

# TELECOM REGULATORY AUTHORITY OF INDIA

## NOTIFICATION

New Delhi, 31<sup>st</sup> July 2006

**No. 1-13/2005 – B & CS** – In exercise of the powers conferred upon it under sub-section (2) and sub-clauses (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) read with the Notification No.39 (S.O. No. 44(E) and 45 (E) dated 09/01/2004) issued from file No. 13-1/2004-Restg by the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of sub section (1) of section 2 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India, hereby makes the following Order:

1. Short title, extent and commencement:

- i) This Order shall be called “The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Sixth Amendment) Order 2006, ( 5 of 2006)”
- ii) This Order shall apply throughout the territory of India.
- iii) This Order shall come into force on the date of its publication in the Official Gazette

2. In the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order,2004 ( 6 of 2004) after the existing clause 3A and the entries relating thereto, the following clause and entries relating thereto shall be inserted as clause 3B, namely :-

“ **3B** : In determining the similarity of rates of similar channels referred to in the provisos below clause 3 above the following factors shall be taken into account:

- (i) the genre and language of the new pay or converted Free to Air to pay channel;
- (ii) the range of price ascribed to the channel of similar genre and language in the price of a bouquet(s) and prices of bouquet(s) that existed as on 26.12.2003 ; and,
- (iii) the range of prices of the individual channel of similar genre and language as existing in the cities where CAS is in existence;”

3. Explanatory Memorandum

A. This Order contains an Explanatory Memorandum attached as Annexure

By Order

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**Explanatory Memorandum**

- 1.1 The MSO Alliance, an alliance representing some of the major Multi System Operators (MSO) had suggested that all new pay channels (i.e those introduced after 26.12.2003) should be offered as individual channels. According to the MSOs the existing provision in the Tariff Order to offer the new pay channels(s) / or converted FTA to pay channels either individually or as part of a new separate bouquet on a stand alone basis has not been effective. Further, it has been stated that the absence of availability of information on individual channel prices, within the bouquet, hampers decision-making based on proper business rationale. On behalf of the MSO Alliance it was stated that the Tariff Order needs to be amended to ensure that the channels within a new bouquet are offered individually.
  
- 1.2 The MSO Alliance, in the context of the above, had made a proposal for amendment of the Tariff Order vide their letter dated March 14 2005. They had sought deletion of the words “or as part of new separate. Bouquets” in the proviso to the Tariff Order of 1.10.2004. The implication of this is that all new channels can only be provided as separate individual channels. They also indicated that once a new bouquet of pay channels is introduced, the new bouquet rate should be frozen at the level of introductory rate excepting for increase for inflation. Another suggestion was that if the broadcaster wishes to introduce any further channels after the introduction of a new bouquet then further introduction of the channel(s) in pay channel mode may be offered as single channel and should not be loaded with the 2nd bouquet of new channels. Attention of the Authority was also drawn to Rule 9 of the Cable Television Network Rules 1994, as amended, and in particular the second proviso relating to illusory pricing introduced with effect from 6.6.2003.

1.3 The Authority considered the proposal and decided that broader consultation would be necessary before a final decision can be taken. Besides, during the process of implementation of the Tariff Order of 1.10.2004, a number of other issues such as migration of channels from one broadcaster to another, freezing of rates of new pay channels at the introductory level, publishing of wholesale prices in TRAI's website were also raised. Accordingly a combined Consultation paper was issued covering all these issues.

### **Consultation Process**

2.1 As indicated in para 1.3 above in order to give effect to broader consultation it was decided by the Authority to issue a consultation paper on 7.11.2005.

The following questions were posed for consultation:

- i) Whether the proposal for amendment to the Tariff Order as suggested by MSO Alliance for deletion of the words "or as part of new separate bouquets" should be agreed to or not?
- ii) If not, whether there can be any other method by which the concerns expressed by MSO Alliance can be addressed within the existing framework of non-existence of addressability? If so how?
- iii) Whether the existing tariff order be amended to indicate benchmarks which can be used for determining similarity in rates of new pay channels vis-a-vis rates of similar channels that was prevailing on 26.12.2003? If so what should be the benchmarks and how to arrive at these benchmarks out of the following options: -
  - a) Can the average wholesale price of bouquet of channels existing as on 26.12.2003 be used as benchmark to determine similarity in rates?
  - b) Should available Chennai (CAS area) individual channel prices and wholesale bouquet prices in CAS Areas and Non CAS areas be used to derive a wholesale individual channel price within a bouquet in non CAS area and this derived wholesale price of the individual channel be used as a benchmark for judging the similarity in rates?
  - c) Whether there can be any other methodology and what are the details of such alternative methodology?
  - d) Whether similarity should be judged with reference to the same broadcaster or all broadcasters for similar genre of channels and whether language and reach of a channel also be considered for reckoning similarity?

