of this view is that there should be a uniform rate at least till the point the market matures and consumers have full information for market participation.*
- *The other view is that the rates should not be uniform and they should be market determined.*
- *One observation is that under an addressable system uniform rates will be possible for the basic tier across the country. With respect to pay channels, under CAS the market forces will determine the charges which will benefit the consumer. All the pay channels will have their own MRP, which will be made available to consumer and then rates will be uniform.*

Authority's Analysis

4.41 Currently there are no uniform rates for Cable TV services. Rates tend to vary from one area to another and at times these are different within the same area depending upon the socio- economic status of the individuals. It has already been stated that different states can have different basic tier rates depending on the local conditions of each individual state.

4.42 The rates of pay channels should be uniform ideally speaking. These rates would tend to become uniform after the introduction of addressability and non-discriminating interconnect agreements. **Therefore at this stage further regulation for uniformity of Cable rates is not proposed.**

Sunset date of price regulation clause

4.43 It must be emphasized that the regulation of prices as outlined above is only intended to be temporary and till such time as there is no effective competition. The best regulation of prices is done through competition. Therefore as soon as there is evidence that effective competition exists in a particular area price regulation will be withdrawn.. TRAI will conduct periodic reviews of the extent of competition and the need for price regulation in consultation with all stakeholders.

SECTION 5: INTERCONNECTION AGREEMENTS AND REVENUE SHARE

Issues

5.1 Interconnection means the commercial and technical arrangements between service providers. Interconnection is a critical factor for viability of competition. There are many issues on interconnection like selectively blocking channels for certain operators, blocking channels to settle commercial disputes, delays in interconnecting, etc.

5.2 Interconnection is also an important consumer issue. Cable or satellite subscribers would not be able to access the service they demand unless necessary interconnection arrangements are in place. Services can also be disrupted unless arrangements are in place to resolve these disputes.

5.3 TRAI has received a number of complaints for disruption of services as different services providers do not arrive at mutually agreed commercial arrangements and settle their disputes through blocking of channels. These commercial disputes generally relate to revenue sharing arrangements between service providers. In these circumstances, it is the consumer who suffers the most as he/she is denied access to the service. In the interests of the consumers and the industry it is imperative that a framework for effective interconnection between service providers is laid down so that such disputes are minimized.

5.4 TRAI in its consultation paper had sought comments of stakeholders on interconnection issues including regulation for revenue share arrangement between different operators. This issue and related issues have been dealt with in this chapter.

Comments of stakeholders

5.5 The views of the different stakeholders differ in this context. Some prefer this concept of revenue sharing and others do not.

- *Some stakeholders, mainly pay broadcasters, say that this decision should be left to the broadcasters and the distributors to be negotiated and mutually agreed upon. They also say that the cost estimation method appears to be flawed , given that it does not take into account the full economic relations between the parties.*
- *Other stakeholders, mainly MSO's and cable operators support the revenue sharing concept and have also suggested certain percentage shares for each segment.*

- *Cable operators have also said that they should be given a share of the advertisement revenue and carriage charges collected by the MSOs*

Authority's Analysis

I. International Regulatory Framework on Interconnection

Australia

5.6 The ACCC typically intervenes when two parties are not able to arrive at an agreement in the C&S subscription television industry. As part of the condition for allowing the Optus/Foxtel content merger to proceed (Australia's leading subscription TV operators), Foxtel was required to provide a number of undertakings to the ACCC in 2002. These undertakings were reviewed and modifications suggested by the ACCC in 2003 and 2004 and include critical open access provisions for third party content and channel providers and the surrender of exclusive programming contracts.

Canada

5.7 The CRTC typically intervenes when two parties are not able to arrive at an agreement in the C&S subscription television industry. Disputes can generally be categorized as follows: between broadcasting distributors and the programming services that they carry on access issues and the related terms of carriage; between competing broadcasting distributors over access to buildings and the end-user; and between programmers regarding rights acquisition and markets served.

5.8 The Commission employs alternative dispute resolution techniques, such as fact-finding meetings, mediation and staff-opinions to attempt to break deadlocks and assist disputing parties to resolve their differences. When this proves unworkable, the Commission can determine on disputes by way of "final-offer" arbitration. These processes are usually conducted on a confidential basis as the matters in dispute often involve commercially sensitive information.

Philippines

5.9 The NTC typically intervenes when two parties are not able to arrive at an agreement in the C&S subscription television industry. For instance, in April 2003, the NTC rendered a decision, which immediately ordered Sky Cable and other cable companies to carry the GMA-7 channel (FTA terrestrial and a must carry) on its CATV system on the channel numbers at which their stations are transmitting, except when technically unfeasible in

which case shall be assigned the nearest channel which does not cause interference.

5.10 The NTC also ordered the erring cable companies to “cease from arbitrarily changing channel assignments without advance written notice to complainant TV stations, the public and the approval by the NTC.”

Taiwan

5.11 Article 8 of the 1999 Cable Radio & Television Law states: “The central regulatory agency shall set up a Cable Radio and Television Review Committee (referred to herein after as "review committee") to review the following:

1. Arbitration of program fees and other disputes between system operators and channel providers;
2. Arbitration of disputes among system operators”

II. For CAS Areas

5.12 Before actual implementation of CAS, service providers will have to revise the interconnect agreements. The financial or commercial arrangements between various operators are complex. The Authority believes that industry negotiation should be the main approach for developing interconnection arrangements. Since in CAS areas the number of pay subscribers are clearly known these agreements should clearly provide the retail price and the margins available for all the service providers in the distribution chain.

5.13 Negotiations for these contracts should begin six months prior to the scheduled date for introduction of CAS. In case service providers are not able to decide the revenue share arrangement within a month of starting such negotiations, the Authority will consider the issue of appropriate regulations depending on the areas of disagreement under the powers conferred upon it through section 11 (1) (b) (ii) and (iv) of the TRAI Act. This is especially necessary in a mandated CAS framework because the entire mandate may be nullified by the breakdown of the interconnection arrangements. The regulations shall be based on similar interconnect arrangements of the service provider, cost details of networks etc.

5.14 In case these negotiations do not succeed even after the issue of such regulations the matter could be taken up in TDSAT as a dispute so that all issues are settled well before the commencement of CAS.

5.15 Therefore the revenue share arrangement between various service providers of CAS areas will be as under:

- (i) The revenue sharing agreements among broadcaster, MSO and LCO shall take place out of the proceeds of the amount payable by the subscriber.**
- (ii) The interconnect agreements should clearly indicate the maximum retail price of a pay channel or bouquet of channels, distribution margins for MSOs. Similarly, agreements between MSOs and LCOs should clearly indicate MRP and margins for LCOs.**
- (iii) The service providers shall mutually negotiate and decide the revenue share arrangements.**
- (iv) Where parties are not able to arrive at an agreement within 30 days of initiating such a process for revenue sharing, the Authority will consider the issue of appropriate regulations depending on the areas of disagreement under the powers conferred upon it through section 11 (1) (b) (ii) and (iv) of the TRAI Act.**

III Non CAS areas

5.16 Revenue share arrangement between services providers of Non-CAS areas is a major source of dispute. There are no agreements about the total number of subscribers and hence the total revenue is not clearly known. The Authority had considered various options to regulate the revenue share arrangement but found that in absence of the accurate information about the subscriber base and total revenue it is not feasible. Many MSOs and cable operators have requested to put a ceiling on revenue payable by one party to the other along with the ceiling rates for various channels. Since subscriber base is a dynamic number and keeps changing, it would not be appropriate to have such ceilings. TDSAT in its order dated 27.8.2004 in the case of IndusInd and Hathway Vs TRAI has held that subscriber base has to have reference to the number of subscribers. The argument of the applicants that irrespective of the increase in the subscribers' base, no further charges are payable was not found maintainable. Therefore the Authority has decided not to regulate the revenue share arrangement between service providers in Non-CAS areas for the present. However it is recognized that there would be a number of disputes relating to the subscriber base/revenue share. In view of this the need of an alternate dispute mechanism at the local level has been stressed in Section 9.

5.17 In this connection, it may be relevant to discuss the issue of “under declaration”. The total sum of all bouquets is around Rs.240 per month for all bouquets put together. The actual consumers’ subscription is in many cases less than Rs.200 per month and the average is Rs.176 per month according to the IMRB survey. The only way this pricing can be sustained is less than 100% declaration by the Cable Operators. Since, there is no MRP and only whole sale prices are available, there is no well defined margin for the distributor. In practice this margin is derived by negotiating the subscriber base for which payment is to be made. Thus, in the absence of any definition of what is a proper level of declaration, it is not possible to say what is “under declaration”. Unless there is a methodology to derive the full subscriber base and to establish dealer’s margins, negotiations and disputes are likely to continue in the non-CAS areas. Addressability will lead to a solution of this problem as the number of subscribers can then be known transparently.

Registration of Interconnection Agreements

5.18 The Authority had issued a regulation on Register of Interconnect Agreements on 3.2.2004 and by virtue of this regulation Broadcasters and Multi System Operators register interconnect agreements with the TRAI. The Authority has also decided that the interconnect agreements are to be submitted in two parts - Part A containing the standard affiliation/contract and part B containing the information in the tabular form on subscriber base, rate per subscriber, service area, discounts etc. The existing regulation is under review and will be amended shortly taking into account the experience of the last few months.

5.19 At present, the Authority is not registering the interconnect agreements between the MSOs and LCOs but it is felt that that there is a strong need to register these agreements at the local level so that the Authorised Officer has access to them and can use them in case of any complaint of violation of TRAI’s regulations. It is proposed to mandate that these agreements will be registered with the concerned Authorised Officers.

5.20 The non-discrimination agreements are not only required for cable operators but across all platforms of delivery TV channels. Therefore broadcasters, DTH operators and HITS operator will also be required to file agreements for registration with the Authority.

5.21 Therefore the Authority has decided that:

- (i) **All MSOs and LCOs will file interconnect agreements between them with the Authorised Officers for registration of Interconnect agreements. To enable this to be done it is**

proposed to insert a new section – Section 20 A of the Cable Act to enable TRAI to delegate this function under Section 33 of the TRAI Act.

- (ii) All Broadcasters, DTH Operators and HITS Operators will file interconnect agreements between them with the Authority for registration, apart from agreements between Broadcasters and MSOs.**
- (iii) A revised regulation on registration of interconnection agreements will be shortly issued.**

5.22 The regulation to register the interconnect agreements of MSOs and LCOs with the Authorised officers would be issued after the Authorised Officers have been empowered to file complaints for violation of TRAI's regulations as indicated in section 9 and the amendment to the Cable Act mentioned above.

Disconnection of signals

5.23 An important issue is the disconnection of signals to settle a dispute. Usually this means that without notice the signals by a broadcaster or MSO are cut off leaving consumers in the lurch. This implies that the consumer who has not defaulted nevertheless has to bear the brunt of the dispute between the operators.

5.24 The Telecom Dispute Settlement Appellate Tribunal (TDSAT) in its order dated 12.8.2004 in the case of appeal No. 21(C) of Hathway Cable & DataCom Pvt Ltd Vs ESPN Software India Pvt Ltd has made the following note:

“ Lastly we may note that Hathway also wants the regulator under Telecom Regulatory of India Act to act in the matter in view of the role assigned to it under the TRAI Act SO 45(E) dated 9.1.2004 of the Central Government on “addressable system”. We may also quote the following submission of Hathway in its rejoinder:

“ The Petitioner further submits TRAI as the administrator of the industry ought to look into all aspects of the standard form agreement inter se executed amongst the broadcaster and MSOs/cable operators so that the same is executed with all the fair and balanced clauses for uninterrupted supply of the services in the interest of consumers. The petitioner further submits that such high-handed act of blocking the channels ought not be allowed by foreign broadcasters so that the consumers are not put to hardship and to disadvantageous position vis-à-vis the competition. It is submitted that it is an industry practice that the MSOs like the petitioner are compelled to sign on the standard form

agreement virtually with no alteration on the dotted line, as the broadcasters like the Respondent no. 1 are always in a commanding position. If however, the MSOs like these petitioners do not agree to sign the standard form agreement, the Broadcasters discontinue to provide the signals and the customers get deprived of the signals and the petitioner placed in a disadvantageous position vis-à-vis the competition.”

It is for TRAI to consider these aspects.”

5.25 The disconnection of channels not only by the foreign broadcasters but also by other players in the distribution chain including Indian broadcasters and MSOs should be the last resort for settlement of disputes. It is, therefore, necessary to find some solution that will protect the consumers without compromising the ability of the broadcasters/operators to settle their dispute. One way of doing this is to impose a restriction on the broadcasters/operators that they cannot cut off the signals without giving at least one month's notice. This would give some time for the affected parties to obtain relief. This notice should also be given through the newspapers so that consumers also have an opportunity to approach the necessary forum to ensure that their interests do not suffer on account of a dispute to which they have not contributed in any way.

5.26 Therefore it has been decided that :

No broadcaster or MSO can cut off the signals to an MSO/cable operator without giving at least one month's notice giving in brief reasons for the proposed action. Such notice shall also be given in two local newspapers having wide circulation so that consumers are also aware of the dispute and can take steps to protect their interests.

5.27 The Authority will shortly be issuing regulations on general principles of interconnection. These will also include the provision relating to disconnection of signals.

SECTION 6 : PROMOTION OF COMPETITION IN THE DISTRIBUTION OF TV CHANNELS

Issues

6.1 The distribution of cable TV in India is characterized by a few dominant broadcasters and large MSOs. Some of these players have become even stronger as vertical integration has taken place. Last mile operations on the other hand are highly fragmented and therefore there are large disparities in the bargaining power of various players in the distribution chain.

6.2 The vertical integration may improve efficiency as it reduces the transaction between upstream and downstream operations but at the same time vertically integrated companies may be able to use this vertical integration in certain circumstances to reduce competition. The anti-competitive behaviour could take the following forms:

- (i) Vertical Price Squeeze may happen when a vertically integrated broadcaster increases the price of a TV channel for competing operators but maintains the same price for operator affiliates. The effect would be to reduce or squeeze the margins.
- (ii) Exclusivity of the Content could be another form whereby popular TV channels can be denied to a competitor so as to promote the broadcaster's own distribution network.
- (iii) Denial of carriage by a vertically integrated cable system of TV channel of the rival company.

6.3 The issue is to what extent can regulation help to ensure that there is fair competition and to what extent can the market be expected to ensure that competition is not thwarted.

I. “Must Provide” and Exclusivity of TV Channels

Stake holder's Comments

6.4 All stakeholders have provided comments on the issue. These have been summarized below:

- *Most cable operators, Consumer organizations are of the view that the denial of TV signal to any platform is anti-competitive and is normally used to promote a particular platform.*
- *Few broadcasters have stated that it is a contractual deal based on commercial terms and is dependent on the viability of the proposal on*

the whole, and the faith and confidence the parties have in each other. No Authority should intervene in that.

- *Another argument put forth by a pay broadcaster is that if all platforms carry the same content that will reduce competition as the platform will compete only with after sale customer services. Thus there will be no incentive to improve the content*

International Trends

6.5 Globally different approaches are being used to check the abuse of vertical integration. In a few countries there are restrictions on ownership to check vertical integration at the root itself but in most other countries legal prohibitions are used to monitor and legislate against the abuse of vertical integration. In most countries vertical integration is not prohibited but there are restrictions on cross-media ownership. There are also restrictions on the operation of vertically integrated systems.

6.6 In USA there is a 40% limit on the number of channels that can be occupied by video programmers affiliated with the particular Cable system. More importantly in the US vertically integrated Cable companies are prohibited from discriminating against competitors in the distribution of satellite delivered programming. Similarly, vertically integrated satellite delivered programmers may not enter into exclusive contracts with Cable operators unless the Federal Communication Commission determines that they are in the public interest. The “ Program Access Rules” that had been drawn up in the USA by the FCC in 1992 were originally valid only for 10 years but were subsequently extended for another five years in 2002.

6.7 In the Philippines the National Telecommunications Commission has prohibited exclusive agreements between Cable and Satellite operators and channels as a general rule and new exclusive agreements need to be approved by the NTC.

6.8 In Canada, a June 7, 2001 ruling by the Canadian Radio-Television and Telecommunications Commission, reversed a long-standing policy that prevented cable companies from owning pay and specialty TV channels:

“The commission has decided, by majority vote, that cable companies and their related entities will be allowed, as a matter of broadcasting policy, to purchase interests, including controlling interests, in Canadian analog pay and specialty programming services.”

Source: CRTC Public Notice, June 7, 2001

Rogers Communications and Shaw Communications, the country's two largest cable companies, had been pressing for a change in the CRTC's rules. The cable companies said that if telecom giant BCE Inc. could own a distribution channel – such as the Expressvu satellite service – as well as specialty channels through its CTV Network then Rogers, Shaw and others should be allowed to do the same. In its decision, the CRTC said the cable TV industry would be governed by the following principles:

- *All specialty and pay services should be supplied and distributed on fair and equitable terms.*
- *Unaffiliated companies should get terms and conditions that are no less favorable than those with affiliates.*
- *Any competitively sensitive information should not be shared.*
- *A programming service is entitled to obtain, at its expense every year, independently verified subscriber numbers for the service in question to validate the basis for programmer compensation.*
- *Where a programming service contributes to the costs of marketing and promotion, it is entitled to obtain, at its expense, an independently verified accounting in respect of its contributions.*

Cross platform Cable and Satellite ownership is allowed – Shaw, for instance, is a controlling shareholder in Shaw Cable and DTH platform StarChoice.

6.9 The attention of the Authority has also been drawn to the following provisions in Japan

Broadcasting Law: Chapter III Private Broadcaster

“Article 52-6: The paid broadcaster shall not, unless under a justifiable reason, refuse to provide broadcaster’s paid broadcasting service to any person who wishes to receive said paid broadcasting with the use of receiving equipment in Japan.”

Authority’s Analysis

Non Discriminatory Access

6.10 In India, competition for delivery of TV channels is not only to be promoted within the Cable Industry but also from distributors of TV channels using other mediums like DTH, HITS etc. It is important that all these distribution platforms are promoted so that they provide consumers with choice. It would be very important that at this stage vertical integration does not impede competition. Vertically integrated broadcaster and distribution network operators would, in the absence of strong regulation,

have the tendency to deny popular content to competing networks or to discriminate against them- this was the apprehension that led to regulation of this aspect in USA.

6.11 One method of checking these practices is to stop at the source any chance of anti-competitive behaviour by ruling that vertical integration will not be allowed. This route could, however, impede investments and in the long run adversely affect competition. The only DTH platform today has a degree of vertical integration. There is another pay DTH platform which is awaiting approval from the government that also has a degree of vertical integration. In the short run DTH is the platform most likely to provide effective competition to cable operators. Restriction of vertical integration could therefore lead to a situation where the DTH rollout could be affected and hence competition. It is for this reason that the alternative route has been looked at; controlling anti-competitive behaviour wherever it manifests itself. These issues are dealt with in the following paragraphs.

6.12 Generally TV channels are provided to all carriers and platforms to increase viewership for the purpose of earning maximum subscription fee as well as advertisement revenue. However, according to some opinions, if all platforms carry the same content it will reduce competition and there will be no incentive to improve the content. Some degree of exclusivity is required to differentiate one platform from the other.

6.13 Exclusivity had not been a feature of India's fragmented cable television market. However the rollout of DTH platform has brought the question of exclusivity and whether it is anti competitive to the forefront. Star India Ltd and SET Discovery Ltd do not have commercial agreements to share their contents with ASC Enterprises on its DTH platform and at present are exclusively available on the Cable TV platform. ASC Enterprises claims that the future growth will remain impacted by the denial of these popular contents. Space TV a joint venture of Tatas and Star, is also planning to launch its digital DTH platform. It has applied for license to the government for the same. The DTH services have to compete with Cable TV. If a popular content is available on Cable TV and not on the DTH platform, then it would not be able to effectively give competition to the cable networks.

6.14 The issue has to be seen primarily from the consumer's perspective. If all channels are not available on one DTH platform then the consumer may have to install more than one dish to view his favourite channels. If the content is not available on all platforms then they would not be treated as the same and would be presented as different products having different content. If content, especially popular content, is exclusively available on one DTH platform then there may not be effective competition. The

consumers would also have limited choice as subscribing to one particular DTH platform may not ensure the availability of content of his/her choice.

6.15 The DTH platform would have to be seen as a carrier of TV channels and its vertical integration with the broadcaster cannot be the reason for content denial to the other distributors. The DTH platforms would have to compete on the strength of the quality of service, tariffs and packaging of the TV channels and not on the content.

6.16 DTH is quite clearly the most effective competitor for Cable TV today. It would be illogical for a consumer to establish two arrangements to view the differing content of two platforms when he has access to the entire content through cable. Moreover if a popular content is available on the cable network and is not available on the DTH platform, it would never be able to give an effective alternative to the cable services. Competition between cable and DTH will be enhanced if all the content is available on both platforms. Therefore in the interest of consumers it is essential that all channels are available on all platforms on a non-discriminatory basis. This would promote competition amongst different platforms and thus would be beneficial for the consumers.

6.17 In the USA the fear was that Cable companies with their affiliated programmers would deny satellite platforms content. These regulations were found to be useful and therefore these had been extended in 2002 by another five years. While extending the regulation by 5 years, the FCC had come to the following conclusion:

“The competitive landscape of the market for the distribution of multichannel video programming has changed for the better since 1992. The number of MVPDs that compete with cable and the number of subscribers served by those MVPDs have increased significantly. We find, however, that the concern on which Congress based the program access provisions -- that in the absence of regulation, vertically integrated programmers have the ability and incentive to favor affiliated cable operators over nonaffiliated cable operators and programming distributors using other technologies such that competition and diversity in the distribution of video programming would not be preserved and protected – persists in the current marketplace.”

6.18 This experience is important as it indicates that such regulation can provide an effective stimulus to competition and this success has been the reason for the extension of such regulation although for a shorter period of five years. Here the problem is that broadcasters may not provide content to rival platforms and this could adversely affect competition in terms of price and quality of service. It is therefore necessary that there should be regulations in place that can be invoked if content is denied in a manner that stifles competition.

6.19 In this context the issue of whether the general ban on exclusivity will adversely affect competition or not needs to be addressed. In the USA the FCC came to the following conclusion after reviewing the impact of 10 years of this ban

“Finally, we believe that the retention of the exclusivity prohibition will not reduce the incentives to create new or diverse programming. As demonstrated from the record before us, the number of national programming services increased since the enactment of the prohibition on exclusivity from 87 in 1992 to 294 in 2001. Moreover, the number of vertically integrated services has nearly doubled since 1994. We do not believe that the exclusivity prohibition has been a disincentive for cable MSOs to develop new profitable cable networks.”

6.20 Keeping in view this experience and the absence of exclusivity in India so far a general ban on exclusivity at this stage has been envisaged. Exclusivity at this stage is more likely to harm competition rather than promote it.

‘Must Provide’ through whom

6.21 There is high cost involved in the distribution of TV channels if the market is fragmented. To reduce the distribution costs broadcasters should be free to provide access in the manner they think is beneficial for them. The ‘must provide’ of signals should be seen in the context that each operator shall have the right to obtain the signals on a non-discriminatory basis but how these are provided - directly or through the designated agent/distributor is a decision to be taken by the broadcasters. Thus the Broadcaster will not be held to be in violation of the ‘must provide’ condition if it is ensured that the signals are provided through a particular designated agent/distributor or any other intermediary and not directly.

Licensing conditions to enforce non- discriminatory access

6.22 The Competition Act prohibits certain activities as anti- competitive. If a broadcaster violates these provisions of the Competition Act then its content should not be permitted to be carried by any DTH operator. To enforce the provisions of non-discriminatory access under the TRAI Act and the Competition Act new licensing conditions should be imposed on DTH operators. This condition would require DTH operators not to carry the signals of a broadcaster who has been:

- (i) found by any regulatory body or a court of law to have refused access on a non-discriminatory basis to any other DTH operator as contemplated in the TRAI regulations or

- (ii) found by any regulatory body or court of law to have violated the provisions of any law relating to competition including the Competition Act

6.23 In addition it is also proposed that to check the DTH operator from entering into exclusive contracts with broadcasters a condition should be added that the Licensee shall not enter into any exclusive contract for distribution of TV channels. This would ensure fair competition amongst DTH operators and strengthen the regulation to this effect.

Safeguards for Broadcasters

6.24 In this context it must be recognized that certain basic criteria must be fulfilled before a service provider can invoke this clause. Thus the service provider should be one who does not have any past dues. Similarly provisions for protection against piracy must be provided. However the content provider must establish clearly that there are reasonable basis for the denial of TV signals on the grounds of piracy.

Volume Discounting Schemes

6.25 An important aim of non discriminatory conditions is to ensure that a vertically integrated supplier does not treat itself in a way that benefits itself, its subsidiaries or its partners and has material effect on competition. The broadcaster must offer the required channels on terms that are no less favourable than those on which it provides equivalent services to its own affiliated operators.

6.26 Broadcasters are also offering discounting schemes including volume or bulk discounts. Such discounts are not considered anticompetitive if these are consistently available to similarly placed operators. However such discounts will be treated anticompetitive if provided on preferential basis to one or select group of operators.

Minimum Subscriber Guarantees

6.27 Minimum Subscriber Guarantees (MSGs) provide that an operator shall provide a minimum number of subscribers and is billed on that basis irrespective of whether he /she has been able to get that many subscribers or not. Such a condition can deny entry to a new operator or to an operator entering a new system like CAS. Thus under CAS it would be difficult to predict the number of consumers who would take a STB and subscribe to a particular channel. Minimum Subscriber Guarantees (MSGs) could thus effectively block such new systems from coming in. Thus the Authority feels that such conditions are not only anti-competitive but it would also negatively impact the successful implementation of CAS. The subscriber

management system is a transparent mechanism to count the number of subscribers using Cable or DTH service. The basic idea of introduction of CAS to give consumer choice and have subscriber base accounting gets defeated with MSGs. These MSGs may also inflate the cost for operators and in turn for the consumers. This would be against the objective of making services more affordable for the consumers and of increasing competition. MSGs therefore should not be allowed and for the present this restriction is proposed to be introduced only in CAS areas.

Piracy Issues

6.28 It has been argued by many that the 'must provide' should not be extended to those networks, which do not adequately protect the content against piracy. The broadcaster must have the right to determine whether the network is secure enough to allow the distribution of their valuable content, and whether to license content to them. This argument against 'must provide' is reasonable but has to be seen in the present context. The TV channels are available on all Cable TV networks without any safeguard against piracy, perhaps with the exception of Chennai. The content provider must establish clearly that there are reasonable basis for the denial of TV signals on the grounds of piracy.

Others

6.29 The central government while issuing License for DTH operation and granting permission for Head Ends in the Sky Operation have clearly laid down conditions that these operators shall ensure that signals are distributed in an equitable and non-discriminatory manner. Similar conditions are not available for the broadcasters to provide signals on equitable and nondiscriminatory basis. This can be ensured by putting it as one of the condition for downlinking.

6.30 **TRAI has therefore decided that:**

- (a) Every broadcaster shall provide on request signals of its TV channels on a non-discriminatory basis to all distributors of TV channels including cable networks, Direct To Home, Head Ends in the Sky.**
- (b) No exclusive contracts would be permitted between broadcasters and distributors of TV channels.**
- (c) Broadcaster will not be held to be in violation of the 'must provide' condition if it is ensured that the signals are provided through a particular designated agent/distributor or any other intermediary and not directly.**

- (d) Volume based discounting schemes would be allowed if there is a standard scheme applicable to all similarly based distributors of TV channels.**
- (e) The ‘must provide’ shall not apply for those distributors which have defaulted on payment.**
- (f) The Broadcasters and the Multi System Operators/ Independent Cable Operators shall not insist on minimum subscriber guarantees from MSOs/Cable of CAS areas where transparent subscriber management systems are installed. This regulation will be issued on acceptance of the recommendations by the Government.**

6.31 The Authority will shortly be issuing a regulation in regard to sub paras (a) to (e) above under Section 11 1 (b) (ii), (iii) & (iv) of the TRAI Act. It is expected that this regulation will help promote competition both within the cable TV market as well as between cable TV and other platforms.

