KOAN

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To

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Chairperson

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Telecom Regulatory Authority of India
New Delhi-110002

Subject: Response to the Consultation Paper on "Tariff Related Issues for Broadcasting and Cable Services"

Koan Advisory Group is a New Delhi based policy advisory firm. Our team combines thorough domain knowledge across multiple technology-oriented sectors with continuous engagement of decision makers in industry and government. We specialise in policy and regulatory analysis in both traditional and emergent technology markets.

We are grateful for the opportunity to participate in this consultation on tariff related issues for broadcasting and cable services. In this document, we submit three key points for the Authority's consideration. First, the new tariff framework implemented this year must be enforced. This will ensure minimal market disruption. Second, the Authority should shift its emphasis from regulating prices to enabling competition, to help achieve goals linked to affordability and innovation to maximise consumer welfare. Third, the Authority should recognise the value of bundling for producers and consumers alike and consider interventions to facilitate orderly market growth in the future.

1. Address Gaps in Implementation

Before undertaking any future amendments, TRAI must identify and remedy the challenges in implementation of the new tariff framework. The Consultation Paper claims that the business strategies used by broadcasters and DPOs have prevented consumers from exercising real choice. However, it is likely that practical difficulties and lapses in compliance by distributors may have impacted consumer decisions, more than the other dimensions that the Consultation Paper concerns itself with.

Several DPOs have already been pulled up by TRAI for non-compliance with requirements including -- (a) setting up a website that provides information about the DPO[1], (b) prescribed standards for responding to consumer complaints[2], (c) procedure prescribed for providing customer premises equipment[3], (d) providing price protection to long-term consumers[4], and (e) not providing the customer care programming service[5]. In addition, TRAI has also pulled up DPOs for (a) not providing consumers the option to delete a channel[6], (b)

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[1] 31, QoS Regulations
[2] 25(3), QoS Regulations.
[3] 24, QoS Regulations.
[4] 17, QoS Regulations;
[5] 32, QoS Regulations.
[6] Violating Clause 6 and Clause 7 of the QoS Regulations.

forcing channels on consumers[7], (c) not providing the basic tier pack[8], and (d) not providing the prescribed billing options[9].

Such enforcement gaps are likely to have limited the choice that consumers can exercise over the channels that they have subscribed to. It is also likely that the high share of bouquet subscriptions stem from the convenience of choosing these over ALC, or because DPOs have not given their subscribers the opportunity to choose channels in the manner envisioned by TRAI. It can also be argued that the consumers who have migrated to the Best Fit Plan have chosen bundles by default and have not exercised their true choice. Therefore, it is important to empower consumers to exercise choice before evaluating the favourability of market outcomes. A few means for this are listed below:

Ensuring compliance: Ensuring compliance with the new regulations requires both incentives and penalties, and these have largely been built into the current framework. For instance, the QoS Regulations require resolution of grievances within seven days of receipt, designating a nodal officer for each state, wide dissemination of contact information, and mandatory display of channel options through an EPG in a standardised format.[10] In this regard, the TRAI has issued directions to more than twenty operators already, highlighting non-compliance with specific QoS obligations.

Assigning penalties requires regular monitoring of the actions of all industry participants. Since the DPO ecosystem is highly fragmented and disaggregated, it is understandably difficult for TRAI to audit compliance. In recognition of this, on May 10, 2019, TRAI floated a tender for empanelling an external agency to audit compliance with the new regulations[11]. This is a positive step and must be implemented to address the current gaps in compliance monitoring in a time-bound manner.

Enhance consumer outreach: Informed decision making by consumers reduces the need for regulatory interventions in most competitive markets, especially where traditional enforcement is difficult[12]. Presently, consumers receive information either through DPOs or broadcasters. This information may be misleading, or incomplete. In this regard, proactive and responsive information campaigns by the regulator can help inform consumers about their rights and choices in an objective and holistic manner, thereby enabling effective implementation of the regulatory framework.

In this context, it is necessary for consumers to be made aware of the availability of the information as well. A multi-pronged consumer awareness campaign is necessary for reaching all user demographics. TRAI may emulate consumer awareness initiatives undertaken by other regulators such as the Reserve Bank of India and the Insurance Regulatory and Development Authority of India, which use a combination of advertisements on different media platforms to raise awareness.

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[7] Violating Clause 4 of the QoS Regulations.

[8] Violating Clause 5 of the Tariff Order.

[9] Violating Clause 22 of the QoS Regulations.

[10] Regulation 18, Interconnection Regulations.

[11] Expression of Interest for Empanelment of Companies for Inspection of Consumer Households in respect of New Regulatory Framework for Broadcasting and Cable TV Services, TRAI, 10 May 2019 https://main.trai.gov.in/sites/default/files/EOI_10052019_0.pdf

[12] Ofcom, A Review of Consumer Information Remedies, 12 March 2013, available at: https://www.ofcom.org.uk/__data/assets/pdf_file/0033/91698/information-remedies.pdf

Capacity building and policy incentives: LCOs need to be aided in the transition to the new regime, as they are typically small enterprises with limited technical capacities and capabilities. We have seen several reports of consumers facing blackouts because LCOs have professed difficulty updating the status of transactions in the portals of MSOs[13]. Indeed, LCOs may not be fiscally or technically able to respond to requirements such as the EPG and customer call centres. Further, extant Interconnection Regulations stipulate technical standards to be followed for set-top-boxes (STBs) which in turn necessitate that LCOs invest in upgrading existing STBs to meet new standards. While it would be easier for MSOs to comply with these requirements, LCOs that are predominantly the last mile operators – have limited resources in contrast.