- iv) What should be the approach in case an existing pay channel changes from one distributor to another as in the case of HBO and Ten Sports and what specific changes may be required in the Tariff Order?
- v) Whether the prices charged by broadcasters to the MSOs, for channels/bouquets launched after 26.12.2003, should be frozen at the levels at which they were introduced, with an annual increase for inflation as suggested by the MSOs?
- vi) Whether the prices charged by the broadcasters to the MSOs as reported under clause 4 of the Tariff Order of 1.10.2004 should be released for public information by TRAI as and when there are changes? If so how this would lead to more efficient functioning of the market?
- vii) Whether we should move towards pricing of individual channels so that the consumers in a non-CAS environment, through the cable operators, exercise a wider choice regarding channels?

Comments were received from 14 stakeholders. A gist of the detailed comments is available on TRAI's website [www.traigov.in](http://www.traigov.in). As a part of the process of consultation Open House Discussions were held on 18<sup>th</sup>, 19<sup>th</sup>, 23<sup>rd</sup> and 25<sup>th</sup> January 2006 at Mumbai, Delhi, Bangalore and Kolkata respectively. A summary of the gist of the comments on the various issues received during the consultation process is placed in the Annexure to this Explanatory Memorandum.

### **Analysis of the Issues raised during Consultation**

#### **Amendment to the Tariff Order for deletion of the words “or as part of new separate bouquets”**

3.1 The Tariff Order of 1.10.2004, inter alia, provides that the ceiling as existing on 26.12.2003 can be increased on account of introduction of new pay channel by a broadcaster after 26.12.2003 or conversion of FTA channel existing as on 26.12.2003 to a pay channel subsequently, provided such new pay channel or converted FTA Channel is offered on a stand alone basis and not form part of a bouquet existing as on 26.12.2003, either individually or as part of new bouquet. The stipulation providing that the new pay channel(s) will not form a part of the existing bouquet that existed on 26.12.2003 and will be offered on a stand alone basis was intended to protect the sanctity of the

price ceiling of channels existing as on 26.12.2003. It was expected that the MSO or independent LCO, would, on receiving the offer of new pay channel individually or as a bouquet, be considering his/her business case before taking a decision. The choice to accept or reject the offer is still available to the MSOs and independent Local Cable Operators (LCO) taking feed from the broadcaster though such a choice is technically not available at levels below in the distribution chain including the consumer.

3.2 Though in the original proposal of MSO Alliance the request was for deletion of the words “or as part of new separate bouquets in response to consultation paper and the during Open House Discussions it was suggested by MSOs that the MSOs should have a choice to opt between a-la-carte and bouquet.

3.3 The basic argument, which is advanced by the MSOs in support of the amendment is that, the broadcasters are forcing the newly introduced bouquets on operators under threats of disconnection of even the old bouquets existing on 26.12.2003. It was also pointed out that they are not able to carry all the channels in the new separate bouquet, in a substantially analogue network due to bandwidth constraint. Further it was stated that there is consumer resistance to pay for unwanted channels in the new bouquet while the MSOs are burdened to carry and pay for the entire new bouquet. While these concerns are valid it must also be recognized that a-la-carte pricing could be more expensive due to higher distribution costs and could in the absence of addressability and the current disparities in market power lead to a situation where the MSOs are forced to take all the new channels and that too at a higher price.

3.4 While expressing similar concerns the consumer organizations have suggested that the choice through the operator would only be farce given the current scenario of area monopolization at the last mile level and the amendment would only give leverage to the MSOs.

3.5 The proposal in all fairness can be considered for implementation only on a prospective basis. This would mean there will be three different sets of regimes for channels floated at different points of time. One for those which

existed as on 26.1.2.2003, the second for those new pay channels which came in after 26.12.2003 and third the proposed new regime as finally decided on the basis of the proposal of MSO Alliance. The implementation of different sets of regulations for three sets of regimes could become complicated. The proposal would invite criticism on grounds of being unfair to the new entrants.