6.32 In addition the Authority also recommends that the following conditions may be added in the license of the DTH operators including the existing DTH operator:

- a) *Licensee shall not carry the signals of a broadcaster who has been found by any regulatory body or court of law to have*
 - (i) *refused access on a non-discriminatory basis to any other DTH operator as laid down in the Regulations of TRAI or*
 - (ii) *violated the provisions of any law relating to competition including the Competition Act.*
- b) *Licensee shall not enter into any exclusive contract for distribution of TV channels.*

II. ‘Must Carry’ of TV Channels

Stake holder’s comments

6.33 Stakeholders have also provided their comments on the ‘must carry’ issue. These are briefly summarized below :

- *Must carry has been supported by consumers and few MSOs. It has been suggested ‘must carry’ of a channel may be made mandatory for all cable TV and DTH and Broadband service providers, as then automatically the digitization of the cable would come in and the digital decoders would be required at home so voluntary CAS will be promoted*

- *Cable operators are against mandated ‘must carry’ due to constraint in the capacity of Cable TV networks. Some other cable operators have suggested a must carry clause and regulation of carriage charges*
- *Most pay broadcasters are also against ‘must carry’ of the TV channels.*
- *A cable operator association has suggested that the ‘must carry’ clause may be mandated for the CAS areas but it should not be mandated for the non-CAS areas.*

International trends

6.34 The global trend is to mandate the ‘must carry’ of the terrestrial FTA channels. Such regulations exist in Japan, Korea, Philippines, and Taiwan. In Canada, the basic package offered by cable TV operators must include local and regional stations, provincial educational services and public broadcasters English and French services. In the United States each local commercial television broadcast station is given an option to choose between “must carry” or “may carry” i.e consent is required for re-transmission. If a local commercial station elects must carry status, it is entitled to insist on cable carriage in its local market. Each cable operator having capacity of more than 12 channels has to set aside upto one third of the channel capacity for must carry channels.

Authority’s Analysis

6.35 Today the majority of the Cable TV networks are carrying signals on an analogue mode and are capable of carrying up to 60 channels. Due to channel carrying capacity constraint, new and upcoming channels are competing to get a space on the cable spectrum. Generally these channels are either not carried on the cable network or have to pay carriage fees to the cable operator.

6.36 In India, as per the section 8 (1) of the Cable Television Network (Regulation) Act, 1995, Cable operators must carry at least 2 Doordarshan terrestrial channels and one regional language channel of a state in the prime band. At present imposing any must carry regulation will not help as in the majority of the networks there is not enough space to carry all the channels. The solution to this problem lie in augmenting the carrying capacity of TV channels through digitization of Cable TV Networks. Since digitization is a long term goal and cannot be addressed immediately TRAI shall be bringing out a consultation note on this subject at a later date. Therefore at present there should be no must carry obligations apart from the ones already there in the Cable Act and Rules. **As and when capacity is augmented the ‘must carry’ regulations will be introduced.** Accordingly for the present therefore there will be no regulation on carriage charges.

Once the must carry regulations can be imposed then through the provision of non- discriminatory access carriage charges would be regulated.

6.37 So far as DTH is concerned clause 7.6 of the DTH license says that the “The Licensee shall provide access to various content providers/channels on a non-discriminatory basis”. This condition should be sufficient to prevent a DTH platform from refusing to carry the content of broadcasters affiliated to a rival platform. Thus, here also, no additional regulation is proposed.

6.38 Another issue that has arisen in recent times is the broadcast of popular events like cricket matches. To provide for this, the Convergence Bill had a provision making it mandatory to provide access to the public broadcaster for such events. **Accordingly it is recommended that there should be legislation on the lines of Clause 31 of the Convergence Bill, according to which events of general public interest to be held in India will have to be carried on the network of the public service broadcaster.**

SECTION 7: Rationalisation of License fee and Taxation

Issues

7.1 There is a fundamental difficulty in providing competition within the cable industry in the provision of last mile services. In some parts of the world this has been explicitly recognized and the local operator has been given an exclusive franchise in a given geographical area. This is not feasible in India given the way the industry has grown and evolved. The most feasible way of giving competition to the cable industry in the short run is through DTH.

7.2 If there has to be competition between the two platforms then license fees, taxes etc. should all be made as uniform as is possible. To some extent given the differences in size, technology and reach complete uniformity is not possible.

Stakeholder comments

7.3 *From the perspective of an operator the suggestion has been made that spectrum royalty charged from the DTH operator should be abolished as there is no shortage of such spectrum like the terrestrial frequencies. To make DTH competitive it has been suggested that the revenue share should be brought down to 2% , that this should be on adjusted gross revenue, bringing down the bank guarantee amount to the previous year's fees, reduction of customs duties to 5% for STBs, concessional sales tax for hardware to access the DTH services, tax holiday for five years from all taxes and waiver of excise duties to make domestic manufacturing of digital decoders affordable.*

Authority's Analysis

7.4 Presently DTH operators are being charged annual license fee of 10% of its gross revenue as reflected in the audited accounts. DTH operators' revenue include pay channel charges and sale of hardware and therefore a significant amount of license fee is payable on account of these. This license fee increases the cost of pay channels and hardware for DTH subscribers.

7.5 There is need to provide as even a playing field as possible, between DTH and the Cable industry given the differences in scale of operation and technology. The cable operators have to pay an annual fee of Rs.500. Taking a cable operator who has only 500 connections this means an average of Re.1 per annum. In contrast if we take the consumer bill for a DTH consumer with full content at Rs.300 per month a 10% revenue share comes to Rs.30 per month or Rs.360 per annum. Therefore from both angles – the need to maintain parity with cable industry and the need to popularize

DTH as a mass market instrument there is a need to bring down the levels of license fee for the DTH operators. At the same time there is need to provide checks to ensure that the accounts are being correctly presented – this can be done by using the CAGs audit to ensure that there is no loss of revenue to the Government. Necessary changes should be made to the license conditions to incorporate these changes.

7.6 The DTH operator carries pay channels on its platform. The major portion of the revenue collected for transmitting pay channels is passed on to the broadcasters and as such that portion is not a DTH operator's revenue. However the license fee is imposed on such revenues also which makes pay channels more expensive for DTH viewers. Thus for DTH the license fees should be applied on the adjusted gross revenue –i.e. total revenue excluding items that are of a pass through nature. This would also be consistent with the government's policy for the Telecom Sector to apply license fee on the adjusted gross revenue and not on the total revenue.

7.7 TRAI has expressed its views in various recommendations that the telecom services should not be treated as a source of revenue for the Government. Imposing lower license fee on the service providers would encourage higher growth, further tariff reduction and increased service provider revenues. With increased growth, it would be a win- win situation for the industry and the Government. The Government would also get higher license fee and service tax if revenue for the service provider increase.

7.8 The annual license fee payable by a DTH operator should be reduced on the same basis as was done recently for telecom operators. The Authority has already proposed a reduction of 2% in the license fee for DTH in its recommendations on "Accelerated growth of internet and broadband penetrations". Similarly the application of license fee on the adjusted gross revenue, as in the telecom sector, may also be followed i.e the revenue which is pass through in nature or is not from any activity under the license should not be charged license fee.

7.9 **Therefore the Authority recommends :**

- a) **A reduction of 2% in the license fee for DTH as already proposed by the Authority in its recommendations on "Accelerated growth of internet and broadband penetrations", in line with the reduction in the license fee given for other telecom operators .**
- b) **The principle of application of license fee on the Adjusted Gross Revenue (AGR) as in the case of telecom may also be followed. The AGR in case of DTH service should mean total revenue as reflected in the audited accounts from the operation of DTH, as reduced by**

- (i) **Subscription fee charges passed on to the pay channel broadcasters;**
 - (ii) **Sale of hardware including Integrated Receiver Decoder required for connectivity at the consumer premise;**
 - (iii) **Service/Entertainment tax actually paid to the Central/State Government, if gross revenue had included them.**
- c) DTH operators shall have to carry out detailed accounting separation so that revenues accrued from the DTH operations and from other services, sale of hardware could be separated. The operator should follow the Accounting Separation guidelines issued by the Authority from time to time.**
- d) The DTH operator shall produce, on demand, all such books of accounts and documents which have bearing on the verification of revenue for the purpose of calculating license fee and auditing by the Comptroller and Auditor General of India in accordance with provisions of Section 16 of the Comptroller and Auditor Generals' (Duties, Powers and Condition of Service) Act, 1971.**
- e) Necessary changes should be made to the license agreements to incorporate these changes.**

Tax Policy on Cable and DTH Platform

7.10 Many state governments are giving differential treatment to the DTH and Cable Services as far as Tax policy goes. For example in Mumbai the Entertainment Tax on DTH services is reported to be higher than the Cable Services. Similarly many Cable Operators have made a representation that in some states there is no entertainment Tax on the DTH services whereas it is charged on the cable services. Such differences are going to provide artificial barriers to competition. There should be a uniform tax policy for all segments to the extent possible.

7.11 The Authority therefore recommends that:

- (a) The Government of India should recommend to all State Governments to consider Cable and DTH Services at par and impose the same rate of Entertainment Tax on these services.**
- (b) Service tax should be imposed on DTH just as in Cable TV**

Foreign Direct Investment

7.12 The Government Policy for Foreign Direct Investment for the Cable and DTH Services is as follows:

- (i) Cable Services: Foreign Direct Investment upto 49%
- (ii) DTH Services: Total Foreign Equity FDI/NRI/OCB/ FII:49% and with in foreign Equity, FDI component not to exceed 20%

7.13 Cable TV Services and DTH Service are to be treated as carriers of TV Channels signals and can be compared with the Telecom Operators which carry voice/video/data signals over its networks.

7.14 Due to convergence of technologies, TV channels can now be delivered through the Telecommunication Networks. For instance, it is possible for an ISPs to provide Cable Services through their existing networks. However it may not be possible for prospective cable operators due to different equity structure requirements for Cable TV and Internet Services Providers. Whereas an ISP can have up to 74% foreign direct investment but it has been restricted at 49% for cable operators. The common policy would result in more efficient use of the existing resources and thus help the consumers to get services at more reasonable rates. The policy may help to push in more cable operators which would give additional choice to consumers for selection of the cable operator.

7.15 There is need for a complete review of the FDI policy so that this is consistent across sectors and does not provide a stumbling block where there is a natural convergence of technology.

7.16 It is therefore recommended that:

The Foreign Direct Investment limit in Cable TV as well as related sectors like DTH should be reviewed and a consistent policy adopted.

Direct and Indirect Tax benefits to distributors of TV channels

7.17 The government has given number of benefits on direct and indirect taxes on equipment used for telecom networks and for income earned from providing such services. Since TV channels can also be distributed on Telecom Networks, it is recommended that similar benefits be available to stand alone distributors of TV channels. This would ensure level playing field and promote competition.

SECTION 8: ADVERTISEMENT

Issues

8.1 Consumers have voiced strong complaints over the frequent and long duration of advertisement breaks. They have been requesting to ban or at least restrict the duration of advertisement on Pay channels. The consumer organizations have been arguing that since they pay subscription fees for viewing pay channels, there is little justification for these channels to show advertisements.

8.2 The Delhi High Court in its order dated 26.12.2003 in the CW No. 8993-4/2003 also directed the Union of India to look into the framing of policy with regard to those channels that generate substantial advertising revenues as to why these channels should not be notified as FTA channels. The Government was also to consider whether a limit needs to be put in respect of time for advertisement

8.3 The Government issued an order dated 9.1.2004 and asked for recommendations of TRAI on the parameters for regulating maximum time for advertisement in pay channels and other channels.

8.4 The issue before the Authority is to suggest the maximum allowable time of advertisement on pay channels and other FTA channels.

Stakeholders Comments

8.5 The stakeholder's comments on the issue are again divided. Broadcasters are generally against the regulation of maximum allowable time for advertisements but consumers and cable operators have strongly recommended regulation of advertisement time. The comments received are summarized below:

- *The supporters of regulation of advertisement time have reasoned that the consumers do not like frequent and long interruption of programmes specially in current affairs and news programs which are mostly FTA. Similarly for any general entertainment channel also a time limit should be defined. Some have suggested that this limit be imposed at 10 minutes for an hour.*
- *An alternative view is that the advertisement time should be left to the market forces for the FTA channels but should be regulated or even banned for the pay channels.*
- *The opposite view is that low subscription revenue should be made up with increased advertisement time. Supporting this is the view that restriction on advertising time will severely hamper growth and*

competition in the broadcasting industry and increase the cost to the consumer. A similar view is that the market will regulate this since excessive advertising is counter productive and can lead to loss of viewership and therefore revenues from both subscription and advertising

International Experience

8.6 Most countries have some regulation on advertisement time. This limit is generally in the range of 10-12 minutes per hour. In some countries (Korea and Japan) advertising control is only for the free-to-air channels. In countries like Taiwan and Thailand advertising is banned on pay TV while in Canada it is banned on pay and premium channels. In the USA this restriction is only for childrens' programmes.

Authority's Analysis

8.7 In India, Free To Air channels are currently reliant 100% on advertising and pay channels about 70% on average, thereby implying that advertising revenue is the primary source of funding for the industry and investment in new and existing programming. This is contrary to the experience of most mature global Cable and Satellite markets where there is an even balance between advertising and subscription. In emerging markets the ratio of advertising to total revenues is similar to India's or is lower.

8.8 In India, there are no channels which rely entirely on the subscription revenue. The market only has channels which either rely on advertising revenue or both the advertising revenue and the subscription revenue. HBO, for instance which generates revenue from subscription in the United States, has changed its business model for Asia and is only viewed as a premium movie channel in the advanced economies of Hong Kong and Singapore. HBO is a basic tier channel in Taiwan and the Philippines and partially reliant on advertising in India because of low monthly per subscriber revenues.

8.9 The Authority has obtained average advertisement time from the pay channel broadcasters. Almost all channels have reported an average advertisement of 10 to 12 minutes per hour which is within the limits laid down in global regulations on advertisement time.

8.10 Based on global regulations on maximum allowable advertisement time, six minutes of advertising per every half hour of programming can be considered as a potential regulation in India. This may not be too onerous for few large broadcasters but will be quite burdensome for smaller regional channels and niche-type domestic and international channels. The cost structure for regional channels is not significantly different from the

national Hindi entertainment and news as content like regional movies, news etc is expensive. Many smaller regional channels do not get airtime rates as much as popular Hindi channels. Thus restrictions on advertising time would be very detrimental to the growth of regional channels and may hamper the creation of TV content in the regional languages. The restrictions would also prove detrimental for niche domestic and international channels.

Additionally, the regulation of advertisement time typically drives up the subscription fees. Thailand's case provides a relevant example in this regard. In Thailand Advertising is banned on Pay TV as stated under the Ministerial regulation No. 14 (B.E 2537, 1994) issued under the Broadcasting Act, BE 2498(1955), Title 4, Clause 25. Since the only source of revenue for Pay TV services is subscription fee, the Average Revenue Per User (ARPU) naturally for these services is very high at US \$ 32 per month. Therefore, the Advertising revenues reduce subscription rates for consumers. The restriction on advertisement time would either result in increase in the subscription fee or affect the variety and quality of the programming.

8.11 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 TV channels in Non-CAS areas. In addition, the Authority has also put a ceiling on the maximum allowable discounts on the bouquet of channels which would encourage selection of individual channels. Besides regulating subscriptions, regulation on the advertisement time and its corresponding affect on the revenues for broadcasters may hamper growth and competition in the broadcasting Industry.

8.12 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 "overadvertising". 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.

8.13 The Authority has proposed mandatory introduction of CAS as one of the three new models, and use of traps to block pay channels as another model. This would definitely have some impact on the viewer-ship for pay channels. This could lead to a price increase for pay channels – correspondingly pay channel prices could also go up because of the absence of the cross subsidization effect that exists in the absence of addressability. With the introduction of CAS prices for pay consumers may go up. Restrictions on advertising minutes could further add to these inflationary pressures.

8.14 The Authority has also looked at the question of classifying certain channels as FTA depending on their advertisement revenue. A fundamental difficulty is that all subscription revenue is booked to a bouquet and it is not clear how much can be ascribed to one channel. Thus the only information that can be gathered is the amount of advertisement revenue that a channel gets. On the basis of this information it would not be correct to interfere with the business model of a broadcaster and decide that certain channels cannot take subscription revenue. Broadcasters keep changing their business models in response to market conditions and it would be difficult to give regulatory guidance at the required speed. The effort on the other hand should be to improve consumer choice and allow the consumers to vote with their eyes. If very few consumers choose to buy a channel the broadcaster would be forced to move a pay channel to a FTA channel to protect his/her advertising revenues. Therefore the Authority considers that it should not regulate and restrict the freedom of a broadcaster to make a channel pay or FTA.

8.15 It is therefore recommended that:

- (i) There should not be any regulation, at present, on advertisement on both FTA and Pay Channels.**
- (ii) The Cable Act should be suitably modified so that powers are available with the government to regulate this if found necessary at a later stage. Broadcasters would also be required to give information on advertising time to TRAI and the Government. This would also be made available to the public through the TRAI web site.**
- (iii) Broadcasters should be free to decide which channel should be FTA and which should be pay.**

Section 9: Regulatory Enforcement

Issues

9.1 The effectiveness of a Regulatory System depends on the extent to which it can be enforced on the ground. The solution does not lie in the formulation of the policies alone but also in effectively implementing it. This is specially so for the Cable Industry where the number of operators and consumers are large and spread all over the country.

Analysis of the Authority

9.2 There are a number of agencies under the Cable Television Networks (Regulation) Act, 1995(The Cable Act) that are involved in the regulation of the cable industry today. The Registering Authority for the cable television networks is the Head Post Master and enforcement of important provisions of the Cable Television Networks (Regulation) Act relating to CAS, Programme code, Advertisement code, compulsory carriage of Doordarshan channels etc. are with the Authorised Officers. In addition certain reporting on CAS by Cable Operators is done directly to the Government of India. The Authority considers that it would be better if there is one agency at the local level that could perform all the regulatory functions.

9.3 The Authorised Officers at present have certain jurisdiction and it is best if they can be made the nodal point for all local regulation enforcement. It is not that regulating cable industry would be new for many district administrations. A case in this regard is summarized below in which the Local Administration to avert the law and order problem resolved the local disputes between operators. This case has been discussed in the following para.

9.4 The Collector Coimbatore took a series of meetings in Sept-Oct' 2003 with Cable TV Operators, Pay Channel representatives, an MSO and consumer groups to resolve problems between them. Number of decisions were taken during these meetings which have been summarized below:

- Pay channels should provide decoders immediately to cable operators who apply without pre-conditions but subject to usual formalities.
- To resolve issues between cable operators, MSO and Pay channels, a standing committee under the Revenue Divisional Officer was formed. The standing committee is to meet every month.
- Standing committee to decide issue of outstanding dues between parties
- The cable operators to provide receipts to consumers

9.5 However in all cases district administrations have not been able to resolve the cases as enabling powers are not available under the Cable Act or other acts. In this regard a complaint of Progressive Cable Networks Welfare Association Andhra Pradesh lodged with the Authority is relevant. The Association had represented against denial of signals by a number of pay broadcasters and suggested the following in the representation:

“ The cable TV operators in AP state who have not been provided these pay channels have lodged the representations to the District Collectors to implement the Cable Act in view of the public interest by providing all pay channels to all the cable TV operators for the last two years. So District Collectors are awaiting the clear instructions from the TRAI regarding the providing the all pay channels to all cable TV operators. Hence we request you issue clear instructions to all the District Collectors to take necessary action against managements and District wise Distributors of the pay channels to provide all pay channels to all cable TV operators in AP state”

9.6 Another similar case is from the Sonitpur District of Assam. A voluntary consumer association from that district had filed an objection with the District Collector against the proposed hike of the cable services charges by the local cable operator. A joint sub-committee consisting of officials, representatives of voluntary consumer association and cable operator was formed to reach at a decision on monthly cable rates. However the final decision could not be reached and now the organization has sent a representation to the Authority.

9.7 These cases suggest that the local Authorities should have a role to play in the implementation of the Cable Act and TRAI Act with respect to the cable services. However under the present system local authorities do not have sufficient powers to enforce these decisions and there is need to make amendments in the Cable Television Act. The Special Committee has also recommended that additional powers be given to the Authorised Officers. These changes have been discussed below.

9.8 At present, besides Deputy Commissioners, SDMs, Police Commissioners, both the Central Government and the State Government can appoint the Authorised Officers. This system of concurrent jurisdiction of enforcing the Cable Act needs to be carefully used. The duties to be assigned to Authorised Officers appointed by the state government and the central government should be clearly demarcated so that there is no overlapping of jurisdiction and responsibilities. The following recommendations are for additional duties of the Authorised Officers to be appointed by the State Governments.

9.9 As per Section 4 A(9) of the Cable Act, cable operator is to submit information regarding the number of subscribers, subscription rate, number of subscribers of basic Tier and other pay channels to the Central Government. The Authorised Officer as the nodal officer to enforce the Cable TV Act would be helped by having such information. The data provided by service providers can be used by the Authorised officers to establish cases of violation of tariff order and other regulations issued under the TRAI Act. Thus this information could be put to better use if it is available with the Authorised Officers. It is therefore proposed that information under 4A(9) should be provided by the cable operator to the Authorised officers and not to the central government. However, it should also be the duty of the Authorised Officer to send consolidated reports to the State/Central Government, formats for which can be prescribed. Similarly information should also be available in Non-CAS areas with the operators, which can be made available to the Authorised Officers wherever required this information could be maintained by the operator in the form of a register.

9.10 The Authorised Officer being the nodal officer for enforcement of various regulations/orders, should also be declared the registering authority for operating cable services. There should also be provision for withdrawal of registration if an operator is convicted of any crime and imprisoned for the same. The registration fee collected by the Authorised Officer should be deposited with the postmaster or in the central head, in a nationalized bank.

9.11 The Authority has issued a tariff order putting a ceiling on the rates of the cable TV services and will shortly issue a regulation on interconnection. In addition the Authority is also going to issue regulations on the quality of the services for the cable services. For implementation of the Authority's regulations, consumers and operators should have an option to approach the Authorised officer. The Authority considers that the Authorised Officers should be empowered to file complaints in respect of violations of these regulations.

9.12 There are a large number of cable operators operating in far flung areas. They need a local dispute resolution mechanism which they can easily approach. Disputes being very common in this service sector, the government may consider setting up an alternate dispute resolution mechanism for cable operators. For multi system operators and broadcasters there need be no change in the present arrangements.

9.13 **The Authority therefore recommends the following :**

- **The duties to be assigned to Authorised Officers appointed by the state government and the central government should be clearly**

demarcated so that there is no overlapping of jurisdiction and responsibilities. The following recommendations are for additional duties of the Authorised Officers to be appointed by the State Governments.

- The Registration of Cable Operator should be done by the Authorised Officer and not by the Head Post Master. The existing cable operators may not be asked to obtain fresh registration but the next renewal of registration should be done with the Authorised Officers.**
- The registration amount should be deposited by the Authorised Officer in the Post Office or under a central head in a nationalized bank.**
- The Authorised Officer should have the power to revoke registration if a cable operator has been convicted of a criminal offence and imprisoned for the same.**
- Information under the Section 4 A (9) of the Cable Act should be submitted to the Authorised Officer. The consolidated information may be sent to the central/state government.**
- Consumers and operators should have the option to approach the Authorised Officers for implementation of the Authority's regulations/tariff orders concerning the cable TV services. In case of violation of the regulations, the Authorised Officers should have the power to file complaints.**
- The government may consider setting up an alternate dispute resolution mechanism for cable operators at the local level. For multi system operators and broadcasters there need be no change in the present arrangements.**
- All cable operators and multi system operators shall maintain a register of subscribers containing the names of the subscriber, address, monthly fee charged and number of channels received. The register shall be furnished for inspection to the Authorised Officer whenever he considers it expedient to inspect such register to find out if there has been a violation of any regulation**

9.14 The draft amendments required in the Cable Act, TRAI Act and Rules are at Annexure II and III respectively. Apart from these amendments the amendments at these Annexure also include certain amendments which are required to bring about consistency between the Cable Act and the TRAI Act as also to clearly bring out the jurisdiction of TRAI for broadcasting and cable services. Some of these amendments had already been sent to Government and are being included here for sake of completeness.

SECTION 10 : QUALITY OF SERVICE

10.1 The purpose of laying down Quality of Service (QOS) parameters is to provide a framework whereby cable TV operators are required to meet certain customer service guidelines in the delivery of cable TV services to consumers. These guidelines and codes of practice will also need to be enforced.

Stakeholder Comments

10.2 In its consultation paper, TRAI had requested comments from the stakeholders on various issues concerning the quality of the cable television service. All stakeholders have agreed that there should be some QOS Regulations. Consumer organizations have given various parameters that they would like to be covered by such regulations. On international norms some have argued that we should be cautious and not adopt unrealistic standards that cannot be complied with. Others have argued that we should adopt the best international practices.

International trends

10.3 Most countries have a quality of service regulation which cover issues like rent of reception equipment, fault repair, billing, choice in programming services, availability of Cable TV personnel for consumer grievances, outage of the system etc. Countries also have a system for adjudication and enforcement of the quality of service provisions. These could lead to financial penalties and also license revocation.

The Authority's Analysis

10.4 The quality of the cable service depends on the network design, planning, operation and maintenance and the management of the service. The network performance is an important element of Quality of Service. The consumers desire quality uninterrupted cable service which is only possible through the high quality network performance. The technical standards of equipment are decided by the Bureau of Indian Standards and cable operators are bound to use these equipment in the network. The equipment complying the BIS standards should ensure the high quality transmission/retransmission on the cable television networks. At the same time other quality parameters which could be termed under the management of service like billing, fault repair and the support and responsiveness to a customer are also important.

10.5 The Authority has decided to issue regulations on the quality of service and its compliance would be obligatory for all MSOs and cable

Operators. The technical standards have been re-emphasized in the quality of service regulations for better enforcement. The other quality standards relating to the billing, complaint handling, information on services offered etc. have been laid down in more details.

10.6 The quality of service norms for STBs has been laid down separately. The Authority had received number of complaints that service providers are not providing STBs in time and there is delay in refund when these are returned. To ensure timely installation and activation of STBs, a provision for rebate has been proposed.

Enforcement of Quality of Service regulation

10.7 The TRAI is required under the TRAI Act not only to lay down standards of the quality of service to be provided by the service providers but also ensure quality of the service and conduct the periodical surveys of services so as to protect the consumer interest. The TRAI has powers to issue directions and enforce quality of service. The contravention of the directions of the Authority may lead to the punishment with fine. The section 29 of the TRAI Act in this regard is reproduced below:

“If a person violates directions of the Authority, such person shall be punishable with fine which may extend to one lakh rupees and in case of second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which the default continues.”

10.8 Further, under Section 33 of the TRAI Act, the Authority may also delegate the power to Authorized Officers to prosecute cable operators violating QOS provisions contained in the directions and guidelines that the Authority has laid out. The decentralized monitoring and enforcing quality of service norms should ensure adherence to the QOS norms.

Regulation on the Quality of Service

10.9 Through its analysis of international QOS codes and practices and its appraisal of QOS information from Indian cable TV industry stakeholders, **the Authority has decided that the following should serve as QOS codes and guidelines for the cable TV industry in India:**

Information to be provided to consumer at the installation of cable TV connection

- (i) Detailed information must be provided to consumers at the time of installation and activation of cable services and at least annually to subscribers and at any time upon request about:
- products and services offered i.e number of channels and names of individual channels being offered
 - prices and options of programming services
 - installation and service maintenance policies
 - billing and complaint procedures including the address and telephone number of the customer service centre.