**3.6 Considering all these factors and in particular the views of the consumer organizations that this would not lead to better consumer choice, the Authority has decided that this suggestion of the MSO Alliance should not be accepted.**

**Alternative Methods in a non addressable system**

3.7 Digitalization is seen to be one solution to address the stated cause for proposed amendment. TRAI has already made detailed recommendations on Digitalization of Cable Television in September 2005 . With developments on the DTH platform even the small /medium level MSOs and Last Mile Operators have started realizing the need for moving towards digitalization. Digitalization per se would only give a larger array of channels and much improved quality but may not facilitate the concept of pay for what you watch without addressable system at the level of consumer. However both CAS and digitalisation to spread throughout the country would take time.

3.8 A suggestion has been made that in a non-CAS environment there has to be a mechanism to know the price of individual channel price vis-à-vis the average price of a channel within a bouquet. As already indicated in the analysis done under the heading of Amendment to the Tariff Order' the individual channel pricing decision will have meaning only if the facility to make a choice of an individual channel within a bouquet exists

3.9 One approach could be that the tariff order could mandate that in case if the new pay channel is offered as a part of a stand alone new bouquet the individual channel prices should also be mentioned along with the bouquet price. This would bring in transparency. An argument often advanced by the broadcasters against stating individual prices is that the business model is to sell a package of channels of different genres and assign a value at which the

bouquet can be marketed and the bouquet price is not merely a sum of cost of individual channel in a bouquet. However it is often seen that the channels in the bouquet are not sourced from the same content provider which should mean that the channels are acquired individually and therefore it can have a reference price.

3.10 The suggestion that there should be an overall price freeze taking all the bouquets together plus 7% is not practical and is not in the spirit of the Tariff Order and could also create problems for the implementation of the current price order which essentially seeks to control the bouquet prices as prevalent on 26.12.2003.

3.11 The other suggestion referring to the recommendation of premium channels coming through set top box is essentially a more CAS oriented solution which will depend on the Government decision.

**3.12 On the basis of the above analysis and the decision on the first issue for consultation it is felt that this concern could be better addressed through introduction of addressability and spread of digitalisation.**

***Amendment to existing tariff order to indicate benchmarks which can be used for determining similarity in rates of new pay channels vis-a-vis rates of similar channels that was prevailing on 26.12.2003***

3.13 The existing tariff order does not indicate any specific methodology to be adopted in establishing similarity of channels that existed on 26.12.2003. The difficulty envisaged was that no one method could really be justified as a perfect method given the degree of difficulty in establishing the criterion for treating two channels as similarly placed. More importantly, even after one is able to establish similarity in content and programme quality between two channels, the value attached to such similar channels depends on the perception of diverse segment of viewers. Entertainment appeals to the mind unlike a manufactured product and therefore perception of viewers is bound to vary between two similarly placed channels. There is therefore a valid business case to price a similar product differently based on the perception of

viewers. The comments received on this question also support this. Therefore any exercise, prima facie, even if done would only be bordered more on subjectivity and judgmental assessment and therefore not perfect.

3.14 The methodology suggested by the MSOs of using the formula indicated in the Consultation paper of April 2004 will not be effective. Essentially this formula suggests that the price of no channel should be more than twice the average price of a bouquet. However as has been indicated in the consultation paper itself this would lead to wrong results in a 2 channel bouquet like ESPN/Star Sports (the price of each channel would be equal to the bouquet price).

**3.15 Following the comments of the consumers it is proposed to provide guidelines to benchmark the prices. The only method that could be followed is to take the bouquet prices, adjust them for inflation, take into account the individual prices of the channels in Chennai ( and other CAS markets when these emerge) of the same genre and then fix the individual prices after adjusting for the wholesale price discount. The tariff order is being amended to provide for these guidelines. A sample calculation is provided below to make the process clear.**

3.16 Bouquet consists of 5 channels priced at Rs. 50 in December 2003.

Individual Channel prices in Chennai : Rs. 30 ( Gen entt.) , 25 (Sports),15 ( Films), 8 ( Cartoons) and 7 (Lifestyle). Total = 85

Benchmark price for General entertainment channel sold a-la carte would be  $30 * 1.07$  (for inflation) = Rs. 32.10. Similar calculation would be done for all the genres and the benchmark price for individual channel would be the range offered by this calculation.