Complaint handling procedure and benchmarks to redress complaints

- (ii) A cable operator shall improve the network quality and the complaint redressal infrastructure to meet the following benchmarks:
- 90% of complaints will be corrected within 4 hours.
 - No more than 3% of customers should require to lodge complaint against service interruption each month.
 - 90% of "no signal" calls received should be corrected within 24 hours.
 - 90% of all other types of complaints will be corrected within 48 hours.
- (iii) Each cable operator must maintain a customer service center or help desk 8 hours a day, 6 days a week. All complaints shall be registered and complaint number issued for each complaint.
- (iv) A Cable Operator shall maintain record containing all complaints filed by the subscriber. The records shall include name and address of complainant, date and time of filing complaint, type of complaint and redressal date and time with the confirmation of the consumer that the complaint has been redressed. The cable operator shall present the records whenever called upon by the Authority or the Authorised officer.
- (v) A Cable Operator shall take all necessary steps like provision of alternate power supply for at least 6 hours, to minimise the incidence of service interruption for power failure.

- (vi) For the purposes of maintenance and repair, a cable operator must ensure that its representative(s) carry proper identification along with a photograph.

Billing Procedure and complaints

- (vii) Cable subscribers must be billed monthly with statements being clear and transparent. Where a customer does not view pay channels via a set-top box, a bill should be itemized clearly indicate cable charges and taxes. Where a customer does view pay/premium channels via a STB, a bill should be itemized and clearly indicate the price of the basic free-to-air tier, the price of pay channels or bouquets, STB rental and deposits, and taxes.
- (viii) The billing system should be such that the following benchmarks are met:
- complaints shall be addressed within 7 days of notice from the consumer to the operator.
 - Refunds must be issued no later than either the customer's next billing cycle or 30 days following the resolution of the complaint, whichever is earlier.

STB related Complaints

- (ix) In cases, where there is a malfunction of a STB provided by the operator on rent, a cable operator must repair or replace the STB within 24 hours.
- (x) In cases where a customer chooses to return a STB, the refund must be made within 15 days, subject to a proper working condition of the STB.
- (xi) If a customer chooses to subscribe to pay channels via a set-top box STB installation and, subscriber activation must take place within 48 hours of the receipt of the subscriber's request.
- (xii) Rebate for deficient service: In case the installation and activation of the STB is delayed beyond 48 hours of the receipt of the Subscriber's request, the multi system operator/cable operator shall in the monthly subscription give a rebate of Rs 15 per day for the first 5 days and Rs 10 per day for the subsequent period.

Change in positioning of channels

- (xiii) Change of positioning of TV channels should not be normally done. In case of pressing technical reasons requiring changes of TV channel position is required, the cable operators shall notify subscribers at least two days in advance of such occurrence.

Technical Standards

- (xiv) A Multi System Operator and cable operator shall match the technical standards set by the Bureau of Indian Standards (BIS) for cable TV Network.

10.10 This regulation will be issued after the Authorised Officers have been empowered to file complaints for violation of TRAI's regulations as indicated in section 9. Though regulation on Quality of Service will be issued by the Authority after the regulatory enforcement machinery has been put in place, in the meantime cable operators and MSOs can take action to ensure that these standards will be met, once the regulation are in place.

ANNEXURES

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|-------|--------------|--------------------------------------|
| (i) | Annexure 1 | Special Committee report |
| (ii) | Annexure II | Proposed Amendments in the Cable Act |
| (iii) | Annexure III | Proposed Amendments in the TRAI Act |

**Report of the Special Committee appointed to consider issues
regarding Cable TV Regulation**

TRAI had constituted a Committee consisting of representatives from the State Governments of Delhi, Tamil Nadu, West Bengal and Maharashtra and chaired by Secretary, TRAI. The TOR of the Committee is at Annexure. The Committee met on 10.3.2004, 31.3.2004, 28.4.2004, 3.6.2004 and 14.7.2004. The Committee's views on various issues referred to it are set out in the following paragraphs. It was noted that the state governments reserve the right to make further comments on the issues.

Pricing of pay channels

1. The difficulties in determination of cost based price of pay channels was also considered and it was felt that cost based pricing of pay channels is not feasible. If pay channels are to be regulated it was felt that the price cap mechanism will be most suitable for price regulation both for bouquets and overall package available to consumers. The committee noted that even price cap mechanism may be difficult for the following reasons:

- Different prices in different areas and at times even in the same area for different subscribers.
- Prices for individual channels do not exist (except Chennai and Delhi for a brief period) and thus implementation of price cap for unbundled channel will require specification of price for individual channels, or of some formula to link individual channels to bundled aggregate prices. On examining this in detail the committee felt that regulation of individual channel price would not be feasible.
- In number of areas cable services are not available and price cap with reference to a date is not possible.
- For monitoring and implementation of pricing policies, the role of Local Authorities becomes crucial since it was felt that a new system with explicit role and powers for Local Authorities should be put in place. The Local Authorities have no role in price regulation, at present.

- The Committee was of the opinion that for greatest acceptability of CAS, the same prices for the same content should prevail as in the pre CAS regime.
- The Committee felt that the prices may be allowed to be changed annually.

Bundling of channels

2. The Committee observed that at present pay channels offer a package deal to the MSOs and in turn the MSOs transfer the same to subscriber. Even in CAS areas compared to a bouquet of channels offered by the broadcaster, an individual channel is priced in such a manner that the subscribers do not have a real option to choose channels on a-la-carte basis. The committee decided that the issue needs to be regulated.

3. The committee deliberated on various issues involved in pricing of individual channels vis-à-vis bouquet of channels. The Committee also felt that in order to give effective choice to the consumer there should be a cap on the bulk discount (i.e. the discount if the entire bouquet is bought as against the sum of prices of the individual channels) being offered on the bouquet. Similarly a cap should also be considered for the ratio of individual channel price to the overall bouquet price.

Set Top Boxes

4. The Committee deliberated on the issue of sale/rent of set top boxes and decided that it should be made mandatory for service providers to offer set top boxes on rent.

5. The issue of interoperability of Set Top Boxes was also discussed and it was felt that making it mandatory has lots of advantages and therefore, the option may be further explored. The option of billing on the basis of pay-per-viewer or number of hours for each channel should also be explored.

6. It was also felt that no advance rent should be permitted. TRAI should be empowered to specify the rent for the STBs and it may exercise the power whenever found feasible. In case of damage to the Set Top box due to the consumer's fault, the consumer should bear the liability.

7. The Committee also felt that there is need to examine the quantum of deposit and other terms and conditions after taking note of relevant international experience and the specific schemes in India. The thrust of these conditions should be to make the system sustainable, on a large scale.

Traps

8. The committee discussed the Trap technology and its possible use in the Cable Television Networks. The committee noted that it is an alternative way of choosing pay TV channels. Traps either can be used to block certain channels or allow certain channels to enter home. A trap can be used to block pay channels to one subscriber or to a group of subscribers. Against a digital STB, which costs around Rs 5000, a trap is said to cost around Rs 400-500. Thus it provides cost effective method of choosing pay channels.

9. The committee noted that though the Traps are cost effective means to block the pay channels for subscribers not willing to pay extra to view pay channels but has the following disadvantages:

- (i) Traps can be easily by-passed and therefore problem of piracy is greater than the STBs.
- (ii) It does not provide transparent system of accounting for number of subscribers accessing pay channels.
- (iii) Though FTA subscribers will gain from this system but price regulation for subscribers subscribing for pay channels will be difficult.

10. Although this option has certain disadvantages, since it is cost effective, the committee recommends that use of Traps in Cable Systems should be further explored.

Advertisement

11. The Committee discussed the prevailing practices of advertisement and scheduling of Free to Air Channels and Pay Channels. The committee was of the opinion that advertisement of FTA need not be regulated as it is the only source of revenue for these channels. Moreover, these channels will have in-built market based mechanism for self regulating the duration of advertisements.

12. For pay channels the committee noted that unlike other countries the advertisement revenues comprise as predominant percentage of the overall revenues. Therefore, the advertisement time should not be regulated for the present. However, TRAI should monitor and review this periodically.

Gradual and voluntary introduction of Set Top boxes

13. The Committee deliberated on problems relating to implementation of voluntary CAS. The committee also debated to make it mandatory for existing pay channels to be viewed without a set top box i.e. these channels will form part of the basic tier. Only new channels may be allowed to be viewed through CAS. Over a period of time existing pay channels can shift to CAS. However, in that scenario basic tier price needs to be adjusted for shifting of channels from Basic Tier to the non basic tier. The committee considered that this form of a voluntary CAS should be considered further and the option of a mandatory CAS should also be considered in a more decentralized fashion.

Other measures

14. The Committee felt that the key was not only formulating appropriate policies but also implementing them effectively. Taking both these aspects into account, the Committee was of the view that the State Governments and local officers should be given greater powers. Thus the State Governments should be empowered to notify areas for CAS implementation rather than the Central Government. Similarly powers under section 4 (A) 2 & 3 of Cable TV act should also be delegated to the State Government.

15. After an initial specification by TRAI of the framework for price regulation, the pricing of the Basic Tier should also be left to the State Governments who could also be given the flexibility to further delegate if need be. In this situation, TRAI should lay down the tariff setting principles, which should be followed by the various authorities.

16. Reports under Section 4 (A) 9 of Cable TV act should go to the authorized officer who could send reports to the State Government/Central Government in a consolidated manner. Disputes between operators, MSOs and Broadcasters should be settled locally through the authorized officers and only appeals should go to TDSAT. The authorized officer rather than the Head Postmaster should be made the registering authority. The authorized officer should be empowered (by allowing him to takeover the network and hand it over to any person temporarily till permanent arrangement is made) to make arrangements for continuing to serve the consumers of an operator in the event that the registration of an operator is cancelled.

17. Under Section 33 read with Section 34 of the TRAI Act the authorized officer should also be empowered to file complaints in respect of matters under their jurisdiction.

The terms of reference for the Special Committee

1. Suggest the norms for fixing rates (or ceiling rates) for cable subscribers/cable operators/Multi Service Operators for individual pay channels, bouquets thereof, and distribution of free-to-air channels.
2. Suggest regulation regarding rates of cable operators, including periodicity of change of monthly cable charges.
3. Suggest the principles for laying down limits as to the extent of bundling of pay channels to be allowed in order to ensure that Cable TV viewers have a genuine choice with regard to selection of pay channels.
4. Formulate the standard terms and conditions under which set top boxes may be made available (sale/rental) to subscribers.
5. Suggest the conditions under which consumers may return set top boxes sold or rented to them by service providers and ask for refund.
6. Suggest the maximum advertising time to be permitted per hour on pay channels along with other conditions that are required to be imposed.
7. Examine the implications of gradual and voluntary introduction of set top boxes.
8. Any other measure, to ensure that CAS does not lead to exploitation of the consumers

Annexure II

Amendment proposed in The Cable Television Networks (Regulation) Act, 1995 and Notifications and Rules issued there under

The title of the Act should be changed to “ The *Broadcasting and Cable Television Networks (Regulation) Act, 1995*”. This is because the amendments in the Act also include certain provisions which apply to Broadcasters.

I. Amendments in the Cable Act

(a) Certain Changes are required in the definition of Basic Tier, Free To Air channels, pay channels so as to facilitate use of Traps and introduction of premium channel in Non-CAS areas.

(i) Section 4A(9) (b) should be substituted by

“basic service tier” means a package of free-to-air channels provided by a cable operator, for a single price to the subscribers of the area in which his cable television network is providing service and such channels are receivable for viewing by the subscriber on the receiver set without any addressable system attached to his receiver set but may require use of traps in the cable television network of the cable operator;

(ii) Section 4A (9) (e) should be substituted by

“free to air channel” means a channel for which no fees is to be paid to the broadcaster for its retransmission through electromagnetic waves through cable or through space intended to be received by the general public either directly or indirectly.

(iii) Section 4A(9) (f) should be substituted by

“pay channel”, means a channel for which fees is to be paid to the broadcaster for its retransmission through electromagnetic waves through cable or through space intended to be received by the general public either directly or indirectly.;

(iv) New 4A (9) (g) should be added after 4 A (9) (f)

“premium channel” in respect of a cable television network means a channel the reception of which under section 4(B) of the Cable

Television Network (Regulation) Act by the subscriber would require the use of an addressable system to be attached to his receiver set;

(v) New 4A(9)(h) should added after 4 A (9) (g)

“trap” in respect of a cable television network, means a device which can act either as a negative trap which would block pay channels from being received by a subscriber or a positive trap which removes an interfering carrier from a channel allowing a subscriber to view it.

(vi) Explanations under 4A (9) including the proposed new explanations should now be part of the definition under section 2 of the Act.

(b) Reference to other Acts like TRAI Act required

Subsection (j) in the section 2 is to be added to refer to the TRAI Act

“(j) Words and expressions used and not defined in this Act but defined in the Indian Telegraph Act ,1885 (13 of 1885) , the Indian Wireless Telegraphy Act, 1933 (17 of 1933) and the Telecom Regulatory Authority of India Act 1997 shall have the meanings respectively assigned to them in those Acts”

(c) Consultation with the State governments to mandate CAS

(i) The following proviso should be added after Section 4A(1) :

4A Transmission of programmes through addressable system, etc.- (1) Provided that where the Central Government is satisfied that it is in the public interest to do so ,it should for reasons to be recorded in writing , postpone, advance , suspend or revoke a notification already issued under this section

(d) Deletion of the provision to decide Basic Tier Service Rate:

At present price of Basic Service Tier can be regulated both under the TRAI Act and The Cable Act. Since TRAI is already regulating the prices of cable services, it is recommended that the the prices of basic tier should also be regulated by TRAI alone and the provisions under the Cable Act may be deleted. *Therefore sub-sections (4) and (5) of section 4A may be deleted.*

(e) Amendment in section 4(3):

Revocation/ refusal for registration

The second proviso is to be added to section 4(3) of the Act to enable registering authority to revoke or refuse registration in case of insolvency or convicted for some crime.

“provided further that the registering authority may revoke or refuse registration if a cable operator has been convicted of any criminal offence involving imprisonment.”

(f) New Section 4(B) to be added so that new pay channels (to be called as premium channels) come on the addressable system.

(i) 4(B) If the Central government is satisfied that it is necessary in the public interest to do so, it may, by notification in the official gazette, make it obligatory for every cable operator in areas notified under this section to carry all pay channels, to be called premium channels, launched after such date as may be specified in the notification, after encryption and the reception of which by the subscriber would require the use of an addressable system to be attached to his receiver set.

(g) New Section 4 (C)

Powers to regulate Advertisement time

4C : If the Central government is satisfied that it is necessary in the public interest to do so, it may, by notification in the official gazette, specify the maximum time of advertisement on pay channels and other channels.

(h) New Section 7A for Cable Operators to maintain a register of subscribers roll

“7A (i) Every cable operator and multi system operator shall maintain a register of subscribers containing the names of the subscriber, address, number of channels being received, monthly fee charges,

(ii) The register shall be furnished for inspection to the Authorised Officer whenever he considers it expedient to inspect such register”

(i) Authorised Officer

A new section 20 A to permit delegation of powers to Authorized Officers

“20 A Functions under the TRAI Act:

“The Authorised Officers would also exercise such functions as are assigned to them under the TRAI Act including the functions that may be delegated to them under section 33 of the TRAI Act.”

II. Amendment in the Notifications

(a) Registering Authority: Amendment in notification no SO 718(E) dated 29.9.94

The registering authority should not be the Head Post Master but the authorized officers. Accordingly the notification dated 29th September 1994 should be amended replacing the words “Head Post Master of a Head Post Office” by “*Authorised Officer*” .

III. Amendments in the in the Cable Television Networks Rules, 1994

Rules relating to the registering authority

(i) Rule 3 (4)

Clause 4 needs to be amended by replacing “Head Post Office” with “Authorised Officer”. In addition to remove doubts the following explanation may be added at end of this clause

“A person operating cable television networks may continue to do so for a period his registration is valid. However the renewal of the registration shall be obtained from the Authorised Officer.”

(ii) Form 1

Replace “ Head Post Office” in column 4 (b) by “Authorised Officer”.

(iii) Form 3/3A

Replace the words “Government of India Head Post Office”: in title and “Head Post Office” at the end of col. 4 by “Name of Authorised Officer.”

(iv) Form 4

Replace the words “ Head Post Master” and “Head Post Office” at the end of the form by “Name of the Authorised Officer”.

(v) Rule 10:

The reports under section 4(A)9 of the Cable Act should go to the authorized officers. This would require amending the Rule 10 replacing the words “Central Government in the Ministry of Information and Broadcasting” by “*Authorised Officer of the area within whose territorial jurisdiction the office of the cable operator is situated*”

(vi) Rule 14

The information on STBs is to be publicized at least 3 months before actual implementation of CAS in a city and therefore the word “*fifteen*” in the sub-rule (1) should be replaced by “*ninety*”.

The information on STBs should be available with TRAI which would require amending this rule. The sub-rule (2) should read as:

“ The Multi System Operator/Cable Operator shall also furnish the information required in sub-rule (1) above to the Ministry of Information and Broadcasting and Telecom Regulatory Authority, duly authenticated by its authorized signatory.”

**Amendment proposed in The Telecommunication Regulatory Authority
of India Act, 1997 - as amended**

I Section 2- definition

Telecommunication Services

It is necessary is to amend section 2 (1) (k) of the TRAI Act – the last phrase *“but shall not include broadcasting services”* needs to be deleted.

Service provider

The definition needs to be amended to remove any ambiguity and can be changed as follows

“service provider” means the (Government as a service provider) and includes a licensee as well as any broadcaster, multi system operator cable operator or distributor”

Further since terms like broadcaster and cable operator has not been defined in the Act it is necessary to add the following clauses (bb) to (bg) after section 2(b) and section (fa) after section 2 (f)

(bb) “broadcaster” means any person including an individual, group of persons, public or body corporate, firm or any organization or body who/which is providing broadcasting service and includes his authorized distribution agencies;

(bc) – “broadcasting services” means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro magnetic waves through space or through cables intended to be received by the general public either directly or indirectly and all its grammatical variations and cognate expressions shall be constructed accordingly;

(bd) – “cable operator” means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network;

(be) – “cable service” means the transmission by cables of programmes including re-transmission by cables of any broadcast television signals;

(bf) – “cable television network” means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment designed to provide cable service for reception by multiple subscribers;

(bg) “distributor of TV channels” means any person re-transmitting TV channels through electromagnetic waves through cable or through space intended to be received by general public directly or indirectly and includes a cable operator, direct to home operator and multi system operator;

(fa)- “multi system operator” means any person who receives a broadcasting service from broadcaster and/or their authorized agencies and re-transmits the same to consumers and/or re-transmits the same to one or more cable operators;

(c) Section 2(2)

After the words “Indian Wireless Telegraphy Act 1933(17 of1933) add the words

“the Cable Television Networks (Regulation) Act ,1995 as amended by the Cable Television Networks (Regulation) Act 2000 and any other applicable law in India”

The amendment would help to cross refer to these Acts and harmonise the regulation of broadcasting and cable services under the TRAI Act.

II. Functions of the Authority

(a) Section 11(1)

The cross reference to Cable Act would help to maintain the consistency between the Cable Act and the TRAI Act and would clearly bring out the jurisdiction of TRAI Act and would also clearly bring out the jurisdiction of TRAI on the Cable and Broadcasting Industry. The proposed clause is as under:

“Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885) and *Cable Television Network (Regulation) Act, 1995 as amended by*

Cable Television Network (Regulation) Act 2000, the function of the Authority shall be-

III. Amendment in Section 13

As per this section the Authority can issue directions to the service providers for discharge of its functions under Section 11 (1) (b). The existing section does not cover the entire functions of the Authority as contained in Section 11(1). In addition the function of the Authority is to notify tariff rates under Section 11(2) which is not covered by the Section 13. In order to avoid any controversy and ambiguity and to rectify the lacuna, it is proposed the Section 13 should read as under:

“The Authority may, for the discharge of its functions under sub section 1 (b), (c), (d) and (e) and sub section (2) of section 11, issue such directions from time to time to the service providers, as it may consider necessary.”

IV. Section 29- Penalty for contravention of directions of Authority

In the existing section the violation of the Authority’s direction is punishable with fine. The violations of the orders and Regulations are not mentioned as punishable therein with fine. By the way of proposed amendment, this lacuna is intended to remove so that in case of any violation of the Orders/Regulations, by any service providers the action can be taken by the Authority in terms of provisions contained in the Act. It is therefore proposed that the word “Direction” should be substituted by “ Directions/ Orders / Regulations”. The section would read as:

“ If a person violates any Direction/Order/Regulation of the Authority, such person shall be punishable with fine which may extend to one lakh rupees and in case of second or subsequent offences with fine which may extend to two lakh rupees and in case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which the default continues.”

V. Cognizance of offences

Section 34 (1)

In respect of cable services, all requests by consumers and cable operators for implementation of the TRAI Act or Regulations made there under should be handled by the Authorised Officers. In this regard , it is proposed that after the word “Authority”, the words “ *and in the case of cable services, in respect of violations of any regulation issued by TRAI, reported by consumers or cable operators save on a complaint made by the concerned Authorised Officer* ”should be added.

**BEFORE THE TELECOM DISPUTES SETTLEMENT AND
APPELLATE TRIBUNAL, NEW DELHI
PETITION NO. 34(C) OF 2010**

IN THE MATTER OF

Utsarg

...Petitioner

Versus

Union of India & Ors.

...Respondents

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22/02/2011

ADVOCATE FOR THE RESPONDENT: **SAKET SINGH**

BEFORE THE TELECOM DISPUTES SETTLEMENT AND APPELLATE TRIBUNAL,
NEW DELHI

Petition No. 34(C) of 2010

IN THE MATTER OF

Utsarg

..... Petitioner

versus

Union of India & Ors

... Respondents

REPLY ON BEHALF OF THE ANSWERING RESPONDENT No. 2 (TRAI)

MOST RESPECTFULLY SHOWETH:-

(A) Preliminary submissions

1. That in the present petition, the petitioner has, *inter alia*, sought the following reliefs against the answering respondent, namely:-

- (a) "..... to immediately direct all the Broadcasters/ Channels having license to operate and downlink in India to follow Section 7 (10) and (11) of The Cable Television Network Rules, 1994 read with Clause 5.1 of the Policy Guidelines for Downlinking of Television Channels;
- (b)to call for the undertaking from Broadcasters/ Channels having license to operate and downlink in India to obey the above mentioned Rules and Guidelines in its true letter and spirit;
- (c) to call for the record of the advertisements shown by various Channels during the last 90 days and punish the channels in accordance with law if they violated the Advertising Code; and
- (d)to make out a policy framework/audit mechanism so that none of the channels could violate the advertising code;
- (e)
- (f)

(g)..... Pass an interim order in terms of the prayer (a), (c)
..... mentioned above

(h) pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the case."

2. The answering respondent most respectfully submits that this petition, in the form laid out, is totally misconceived and is not maintainable in law before this Hon'ble Tribunal, as against the answering respondent, for the following reasons:

(a) The answering respondent most humbly draws the kind attention of this Hon'ble Tribunal to the express provisions of sub-clause (iii) of clause (a) of section 14 of the TRAI Act which provides for adjudication of disputes between a service provider and a group of consumers by this Hon'ble Tribunal. The provisions of section 14 read as under:-

"14. The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to -

(a) adjudicate any dispute -

(i) between a licensor and a licensee;

(ii) between two or more service providers;

(iii) between a service provider and a group of consumers;

Provided that nothing in this clause shall apply in respect of matters relating to -

(A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969);

(B) the complaint of an individual consumer maintainable before a Consumer Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986 (68 of 1986);

(C) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7 B of the Indian Telegraph Act, 1885(13 of 1885);

(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act."

It may kindly be seen that sub-clause (iii) of clause (a) of section 14 of the TRAI Act contemplates adjudication by this Hon'ble Tribunal only of disputes between a service provider and a group of consumers and that there is nothing in the said sub-clause to even remotely suggest that a group of consumers can invoke the jurisdiction of this Hon'ble Tribunal to raise any dispute against the regulator, i.e., TRAI.

In fact, clause (b) of section 14 of TRAI Act clearly provides for only the exercise of appellate jurisdiction by this Hon'ble Tribunal against any direction, decision or order of TRAI. In other words, it is only where a person is aggrieved by any direction, decision or order of the answering respondent TRAI, the appellate jurisdiction of this Hon'ble Tribunal can be invoked. Knowing fully well that the dispute raised in the petition is not against any direction, decision or order of the answering respondent TRAI, the petitioners have sought to invoke the adjudicatory jurisdiction of this Hon'ble Tribunal seeking directions against the answering respondent. The answering respondent begs leave of this Hon'ble Tribunal to highlight the fact that a prayer, seeking directions of this Hon'ble Tribunal to the answering respondent, is outside the purview of sub-clause (iii) of clause (a) of section 14 of the TRAI Act, 1997 in view of the judgment of the Hon'ble Supreme court in Civil Appeal No. 2061 of 2006 (Hotel & Restaurant Association and Anr. Vs. Star India Pvt. Ltd. and Ors.).

- (b) The answering respondent most respectfully submits that the Hon'ble Supreme Court, in its judgment dated 24th November, 2006 in Civil Appeal No. 2061 of 2006 (Hotel & Restaurant Association and Anr. Vs. Star India Pvt. Ltd. and Ors.), has observed as follows:-

".....TDSAT, with great respect, therefore, was not correct in opining that the regulators should also consider whether it is necessary or not to fix the tariff for commercial purposes in order to bring greater degree of clarity and to avoid any conflicts and disputes arising in this regard.

While exercising its original jurisdiction, again with respect, TDSAT should not have made such observations. This Court in *K. Kankarathnamma and Others v. State of Andhra Pradesh* [(1964) 6 SCR 294 at 298], held:

"...wherever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein, it is a universal principle that those terms should also be complied with, in order to create and raise the jurisdiction, and if they are not complied with the jurisdiction does not arise..."

It is also well settled that when a power is required to be exercised in a particular manner, the same has to be exercised in that manner or not at all. TDSAT having not exercised its appellate jurisdiction, in our opinion, neither could have issued any direction nor TRAI could abide thereby (emphasis supplied). [See *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.*, AIR 1978 SC 851, *Commissioner of Police v. Gordhandas Bhanji*, AIR 1952 SC 16, *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai*, (2005) 7 SCC 627 and *R.S. Garg v. State of U.P. and Others*, 2006 (7) SCALE 405].

We are, however, sure that TRAI while exercising its jurisdiction under Sub-section (2) of Section 11 of TRAI Act shall proceed to exercise its jurisdiction without in any way being influenced by the said observations. It must apply its mind independently."

Thus, the law on this issue is well settled by virtue of the above judgment of the Hon'ble Supreme Court that prayers for issue of directions against the regulator, i.e., TRAI, as in the present petition by the petitioner, are not maintainable before this Hon'ble Tribunal and thus cannot be allowed by invoking the original jurisdiction conferred on this Hon'ble Tribunal by sub-clause (iii) of clause (a) of section 14 of the TRAI Act, 1997. In view of this, the present petition, in the form laid out, is totally misconceived as against the answering respondent TRAI, a

regulator, and, therefore, deserves to be dismissed as against the answering respondent on this short ground alone.

- (c) That, further, as already settled by the Hon'ble Apex Court in the afore-cited judgment in the Hotel & Restaurant Association case, the regulator has to apply its mind independently (without being influenced by any observations from any other authority). The answering respondent craves leave of this Hon'ble Tribunal to cite the following observations made by the Hon'ble Supreme Court in the afore-cited judgment, namely:-

"TRAI exercises a broad jurisdiction. Its jurisdiction is not only to fix tariff but also laying down terms and conditions for providing services. Prima facie, it can fix norms and the mode and manner in which a consumer would get the services.

The role of a regulator may be varied. A regulation may provide for cost, supply of service on non-discriminatory basis, the mode and manner of supply making provisions for fair competition providing for level playing field, protection of consumers interest, and prevention of monopoly. While making the regulations, several factors are, thus required to be taken into account. The interest of one of the players in the field would not be taken into consideration throwing the interest of others to the wind. (emphasis supplied)

We direct the TRAI to carry out the processes for framing the tariff. While doing so, it must exercise its jurisdiction under Section 11 of the Act independently and not relying on or on the basis of any observation made by the TDSAT (emphasis supplied) to this effect. It goes without saying that all the procedures required for framing the said tariff shall be complied with."

- (d) That, irrespective, it is humbly submitted that under the scheme of section 14 of the TRAI Act, only an appeal can lie against the order, direction or decision of TRAI which can be the subject matter of adjudication by this Hon'ble Tribunal. The Respondent TRAI cannot be made a party respondent nor can any relief be
-

claimed against it in a Petition under section 14(a) of the TRAI Act. In the present case, no order, direction or decision of TRAI has been challenged and as such the said Petition cannot lie against the Respondent TRAI. Therefore, indisputably, the petition is not maintainable in law and is liable to be dismissed by this Hon'ble Tribunal on this ground alone.

3. That rule 7 of the Cable Television Networks Rules, 1994 provides as under:

"7. **Advertising Code:-**

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

(11) No programme shall carry advertisements exceeding 12 minutes per hour, which may include up to 10 minutes per hour of commercial advertisements, and up to 2 minutes per hour of a channel's self-promotional programmes.....".

4. That Clause 5.1 of the policy guidelines for downlinking of television channels provides as under:-

" 5.1 The Company permitted to downlink registered channels shall comply with the Programme and Advertising Code prescribed under the Cable Television Networks (Regulation) Act, 1995.....".

5. That Section 2 of the Cable Television Networks (Regulation) Act, 1995 provides as under:

"2. **Definitions:** In this Act, unless the context otherwise requires,-

(a) "authorised officer" means, within his local limits of jurisdiction;-

(i) a District Magistrate, or

(ii) a Sub-divisional Magistrate, or

(iii) a Commissioner of Police,

and includes any other officer notified in the Official Gazette, by the Central Government or the State Government, to be an authorised officer for such local limits of jurisdiction as may be determined by that Government;"

6. That sections 5 and 6 of the Cable Television Networks (Regulation) Act, 1995 provide as under:-

"5. Programme code: No person shall transmit or re-transmit through a cable service any programme unless such programme is in conformity with the prescribed programme code.

6. Advertisement code: No person shall transmit or re-transmit through a cable service any advertisement unless such advertisement is in conformity with the prescribed advertisement code."

7. That Section 18 of the Cable Television Networks (Regulation) Act, 1995 provides as under:-

"18. Cognizance of offences: - No court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by any authorized officer."

8. That from the perusal of sections 2, 5, 6 and 18 of the Cable Television Networks (Regulation) Act, 1995, it can be clearly seen that for any contravention of the Advertising Code, the authority to file a complaint before appropriate court for violation of advertisement code vests with the authorized officer. Thus it is amply clear that a policy framework and audit mechanism as prayed for by the Petitioner is already in place under the provisions of Cable Television Networks (Regulation) Act, 1995 and the rules made thereunder. It is submitted that the answering respondent has no role to play in relation to the Cable Television Networks (Regulation) Act, 1995.

9. That it is submitted that Government of India vide its order [S.O. 45 (E)] issued on 9.1.2004, specifically sought recommendations of the answering respondent on "the parameters for regulating maximum time for advertisements in pay channels as well as other channels.....".

10. That after following a consultation process, the answering respondent, *inter-alia*, formulated its recommendations on the issue of maximum time for advertisements in TV channels. 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 mentioned that the Authority has obtained average advertisement time from the pay channel broadcasters. Almost all channels have reported an average advertisement of 10 to 12 minutes per hour which is within the limits laid down in global regulations on advertisement time.....". In paragraph 8.11 of the said recommendations it has been mentioned that "..... The primary objective of the policy is to give consumer choice and good quality service at affordable prices. To ensure affordable services to the consumers, the Authority has regulated the subscription fees of TV channels Besides regulating subscriptions, regulation on the advertisement time and its corresponding affect on the revenues for broadcasters may hamper growth and competition in the broadcasting Industry.....".

11. That considering all the aspects of the matter, the answering respondent in its recommendations dated 1.10.2004, had recommended as under:-

"8.15 (i) There should not be any regulation, at present, on advertisement on both FTA and Pay Channels.

(ii) The Cable Act should be suitably modified so that powers are available with the government to regulate this if found necessary at a later stage. Broadcasters would also be required to give information on advertising time to TRAI and the Government. This would also be made available to the public through the TRAI web site.....".

The recommendations of the Telecom Regulatory Authority of India were sent to Ministry of Information and Broadcasting, Government of India for its consideration on 1st October, 2004.

B. Para-wise Reply:

Paras 1 and 10: That submissions made in paragraphs 8 and 11 of the preliminary submissions above are reiterated. The said averments are therefore irrelevant.

Paras 2, 11, 12 and 13: The submissions made in reply to paragraph 1 of the petition above are reiterated.

Paragraph 3: The averments made have no relevance to the present matter.

Paragraph 4, 8 and 9: That the contents of these paragraphs do not require any comments of the answering respondent.

Para 5: That the petitioner be put to strict proof of averments made as to massive violation of rule 7(10) and (11) of the Cable Television Network Rules, 1994 read with clause 5.1 of the Policy Guidelines for Down linking of Television Channels. No evidence regarding massive violation has been enclosed with the petition in support thereof. Therefore, the averments are merely hollow statements which can not be relied upon. The focus of the Petition seems to mainly relate to cricketing events as paragraphs 1, 3, 7, 8, 9 and 10 of the present petition mentions about cricket matches/ games whereas in paragraph 5 of the petition, the Annexure P-6 & P-7 relate to non-cricketing or sport events. Therefore, the averments made in paragraph 5 of the Petition are not relevant.

Para 6: That submissions made in paragraphs 8 and 11 of the preliminary submissions above are reiterated.

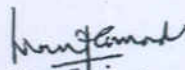
Para 7: The submissions made in reply to paragraph 1 of the petition above are reiterated.

Para 14: The submissions made in the paragraph 2 of the Preliminary submissions above are reiterated.

PRAYER

12. In light of the reasons stated hereinabove, the respondent Authority most respectfully prays that this Hon'ble Tribunal may be pleased to dismiss the present petition with costs in favour of the answering respondent and against the Petitioner.

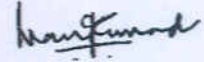
SO PRAYED ACCORDINGLY,


Respondent
(WASI AHMAD)
Advisor (BRCs)

भारतीय दूरसंचार विनियामक प्राधिकरण
Telecom Regulatory Authority of India
महानगर दूरसंचार भवन, नवाइरात नहर मार्ग
Mahanager Doorsanchar Bhavan, Jawahar Lal Nehru Marg
नई दिल्ली-110002/New Delhi-110002

VERIFICATION

I, Wasi Ahmad, s/o Late Mohammad Shafi, aged 48 years, working as Advisor (B&CS), in the office of the Telecom regulatory Authority of India having its office at Mahanagar Doorsanchar Bhawan, J.L.N. Marg, Old Minto road, Near Dr. Zakir Hussain College, New Delhi-110 002, do hereby verify that the contents of the paras 1 to 12 of the reply are true and correct to the best of my knowledge. No part of it is false and nothing material has been concealed therefrom.



Respondent
(WASI AHMAD)
Advisor (B&CS)

भारतीय दूरसंचार विनियमन प्राधिकरण
Telecom Regulatory Authority of India
महानगर दूरसंचार भवन, जवाहरलाल नेहरू मार्ग
Mahanagar Doorsanchar Bhawan, Jawaharlal Nehru Marg
New Delhi-110002
(SAKET SINGH)

Counsel for the Respondent
53, Lawyers' Chamber,
Supreme Court of India,
Tilak Marg, New Delhi
Dated:

IN THE TELECOM DISPUTES SETTLEMENT AND APPELLATE TRIBUNAL, NEW DELHI

Petition No. 34(C) of 2010

IN THE MATTER OF:-

Utsarg

..... Petitioner

versus

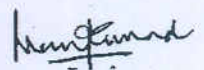
Union of India & Ors

... Respondents

AFFIDAVIT

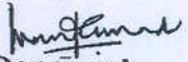
I, Wasi Ahmad, son of late Mohammad Shafi, aged 48 years, working as Advisor (B& CS), in the office of the Telecom Regulatory Authority of India having its office at Mahanagar Doorsanchar Bhawan, J.L.N. Marg, Old Minto Road, Near Zakir Hussain College, New Delhi-110002, do Solemnly affirm and declare as under: -

1. That I am working as Advisor (Broadcasting & Cable Services) of the Telecom Regulatory Authority of India (Respondent) and that in my official capacity, I am fully conversant with the facts of the reply as derived from the official records, that I am competent to affirm this affidavit on behalf of the answering respondent and that I have been authorized to do so.
2. That the reply has been drafted at my instance by my counsel.
3. That the factual contents of the accompanying reply are true and correct to the best of my knowledge as derived from official records and the legal submissions are believed to be correct on legal advice and that nothing material has been concealed therefrom.


Deponent
(WASI AHMAD)
भारतीय दूरसंचार विनियामक प्राधिकरण
Telecom Regulatory Authority of India

VERIFICATION

I, Wasi Ahmad, s/o Late Mohammad Shafi, aged 48 years, working as Advisor (B&CS), in the office of the Telecom regulatory Authority of India having its office at Mahanagar Doorsanchar Bhawan, J.L.N. Marg, Old Minto road, Near Dr. Zakir Hussain College, New Delhi-110 002, do hereby verify that the contents of the paras 1 to 3 of the affidavit and paras 1 to 12 of the reply are true and correct to the best of my knowledge as derived from the official records and that I have not suppressed any material fact. No part of it is false and nothing material has been concealed therefrom.


Deponent
(WASI AHMAD)
Advisor (B&CS)

भारतीय दूरसंचार विनियामक प्राधिकरण
Telecom Regulatory Authority of India
महानगर दूरसंचार भवन, जवाहरलाल नेहरू मार्ग
Mahanagar Doorsanchar Bhawan, Jawaharlal Nehru Marg
नई दिल्ली-110002/New Delhi-110002

The Contribution of the Advertising Industry to the UK Economy

A Creative Industries report

Conducted on behalf of Credos

Prepared by Alexandra Albert and Dr Benjamin Reid, November 2011



Acknowledgements

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The authors would like to thank and acknowledge the Advertising Association and the World Advertising Research Centre (Warc) for use of its unrivalled data on the UK advertising industry (www.warc.com/expenditurereport).

The authors would also like to thank Work Foundation colleagues Charles Levy, Andrew Sissons, Ian Brinkley, Will Hutton, as well as Josh McBain from Credos, for their input, advice and assistance.

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1 – Executive summary

This report – commissioned by Credos, the advertising think-tank established by the UK Advertising Association – provides an economic impact analysis of the UK's advertising industry.

1.1 – Findings

- Assessing a number of impacts, including direct, indirect and induced measures, we estimate the UK advertising industry's contribution to the UK economy for 2008 to be £15.6bn.
- But this analysis does not take into account a number of ways in which the advertising industry has a catalytic effect on the broader economy. These would include:
 - The amount UK organisations spent on advertising products and services in 2009: US\$26.8bn (£17.98bn)
 - Extrapolated from a US study of the 'advertising supported internet', a conservative figure indicating the difference an advertising model brings to internet-based business models: £1bn in 2008 for the UK
 - Extrapolated from a US study of the 'consumer internet surplus', a figure indicating how much a nation's consumers gain from receiving 'free' (advertising supported) online services such as social networking, email, etc.: £6.6bn a year for the UK
- These numbers cannot be straight-forwardly added to the £15.6bn calculation. But they do represent additional benefits to the UK which are unlikely to have accrued without the availability of advertising as a business model to which those other industries could turn for successful innovation and revenue streams.
- In terms of other catalytic effects, international comparison data also show a clear correlation between countries' degree of advertising spend, or advertising spend growth, and a range of important economic outcomes, such as growth, innovation, and consumer propensity to spend. There is a less clear, but present correlation between advertising spend and level of national economic competitiveness.

1.2 – Recommendations

- The contribution of the advertising industry to the UK economy should be continually assessed, building on the methodology, results and recommendations of this report.
- Advertising as an industry should also focus on its 'specific' forms of contribution through a range of catalytic effects – including adspend, consumer internet surplus and key advertising-based business model organisations and sectors.
- The contribution of complex industries such as advertising should continue to be understood as part of the broader creative industries, and of the UK's innovation ecosystem.

1.3 – Context

- The advertising industry has been a UK success story for much of the 20th century, developing as a base for globe-spanning advertising organisations, and taking a central role in the broader creative industries sector. The 21st century advertising industry makes a major contribution, both directly and indirectly, to the UK economy.
- The combination of the recent recession, and a range of global, long-term trends of digitalisation, convergence and internationalisation, have wrought considerable changes on the advertising industry, and set the context for the industry's role within the UK creative industries.
- The changing nature of advertising – as it increasingly moves online, and as convergence breaks down the more traditional categories of both advertising channels and advertising businesses – is making analysis of the macro-effects of advertising as an industry more complex. To build a picture of the advertising industries' contribution to the UK economy will require the combination of a number of proven useful approaches, and to situate the analysis within both the discussion of the creative industries and the broader economic impact debate.

1.4 – Methodology

- The existing literature on the national economic impact of the advertising industry is relatively sparse, and this report therefore undertakes some of this groundwork as well as setting such calculations in their wider context. We have looked to work with the best extant economic data available, and to set this data within a specific understanding of advertising as a creative industry, so as to convey the true weight of the issues and to take further steps towards a better understanding of how advertising contributes to the UK economy.
- In looking at the economic contribution of the advertising industry, we distinguish this from the debate regarding whether advertising is *effective* – in the sense of whether, for example, a particular campaign is successful or achieves its aims for a client.
- For this report, we follow established economic impact analysis practice, looking at industry contributions in four categories:
 - Direct: this includes 'gross value added', and direct employment
 - Indirect: this includes what the advertising industry purchases from other UK industry sectors (and then what those other industries spend elsewhere to be able supply the advertising industry)
 - Induced: the economic impact of the spending of advertising industry employees (and the employment impact of their spending elsewhere in the economy)
 - Catalytic: these are impacts which do not flow directly from the industry, but are theorised ways in which the industry contributes – for the advertising industry this would include wider contributions to economic growth, innovation, consumer propensity to spend, and national competitiveness
- The 'multiplier effects' of direct, indirect and induced measures can be totalled together to create a basic assessment of the contribution of the UK advertising industry to the UK economy.
- The catalytic measures give strong indications of the wider role the industry plays in the economy.

2 – Introduction

Let us be a nation of shopkeepers as much as we please, but there is no necessity that we should become a nation of advertisers.

David Ogilvy, *Confessions of an Advertising Man*, 1963

Quoting Punch Magazine, 1848

Despite Punch's rather haughty disdain of the idea, it is arguable that the UK *has* gone on to be a nation of advertisers – or at least one which leads the world in the field. The advertising industry has been a UK success story for much of the 20th century, developing as a base for globe-spanning advertising organisations, and taking a central role in the broader creative industries sector. While it is true that those involved in advertising have not always been able to use their media savvy to ensure fantastic press for their activities, as an area of UK industry they are part of one of the most dynamic and fast-growing sectors of the 'knowledge economy'. And while in the public imagination the world of advertising is probably entirely a Don-Draper-driven caricature, the reality is that the 21st century advertising industry makes a major contribution, both directly and indirectly, to the UK economy.

It is in order to better understand this contribution that Credos – the advertising think-tank established by the UK Advertising Association – has asked The Work Foundation to explore the economic value of advertising to the UK economy.

It is not an easy topic to tackle. There are three important ways in which we have framed the study to assist its clarity:

- First, the existing literature is relatively sparse, and there is no extant 'economic impact analysis' for advertising as a UK creative industries sector as there has been, for example, for fashion¹, film², or computer games.³ This report therefore undertakes some of this groundwork as well as setting such calculations in their wider context.
- Second, the nature of the 'contribution' requires some unpicking: advertising represents a major intangible investment on the part of companies⁴ and a process of economic valuation of 'advertising' as a concept is an extremely complicated one. Different approaches to the *idea* of advertising and what it does can lead to very different conclusions. For example, on the one hand we have a prominent 2004 American Association of National Advertisers-commissioned study which concluded that advertising 'generates over \$5 trillion in economic activity, or approximately 20 percent of U.S. total economic activity[, and that] sales of products and services stimulated by advertising support 21 million jobs, or 15 percent of the total jobs in

¹ **British Fashion Council** (2010) *The Value of the UK Fashion Industry*, <http://www.britishfashioncouncil.com/valueoffashion>, Oxford Economics

² **UK Film Council** (2010) *The Economic Impact of the UK Film Industry*, <http://bit.ly/fzpAcO>

³ **Oxford Economics** (2008) *The economic contribution of the UK Games Development industry*, <http://www.oef.com/free/pdfs/gamesimpact.pdf>

⁴ **Nayaradou, Maximilien** (2006) *Advertising and economic growth*, Word Federation of Advertisers, http://www.wfanet.org/documents/3/WFA-UDA_Advertising&Economic_Growth.pdf



the country⁵, while on the other, a 2009 New Economics Foundation study in the UK finding that ‘for every £1 of value created by an advertising executive, £11.50 is destroyed’.⁶ Clearly both cannot be right on the same terms – they are proceeding from quite different starting points. In this report we take a pragmatic approach to these different perspectives, guided by a focus on understanding the contribution of the advertising *industry*. We have looked to work with the best extant economic data available, and to set this data within a specific understanding of advertising as a creative industry, so as to convey the true weight of the issues and to take further steps towards a better understanding of how advertising contributes to the UK economy.

- Third, in looking at the economic contribution of the advertising industry, we distinguish this from the debate regarding whether advertising is *effective* – in the sense of whether, for example, a particular campaign is successful or achieves its aims for a client⁷. This is not to say that more effective advertising might not be a catalyst for an improved economy – something explored more towards the end of this report – but to emphasise that we are not *evaluating* advertising, but examining the footprint, and broader impact, of the industry on the UK economy.

The report begins by outlining some important recent trends within the advertising industry, and setting the industry in the broader context of the creative industries. Specific areas of the broader debate regarding definitions of advertising, which will be important in economic calculations, are also reviewed here (**Section 3**).

The report then looks to build up an economic picture of the ‘direct’, ‘multiplier’, ‘indirect’, ‘induced’ and ‘catalytic’ effects of the advertising industry on the UK economy, noting difficulties and contradictions in the available data where this is salient (**Section 4**). In general the logic of this section is to work ‘outwards’ from relatively clear, concrete areas of data, towards those broader areas of impact where the data is less certain, and a greater interpretive step is required.

The report then concludes with a discussion of the implications of the economic analysis for the prospects of growth and increasing the advertising industry’s contribution both to the UK creative industries and the wider UK economy (**Section 5**).

⁵ Raimondi, Michael J, and Klein, Lawrence (2004) *Comprehensive Economic Impact of Advertising Expenditures*, Association of National Advertisers, Global Insights Group, <http://bit.ly/gUrHde>

⁶ NEF (2009) *A Bit Rich: Calculating the real value to society of different professions*, http://www.neweconomics.org/sites/neweconomics.org/files/A_Bit_Rich.pdf

⁷ For example as developed and championed by the Institute of Practitioners in Advertising’s Value of Advertising Group (www.ipa.co.uk/Content/The-Value-of-Advertising-Group), including their influential effectiveness awards scheme, and the US Association of National Advertisers’ equivalent: <http://www.ana.net/mictopic/index/id/17>

3 – UK Advertising in context

The starting point for understanding the economic contribution of advertising is to place it in context. Firstly, to frame the advertising industry itself, and in particular the ways in which global changes in technology and consumer behaviour have affected the structures, roles and organisation of advertising firms (**Section 3.1**). Secondly, to place the changing advertising industry within some brief discussion of debate concerning the broader ways in which advertising affects economies – particularly, the advertising industry within the knowledge economy, and within the value chain of the creative industries (**Section 3.2**).

3.1 – The changing face of the advertising industry

The last three decades have seen major changes to the structure and operations of the advertising industry, as well as radical changes to the range of services advertising provides, the number of channels and media across which advertising is co-ordinated, and the range of inter-connected activities which constitute a modern campaign.

A key change has been the expansion and inclusion of so-called ‘non-traditional’ advertising (direct marketing, promotions, event-related, directories, public relations, sponsorship, etc.) within and around the broader ‘traditional’ media campaigns (press, radio, TV, outdoor, cinema, Internet, etc.). **Table 1** indicates the range of these traditional and non-traditional channels.

Traditional	Direct Mail	Includes all advertising communications through the mail or other delivery service including: cards, letters, brochures, pamphlets, catalogues, flyers, video tapes, CDs and promotional items.
	Television	Includes all advertising communications conducted through local, national, or cable TV.
	Radio	Includes all advertising communications conducted through local and national radio channels.
	Newspaper	Includes all space advertising, free standing inserts (FSIs), and other advertising inserts in community, local, regional, or national newspapers distributed daily, weekly, monthly, and on Sunday.
	Magazine/Periodical	Includes all space advertising, advertising inserts, and "market place" advertisements in periodical magazines and other publications.
	Billboard	Large outdoor advertising typically in high traffic areas such as alongside busy roads
	Internet	Includes banner ads and email newsletters, social media and online marketing; corporate pages with logos (such as Facebook Fan Pages) and widgets (such as interactive elements)
	Other	Includes all other advertising media including displays, "take-one", package inserts, facsimile, kiosks, match books, paperback books, outdoor advertising, Yellow Pages directories.
Non traditional forms		Event promotion, Loyalty Clubs, Coupons, mobile coupons, Gift-with-purchase, shopper applications, social crowd sourcing and other new platforms where there are opportunities to engage with the consumer in a more strategic and ongoing relationship.

Table 1: Advertising by channel

Changes to the advertising industry are being driven primarily by three key inter-related trends: globalisation, digitalisation, and convergence⁸. These shifts are having profound effects on how consumers access and interact with media, and *who* those consumers are – and the advertising industry is responding to those changes. Also non-traditional advertising and direct marketing have benefitted from digital media's ability to collect and store data, which in turn means more reliable and quick feedback to advertisers and in some cases a higher return on investment (ROI) for advertisers.

In terms of digitalisation, the move to online advertising as a proportion of media spend seems inexorable: the European Interactive Advertising Association (EIAA) annual member survey predicts minimum 15% year-on-year increases in online advertising spend by their clients for the foreseeable future. This shift has actually been led by UK advertisers, with the UK's share of domestic online advertising spend reaching 18.9% of all advertising spending in 2009 – and rising fast – compared to 13% in the US.⁹

Convergence has no simple definition, but usefully encapsulates a wide range of changes to how people experience and interact with media and technology.¹⁰ This convergence has resulted in more complex and sophisticated relationships with brands – through multiple channels simultaneously. It is arguable that internet phenomena companies such as Zynga, the makers of Facebook games such as Cityville and Mafia Wars – recently valued at about \$10bn – demonstrates this kind of convergence with advertising.¹¹ Zynga's business model straddles categories such as games development, social networking, information processing and, through their sales of 'virtual' goods, advertising. Advertising has responded strongly by also moving into this space¹², as the EIAA Media Multi-tasking Report found that almost a quarter (22%) of all Europeans now use TV and internet simultaneously. Just one example of innovation combining social media with new technology to take advantage of converged media would be the 'LiveCycle' mobile phone application developed by CP+B as part of a campaign for Coke Zero, which allowed users to re-create the 'light-cycle' races from the recent 'Tron: Legacy' film in real life, with users tracked geographically in real time.¹³

Partly because of, and partly causing, convergence and digitalisation, the increasing globalisation of business has also driven changes in advertising. Both media growth and general economic growth in the wake of the 2008 recession have been proceeding at a much faster pace in the emerging economies than in the western developed economies. This is even the case compared to the (relatively) fast-growing creative industries in the UK. For example, while the UK creative industries grew at an annual 5 percent on average between 1997 and 2004, compared with 3 percent for the rest of the economy, world trade of creative products annual growth rate was 8.7 percent during 2000-2005, and reached

⁸ See Reid, B, Albert, A, and Hopkins, L. (2010) *A Creative Block? The Future of the UK Creative Industries*, London: the Work Foundation, <http://bit.ly/ha4B0G>

⁹ TSB Driving Innovation Creative Industries Technology Strategy 2009-2012
<http://snipurl.com/1lwqyp>

¹⁰ Mueller, M. (1999) Digital Convergence and its consequences *The Public* Vol.6 (1999), 3, 11-28

¹¹ See Reid, B, Albert, A, and Hopkins, L. (2010) *A Creative Block? The Future of the UK Creative Industries*, London: the Work Foundation, <http://bit.ly/ha4B0G>

¹² Escobar, J. F., (2005) *Marketing Communications Procurement: Best Practices*. New York: Association of National Advertisers

¹³ <http://www.cocacolazero.com/tron/support/>

US\$424.4 billion in 2005.¹⁴ This suggests that advertising growth (and innovation in advertising, as it will be closer to the needs of the new customers) is as likely to come from non-western countries over the next decades. Such shifts, driven by globalisation, represent a stark challenge to the traditional UK strength in advertising.

These developments have wrought some specific changes on the structure of the advertising industry. These changes have been global, but equally have affected the UK. They have, for example, driven a trend towards global ‘holding companies’ of many branded advertising agencies: since the early 80s, these holding companies have transformed the structure of the top end of the industry.¹⁵ These holding companies provide the global reach, scale, and access to finance capital needed to manage accounts for huge global clients, but allow relatively small autonomous units that you would expect to find in a high-human-capital industry – driven by creativity and specialist knowledge – where there are comparatively few economies of scope.

The holding company model offers a continued degree of flexibility and specialisation within individual agencies – the ‘unbundling’ of services¹⁶ – as clients demand more services in specialist channels in non-traditional areas and online, while being able to keep a global client’s overall spend within a single overall set of agencies. Unbundling may signal the structural end of the older-style ‘one-stop-shop’ agency, but it is also an indication of the increasing complexity of advertising offerings and the advertising value chain – stretching across holding companies, advertising agencies, media agencies and marketing services.¹⁷ It has also had the effect of spreading advertising expertise in a higher proportion of organisations based outside the advertising industries’ traditional tight geographic clusters¹⁸ (see also **Section 4.5.2** below).

The rise of the global holding companies is an elegant solution to grasp some of the positives of globalisation and convergence, while creating enough scale to serve global company needs effectively. It does, however, create a highly complex set of economic inter-relationships, which complicate an understanding of the impact of the advertising industry on particular national economies. It has also forced the advertising industry to develop new business models and to go beyond advertising to focus on consumer-centric marketing tactics.¹⁹

¹⁴ **United Nations Conference on Trade and Development** (2008) Creative Economy Report 2008: The challenge of assessing the creative economy towards informed policy-making, www.unctad.org/creative-economy

¹⁵ **Von Nordenflycht, A** (2011) ‘Firm Size and Industry Structure Under Human Capital Intensity: Insights from the Evolution of the Global Advertising Industry’. *Organisation Science*, Vol. 22, No. 1, pp. 141 - 157

¹⁶ **Arzaghi, M., E. R. Berndt, J. C. Davis, A. J. Silk.** (2008) Economic factors underlying the unbundling of advertising agency services. Working, Paper 14345, NBER, Cambridge, MA.