Benchmark price when channel sold in bouquet would be  $30 * 1.07 * (50/85)$  = 17.77 The reference bouquet price would be calculated by totaling benchmark prices of the individual channel prices in the bouquets as

arrived above. Rs.85 and Rs 50 used above are only examples. The determination of benchmark prices for individual channels in a bouquet would take into account bouquet price(s) that existed on 26.12.2003 of all broadcasters, the range of price ascribed to the individual channels of similar genre and language out of bouquet price of the broadcaster's bouquet(s) that existed on 26.12.2003, range of individual channel prices offered on a-la-carte of channels of similar genre and language of all broadcasters

*Approach in case an existing pay channel changes from one authorised agency to another*

**3.17 It has been decided to insert a separate section indicating the factors that would be taken into account while determining the similarity of rates of similar channels as indicated in the Tariff Order of 1/10/2004.** Further so far there have been only two cases of a channel moving from one authorised agency to another. Ten Sports which was being distributed earlier by Modi Entertainment joined the One Alliance and is now being distributed by them as part of a new bouquet. HBO which was earlier being distributed by the One Alliance is now being distributed by Zee Turner as part of a new bouquet. One of these channels is an English Movie Channel which is not very popular. The approach set out in the earlier paragraph could be used to determine the reasonableness of the individual prices if the channel is offered as an individual channel and also the prices of a bouquet if the channels are offered as a bouquet. It has therefore been decided not to consider any amendment to the Tariff Order in regard to the issue of shifting of a channel from one broadcaster to another.

*Whether the prices being charged by Broadcasters to the MSOs for channels/bouquets launched after 26.12.2003 should be frozen at the levels at which they were introduced?*

3.18 This suggestion was made by the MSO Alliance – it has also been indicated by them that an annual inflation adjustment mechanism could be considered. The apprehension here is that the prices of these new bouquets could be escalated. The broadcasters have objected to any price control as they consider that this is not necessary since the price increase is only temporary. **Out of the two consumer organizations one has agreed with the views of the MSO alliance while the other has suggested that this be regulated through the mechanism suggested for judging similarity (discussed in paras 3.13 to 3.16 above) . This suggested approach is the best as it would provide a fair basis of judging the reasonableness of the prices in a comprehensive manner.**

*Whether the prices charged by the broadcasters to the MSOs as reported under clause 4 of the Tariff Order of 1.10.2004 should be released for public information by TRAI as and when there are changes? If so how this would lead to more efficient functioning of the market?*

3.19 On this issue the two consumer organizations have supported the suggestion. Some Broadcasters have however pointed out that this should also be accompanied by further dissemination of information by the MSOs and the Cable operators to the consumers. In principle there can be no real objection to the release of prices. This would lead to greater transparency and information. However given the market as it has evolved today there is no direct correlation of wholesale prices to retail prices – this depends on the level of negotiated connectivity and total payment not only for the particular bouquet but also the other bouquets. Thus the same wholesale prices lead to different retail prices in different parts of the country. It would not be possible to bring about uniformity in these prices, in the absence of addressability, because of the great diversity in conditions in different parts of the country. Therefore the best course of action would be for each service provider to provide a break up of these charges with all elements including arrears. This would also help in the resolution of disputes as and when they arise. **It has been decided in principle that these wholesale prices reported by the**

Broadcasters would be put up on TRAI's website with the clarification that retail prices need not fully reflect these prices since the negotiated connectivity is less than 100% and that is why retail prices are generally lower than the wholesale price. There should also be a mechanism by which prices for individual channels charged by MSOs to cable operators and by cable operators to consumers should be made available to the cable operators and consumers respectively. In view of the large number of operators the manner in which this should be done will have to be determined separately taking into account that at present there is no field level enforcement machinery in place. Thus action to publicise and /or inform individual consumers about the rates of channels /bouquets would be examined separately as one comprehensive exercise.

*Whether we should move towards pricing of individual channels so that the consumers in a non-CAS environment, through the cable operators, exercise a wider choice regarding channels?*

3.20 A general view over this subject is yet to crystalise. **Accordingly there appears to be no need to make any changes in the basic scheme of the price control regime for the present.**

3.21 The factors mentioned for determining the similarity of rates of similar channels contained in the proposed clause 3B in the Amendment Order has not been extended to the charges in respect of commercial subscribers, in deference to the directions of the Hon'ble Supreme Court on 28.4.2006 to maintain status quo as on the date of the order until further orders in civil appeals no 2061 of 2006 and 2247 of 2006.

GIST OF COMMENTS OF STAKEHOLDERS

The opinion on the issues have generally been seen to be divided along the lines of business model reflecting the respective interests of stakeholder groups of Broadcasters, channel Providers and channel Distributors on the one hand and the MSOs and Cable Operators on the other. Only two consumer Organisations have responded. The comments received have been summarized to reflect the different views received under these three major groups of stakeholders. Certain new issues, which have been raised in the Open House Discussions, have also been taken into consideration.

a) **On the proposal for amendment to the Tariff Order proposed by MSO Alliance the views of the major groups are:**

I. Group consisting of Broadcaster, channel provider, distributors of channels

- i) Collective choice given the wide variety of individual choices would require consensus, which is not practicable. Further the argument of a-la-carte leading to wider consumer choice is fallacious, as the consumers will still have no choice over cable operator or placement of channels or quality of service.
- ii) It is important to have a proper addressable system for a-la-carte model to be effective and transparent.
- iii) Restricting channels to a a-la-carte leads to a loss of benefits of economies of scale, result in lower programme diversity and absence of level playing field to new and niche channels, restrains the growth of the industry leading to loss of benefits of volume discounting, reduced choice and increased cost to the consumers. It has been reported that there is evidence to this effect shown in a study of US Market.

II Group consisting of MSOs, Cable Operators

- i) Broadcasters are hard bundling all the pay channels and customers are not willing to pay as they do not watch all pay channels. The words 'or as part of new separate bouquet' has been taken advantage by the broadcasters in the case of HBO and Ten Sports Channels.
- ii) What has been requested is that both choices – to subscribe individually or bouquets – should be available and for the choice to be real a pricing formula needs to be incorporated in the Tariff

Order whereby a ceiling on the individual/ a-la-carte prices comprised in a bouquet is imposed.

- iii) With the large increase in the number of channels it is not possible to carry all the channels because of limitations of bandwidth.

### III Group consisting of consumer organizations

The responding consumer organisations have stated that the proposal of MSO Alliance should not be agreed to till the introduction of CAS or an addressable system at the level of consumer. Collective choice in the present set up when the consumer is required to deal with only one cable operator is a farce and the amendment will only give leverage to the MSOs.

- b) **On the issue of alternative methods by which the concerns expressed by MSO Alliance can be addressed within the existing framework of non-addressability the views of the various groups of stakeholders are as under:**

- I. Group consisting of Broadcaster, channel provider, distributors of channels

- i) In the absence of CAS, digitalization is seen to be the solution for addressing the concerns of MSOs over constraints of bandwidth for carrying channels in Analogue mode. The choice of offering channels individually or as a bouquet should be left to the broadcasters to determine and market driven solution is advanced as the best option in a Non CAS environment.

- II Group consisting of MSOs and Cable Operator

- i) The general view is that there is no other method excepting amendment to the Tariff Order, as they are not able to carry all the bouquet(s) of channels imposed on them in analogue mode.
- ii) However in the alternative in a non-addressable situation there is a need for a basic formula of individual pricing of channels Vs Average price per channel in a bouquet so that the individual channel price is not unviable for operators to choose.
- iii) One view is that in the event amendment being not practical the price prevailing on 26.12.2003 can be used as benchmark but only 7% increase be permitted on the aggregate price of all bouquets.
- iv) Another view is that TRAI's recommendation on pay channels coming after a notified date through STB with limited price regulation on maximum available discount in a bouquet should address the issue.

- III Group consisting of consumer organisations
  - i) If CAS through STB is implemented on rental basis and digitalization takes place the issue will get resolved.
  - ii) Another consumer organisation is of the view that the issue has arisen due to migration of pay channels and it is a dispute between service providers. In order to avoid future dispute TRAI should mandate all broadcasters /distributors to decide on individual prices of all existing pay channels.
  