¹⁷ **Horsky, S** (2006) ‘The Changing Architecture of Advertising Agencies’ *Marketing Science* Vol. 25, no. 4, p. 367

¹⁸ **King, C, Silk, AJ, Ketelhohn, N** (2009) ‘Knowledge Spillovers and Growth in the Disagglomeration of the US advertising-agency industry’, *Journal of Economics & Management Strategy*, Vol. 12, No 3, 327-362

¹⁹ **Berman, S, Battino, B, Feldman, K** (2009) Beyond Advertising: Choosing a strategic path to the digital consumer *IBM Institute for Business Value*

Many of these changes to the UK advertising industry, in structure, and response to the key trends, have been accelerated by the recent recession. Advertising has traditionally been particularly 'pro-cyclical', i.e., to a greater degree than most industries, it does better when the overall economy is doing well and worse than most industries when the overall economy is doing badly. **Figure 1** below indicates that this trend continued as we entered the most recent downturn.

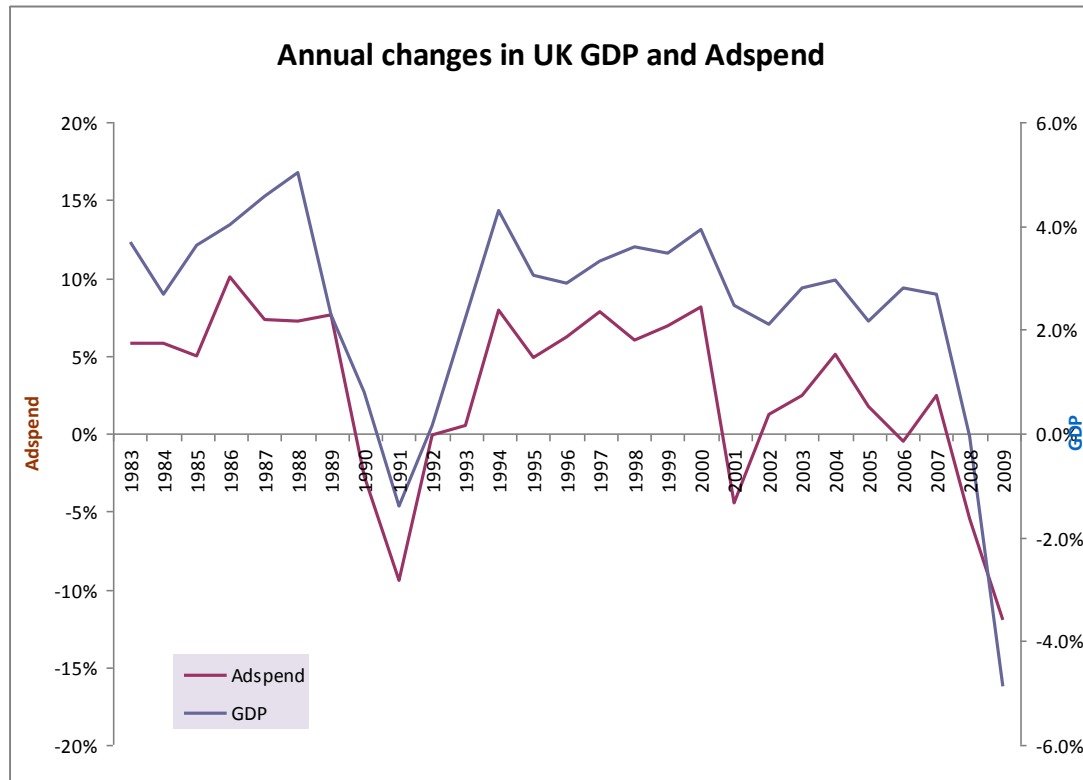


Figure 1: Annual changes in UK GDP and advertising expenditure, 1983-2009

Source: WARC Data (www.warc.com)

Further evidence of the severity of the effects of the recession on the advertising industry include reaching the highest rate of business failure (13 percent) compared to other creative and cultural industries through the recession,²⁰ and the October 2008 Bellwether Report reporting the largest ever fall in annual marketing budgets in the survey's 9-year history.²¹ As corporate profitability has gradually returned, so has the general positive outlook for the advertising industry in the UK. However, the longer-term implications of the recession on the UK advertising industry in terms of the global balance of power may not yet be fully felt.

The combination of the recent recession, and a range of global, long-term trends, have wrought considerable changes on the advertising industry, and set the context for the industry's role within the UK creative industries.

²⁰ **Creative and Cultural Skills and Skillset** (2010) Strategic Skills Assessment for the Digital Economy, London, http://www.skillset.org/uploads/pdf/asset_14618.pdf?1

²¹ **Quarter 2 2010 IPA / BDO Bellwether Report**, <http://www.ipa.co.uk/content/Q2-2010-Bellwether-marketing-spend-down>

3.2 – Advertising and the creative industries

The advertising industry in the UK sits within two key broader industry categories. Firstly, it is part of the ‘knowledge economy’. The biggest employment trend in the UK over the last 50 years has been the shift from a tangible, labour-power market, to a knowledge economy. The second is the advertising industry as a sub-section of the knowledge economy – the *creative economy*.

There are three key drivers of a greater level of employment in the knowledge economy in the UK, all of which are evident in the changes to the advertising industry outlined in the previous section:²²

- **Increasing investment in intangibles** – There has been a fundamental shift in investment priorities towards the creation and exploitation of knowledge and other intangible assets such as research and development, IT, branding and advertising, and organisational development.²³
- **Expansion of higher education** – Between 1970 and 2005 the proportion of the population with a graduate level education or above increased from 2 per cent to 20 per cent
- **Technological development** – The rapid development of general purpose technologies (GPTs) such as the personal computer and the internet have had transformational impacts on the flow of global capital, the processing and communication of information and the development of organisational systems and processes.

Advertising is fundamentally a knowledge business, driven by the creativity and expertise of its professionals. These constitute, to a very great degree, intangible assets for organisations. Advertising has also, traditionally, employed a high proportion of highly-qualified individuals compared to many other industry sectors and, as we have seen, much of its new business is driven by creative use of new technologies. These attributes place advertising at the centre of the UK knowledge economy, but also ensure advertising is a key sector facing what is known as the ‘value paradox’, whereby organisations recognise the value of such assets but are unable to account for them through conventional accountancy rules.²⁴ There are some potentially serious implications to this paradox. For example, along with many of the other creative industries, it is likely that advertising businesses will be ‘undervalued’ when seeking to access debt finance for growth.²⁵

²² Brinkley, I. (2008), *The Knowledge Economy: How Knowledge is Reshaping the Economic Life of Nations*, London: The Work Foundation, <http://bit.ly/gO2tKA>

²³ Blaug, R and Lekhi, R (2010) *Accounting for intangibles: Financial reporting and value creation in the knowledge economy*, London: the Work Foundation, http://www.theworkfoundation.com/assets/docs/publications/223_intangibles_final.pdf

²⁴ Aizcorbe, A., C. Moylan, and C. Robbins (2009) ‘Toward a Better Measurement of Innovation and Intangibles’ *Survey of Current Business*. Bureau of Economic Analysis, Washington, D.C., http://www.bea.gov/scb/pdf/2009/01%20January/0109_innovation.pdf

²⁵ Chandler, Chris and Henning, Kay (2009) *Access to Finance For the Cultural and Creative Industries In the South East of England*, Guildford: South East England Development Agency, <http://bit.ly/hXXbXY>

The other implication is that the value paradox presents considerable additional complications when looking to understand the economic value and contribution of the industry to the overall economy. One option for explicating the contribution of the advertising industry to the national economy is to see it within the context of the creative industries value chain.

3.2.1 – Advertising in the creative industries value chain

Advertising was placed as a key creative industry by the UK Department of Culture, Media and Sport's Creative Industries Mapping Project.²⁶ Its key publications in 1998 and 2001 brought together a formerly fairly disparate group of industrial categories under the broad heading of the 'creative industries'. The industrial categories they coalesced in their mapping exercise became known as the 'DCMS 13':

- Advertising, Architecture, Art and antiques, Computer games, Crafts, Design, Designer fashion, Film and video, Music, Performing arts, Publishing, Software, TV and radio

By drawing together, in particular, the 'arts' or 'cultural' sector with a range of professional services sectors such as advertising, architecture and software²⁷, these publications provided an effective 'blueprint' for a new – and surprisingly large and influential – sector: the creative economy. The DCMS 13 provided a set of industrial sectors defined by their core activities: 'the management of creativity and innovation in complex knowledge flows; a cycle from the generation of original ideas to their realisation and consumption, whether as performances, products or services'.²⁸

The Work Foundation's 2007 report *Staying Ahead* articulated some of the inter-relationships between the different elements of the UK creative industries with its model based on a concept of 'expressive value'.²⁹ While the model was explicitly designed so that no particularly sub-sector of the creative industries would fit only into one category, it is clear that the advertising industry plays a particular role in the mass reproduction of expressive outputs based on copyright and intellectual property, and of facilitating the link between those expressive outputs and their role in the broader economic value chain (see **Figure 2** below).

The primary 'logic' of the model is that expressive value spills over from the 'core' activities, outward through the concentric circles. However, particularly as a result of convergence and the increasingly networked nature of organisational interactions, the flow of value for many complex businesses such as advertising agencies is more multi-directional.³⁰

²⁶ **DCMS** (2001), Creative Industries Mapping Document 2001 (2 ed.), London, UK: Department of Culture, Media and Sport, http://www.culture.gov.uk/reference_library/publications/4632.aspx

²⁷ **O'Connor, J.** (2007) The cultural and creative industries: a review of the literature, Arts Council England: Creative Partnerships, <http://www.creativitycultureeducation.org/data/files/cce-lit-review-creative-cultural-industries-257.pdf>

²⁸ **Jeffcutt, P.** (2000) 'Management and the Creative Industries.', *Studies in Cultures, Organizations & Societies*, 6, No. 2, 123-7

²⁹ **Andari et al.** (2007) *Staying Ahead: the economic performance of the UK Creative and Cultural Industries*, London: the Work Foundation / DCMS, <http://snipurl.com/stayingahead>

³⁰ **Reid, B, Albert, A, and Hopkins, L.** (2010) *A Creative Block? The Future of the UK Creative Industries*, London: the Work Foundation, <http://bit.ly/ha4B0G>

Within the model, the advertising industry naturally develops intellectual property and creative outputs of its own – for example in campaign ideas – but within the value chain of the creative industries, it clearly also:

- acts as a catalyst for the distribution and consumption of creative outputs developed by others;
- commissions the production of expressive value works for campaigns including in art, design, sound, music and media production;
- provides content for a range of creative industries business models reliant on advertising, such as free-to-air TV, newspapers, and many internet services.³¹

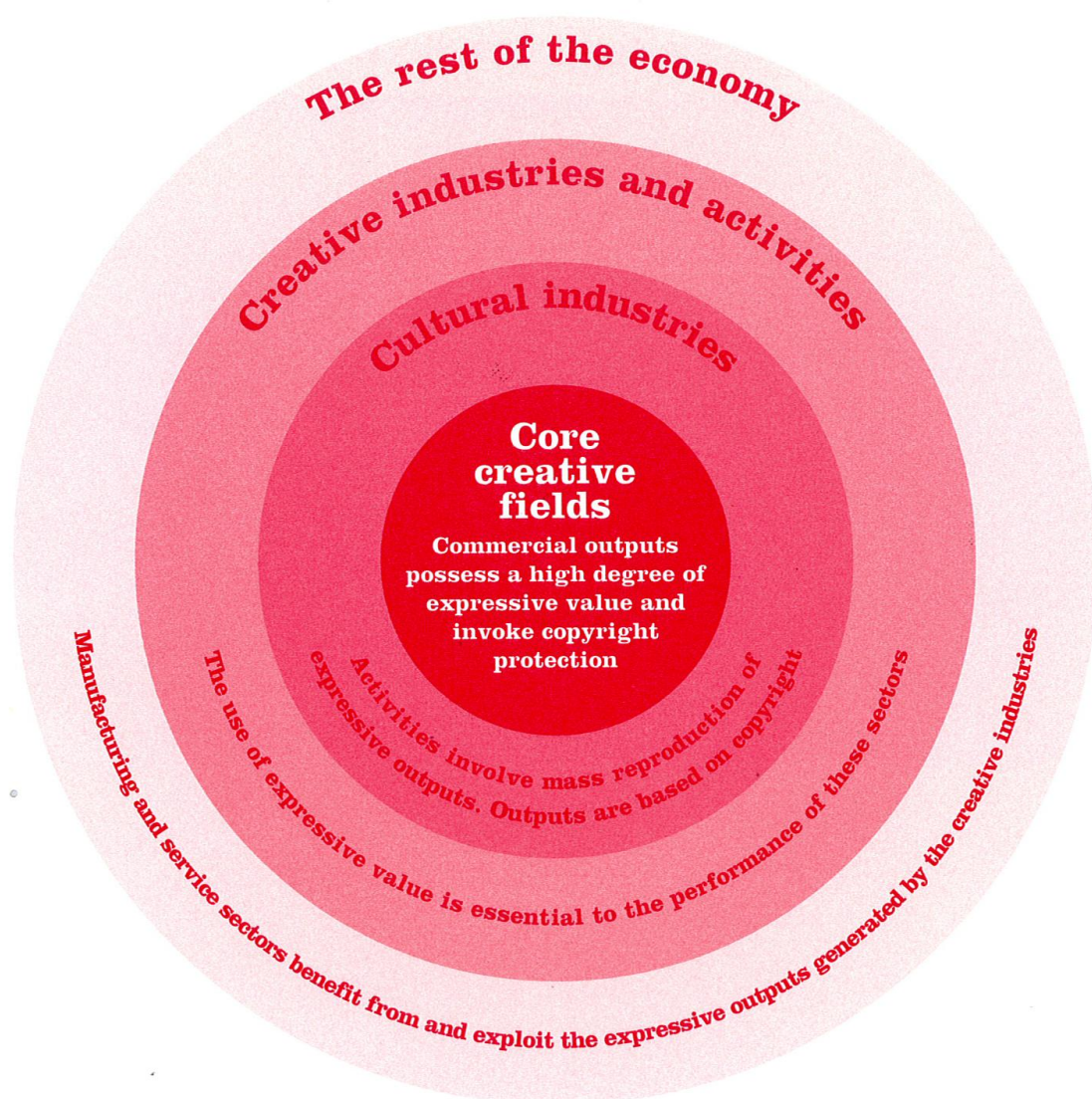


Figure 2: Modelling the inter-relationship between the creative industries

³¹ Deighton, John and Quelch, John (2009) *Economic Value of the Advertising-Supported Internet Ecosystem*, Cambridge, MA: Interactive Advertising Bureau, <http://www.iab.net/media/file/Economic-Value-Report.pdf>

However, with the advent of the huge shift to digital, this is also creating shifts across the value chain and a far more complex ecosystem where companies are forced to vie to capture value and revenue share, and to optimise new distribution platforms whenever, wherever and in whatever format consumers desire.

3.2.2 – Advertising’s role in the economy

In addition to its position in the value chain of the creative industries, the advertising industry also plays a role in the wider economy. The effects of this role are a source of much debate among economists, as well as policy makers and regulators.

In a major study of the economic value of advertising for the World Federation of Advertisers in 2006³², researcher Dr Maximilien Nayaradou summarised the key mechanisms – both positive and negative - through which advertising can be supposed to affect economies.

Proposed positive impacts of advertising on economies:	Proposed negative impacts of advertising on economies:
<ul style="list-style-type: none"> + Stimulating greater competition + Operates as a more cost-effective and timely mechanism for distributing information than individual searches for that information. + Leads to lower prices, and less variation in prices, as the wide dissemination of product price information encourages suppliers to strive to attract customers. + Increases consumption + Drives a reduction in production costs + Allows new competitors offering innovative products to reach new consumers + Increases the pace of introduction of new technologies 	<ul style="list-style-type: none"> - It costs a lot to advertise, and this may therefore entail an increase in consumer prices - It tends to favour the current dominant companies who can most afford to advertise - It encourages ‘superfluous’ investments to the detriment of genuinely productive investments - It promotes a proliferation of falsely differentiated products.

Table 2: The Potential economic impacts of advertising. – **Source:** WFA 2006

Nayaradou concludes strongly that advertising is both a driver of growth, and a positive force within national economies, utilising a country comparative approach which indicates the positive correlation between advertising investment rates and productive efficiency – a useful method for addressing some thorny issues. But his conclusions are in contrast to a tradition of economic research into advertising’s effects: a 1996 review of 20 years of papers on the broader effects of advertising on markets concluded that the empirical evidence

³² Nayaradou, Maximilien (2006) *Advertising and economic growth*, Word Federation of Advertisers, http://info.wfa.be/WFA-UDA_Advertising&Economic_Growth.pdf

doesn't support the contention that advertising grows markets.³³ However, the vast majority of the papers studied concern whether *tobacco* advertising grows markets, and this clearly emotive issue may well have had an influence on the framing of the research studies reviewed.

A pragmatic approach to this issue might be to conclude that while 'there is always the *possibility* that advertising affects the size of a particular market, its actual scale and significance are highly variable across individual cases'.³⁴ For the World Advertising Research Centre, Tim Broadbent adopts this approach by bringing together analysis of advertising campaign effectiveness with analysis of the broader changes to markets and demand through advertising. He concludes that evidence for growth of a particular market category within a hierarchy of markets doesn't imply growth in the larger category. For example, increasing purchases of Mitsubishi brand 4x4s in a particular national market might be evidence of growth in the Sports Utility Vehicles sub-sector, but it also might be growth at the expense of other brands. Equally, growth in the Sports Utility Vehicle sub-sector doesn't necessarily equal growth in the car market, or indeed in transportation. As he notes, because of these issues, 'it is permissible for two people to inspect the same data set and for one to conclude that, yes, advertising grew the market, and for the other to conclude that, no, it didn't'.³⁵

On balance, Broadbent concludes, advertising's ability to create desire, demand, and to in-and-of-itself grow markets is 'perhaps less powerful than commentators allege'. It is also probably salient that his review finds that the vast majority of IPA Effectiveness Award nominees make no claims to be attempting overall market growth – let alone national economic growth – for their campaigns.

However, there does appear to be some evidence from non-commercial campaigns – for example in health promotion and public information – that there is broader consumer behaviour and market change, and also that there is a channel through which consumer comfort with almost ubiquitous advertising – for example on much of the internet, and not just in 'formal' adverts – facilitates new business models which are not grown directly by advertising, but are only made possible through advertising:

"Much of what users do every day on the Internet is to interact with promotionally-oriented material or content supported by advertising. With the exception of information provided by city, state, or the federal government as a public service, nearly all other information [on the internet] is provided with some degree of self-promotion, or because advertising helps to fund it."³⁶

³³ **Luik, J.C., and Waterson, M.J** (eds) (1996) *Advertising and Markets: a Collection of Seminal Papers*, Oxfordshire, England: NTC Publications

³⁴ **Broadbent, Simon** (ed) (1997) *Does Advertising Affect Market Size?* London: Advertising Association Economics Committee

³⁵ **Broadbent, Tim** (2008) 'Does Advertising Grow Markets? More evidence from the UK', *International Journal of Advertising*, Vol. 27, No. 5; see also **Broadbent, Tim** (2007) *Does Advertising Create Demand?*, London: World Advertising Research Centre

³⁶ **Deighton, John and Quelch, John** (2009) *Economic Value of the Advertising-Supported Internet Ecosystem*, Cambridge, MA: Interactive Advertising Bureau, <http://www.iab.net/media/file/Economic-Value-Report.pdf>

What is clear is that the changing nature of advertising – as it increasingly moves online, and as convergence breaks down the more traditional categories of both advertising channels and advertising businesses – is making analysis of the macro-effects of advertising as an industry more complex. To build a picture of the advertising industries' contribution to the UK economy will require the combination of a number of proven useful approaches, and to situate the analysis within both the discussion of the creative industries and the broader economic impact debate.

4 – Calculating the advertising industry’s contribution to the UK economy

In **Section 4** of this report, we undertake an analysis of some of the key ways in which the UK advertising industry contributes to the UK economy. We begin by outlining the main approach and methods we will be using to build up a picture of the industry’s contribution to the UK economy (**Section 4.1**). We then look at the different kinds of economic contributions which the industry makes, breaking them down into direct (**Section 4.2**), multiplier (**Section 4.3**), indirect and induced (**Sections 4.3.1 and 4.3.2**), and catalytic value (**Section 4.4**).

4.1 – Approach

In compiling our approach to an economic valuation of the UK’s advertising industry, we have built on the body of research deploying an economic impact methodology already undertaken in other sectors/sub-sectors of the creative industries, particularly Oxford Economics’ studies of the economic contribution of the UK Games Development Industry³⁷, the UK Film Industry³⁸, and also the UK Fashion Industry³⁹. We have also drawn on the World Federation of Advertisers’ 2006 analysis of *Advertising and Economic Growth*⁴⁰, to shape our analysis of the wider catalytic effects of the advertising industry.

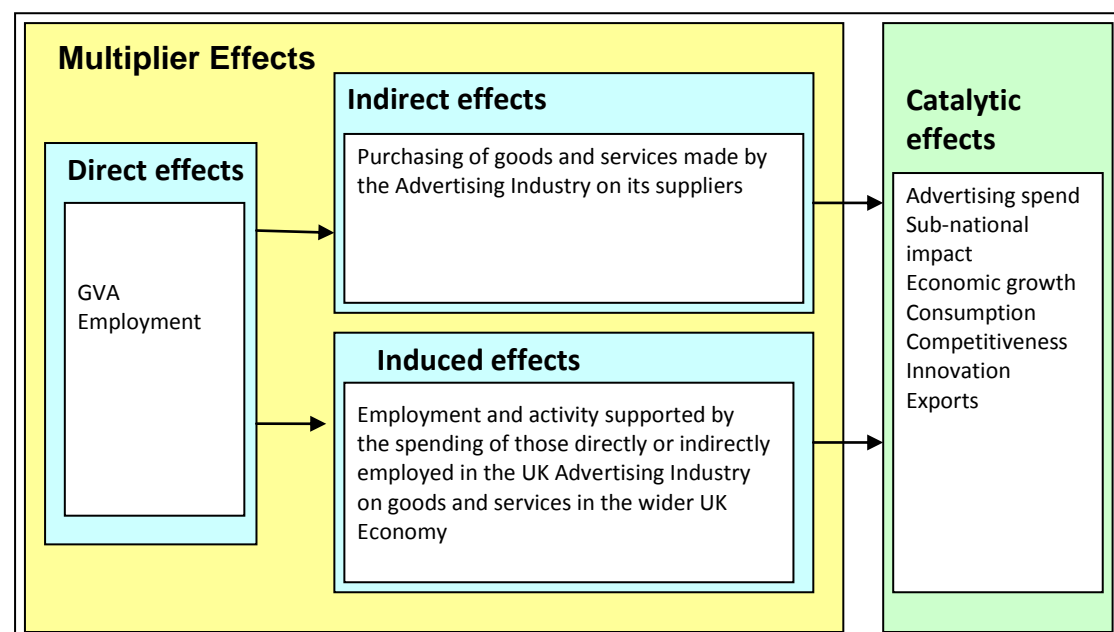


Figure 3: Modelling the economic contribution of the UK advertising industry

We have used publicly available national statistics for the majority of the data for our analysis, since the extent of economic modelling used in the Global Insight study of the

³⁷ Oxford Economics (2008) *The economic contribution of the UK Games Development Industry*, <http://www.oef.com/free/pdfs/gamesimpact.pdf>

³⁸ UK Film Council (2010) *The Economic Impact of the UK Film Industry*, <http://bit.ly/fzpAcO>

³⁹ British Fashion Council (2010) *The Value of the UK Fashion Industry*, <http://www.britishfashioncouncil.com/valueoffashion>, Oxford Economics

⁴⁰ Nayaradou, Maximilien (2006) *Advertising and economic growth*, World Federation of Advertisers, http://info.wfa.be/WFA-UDA_Advertising&Economic_Growth.pdf

Economic Impact of Advertising Expenditures in the US⁴¹ was beyond the scope of this project. In more detail, we have decided to focus on the following channels of economic impact:

Direct effects:	The employment and activity within the UK advertising industry itself. In other words this is the reaction of advertising producers to meet an increase in demand for advertising.
Economic Multiplier effects:	<p>The initial change in aggregate demand can have a much greater final impact on the level of national income and thereby the national economy more broadly. This is known as the multiplier effect and it comes about because injections of demand into the circular flow of income stimulate further rounds of spending, which in turn leads to bigger effects on employment and output activity. In other words, one person's spending is another person's income. The economic impact (jobs, expenditure or income) of an industry is multiplied because of knock-on effects on the economy.</p> <p>There are various types of economic multiplier, relating to supply linkages and to income. There are also a number of different ways in which multipliers can be estimated. We will work with a standardised multiplier of direct value. We will calculate this multiplier by assessing the industry's immediate indirect value, using the ONS input-output tables, and induced value, using employment costs. The multiple is then an estimate of the additional outputs and outcomes that will occur through purchases along local supply chains, employee spending rounds and longer-term effects as a result of an industry.⁴²</p>
Indirect effects:	The activity supported down the supply chain to the advertising industry. This is the purchasing of goods and services made by the advertising industry on its suppliers.
Induced effects:	The activity supported by the spending of those directly employed in the UK advertising industry on goods and services in the wider UK economy. As a result of the direct and indirect effects, the level of household income throughout the economy will increase as a result of increased employment. A proportion of this increased income will be re-spent on final goods and services.
Catalytic effects:	The economic value of the direct, indirect and induced effects is related to the total contribution of the UK advertising industry. However, there are also wider catalytic effects of the advertising industry that need to be taken into consideration. These include: advertising spend, regional effects of the advertising industry, effects on growth, consumption, competitiveness, innovation and effects on exports.

Table 3: Areas of economic contribution

In general, the logic of our model is to move from those areas where the method is relatively well understood, and the data is clear (although we highlight specific concerns in this area),

⁴¹ **Raimondi, Michael J, and Klein, Lawrence** (2004) *Comprehensive Economic Impact of Advertising Expenditures*, Association of National Advertisers, Global Insights Group, <http://bit.ly/gUrHde>

⁴² **English Partnerships** (2004) *A Standard Approach to Assessing the Additional Impact of Projects Method Statement Second Edition*, <http://bit.ly/i8szDh>

towards those areas in which advertising can plausibly be making an impact, but where the line of sight, in economic analysis terms, is less sure.

It is also important to explain some definitional issues here since these are important to our understanding of the data we have worked with:

Definitions	
Standard Industrial Classification (SIC):	<p>We have been working with the Standard Industrial Classification (SIC) codes which classify businesses based on the type of activity they engage in. These codes are interesting because they are also comparable with the Eurostat system (NACE) which means that the data is consistent with much of Europe, and country comparisons are possible.</p> <p>The SIC codes were updated in January 2008 to reflect more accurately the changing nature of businesses. Thus, any examination of national statistics over time will include data collected under SIC 2007 as well as SIC 2003. Whilst DCMS have pledged to apply the SIC 2007 definitions on previously collected data, this work is yet to take place.</p> <p>In our analysis we have used SIC code 73.1 (2007) in Section M: Professional, Scientific and Technical Activities. This excludes Market Research and Opinion Polling which fall under SIC 73.2 (2007). Unfortunately the SIC 2003 definitions do not have such a clear breakdown and advertising comes under SIC 74.4 (2003) in Section K: Real Estate, Renting and Other Business Activities. For a clearer comparison of SIC (2003) and SIC (2007) please see Appendix 1.</p>
The Creative Industries:	<p>The current national statistics produced by the ONS and DCMS define the creative industries using the DCMS's 2001 Creative Industries mapping document. They identify nine main industries, namely:</p> <p>Advertising; Architecture; Art & antiques; Designer Fashion; Video, Film & Photography; Music & the Visual & Performing Arts; Publishing; Software, Computer Games & Electronic Publishing; and Radio & Television.⁴³</p> <p>Nine main industries are used, in comparison to the original DCMS 13. This is due to insufficient data being available for industries such as Crafts, and in some cases design, as well as the more useful regrouping of certain sub-sectors of the creative industries. However this does not significantly affect the data available on the advertising industry.</p> <p>It is important, however, to acknowledge the considerable overlap between the digital industries and the creative industries – estimates that attempt to measure the former should not be compared to or aggregated with estimates of the latter.</p>

Table 4: Definitions

For more information about specific definitional issues, precise methodologies for each sub-section of this report and more information regarding data sources please refer to **Appendix 1** at the end of this report.