- c) **On the issue of amendment of Tariff Order to indicate benchmarks for determining similarity in rates of new pay channels vis-à-vis rates of similar channels that was prevailing on 26.12.2003 the views of the various groups are as under:**
  - I. Group consisting of Broadcaster, channel provider, distributors of channels
    - i) This group have stated that the rapid growth in competitive market should be recognized and price freeze withdrawn and the Tariff Order amended to invoke free market principle and pricing should be allowed to be based on commercial agreements.
    - ii) Fixing benchmarks for a product, which comprises intellectual property rights and copyrightable material, would amount regulating the price of copyrights. Entertainment is not a commodity to apply quantitative parameters and is not an essential commodity to be brought under price regulation.
    - iii) With intrinsically different cost structure on account of technology used, distribution model followed, differences in content quality, programme format, margin/fees paid to intermediaries, the benchmark approach will be ineffective, illogical and sub optimal.
  
  - II. Group consisting of MSOs and Cable Operators
    - i) Similarity of channels should be judged by taking into consideration the rate card or price of individual channel of all broadcasters of similar genre and the language of the channel. The criteria based on reach being subjective should not be used.
    - ii) The derived wholesale price should not be used as a benchmark.
    - iii) One view is that if the price prevailing as on 26.12.2003 is used as benchmark only 7% increase on account of inflation should be allowed on the aggregate price of all the bouquets of a broadcaster/distributor.

- iv) Another view is that the method of fixing prices on a la carte vis a vis bouquet of channels as envisaged in para 4 of chapter 3 of the consultation paper of April 2004 can be used as basis.
- v) Despite subjectivity involved in pricing of content there has to be ceiling on the price of new channel vis-à-vis the price of existing channel of that genre. A limit of 1.5 times the price of existing channel is suggested as one option. In case if a broadcaster feels that such pricing will not cover his costs and reasonable margin exception can be made by TRAI on case-to-case basis after examining costing details.

### III. Group consisting of consumer organisations

One view is that the available Chennai CAS area individual channel prices and wholesale bouquet CAS and NON CAS area prices be used to derive wholesale individual channel price within a bouquet and for judging similarity in rates. Another organisation has suggested that channels be classified under various genres by the broadcaster and average price falling under a genre can be used as a benchmark till such time the addressability is introduced. Market forces may be allowed to determine the prices once the addressability is introduced.

- d) **On the issue of specific changes required in the Tariff Order and the approach in case of an existing pay channel change from one distributor to another, the arguments representing various stakeholder groups are:**

#### I. Group consisting of Broadcaster, channel provider, distributors of channels

- i) The Regulator should not be interfering in what are commercially negotiated contracts between private parties.
- ii) Such events are unique and it is impossible to work out any methodology because the events are spread over different periods of time.
- iii) There are also a couple of suggestions on the methodology. One suggestion is that the current distributor be allowed to acquire a new channel in place of an existing channel going out of his existing bouquet without change in the existing bouquet price. Alternatively if the cost of acquisition leads to higher cost per subscriber, the new distributor should be left to his discretion to provide such new channel on a-la-carte basis or as a part of new bouquet by adding volume discount.

## II. Group consisting of MSOs and Cable Operators

- i) The extent of reduction in the bouquet price should be the benchmark for the new broadcaster/distributor and to facilitate this the prices of individual channels and bouquets should be published by broadcasters in public domain.
- ii) Another suggestion is that the principle of price freeze on the total price of all bouquets subject to escalation for inflation must be applied or alternatively the shifted channel be mandated to be offered on a standalone basis for at least six months till the market forces determine the true value of the channel.

## III Group consisting of Consumer Organisations.

One view is that the extent of reduction should be with reference to the benchmark prices as prevailed on 26.12.2003 of the channel that moved out of a bouquet. Another view is that it is an issue, which has to be settled between MSO and broadcaster, but in order that no dispute arises in future TRAI should mandate broadcasters/MSOs to decide on the individual channel prices of all the existing pay channels.

- e) **On the issue of freezing of the rates of new pay channels /bouquets introduced after 26.12.2003 at the level of introduction the views are as under:**
  - I. Group consisting of Broadcaster, channel provider, distributors of channels
    - i) The group have opposed price freeze and suggested lifting of price caps and recommended to leave it to market forces.
    - ii) The object behind introductory pricing is to provide an opportunity to as many people to view content and therefore the prices should not be frozen at this level.
    - iii) With two platforms for delivery and with more DTH operators expected to become operational the Indian market is competitive and price control and restrictions will impact revenues, limit investment, slow down launch of digitalization, affect quality and diversity of programming.
    - iv) TRAI's objective is to promote competition and price freeze is only a temporary measure. There is no comparable regulation on price etc on other forms of entertainment such as theatre, print media. Globally pay channels are not capped or regulated except the basic tier.
    - v) Price regulation sanctifies piracy and resultant under declaration.