⁴³ These are constructed using the 2003 Standard Industrial Classification (SIC) at the 4 digit level.

4.2 – Direct Value - GVA & Employment

Here we examine the direct value of the advertising industry. The most accurate way to do this is to look at the contribution that the advertising industry makes to total ‘Gross Value Added’ in the UK, and how many people are employed in the advertising industry in the UK.

4.2.1 – GVA (Approximate gross value added at basic prices)

Gross Value Added (GVA) represents the amount that individual businesses, industries or sectors contribute to the economy.⁴⁴ Broadly, this is measured by the income generated by the business, industry or sector less their intermediate consumption of goods and services used up in order to produce their output.

GVA consists of labour costs (e.g. wages and salaries) and an operating surplus (or loss). The latter is a good approximation to profits. The cost of capital investment, financial charges and dividends to shareholders are met from the operating surplus. Whilst GVA and GDP are closely linked, GVA is a better measure of the direct contribution of the advertising industry to the UK economy, because it takes into account taxes and subsidies.

In 2008 the UK advertising industry generated £7.8 billion of GVA at basic prices. This is the greatest contribution to the total UK economy made by the advertising industry over the past eight years and appears to be a steady increase since 2006.

Year	Approximate GVA at basic prices (£ million)	Total UK GVA (£ million)
2008	7,762	915,267
2007	6,211	879,010
2006	5,305	816,697
2005	6,712	781,485
2004	5,632	736,899
2003	5,210	683,840
2002	5,357	658,253
2001	5,542	651,173
2000	6,108	623,050

Table 5: Approximate contribution of the Advertising Industry to GVA at basic prices

Source: ABI/ABS & BRES

It is important to note that the approximate GVA at basic prices for the UK advertising industry in 2009 is £3,871 million. There are a number of potential explanations for such a large decrease in GVA from 2008 to 2009. This figure may reflect the impact of the recession on the advertising industry. However, another explanation could be methodological: changes in the measurement system as the Annual Business Survey and the Business Register Survey are being merged to form the Business Register and Employment Survey (BRES).⁴⁵

⁴⁴ <http://www.statistics.gov.uk/abi/downloads/ABS-BG-Info.pdf>

⁴⁵ <http://www.ons.gov.uk/about/surveys/a-z-of-surveys/business-register-and-employment-survey/index.html>

If we situate the advertising industry within the creative industries more broadly, we can use the economic estimates produced by the DCMS to draw useful comparisons⁴⁶ with the DCMS 13 definitions of the Creative Industries. The figures in **Table 6** below are for 2008⁴⁷.

Sector	GVA at basic prices (£ million)	Proportion of total UK GVA (%)
1. Advertising	7,800	0.7%
2. Architecture	3,600	0.3%
3. Art & Antiques	300	0.03%
5. Design	1,600	0.2%
6. Designer Fashion	100	0.01%
7. Film, Video & Photography	2,700	0.3%
9. & 10. Music & Visual and Performing Arts	3,200	0.3%
11. Publishing	10,100	1.0%
8. & 12. Software & Electronic Publishing	26,400	2.5%
13. TV & Radio	3,200	0.3%
Total GVA for Creative Industries	59,100	5.6%
Total GVA for all industries	1,053,900	

Table 6: Gross Value Added (GVA) of the Creative Industries, UK 2008 data

Source: DCMS economic estimates from ABS, ONS

From **Table 6** it is clear that advertising makes the third largest contribution to GVA within the creative industries, behind publishing and software and electronic publishing. Advertising contributes a 0.7% share in the UK's total GVA and is a significant player within the UK's creative industries.

Table 7 below highlights the average growth in GVA from 1997 – 2007 for the creative industries sub sectors, as well as the relative size of sub-sector of the creative industries, based on the share in overall GVA.⁴⁸ From **Table 7** it can be seen that advertising grew an average of 4% per annum between 1997 and 2007 which is similar to the Architecture subsector and average for the Creative Industries sub-sectors overall. Software, Computer Games & Electronic Publishing has had the highest average growth at 9 per cent per annum between 1997 and 2007. The lowest was Radio and Television where GVA was broadly flat over the same period.

⁴⁶ **DCMS** (2010) Creative Industries Economic Estimates (Experimental Statistics) Full Statistical Release, www.culture.gov.uk/images/research/CIEE_Full_Release_Dec2010

⁴⁷ It is important to note that there is not sufficient data to assess the GVA of the crafts industry. Also the figure for the total GVA of all industries is taken from the National Accounts Blue Book, and adjusted for the fact that the ABS does not have complete coverage of the economy.

⁴⁸ **Scheffel, E. & Thomas, A.** (2011) *Employment and intangible spending in the UK's creative Industries*. Economic & Labour Market Review, www.statistics.gov.uk/articles/elmr/elmr-jan11-scheffel.pdf

Creative Industries sub-sector	Share in UK total GVA, 2007	Average growth in GVA 1997 - 2007
Advertising	0.6%	4%
Architecture	0.6 %	4%
Art & Antiques	0.06%	5%
Designer Fashion	0.05%	3%
Video, Film & Photography	0.3%	2%
Music and the Visual & Performing Arts	0.4%	2%
Publishing	1.0%	2%
Software, Computer Games & Electronic Publishing	2.9%	9%
Radio & Television	0.2%	0%

Table 7: The UK's creative Industries: shares in total GVA and growth

Source: Annual Business Inquiry (ABI) micro data produced by ONS. DCMS 2010

The creative industries grew by an average of 5 per cent each year between 1997 and 2007 which compares to an average of 3 per cent for the whole of the economy over this period. Also, the creative industries, excluding Crafts and Design, accounted for 6.2 per cent of GVA in 2007.

This section has examined direct Gross Value Added contribution of the advertising industry to the UK economy. It found that, for 2008, the advertising industry makes a significant contribution of £7.8bn. This makes it the third largest sub-sector the UK's creative industries for 2008.

4.2.2 – Employment

Employment in the advertising industry is another key way in which to examine the economic value of the UK's advertising industry. More people in employment equates to more products and services being produced, more wages earned, a higher standard of living, an increase of highly skilled workers, increased consumer spending and greater tax contributions amongst other things.

Employment in advertising, which includes employees and the self employed, totalled 120,900 in the last quarter of 2010. Employment in the advertising industry has remained relatively steady over time and increased steadily in 2010. Advertising is a relatively large subsector of the creative industries, both in terms of employment and GVA, and therefore makes a significant contribution to the UK economy more broadly.

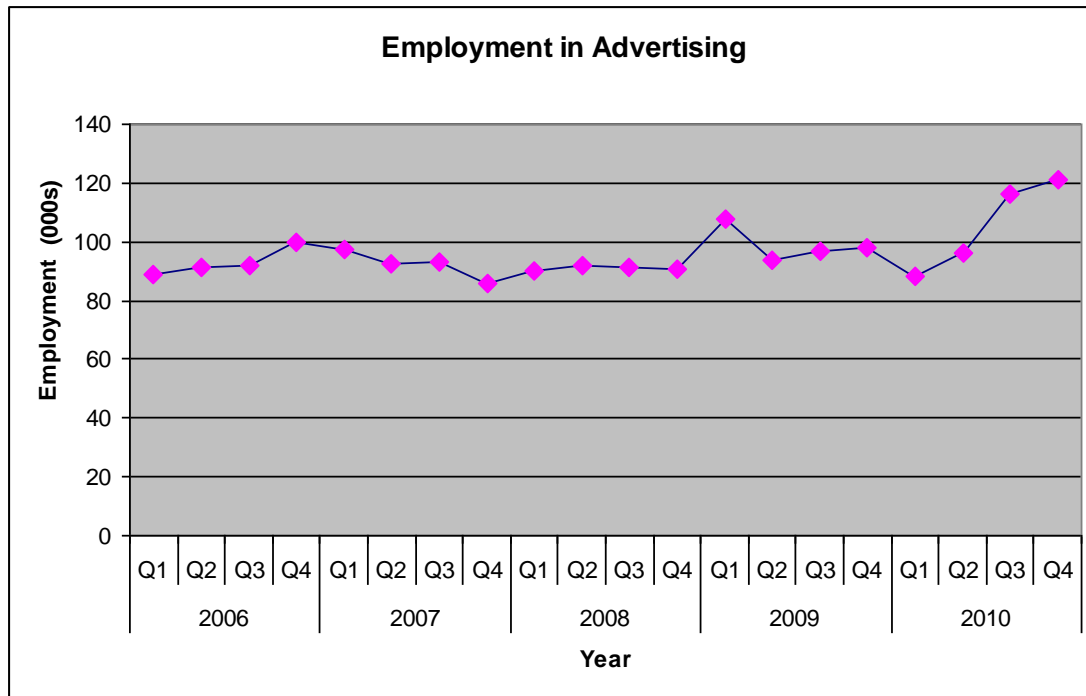


Figure 4. Employment in the UK Advertising Industry 2006 – 2010

Source: Labour Force Survey (LFS) produced by the ONS.

Figure 4 above shows the pattern of employment in advertising in the UK over the period 2006 – 2010.

It is also possible to compare employees in the advertising industry with those who are self-employed, those employees doing advertising jobs in other industries and those who are self-employed doing advertising in other industries. The breakdown using 2010 data for July – September is shown in **Table 8** below.

Employees in Advertising Industry	89,100
Self-employed in the Advertising Industry	25,400
Employees doing advertising jobs in other industries	163,800
Self-employed doing advertising jobs in other industries	21,000
Total employment	299,300

Table 8: Breakdown of Employment in the UK Advertising Industry, 2010 July – September.

Source: Labour Force Survey produced by ONS.

Table 8 shows that there are just under 164,000 employees who consider themselves to be undertaking advertising type jobs outside of the advertising industry itself, which is a relatively high number compared to the total number of employed and self-employed employees who consider themselves to work within the advertising industry.

If we situate employment in the advertising industry within the broader creative industries we can also see some interesting comparisons. **Table 9** below shows the total employment in the creative industries and the average growth rate of employment between 1997 and 2008.

Creative Industries Workforce	Total Employment in 2008	Average employment growth 1997 - 2008
Advertising	248,600	2%
Architecture	130,100	3%
Art & Antiques	23,000	1%
Crafts	101,700	1%
Design & Designer Fashion	107,200	3%
Video, Film & photography	63,500	0%
Music and the Visual & Performing Arts	272,100	2%
Publishing	242,700	-2%
Software, Computer Games & Electronic Publishing	681,600	5%
Radio & Television	100,700	0%

Table 9: Employment in the Creative Industries.

Source: Inter Departmental Business Register, DCMS 2010

According to these employment figures, the workforce of the advertising industry appears relatively similar to that of the publishing sector, and appears to have sustained a moderate employment growth of 2% over the period from 1997 – 2008. Interestingly, the Software, Computer Games and Electronic Publishing sub-sector employs by far the largest number of workers at close to 700,000 and it also expanded at the fastest rate of 5 per cent between 1997 and 2008.

It should be noted that the different totals figures between **Tables 8** and **9** are due to different data collection methodologies between the Labour Force Survey and the Inter Departmental Business Register (IDBR).

This section has reviewed employment in the UK advertising industry for 2010. It found that ‘core’ advertising employment within agencies stood at just over 89,000. However, taking into account a broader measure including self-employed and those doing advertising roles in other industries, employment stood at between 249,000 and 300,000. Advertising is the 3rd largest UK creative industry in terms of employment. Advertising employment does not seem to have been significantly affected by the recent recession.

4.3 – Multipliers and spill-overs to other UK industries

It is clear from the direct contribution calculations in the section above that the advertising industry contributes a significant amount to the UK economy overall. However, there are also *indirect* contributions to the economy through the purchases of goods and services from other industries by the advertising industry, and *induced* contributions to the economy by those directly and indirectly employed in the UK advertising industry spending their earnings on other goods and services in the UK. These impacts are a ‘multiple’ of the original GVA – hence ‘multiplier effects’. They are also ‘spill-overs’; that is, they are economic impacts which extend outward from the advertising industry into other industries.

But both of these impacts can be extended further outwards: for example, in terms of indirect impacts, those organisations from which advertising firms purchase products and services, also purchase products and services from other industries to provide products and services to the advertising industry. For induced impacts, the purchases of employees in advertising in turn fund employment in other industries, whose employees themselves make purchases with their income elsewhere in the economy. As these impact chains extend outward, each impact is a *proportion* of the previous round of impact. An *overall* economic impact multiplier for an industry or sector can be reached by a reasonable extrapolation of these multiple rounds of indirect and induced impact assessment, and is therefore the *sum* of those proportions of the original GVA figure.

In **Sections 4.3.1** and **4.3.2** below, we develop a more detailed understanding of the first round indirect and induced spill-over effects. However, most straight-forwardly, we can say that the advertising industry’s overall multiplier is an effect of it being relatively highly paying as an industry on average, and also (as a professional service / knowledge industry) spending a high proportion (almost 65%) of its income in people costs. The advertising industry in the UK therefore can be reasonably estimated to have an overall economic multiplier of 2.0. The multiplier impacts or value of the advertising industry is then the *combined* direct, indirect and induced values:

Estimated GVA for advertising for 2008	Calculated combined multiplier from indirect and induced impacts	Total impact from direct, indirect and induced contributions for 2008:
£7.8bn	2.0	= £15.6bn

From this analysis, the UK advertising industry is estimated to have contributed £15.6 billion to UK GVA for 2008. This figure takes into account the direct, indirect and induced impacts of the industry.

It is important to stipulate that this is in fact only one way of calculating estimates for the value of the UK advertising industry – utilising well-established econometric methods. For example, as noted in the employment section above, were we to use the broader, less standard metric for measuring advertising employment including all in ‘advertising’ roles inside and outside the established advertising industry – the total impact figure would likely be significantly larger.



- This section shows that the *overall* economic multiplier for the UK advertising industry can be estimated at 2.0. Combining the 2008 direct GVA figure with the indirect and induced multiplier of 2.0 gives advertising an overall economic impact figure of £15.6bn for 2008.

4.3.1 – Indirect value

In economic impact assessment terms, the indirect value of the advertising industry can be defined as the goods and services purchased by the advertising industry from its suppliers in the rest of the economy. It is important to take this into consideration since understanding how the advertising industry contributes to the economy in different ways, and the interdependencies between different branches of the economy, enhances our wider notion of the economic value of the advertising industry.

The advertising industry spent £5.23 billion for 2008 on purchasing other goods and services. This is the total intermediate consumption at purchasers' prices from the ONS input – output tables' most recent available data (2008).

This is broken down in more detail in the **Figure 5** below which can effectively be interpreted as the advertising industry's supply chain. The advertising industry in the UK clearly spends the most on market research and management consultancy, as well as on advertising itself, but other big expenditures include architectural activities and technical consultancy, and other business services.

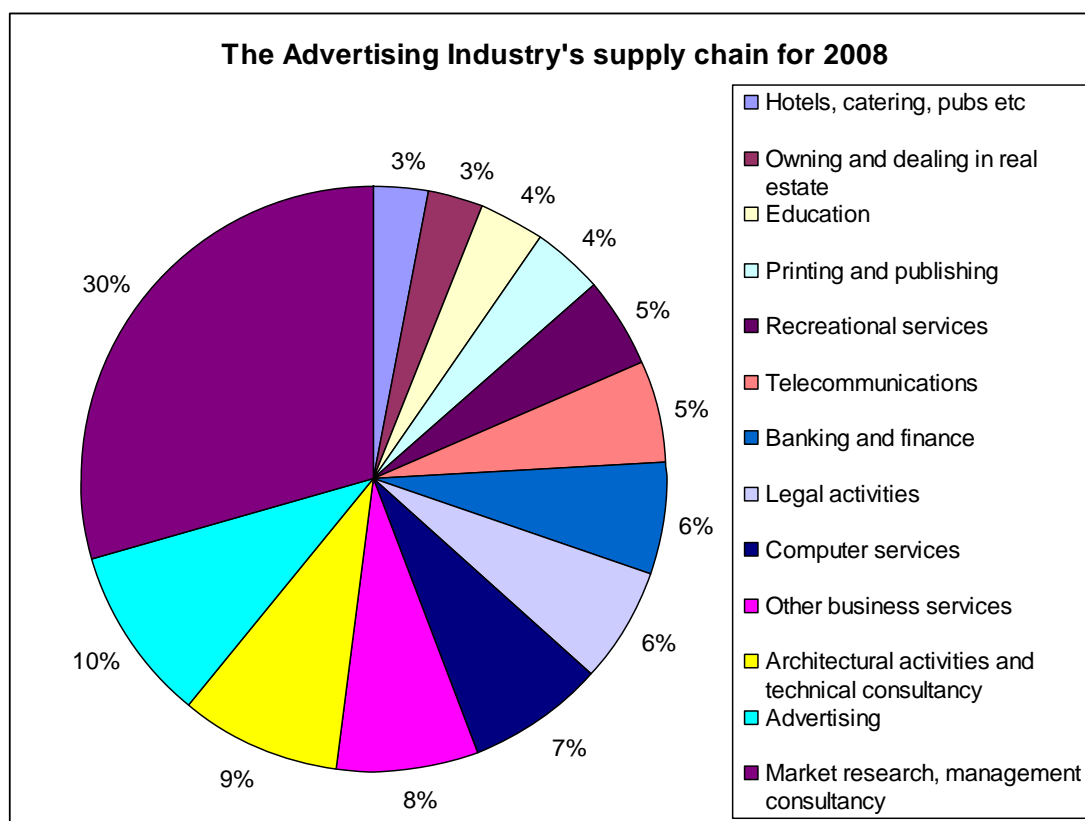


Figure 5: The advertising industry's supply chain for 2008

Source: ONS Input Output tables 2008

Whilst the national data from the input – output tables reflects the purchases of goods and services made by the advertising industry from different areas of the economy more

broadly, it is possible to obtain some data on the indirect value of the advertising industry on other areas of the economy, not reflected in the national data. For example, **Table 10** below gives a spending average per brand for 2003 – 2008 of the advertising industry's spending on content production. This illustrates the value generated by the advertising industry commissioning content production from other industries.

Medium	Average media spend per brand (£m)	Average production spend per brand (£m)	Production spend as % of media/production total
Television	8.38	1.40	14.3
Press	4.00	0.34	7.9
Radio	1.67	0.12	6.7
Outdoor	2.21	0.18	7.7
Internet	2.80	0.19	6.2

Table 10: Advertising Industry average spend on content production, 2003 – 2008.

Source: Advertising Association/WARC Expenditure Report 2009

(www.warc.com/expenditurereport)

There are clearly many more ways in which to demonstrate the indirect economic value of the advertising industry, based on what goods and services it purchases from other industries, however the break down of available national data does not go this far. For the sake of consistency this specific example of the indirect value of the advertising industry will not be included in the overall calculations of this paper.

However, owing to the very specific nature of the advertising industry and where precisely it sits within the value chain, as well as the important changes occurring to the context in which the advertising industry operates, such as the advent of digitisation, and new content distribution platforms, much more work needs to be done to understand the indirect value of the advertising industry to the UK economy.

- **This section reviews where the advertising industry spends its money in the economy.**
- **It estimates that the UK advertising industry spent £5.23 billion for 2008 on purchasing other goods and services.**
- **The first round indirect impact is therefore 67% of the overall direct (GVA) impact figure for 2008.**

4.3.2 – Induced value

The induced impact of the advertising industry on the wider UK economy is another significant value to be taken into consideration. Induced value consists of the activity supported by the spending of those directly employed in the UK advertising industry, and employees whose jobs are indirectly linked to the advertising industry through the supply chain as per **Figure 5** above. The size of the induced value is directly related to employment in the wider industry and the wages earned by these workers. The effect on GVA will be less than overall spending because some of the purchases will be on imports from outside the UK.



The estimated contribution to GVA arising from the induced value of the advertising industry is £5 billion for 2008. This is a significant amount owing to the relatively high total employment costs of the industry as a percentage of GVA, and the large number of people employed directly in the advertising industry.

Advertising is a human capital intensive industry and wages in the advertising industry also appear to be relatively high. This means that for every person employed directly in the advertising industry, there will be a greater induced impact on the rest of the economy more broadly as direct employees will have earned more wages that can be spent across the rest of the economy, thereby generating value in other areas.

Because of these wide variations even in the central measurement points for economic impact, it is important to also explore where the broader 'catalytic' impacts of the advertising industry may be occurring. The catalytic impacts of advertising on the wider industry are explored in the next section (**Section 4.4**).

- **This section reviews how much money the advertising industry provides to its employees, who then spend that income elsewhere in the economy.**
- **It estimates that this first round induced impact of the advertising industry for 2008 was £5bn.**
- **The first round induced impact is therefore 64% of the overall direct (GVA) impact figure for 2008.**

4.4 – Catalytic impacts of advertising

Following on from the direct, multiplier, indirect and induced contribution of the advertising industry to the UK economy, we now look at those areas of economic outcome where the advertising industry is not necessarily directly attributable within mainstream economic impact methodology, but where it is plausible to see advertising as a catalyst – stimulating and promoting positive economic change.

In doing so we are aware of the complexities within this debate, as discussed in **Sections 3.2.2 and 4.1** above, and have largely relied on the methodological guidance provided by the World Federation of Advertisers' 2006 study,⁴⁹ updating its analysis with more recent data, and drawing on a range of more up-to-date studies. The catalytic impacts of advertising are not something straightforward to calculate and therefore where applicable we have used case study examples to illustrate our point.

This section briefly covers a range of areas to which the advertising industry makes a catalytic contribution, including advertising spend (**Section 4.4.1**), sub-national impact (**4.4.2**), economic growth (**4.4.3**), consumption (**4.4.4**), competitiveness, (**4.4.5**), innovation (**4.4.6**) and exports (**4.4.7**).

The approach is largely an international comparative one, trying to understand the relationships between advertising and economic outcomes by comparing national advertising spend (as a proxy for the strength of the national advertising sector) and other economic factors.

4.4.1 – Advertising spend

Perhaps the central way in which advertising is a catalyst for the broader economy is through advertising *spend*, or rather what organisations spend on advertising. It is easily arguable that this area of organisational investment and spending would not exist without the content and campaigns provided by the advertising industry to promote goods and services. Spending on advertising dwarfs the direct scale of the advertising industry (see **Table 11** below). In many senses the advertising industry is merely the fulcrum for a much larger part of the economy, indicated by *adspend*.

		US\$ billions	% of global adspend
1	USA	158.5	31.8
2	China	57.1	11.4
3	Japan	41.9	8.4
4	Germany	28.6	5.7
5	United Kingdom	26.8	5.4
6	Brazil	21.0	4.2
7	France	17.1	3.4
8	Italy	13.5	2.7
9	Canada	11.8	2.4
10	Australia	11.3	2.3

⁴⁹ Nayaradou, Maximilien (2006) *Advertising and economic growth*, World Federation of Advertisers http://info.wfa.be/WFA-UDA_Advertising&Economic_Growth.pdf

Table 11: The top 10 world spenders in advertising **Source:** WARC Data (www.warc.com)

As **Table 11** suggests, these ‘top ten’ between them cover a great deal of the global advertising market, with the US spending nearly three times more on advertising than any other country, and more than China, Japan, Germany and the UK combined in 2008. Together, these five countries spend nearly two-thirds of the global adspend total. It is worth noting that the data used in **Table 11** is at rate card level to ensure compatibility of data from different countries and sources.

This ‘top ten’ spenders list offers a useful and comparable ‘index’ for examining the relationship between adspend and other ways in which the advertising industry contributes as a catalyst to economies. It is therefore this top-ten list, and the data relating to those countries, which will be used in the remainder of this analysis.

Despite taking a considerable hit during the recent recession – and in particular in 2009 – global adspend (calculated in current US\$) continues to rise, as indicated by **Figure 6** of the top ten adspend countries for 2009 below.

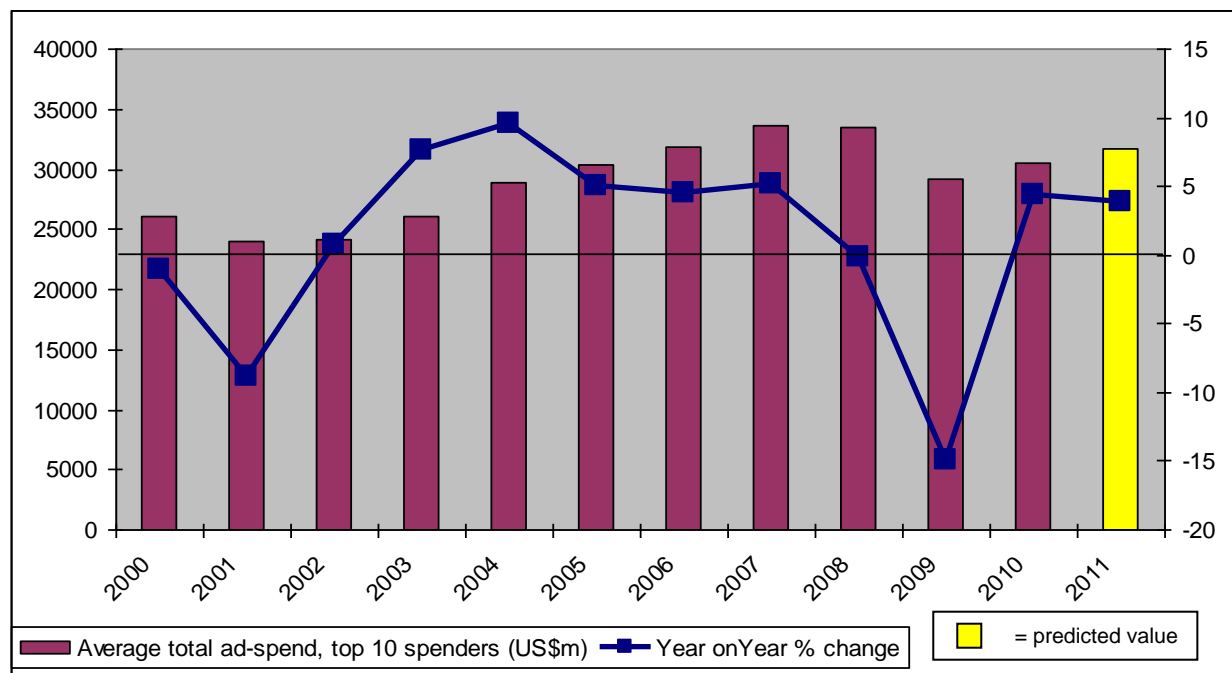


Figure 6: Growth in Adspend, average of Top 10 global spenders in 2009, period 2000-2011.

Source: WARC Data (www.warc.com)

However, this gradual increase in the top ten adspend obscures two major underlying trends. Firstly, the differential growth rates of adspend in the top 10: while the US adspend figure actually dropped 7% over the 11 years 2000-2011 (in 2009 dollar terms) and the UK increased 15% over the same period, the Brazilian adspend – from admittedly a much lower base – was surging ahead at an average of 25% a year, and the Chinese adspend increased by 525% over the period.

The second major trend is the shift towards online and non-traditional forms of adspend. Here the UK is a trend-setter – even in 2006, the IAB Europe / PwC note that UK online adspend is already at £3.1bn, more than double the rate of the next highest EU country, Germany. The US online adspend figures for the move to online are even more stark: more

than US\$6bn a quarter through 2010, despite the recession slowing rate of increase (see **Figure 7.** below).⁵⁰

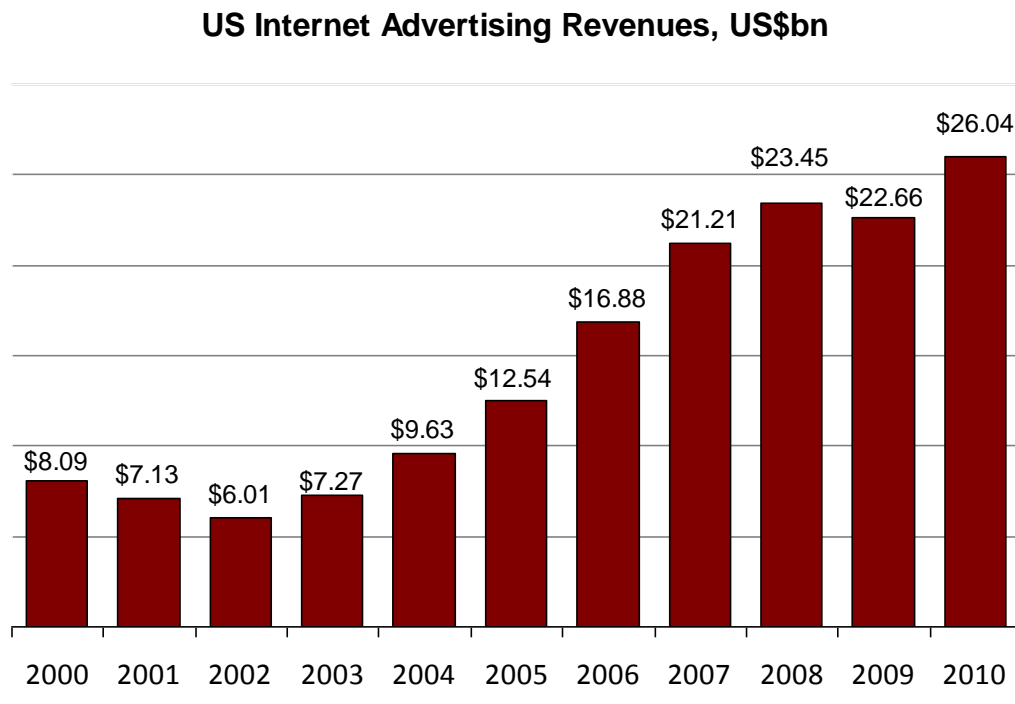


Figure 7: NB - Y axis = quarterly revenue, US online advertising (millions of US\$), column totals show annual figures – **Source:** PwC

Interestingly, in terms of per capita expenditure, the list of top ten spending nations changes fairly dramatically – as WARC Ad Spend Report 2009 notes: for per capita adspend, ‘six out of the top ten markets do not appear in the total adspend table. The US remains top of the pile, but Australia, Austria and Ireland take the next three spots, with the UK in fifth. Japan – the second-biggest spender overall in PPP terms – is right down in 13th position, and Germany and France are lower still, in 16th and 20th positions respectively’.

- **In terms of catalytic contributions of the advertising industry to the economy, it is clear that adspend is the bedrock.**
- **Assuming even a fraction of the US\$26.8bn (£16.3bn in 2009 figures) of advertising spend is attributable as a contribution of the advertising industry itself, it considerably expands the economic impact of the industry on the UK.**

4.4.2 – Regional effects

One way of understanding the catalytic impact of the advertising industry is to estimate its relative effects on different geographic regions in the UK. There is a dearth of economic data on the advertising industry at the regional and sub-regional level. The Department for Culture, Media and Sport has, by and large, not provided economic estimates of GVA etc. for SIC codes at the level of individual sub-sectors such as advertising. It is therefore difficult to estimate the economic distribution of the advertising industry in the UK.

However, there is a greater depth of data regarding regional employment in the advertising industry. The Creative and Cultural Skills Footprint report for Advertising 2008-9⁵¹ – based on

⁵⁰ 2010 IAB Internet Advertising Revenue Report / PwC, <http://bit.ly/gSWclj>

2006 employment data, and the 'core' 73 SIC code (see **Section 4.2.2** above) – perhaps unsurprisingly finds that England dominates the UK picture of advertising employment in the UK, with 95% of UK employment, and that within England, London is the main centre of advertising employment, and half of all people working in advertising are in London or the South East region (see **Figure 8** below).

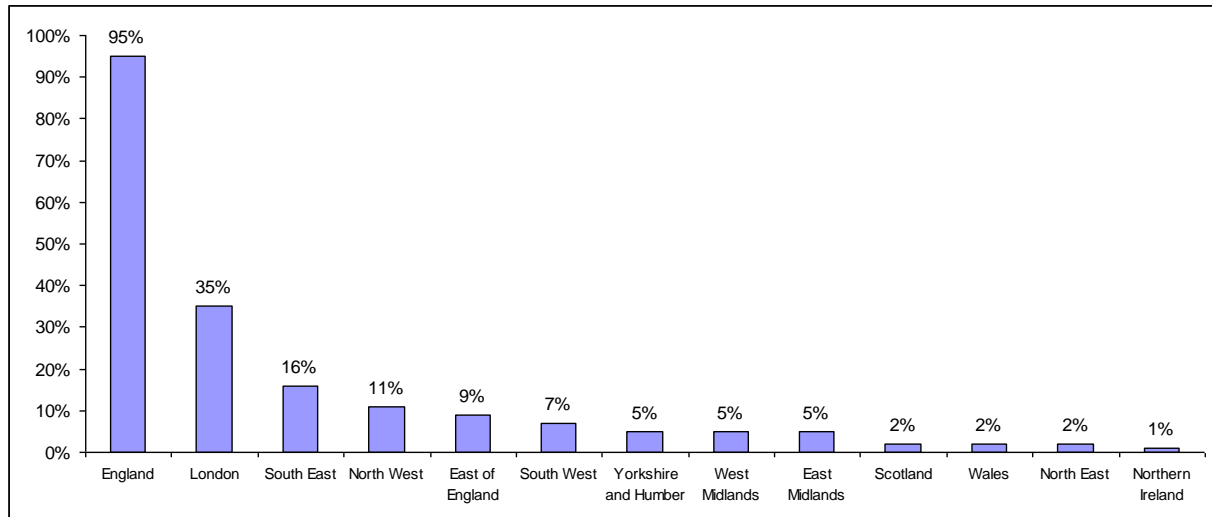


Figure 8: Advertising employment by UK region, 2006 **Source:** CCSkills

London is also the UK's most important advertising cluster when viewed from a European perspective. **Table 12** below shows the largest clusters of advertising employment within the EU by city-region. While London remains a powerhouse of advertising expertise, it is interesting to note that both Paris and Milan are larger centres of employment in advertising, despite their lower overall national advertising spend rates.

Rank	City-region	Employment	European share
1	Ile de France (Paris)	52,202	7.56%
2	Lombardia (Milan)	30,020	4.35%
3	Inner London	24,348	3.53%
4	West-Nederland (Amsterdam)	19,876	2.88%
5	Madrid	18,736	2.71%
6	Danmark	17,343	2.51%
7	Cataluña (Barcelona)	12,410	1.80%
8	Dusseldorf	11,653	1.69%

Table 12: Employment in Advertising in European City Regions, 2006 data⁵²

The relative dominance of London compared to other UK advertising centres is perhaps more clearly represented in **Figure 9** below.⁵³ However, the more multi-centre nations such as Italy, Germany, and Spain in advertising reflect in both broader creative industries employment across the EU, and in the relative regional balance of GDP in those nations.

⁵¹ **Creative & Cultural Skills** (2008) Advertising: Impact and footprint <http://bit.ly/gddBPE>

⁵² **Power, Dominic, and Nielsén, Tobias** (2010) 'Priority Sector Report: Creative and Cultural Industries', European Cluster Observatory, European Commission, <http://bit.ly/flrFFS>

⁵³ **Power, Dominic, and Nielsén, Tobias** (2010) 'Priority Sector Report: Creative and Cultural Industries', European Cluster Observatory, European Commission, <http://bit.ly/flrFFS>

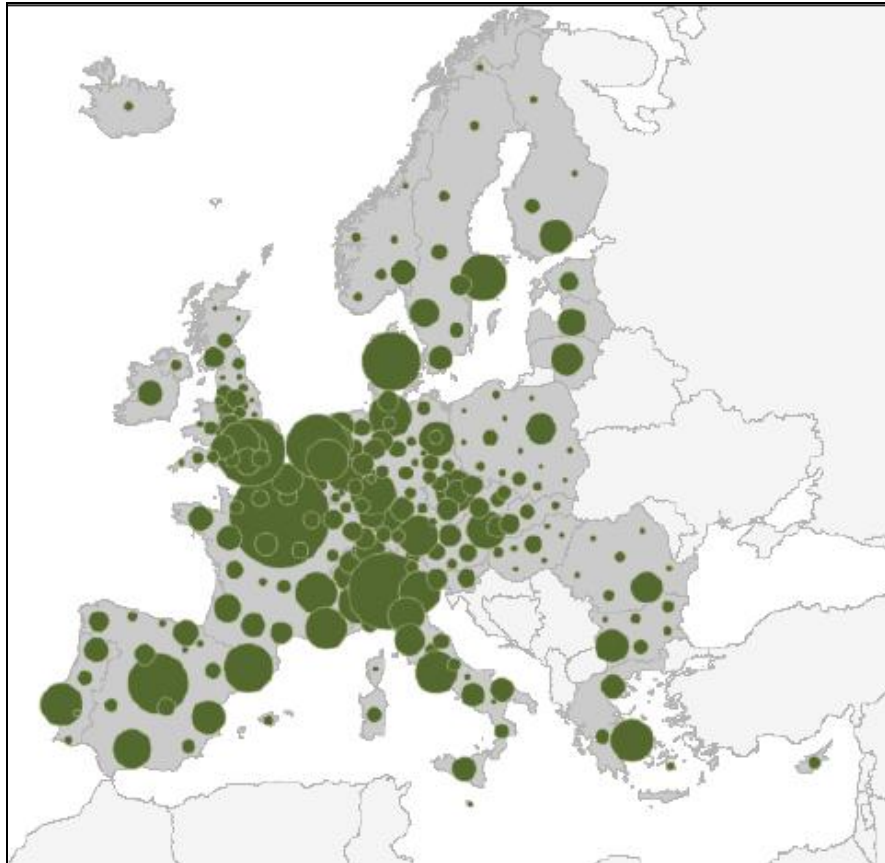


Figure 9: Centres of employment in the EU advertising industry, 2006 data

Source: Europe Innova: European Cluster Observatory

Despite the obvious industry dominance of London, by utilising ‘location quotient’ analysis by Frontier Economics, a 2010 report by the National Endowment for Science, Technology and the Arts (NESTA)⁵⁴ identifies a small set of clusters of advertising expertise outside of London, including:

- South of Guildford (from St Albans to Tunbridge Wells and Guildford);
- a south belt around Manchester and Birmingham and its south counties;
- Warwickshire and Worcestershire; and
- a higher than average agglomeration in Harrogate, Ripon, and Blackpool.

A closer analysis of the Manchester cluster indicates the ways in which the advertising industry is contributing within the creative industries value chain:

‘The Manchester Advertising Cluster has developed over the last decade in close connection with the city’s strong digital sector. It is mostly comprised of small businesses that engage in high levels of information sharing and networking. Local and regional firms in other sector do not show the high levels of awareness of this young cluster.’

The NESTA report notes, in particular, the way in which most of the small advertising firms in the cluster specialise in different stages of the value chain, and there is a wide portfolio of innovation sources, both locally and internationally, although it also highlights that other sectors are less aware of the cluster, tending to use advertising firms in London.

⁵⁴ Chapain, Caroline, Cooke, Phil, De Propriis, Lisa, MacNeill, Stewart and Mateos-Garcia, Juan (2010) Creative Clusters and Innovation: Putting creativity on the map, London: NESTA, <http://bit.ly/gVBjAr>

These detailed analyses of particular clusters dovetail with an econometric analysis of US advertising clusters, which concludes that despite improvements in telecommunications and transportation reducing effective distances, location still matters for situating advertising businesses.⁵⁵ Such a city-region analysis is also important as a greater number of organisations look to organise their advertising spend at a pan-regional basis, particularly in online spend.

- The UK regional data on advertising doesn't lend itself to simple metrics on economic contribution.
- But it does provide powerful in-depth evidence of the way in which the advertising industry situates itself within the economic geography of the UK and Europe.
- It also indicates the way in which advertising organisations act as a catalyst within value chains in the creative industries in particular creative clusters such as Manchester.

4.4.3 – Advertising and growth

The economics of advertising has long recognised a relationship between adspend and the size of economies, with the relationship seemingly stronger in the direction of GDP predicting adspend levels better in countries where a larger proportion of GDP is spent on advertising.⁵⁶ **Figure 10** below demonstrates that this basic correlation holds strongly for a selection of nine of the top 10 spending nations. The correlation is even stronger if the US is included, but its GDP and adspend are so far in excess of the other nine that removing makes the comparative point more clearly.

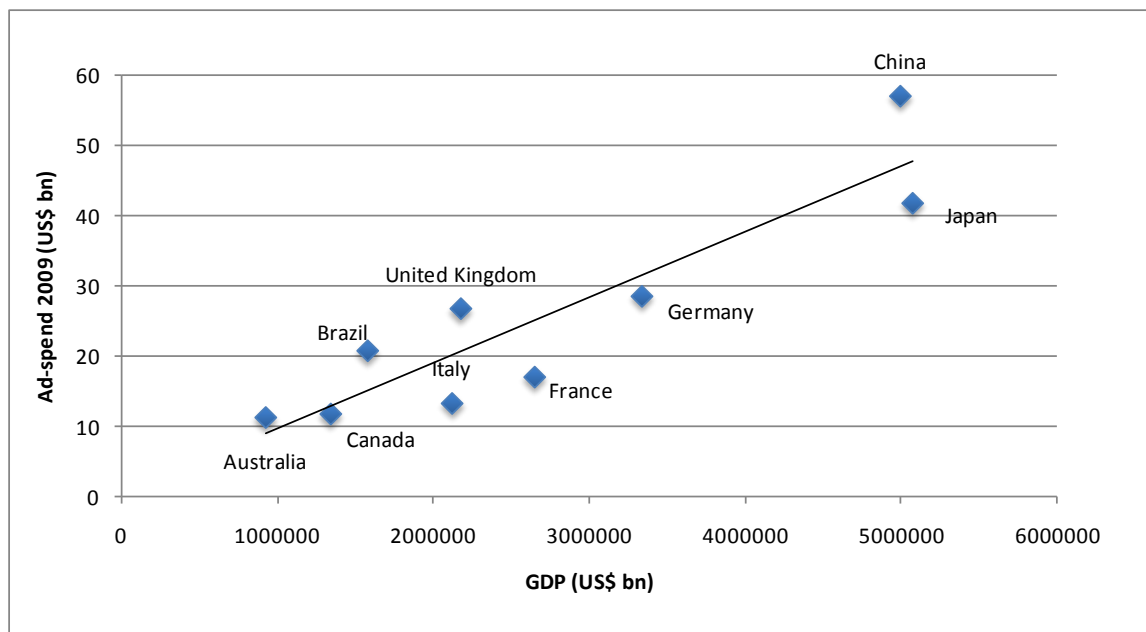


Figure 10: Advertising and Size of Economy (2009 figures).

Source: World Bank, WARC Data (www.warc.com)

⁵⁵ King, C, Silk, AJ, and Ketelhohn, N (2009) Knowledge Spill-overs and Growth in the Disagglomeration of the US advertising-agency industry, *Journal of Economics & Management Strategy*, Vol 12, No 3, 327-362

⁵⁶ van der Wurff, Richard, and Bakker, Piet (2008) 'Economic Growth and Advertising Expenditures in Different Media in Different Countries', *Journal of Media Economics*, Vol. 21, pp28–52

Taking these metrics – adspend levels and GDP – over time gives a more sophisticated indication of the inter-relationship. **Figure 11** below shows the relationship between rates of growth in adspend between 2000 and 2010, and GDP growth between 2000 and 2009. Replicating a finding from the 2006 World Federation of Advertisers (WFA) study,⁵⁷ **Figure 11** shows a strong relationship between pace of increase in adspend, and pace of increase in the overall economy. This clear positive correlation holds true even without China. The WFA study additionally indicates a positive correlation between the advertising investment rate and a predictor of broader economic growth: productive efficiency. This further strengthens the empirical relationship between advertising growth and economic growth.

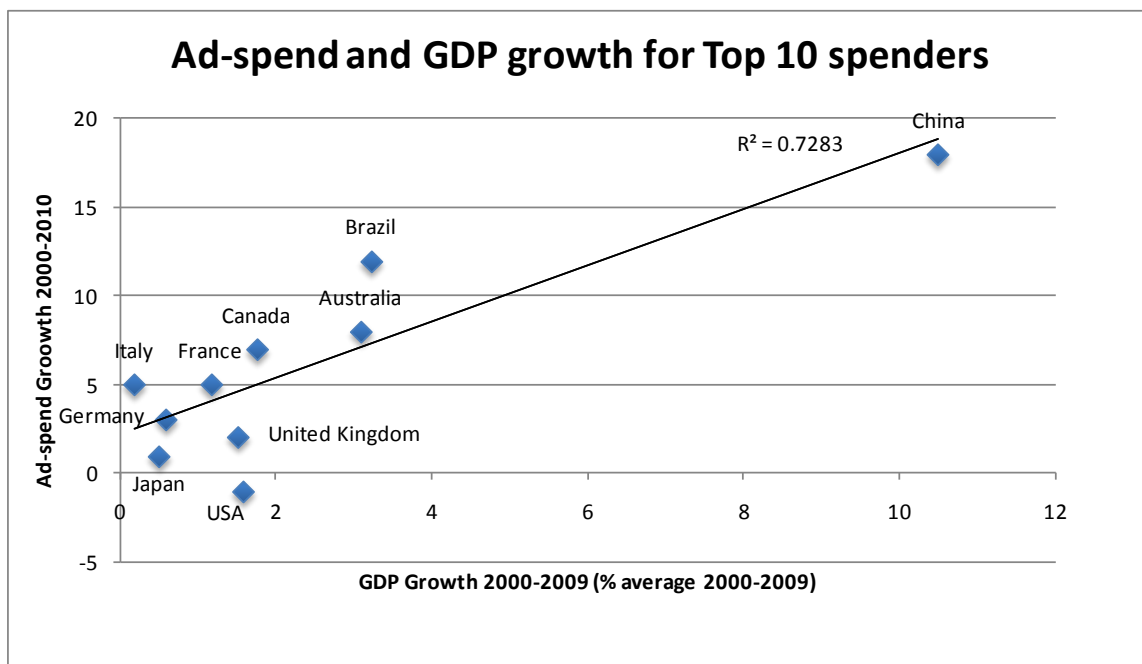


Figure 11: Adspend growth and GDP growth 2000-2009.

Source: World Bank, WARC Data (www.warc.com)

While consumer perceptions do not offer the same kind of evidence for the relationship of advertising and economic growth as econometric measurements, they do provide an interesting and important perspective on the debate. A major multi-country survey, conducted with more than 24,000 people in 2009 found that, in general, consumers understand the relationship between advertising and growth in a similar way to **Figure 11** above.⁵⁸ The Nielsen Group survey suggests that, fairly consistently across the samples, 70 percent of consumers globally agree that advertising contributes to economic growth, while eight out of ten agree that advertising helps create jobs. While UK respondents were somewhat less convinced than the global average – with 61 percent agreeing advertising contributes to economic growth, it still represents a fairly clear indication that the link between advertising and growth is widely understood.

⁵⁷ **Nayaradou, Maximilien** (2006) *Advertising and economic growth*, World Federation of Advertisers, http://info.wfa.be/WFA-UDA_Advertising&Economic_Growth.pdf

⁵⁸ **Nielsen Consumer Research** (2009) *Nielsen Global Online Consumer Survey: Trust, Value and Engagement in Advertising*, Brussels, Belgium: World Federation of Advertisers, <http://bit.ly/4xeul9>

- This section confirms the relationship between size of national economy and adspend.
- It also indicates a relationship between the speed of growth of a national economy, and the speed of growth in advertising expenditure.
- The causal link between advertising expenditure and economic growth continues to require clarification.
- 61% of UK consumers agreed that advertising makes a positive contribution to economic growth.

4.4.4 – Advertising and consumption

Figure 12 below uses data up to 2009 to recreate and update another analysis undertaken by the 2006 WFA study, comparing advertising spend – this time as a percentage of GDP to make different-sized countries more comparable – and ‘propensity of households to spend’: a measure of the average percentage of income which is spend rather than saved, also expressed as a percentage of GDP.

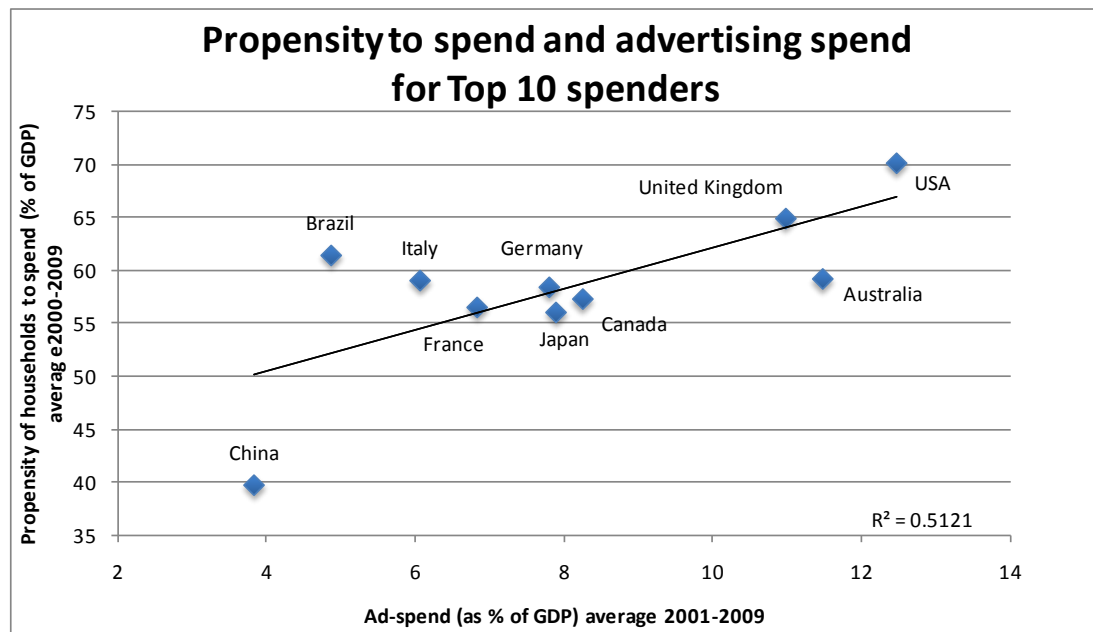


Figure 12: Propensity of households to spend and adspend as a % of GDP

Source: World Bank, WARC Data (www.warc.com)

Figure 12 indicates a strong positive relationship between advertising and propensity to spend, confirming, with 2000-2009 data, the WFA finding that it appears a greater degree of advertising does stimulate consumer-driven economies such as the top ten spending nations selected for this analysis.

Other studies provide important alternative perspectives on the relations between advertising and consumption. Two in particular are worth looking at in more detail, both looking at the advertising-supported internet economy. The first, from 2009,⁵⁹ performs an

⁵⁹ Deighton, John and Quelch, John (2009) *Economic Value of the Advertising-Supported Internet Ecosystem*, Cambridge, MA: Interactive Advertising Bureau, <http://www.iab.net/media/file/Economic-Value-Report.pdf>

econometric calculation on the value of the US ‘advertising-supported internet economy’ as though it were a discrete sector in its own right, before assigning a value: US\$444bn. Of that they see online advertising activity more directly contributing almost US\$11bn. Although only an estimation, relying on the UK internet economy being the same proportion of GDP as the US, the equivalent value for this more conservative measure for the UK would still be more than £1bn.

The second study – also commissioned by the Interactive Advertising Bureau, and carried out by McKinsey, the consultancy, in 2010 – places a tentative figure on the ‘surplus value’ consumers are gaining from accessing internet services which are advertising-supported rather than, for example, accessible through prior sign-up subscription costs.⁶⁰ After subtracting other internet consumer costs – for example, the cost of general internet access from an ISP – they conclude that ‘advertising triples the value consumers receive from the Internet, by subsidising such valuable-to-consumer services as webmail, comparison shopping, news alerts, social networking, and video entertainment’. They place a global figure on this ‘consumer surplus value’ of a staggering US\$120bn – almost as much as the total US advertising spend. Translated into GBP, this works out at more than £32 per household per year, or more than £6bn for UK consumers, suggesting advertising as an online business model is providing an important cost-effect way of stimulating the wider consumer economy.

- This section reviews the evidence linking advertising expenditure and consumption.
- In an international comparison it finds a strong correlation between advertising spend as a % of GDP, and propensity of households to consume as a % of GDP.
- Key recent studies on the internet advertising sector give powerful evidence of the consumer value an advertising-supported business model provides: more than £1bn a year for enabling business models, and up to £6bn a year of ‘consumer surplus’ from advertising-supported services such as social networking and email.

4.4.5 – Advertising and competitiveness

The next two sections utilise major established international measures of complex social phenomena, both of which have been linked to advertising – competitiveness, and innovation.

Figure 13 below shows the complex multi-dimensional model deployed for measuring relative national ‘competitiveness’ by the World Economic Forum’s *Global Competitiveness Research* project. The World Economic Forum’s (WEF) *Global Competitiveness Research* project defines competitiveness as:⁶¹

⁶⁰ **McKinsey and Co.** (2010) *Consumers driving the digital uptake: The economic value of online advertising-based services for consumers*, Cambridge, MA: Interactive Advertising Bureau, http://www.iab.net/insights_research/947883/consumers_driving_digital_uptake

⁶¹ **Schwab, Klaus** (2010) *The Global Competitiveness Report 2010 -11*, Geneva, Switzerland: World Economic Forum, http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf

‘the set of institutions, policies, and factors that determine the level of productivity of a country. The level of productivity, in turn, sets the sustainable level of prosperity that can be earned by an economy. In other words, more competitive economies tend to be able to produce higher levels of income for their citizens.’