- vi) No market failure scenario or other compelling economic rationale exists for placing price control on pay channels.

## II. Group consisting of MSOs and Cable Operators

- i) The prices should be frozen except for the adjustment for annual inflation till addressability and choice at the consumer level is not sorted out as otherwise the objective of protecting consumer interest will be defeated.
- ii) Another suggestion is that not only the prices be frozen in respect of new pay channels that have come after 26.12.2003, the tariff order should also be amended imposing restrictions on the grounds for increase in subscriber base limiting it to only on account of enlargement of service area or addition to the number of cable operators. Alternatively, the price freeze should operate only at the level of broadcasters to MSO and MSOs should be allowed to increase the cable charges for the distribution chain below so that the additional outgo to broadcasters due to imposed increased connectivity is recouped.

## III Group consisting of Consumer Organisations

One of the consumer organisations has favoured the freezing of prices of pay channels at the level of introduction after 26.12.2003 and the other has viewed that it should not be frozen and may be reviewed on the basis of benchmarks adopted for pricing of new pay channels.

- f) **On the issue of release for public information of prices of new pay channels charged by broadcasters to MSOs reported under clause 4 of the Tariff Order by TRAI as and when there are changes, the arguments advanced are:**

### I. Group consisting of Broadcaster, channel provider, distributors of channels

- i) The relevant information to the consumer is the retail price and not the price charged by broadcaster to MSOs. Publishing of information without similar obligations down the distribution chain will cause confusion and make the market functioning inefficient.
- ii) Another view is that the information furnished to TRAI on prices is confidential information and public disclosure of negotiated commercially sensitive information will create difficulties for the parties to enter into agreements based on their respective competitive strength in future.
- iii) There is also a view that the rates of the channel may be published by TRAI.

### II. Group consisting of MSOs and Cable Operators

- i) The prices should be published by TRAI as TRAI will be best official source for pricing and will bring transparency. The prices should be made available to the consumer organisations. Broadcasters and MSOs should also disclose the prices through their respective channels. Attention has been invited to Rule 9 of the Cable Television Rules 1994 in support.
  - ii) Stating that there is a worldwide practice of sharing distribution margin between broadcasters, MSOs, LCOs and a similar model should be adopted in India.
- III Group consisting of Consumer Organisations  
The consumer organisations have commented that it will be very positive step and would lead to transparency and informed decision making at all levels.
- g) **On the issue of moving towards pricing of individual channels so that the consumers in a NON CAS environment through the cable operators exercise wider choice regarding channels the views of the various groups of stakeholders are:**
- I. Group consisting of Broadcaster, channel provider, distributors of channels  
The broadcaster group has not supported the moving towards pricing of individual channels. Generally the grounds for not supporting the proposed amendment to the Tariff order facilitating the a-la-carte system, has been reiterated. The absence of non existence of addressability at the consumer level, collective choice cannot be representative of individual consumer choice etc, increased costs to consumers on a-la-carte system have been cited as the reasons for not supporting this proposal.
  - II. Group consisting of MSOs /Cable operators
    - i) We should move towards pricing of individual channels. Broadcasters are bundling slow moving channels with channels in good demand and a move towards pricing of individual channels in non CAS environment will give wider choice to consumers.
    - ii) It has been stated that MSO/operator who is getting direct feed should be able exercise choice on behalf of the consumers till addressability comes at consumer level and this is the practice worldwide.
    - iii) One view that it has both advantages and disadvantages. The benefit is to choose collectively through the operator but the difficulty is that the MSO will have to select all the channels, as there will be divergent demands and increased number of agreements with the cable operator.

### III. Group consisting of consumers

Exercising choice through Cable operator is just an illusion and pricing of individual channels should go along with the introduction of pay channels through the addressable system. Another view is that we should move towards pricing of individual channels but the consumer will not be able to exercise choice because of analogue networks with limited bandwidth.