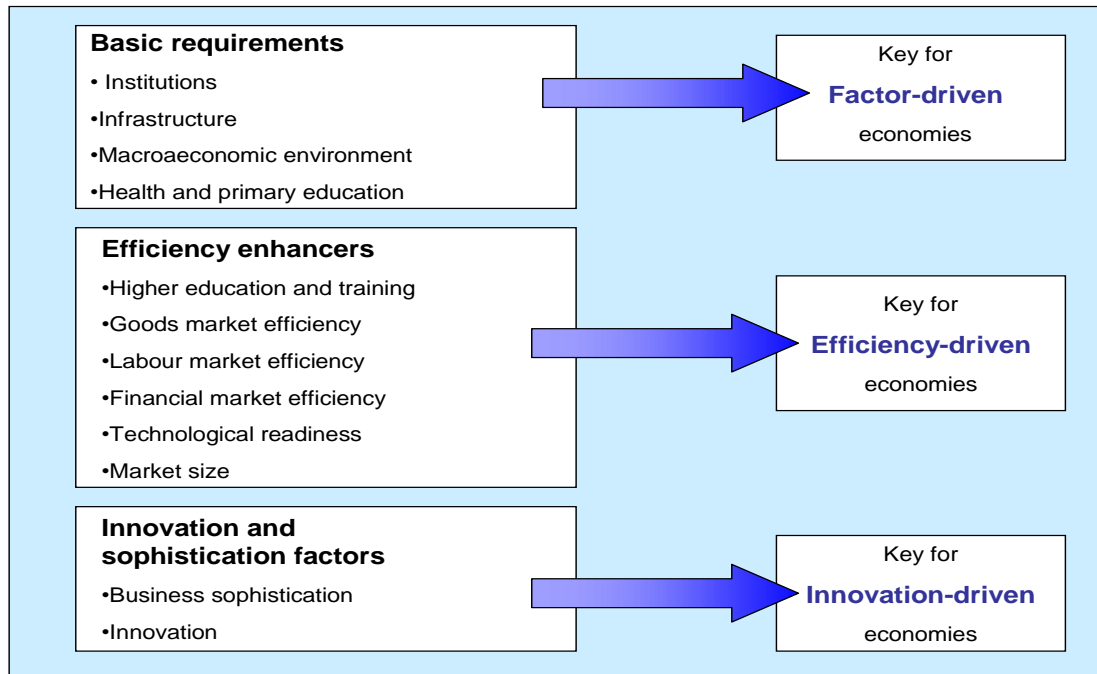


Figure 13: The World Economic Forum model of national competitiveness. - **Source:** WEF

The WEF research offers a stable internationally-comparable measure for examining the important hypothesised relationship between advertising and national competitiveness.⁶²

Figure 14 below shows the analysis, which compares advertising rates to the WEF measure of international competitiveness for the top ten 2009 spenders on advertising. Even with the USA’s high competitiveness and high advertising spend, the correlation is not as strong as for earlier analyses within the ‘catalytic’ impacts. There is a relationship, but this perhaps reflects the ambivalence in the broader debate regarding whether advertising, in any relatively straightforward way, grows markets.

Again, the consumer perspective gives some broader support for the link between advertising and competitiveness, with 68 percent of the Nielsen survey respondents feeling that advertising was a critical driver of competition between companies, and that through this mechanism it does lead to better products and lower prices.⁶³

⁶² NB: All of the top 10 advertiser group as in what the WEF calls ‘stage 3’ economies, which means the weighting of the 12 factors from Figure 11 is the same in the WEF rating used.

⁶³ **Nielsen Consumer Research** (2009) *Nielsen Global Online Consumer Survey: Trust, Value and Engagement in Advertising*, Brussels, Belgium: World Federation of Advertisers, <http://bit.ly/4xeul9>

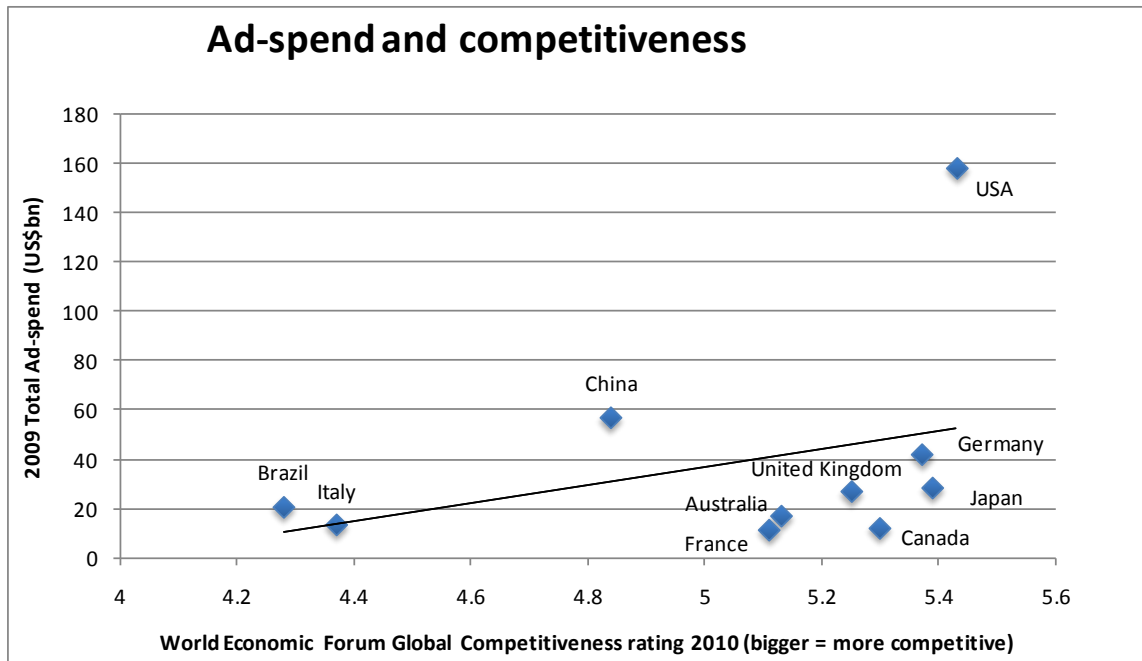


Figure 14: 2009 total adspend and relative competitiveness

Source: World Economic Forum, WARC Data (www.warc.com)

Case example

Price comparison sites for the UK General Insurance sector are an interesting example of how advertising supports competition in the UK. Sites such as comparethemarket.com and gocompare.com are widely used by consumers, with the average number of sites used increasing over time according to Consumer Intelligence analysis.⁶⁴ Nielsen adspend data suggests that £35m was spent by price comparison sites in 2006 and that this more than doubled to £85m in 2009. Price comparison websites were a key area of advertising growth throughout the recent recession. The analysis suggests that this is very much a market where high profile advertising campaigns can significantly affect brand, the degree of price competition and performance in some sectors.

The discussion about whether or not advertising stimulates competition has also been discussed in the WFA study on advertising and economic growth. One of the reported suggestions, backed up by two separate studies, one by Boston Consulting Group in 2003 and another in France with a wider sample, is that advertising is particularly effective in stimulating competition in times of recession. The WFA 2006 study concludes that, in an effort to gain market share, companies invest heavily in advertising, which in turn encourages competition and prompts them to increase the quality and volume of their output, thereby increasing economic growth across the board.⁶⁵

- This section found the correlation between national competitiveness and advertising to be present, but not as strong as some other catalytic effects.
- 68 percent of surveyed UK consumers felt that advertising was a critical driver of competition between companies, and that through this mechanism it does lead to better products and lower prices.

⁶⁴ Knight, E. (2010) *The Use of Price Comparison Sites in the UK General Insurance Market* Consumer Intelligence

⁶⁵ Nayaradou, Maximilien (2006) *Advertising and economic growth*, World Federation of Advertisers, http://info.wfa.be/WFA-UDA_Advertising&Economic_Growth.pdf

4.4.6 – Advertising and innovation

Another mechanism through which advertising may drive economic outcomes is through the encouragement and boosting of innovation. Innovation is widely recognized as the single most important ingredient in any modern economy. The assumption is that Advertising helps turn innovative ideas and technological developments – often in danger of remaining unexploited – into products we use. Innovation on its own does not necessarily create economic value: it can be argued that we need advertising to make R&D investments profitable.

Case example: mp3

In the late 1970s, with the introduction of ISDN and fibre optic cables for telecommunication, Professor Seitzer and his team in Germany started researching the coding of music signals. In 1987, the prestigious *Fraunhofer Institut Integrierte Schaltungen* research centre (part of Fraunhofer Gesellschaft) began researching high quality, low bit-rate audio coding, a project named EUREKA project EU147, Digital Audio Broadcasting (DAB) and the first mp3 patent was registered in 1989.

However it was nine years later, in 1998, that the era of portable mp3 listening began with the introduction of Diamond Multimedia's "Rio 100" in the U.S. and Saehan Information Systems' "MPMAN" in Korea. The first commercially viable products of their kind, it was not until information and advertising about the products was widely distributed, and the products were more widely understood, that their success was ensured, triggering dozens of companies to launch similar portable devices for compressed music playback, and the advent of consumer electronics.

The extensive work of the WFA 2006 study in this area found a strong relationship between more innovative industry sectors and advertising spend, with the suggestion that advertising speeds up the spread of innovation.

Case example: Dyson's bag-less vacuum cleaner

It took five years and over 5000 prototypes before Sir James Dyson launched the G-Force vacuum cleaner in 1983. Despite Dyson's previous successful inventions, no major vacuum cleaner manufacturer or distributor was interested in his product and it went largely unnoticed. The breakthrough came more than ten years later, following the memorable advertising campaign with the slogan 'say goodbye to the bag', which revolutionised the vacuum cleaner market and soon led other manufacturers to introduce their own 'bag-less' models.

The analysis of this paper draws on a similar logic, but utilises a relatively new international index for measuring innovation: the Insead Global Innovation Index.⁶⁶ This index draws on a model which has some similarities to the WEF competitiveness index, with seven areas of measures divided into 'enabling' and 'outcomes' of innovation.⁶⁷ Using this standardised

⁶⁶ Dutta, Soumitra (2010) *Global Innovation Index 2009-2010*, Fontainebleau: Insead.
http://www.globalinnovationindex.org/gii/main/reports/2009-10/FullReport_09-10.pdf

⁶⁷ 5 enabling areas: Institutions, Human Capacity, General and ICT Infrastructure, Market Sophistication and Business Sophistication, and two outcome areas: Scientific Outputs, and Creative Outputs and Well-Being."

measure of innovation, **Figure 15** shows a strong positive relationship with advertising spend. Combining this finding with the other clear correlations – to economic growth, and to consumption – we can start to build a broader picture of the nature of advertising’s contribution to national economies.

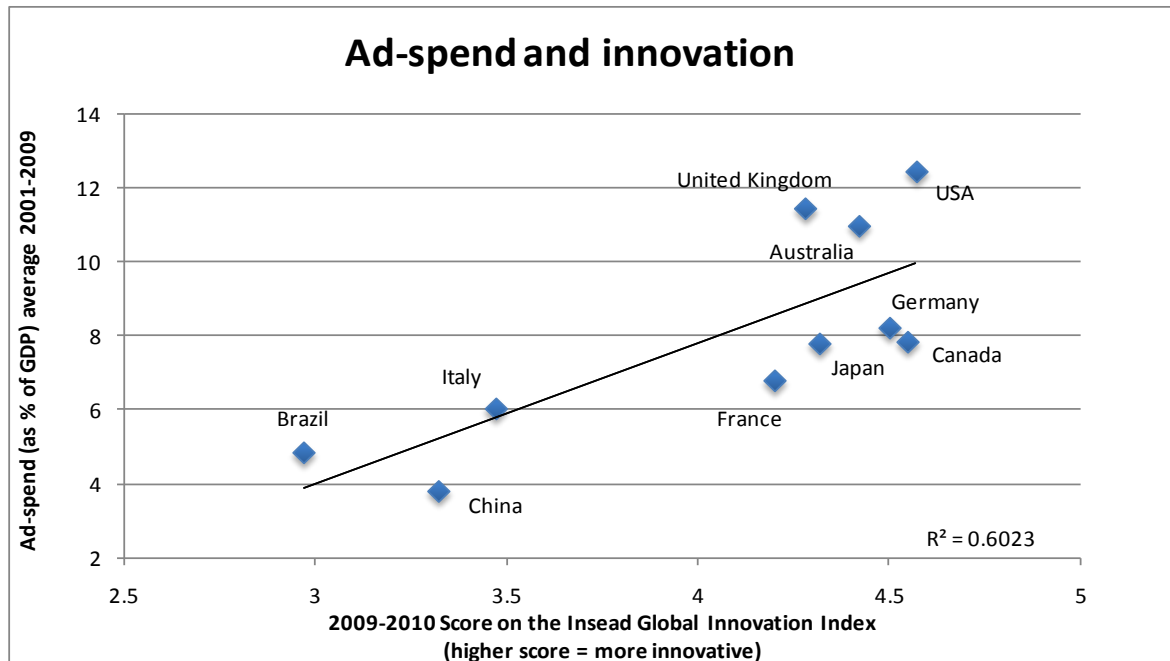


Figure 15: Average adspend as a percentage of GDP, and GII 2009-10 score

Source: Insead GII, WARC Data (www.warc.com)

For innovation measures specifically, the position of advertising within the knowledge economy and its facilitative role within the creative industries specifically explains its strong relationship with innovation. In addition, as we have seen with the shift in adspend to online, there are strong links between advertising industry practice and the introduction and utilisation of new technologies – another measure of innovation within the Index. Finally, advertising agencies are themselves important producers of intellectual property, an important indicator of national innovation levels.

Case example: new children’s food product development

In 2008 Ofcom banned the advertising to children of food high in fat, salt or sugar. Post-2008 there was a noticeable drop-off in new products from the dairy, confectionary and ready-meal sectors that are liable to fail the FSA’s ‘nutrient profiling model’.

Rather than risk a costly new-product-development (NPD) failure some brands adapted existing products to make them more suitable for children. Brands such as Magnum Minis and Ben & Jerry’s single-serve pots have been taking adult brands and repackaging them so that they are accessible for kids. In response to being unable to promote its Coco Pops brand to kids, Kelloggs developed Coco Pops Choc ‘n’ Roll, a cereal with reduced sugar, salt and saturated fat, which passed the profiling model with flying colours. The advertising ban can be seen to inspire innovation and force marketers to create products with greater relevance.

- **This section reviewed the link between advertising spend and innovation.**
- **It found a strong correlation between relative national adspend, and national innovation score on the Insead Global Innovation Index.**

- A range of case examples indicate the processes through which advertising activity boosts innovation.

4.4.7 – Advertising and exports

Before a brief overview of the measures reviewed in **Section 4**, it is worth briefly looking at the role of advertising as a UK export. Key data is difficult to obtain, but the United Nations Conference on Trade and Development places advertising as the fourth fastest growth UK creative industries' export sector between 2000 and 2007 (see **Table 13** below).⁶⁸

Publishing	12.7%
Architecture	12.2%
Software, Computer Games and Electronic Publishing	11.9%
Advertising	11.3%
Radio and TV	6.9%
Art and Antiques	6.5%
Video, Film and Photography	3.6%
Design	-4.0%
Music and the Visual and Performing Arts	-6.3%
TOTAL	8.3%

Table 13: Annualised growth in exports by sub-sector (2000-2007). **Source:** DCMS, 2009

Despite this apparently high level of export growth, it can be speculated that much of the international 'trade' in advertising is in fact taking place within the large global 'holding companies'. Much of the actual 'export' of UK advertising expertise and creative work to client areas in other countries is perhaps 'lost' to the official data sources. The 'real' figure in terms of the export of advertising IP, expertise and know-how may therefore be severely underestimated by these figures.

Given the fierce rate of growth of emerging economies, it is likely that the global centre of advertising creativity and production gravity will continue to shift away from western countries, and towards the BRIC and South East Asian markets. If the UK is going to maintain an international competitive advantage partly through recognised key growth sectors such as the creative industries – and advertising – it will need to understand where and how its expertise in these key areas is being exported, and whether the value of these exports is being realised for the UK economy, as part of advertising's contribution to the broader economy.

- This section briefly reviewed the role of advertising as a UK export sector within the UK creative industries.
- It found that advertising was the fourth fastest export growth sector in the UK creative industries between 2000 and 2007.
- The exporting of advertising consulting expertise is likely to be a key contribution of UK advertising to exports over the next decade.

⁶⁸ **United Nations Conference on Trade and Development** (2008) Creative Economy Report 2008: The challenge of assessing the creative economy towards informed policy-making, www.unctad.org/creative-economy

4.5 – Value contributions

The analysis in **Section 4** of this report has covered a range of different kinds of economic impact measurements. The difficulties encountered in this process reflect, in some cases, the problems with the data when measuring a fast-changing knowledge-economy sector utilising sometimes-cumbersome standardised statistics. In other cases they spring from the particular complexities of advertising as an industry.

In general the analysis has looked to move stepwise from the relatively clear-cut economic impact methodology borrowed from a number of comparable studies, to broader and more extensive links with other industries and the broader economy, where advertising acts as a catalyst rather than as a direct economic contributor.

In terms of the econometric model, the overall ‘core’ figure reached was a contribution of £15.6bn annually by the advertising industry to the UK economy – using 2008 figures. But this figure is only the groundwork for understanding advertising’s contribution to the broader economy. As noted in **Section 4.3** above, if we were to take a larger figure of employment in advertising i.e. the people who do ‘advertising’ type work but not necessarily in a standard defined advertising agency, then this would cause the conservative £15.6bn figure to rise.

Then there are the range of additional economic impact measures, which cannot easily be simply ‘assigned’ to the advertising industry’s contribution, but nonetheless are difficult to conceive of without a thriving advertising sector: the annual UK advertising spend figure, US\$26.8bn;⁶⁹ the conservative ‘advertising-supported internet’ contribution estimate of £1bn, and the estimate of the UK advertising-driven ‘consumer internet surplus’, drawn from the 2010 McKinsey report, totalling £6.6bn. These figures are potentially counting overlapping areas of value, and certainly there is no straight-forward or established methodology for incorporating them into the ‘core’ measure, but yet they give strong indications of the industry’s wider economic contributions.

A wealth of broader supporting indicators have also been examined. These measures are of necessity more ‘narrative’ in nature, but reviewing the consumer perspective on advertising’s economic value and the mechanisms through which, within creative clusters, advertising facilitates the creative industries’ value chain gives important colour and detail to the economic impact story. And, although correlational – or circumstantial – rather than causal, the strong links between advertising expenditure and measures such as innovation, consumption and economic value combine with the ‘harder’ econometric measures to build up a complex – but nuanced and holistic – picture of the contribution of the UK advertising industry to the UK economy.

So, while this analysis doesn’t square the circle of the broader philosophical issues debated in the context section, it does provides a further contribution to our understanding of the relationship between advertising and economic impact.

⁶⁹ WARC Data (www.warc.com)

5 – Discussion

This paper has sought to understand the economic contribution of the UK advertising industry to the broader UK economy. It has done so through an established process of economic impact analysis, highlighting along the way where some of the standard measures present particular challenges for assessing the advertising industry.

It is important to set the key findings from the report in their broader context, and to position this analysis within the ongoing development of measures to understand the economics of the creative industries. Therefore, in this discussion section we examine, firstly, how the evaluation of the advertising industries' contribution to the economy should develop from this point, and, secondly, what these developments imply for the advertising industry within the broader economy.

5.1 Expanding our understanding of the advertising industry's economic contribution – data and methods

While we believe this paper goes beyond previous attempts at an analysis of the impact of the UK advertising industry on the UK economy, it clearly represents a work in progress in terms of developing a methodology which captures the heterogeneous paths and methods of the advertising industry's economic impact.

For example, in general this paper adopts a 'snapshot' approach, looking at the industry in 2008. **Section 4.1** above explains why we chose this approach, but as our understanding of the industry's contribution develops, establishing more of a longitudinal analysis will help to trace advertising's changing contribution. But to do so properly, a number of data issues will have to be resolved, and the ability of national statistics to appropriately capture the changing advertising industry improved. At the moment changes to the measurement systems seem to be exacerbating, rather than ameliorating, our ability to track these changes over time. The new GVA calculation route (from 2009 onwards), utilising the Business Register and Employment Survey, provides a figure for advertising of £3.9bn in 2009, compared to the previous calculation method's £8.3bn for 2008. While advertising as an industry is known to be highly pro-cyclical, teasing out whether this precipitous decline is a 'real' change in the industry's contribution or an effect of methodological change, or what proportion of each, is a distinct challenge for those looking to update our work here, or set it in a longitudinal context.

But these problems of changing measurement methods have to be coupled with the advantages of more nuanced national data collection. Particularly as advertising campaigns and activities become increasingly complex in terms of channels and approaches – and incorporating a greater degree of 'non-traditional' areas such as PR and events – if the national statistics are to be useful in understanding the industry, they must provide a greater level of detail. For example, as was clear from analysis for this paper, understanding advertising employment at regional level or below is patchy, at best. UK national advertising bodies may have a role to play in industry-bespoke data collection on employment in the future to ensure appropriate information is available.

Improved data collection could be combined with improved data analysis – for example in linking advertising to other parts of the supply chain in the creative industries through the

national statistics. While the DCMS has recently made efforts in this direction,⁷⁰ expanding this kind of analysis would provide more flesh on the bones of a catalytic analysis undertaken here. Then existing sub-sector specific data – such as the advertising industry’s statistics on investment in advert production – could be more plausibly linked through robust data to the broader innovation value-chain in the creative industries.

In general these kinds of improvements to the quality of creative industries statistical data – something called for by the Work Foundation in December 2010⁷¹ – would move forward economic impact analyses in the creative industries. But future analyses would also need to respect the sector-specificity of certain elements – such as ad-spend for the advertising industry. This suggests a multi-method approach will be required to understand advertising’s impact within and beyond the creative industries; one which draws on the advantages of comparable national (and international) measures, while retaining measures and approaches – such as ad-spend, the link to innovation, and competitiveness – which are more sector specific.

5.2 Expanding our understanding of the advertising industry’s economic contribution – ecosystem

The economic impact analysis within this paper theorises a number of important broader effects to which advertising contributes catalytically – including competitiveness, innovation, and economic growth. These kinds of impacts are suggested by our ‘spill-over’ model (see **Section 3.2.1** above). The subsequent analysis of those elements provides a strong indication of a relationship between the extent of advertising, and national level indicators. This multi-method approach ensures the range of potential impact is captured, but moving forward it is important to see advertising’s contribution within a broader and more integrated innovation eco-system within the UK.

Such an analysis would view advertising as part of specific sets of inter-related value chains and business models developed by different industries, and their contribution is that which opens up new and innovative ways to construct and remake those value chains. Part of this may be assessing what economic impact analysis calls the ‘counter-factual’ – an assessment of the economic picture if advertising was removed as an industry. For example, would other business models have been as successful for Google, Facebook, and other major new digital companies, if an advertising-based approached was not available? Thinking about advertising’s role in this way also provides a more rounded means of addressing issues regarding the need or otherwise to restrict advertising in certain product categories or sectors.⁷²

Moving forward, an approach which valued advertising’s contribution as part of a national innovation eco-system would not only allow assessment of that contribution, but potentially indicate more clearly a route to improving that contribution. These approaches would also

⁷⁰ **Scheffel, Eric, and Thomas, Andrew** (2011) ‘Employment and intangible spending in the UK’s creative industries’, *Economic and Labour Market Review*, Jan 2011, pp79-104
www.statistics.gov.uk/cci/article.asp?id=2629

⁷¹ **Reid, B, Albert, A, and Hopkins, L.** (2010) *A Creative Block? The Future of the UK Creative Industries*, London: the Work Foundation, <http://bit.ly/ha4B0G>

⁷² **Tim Broadbent** (2008) Does advertising grow markets? More evidence from the United Kingdom *International Journal of Advertising* Vol. 27, No. 5, 2008



improve an economic impact analysis' ability to take account of the major trends and changes to the industry wrought by globalisation, convergence and digitalisation.⁷³

The position of advertising as an industry – and more broadly as a business model – within the UK economy is a complex one, and not easily reduced to a single figure, or indeed a small set of figures. This paper sets a baseline and delineates the current possibilities for assessing this position, and calculating its contribution. Future assessments must build on this path-breaking activity to set these contributions within the broader economic ecosystem of the UK.

⁷³ **Arzaghi, M et al.** (2008) The Unbundling of Advertising Agency Services: An Economic Analysis. Harvard Business School

Appendix 1

This appendix includes further methodological information regarding the calculations shown in **Sections 4.2** and **4.3** of the report, and other information on data sources that was not deemed necessary to include in the main body of the report.

Direct value:

Data collected and published through the ONS Annual Business Survey (ABS) are used to produce an approximate estimate of GVA at basic prices. This measure is approximate because it does not allow fully for certain types of National Accounts concepts such as taxes, subsidies or income earned in kind.

The ABS also forms a major data input in the production of Input-Output Annual Supply and Use Tables used to set the annual level of UK Gross Domestic Product. The input-output tables also show industry estimates of GVA at basic prices, and are produced to be consistent with the European System of Accounts 1995, but are different from those shown in the ABS.

Whilst it is interesting to chart the GVA of the advertising industry over time, the available data is not without problems. Under the Standard Industrial Classification (SIC) codes for 2003 we used the code 74.4 in Section K of the ABS. However, the SIC codes changed again in January 2008 and so for the data for 2008 onwards, we used SIC code 73.1 in Section M of the survey. The UK SIC codes classify businesses by the type of activity they engage in, and provide a framework for collecting and presenting data on businesses. When the SIC codes were updated from SIC 2003 to SIC 2007, some old codes that were no longer relevant were removed from the list and others were added as new industries emerged. Similarly some codes were merged and others split out as the nature of different industries changed. The DCMS have stated their intention to create a 'Back Time' series using SIC 2007 so as to have more comparable data over time.

Comparison of reclassification of SIC codes from SIC (2003) to SIC (2007)

SIC (2003)		SIC (2007)	
A	Agriculture, hunting and forestry	A	Agriculture, forestry and fishing
B	Fishing		
C	Mining and quarrying	B	Mining and quarrying
D	Manufacturing	C	Manufacturing
E	Electricity, gas and water supply	D	Electricity, gas, steam and air conditioning supply
		E	Waste supply, sewerage, waste management and remediation activities
F	Construction	F	Construction
G	Wholesale and retail trade, repair of motor vehicles, motorcycles, and personal and household	G	Wholesale and retail trade, repair of motor vehicles, motorcycles

	goods		
H	Hotels and restaurants	I	Accommodation and food service activities
I	Transport, storage and communications	H J	Transport and storage Information and communication
J	Financial intermediation	K	Financial and insurance activities
K	Real estate, renting and business activities	L M N	Real estate activities Professional, scientific and technical activities Administrative and support service activities
L	Public administration and defence; compulsory social security	O	Public administration and defence; compulsory social security
M	Education	P	Education
N	Health and social work	Q	Human health and social work activities
O	Other community, social and personal services activities	R S	Arts, entertainment and recreation Other service activities
P	Activities of private households as employers and undifferentiated production activities of private households	T	Activities of households as employers; undifferentiated goods-and-services-producing activities of households for own use
Q	Extraterritorial organisations and bodies	U	Activities of extraterritorial organisations and bodies

It is worth noting that in some standard economic impact assessments ‘Value to the Exchequer’ is another way in which it is possible to understand the economic value of an industry. In other words, the greater the amount of employment and goods produced by an industry, the greater the size of the industry and the greater its contribution to the exchequer. In other economic valuation models of sub-sectors of the creative industries there has been a calculation of the estimated size of the contribution of said industries to the Exchequer. This has been undertaken by adding the different strands of tax that would be paid by the industry through, for example, Income tax, National Insurance (both employee and employer contributions), value added tax, corporation tax and so on. Contributions were calculated using average earnings data, profit estimates and ONS data on average tax payments by individuals in various income bands.

However, when considering the nature of the advertising industry, made up of large holding companies, and then many smaller agencies, this method of calculation becomes extremely complex. It is also important to note that in examining the advertising industry’s share in GVA, rather than GDP, we have thereby taken into account the contribution of taxes to the exchequer for the advertising industry.

Direct employment:

In **Table 9** in the main text, the figures in this table were calculated by adding up total employment data for each industry from the Inter Departmental Business Register (IDBR). The IDBR represents a population register covering 99 per cent of all business activity in the United Kingdom.

Indirect value:

The UK input-output tables published by the ONS form the basis for the indirect value of the UK advertising industry. The input-output tables report the value of purchases made by each industry from every other industry in the economy (including own-industry purchases). An essential source for the data underlying Gross Domestic Product - one of the key indicators of the National Accounts - these balances provide a single framework showing the relationship between components of value added, industry inputs and outputs, and product supply and demand.

Induced value:

In order to calculate the first-round induced value of the advertising industry, it is possible to take the total employment costs of the core advertising industry as a percentage of GVA for 2008. This amounts to 72%, which is relatively high compared to the average across all UK industrial sectors, but it compares reasonably with similar human capital intensive industries such as business consultancy. If we subtract a rounded figure of 10% to allow for the National Insurance contributions of employees in the advertising industry, we reach our first-round induced value of the advertising industry estimated figure of £5 billion.