The TRAI should seek to enable LCOs to tide over such constraints through collaborative efforts at capacity building. Capacity building initiatives undertaken at the time of digitisation included education drives[14,15,16] and sensitisation programmes. However, market stakeholders did not actively participate in these initiatives, forcing them to be dropped. Therefore, future interventions must be incentives- based. The example of the Conferenza Permanente dell Audiovisivo Mediterraneo (COPEAM) in the European Union may be emulated, which conducts periodic training workshops to update and skill personnel with the evolving technical needs of the audio-visual sector.[17] This may be taken up by TRAI itself or conceptualised in a collaborative mould. A model such as the COPEAM of a non-profit organization supported by the regulator/government may be explored. The TRAI may also rope in the Media and Entertainment Skills Council to support such programmes.

2. Enhance Regulatory Focus on Enabling Competition

Regulatory intervention in the TV market should be aimed at enhancing competition, instead of guiding business decisions directly. Competitive markets lead to lower prices and encourage innovation[18]. In the TV market, competition among broadcasters is likely to lead to greater content innovation and lower channel prices, whereas competition among distributors will ensure low prices and high quality of services for consumers[19]. The competition objective also requires less regulatory resources as market forces can nudge supply-side stakeholders to serve consumer welfare in their own self-interest.

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[13] The Telegraph, Cable TVs go blank, operators blame payment snags, 13 May 2019, available at: https://www.telegraphindia.com/states/west-bengal/cable-tvs-go-blank-operators-blame-payment-snags/cid/1690447

[14] Ibid at Para II, Para 17.

[15] TRAI Recommendations on Implementation of Digital Addressable Cable TV Systems in India, 5 August 2010

[16] Standing Committee on Information Technology, 16th Lok Sabha, Status of Cable TV Digitization and Interoperability of Set Top Boxes, 44th Report, December 2017, available at: http://164.100.47.193/lsscommittee/Information%20Technology/16_Information_Technology_44.pdf

[17] COPEAM, Capacity building: "Managing the digital transition: a training challenge for media organizations", 2017, available at: http://www.copeam.org/activities/capacity-building-managing-the-digital-transition-a-training-challenge-for-media-organizations/

[18] UK Parliament, Economic rationales for regulating markets, available at https://www.parliament.uk/documents/commons/Scrutiny/Rationale-for-regulating-markets.pdf

[19] ICRIER An Analysis of Competition and Regulatory Intervention in India's Television Distribution and Broadcasting Services (2019), available at http://icrier.org/pdf/An_Analysis_of_Competition_and_Regulatory_Interventions.pdf

The Authority has adopted a market-approach in the telecom sector, where it has placed regulatory emphasis on lowering barriers to market-entry and facilitating free and fair competition[20]. The TV market would benefit from a similar regulatory approach and overall regulatory forbearance.

Towards this end, the new framework has already mandated market-based measures such as non-discrimination and transparency in interconnection. DPOs and broadcasters must publish requisite details about their interconnection agreements on their website.[21]Under extant Interconnection Regulations, 'must carry' prescriptions seek to ensure that all channels offered by broadcasters are available to customers of every DPO and put in place reporting requirements with respect to subscriber base, network base, list of channels available, list of channels requested for, etc.[22] Additionally, entry barriers are removed by stipulating that no minimum base of subscribers may be stipulated by the DPO or broadcasters to onboard a channel.[23] A few other measures which the Authority may undertake to enhance competition in the TV market are listed below:

For distributors

The lack of competition at the level of the last mile can serve as a major hurdle in successfully achieving the objectives of this regulatory and market transition. As noted by TRAI, only fifteen MSOs, which represent less than 1.5 percent of the total MSOs in the country, occupy 78 percent of the market share. The TRAI has also noted that this reflects structural issues in the sector and the existence of hurdles to fair competition[24]. Thus, it is necessary to assess the major obstacles to competition at the level of DPOs, and undertake reforms that can augment market competition.

In this regard, the TRAI has previously recommended policy reforms such as infrastructure sharing and enabling the ease of doing business. For the latter, it has recommended the revision of extant requirements for independent headends for each MSO, as well as eliminating redundant registration and licensing processes. Moreover, addressing inefficiencies in obtaining right of way permissions are necessary to prevent arbitrary barriers to market entry.

Set-top-box interoperability is another appropriate solution to augment competition by minimising switching costs at the consumer level. Apart from these initiatives, unbundling the local loop (ULL) can allow new avenues for DPOs to monetize their infrastructure through related broadband markets. ULL has previously served well in enabling competition through the entry of new market players and provides choice to consumers.[25] The National Digital Communications Policy 2018 has recognised this as a strategy to enable

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[20] TRAI, Consultation Paper on Regulatory Principles of Tariff Assessment, available at https://main.trai.gov.in/sites/default/files/Consultation_paper_03_17_feb_17_0.pdf

[21] Chapter III, TRAI Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017

[22] Regulation 4, Interconnection Regulations.

[23] Regulation 3(5) and 4(12), Interconnection Regulations

[24] TRAI, White Paper on the Benefits of 'New Framework' for Small MSOs (2019), available at: https://main.trai.gov.in/sites/default/files/WhitePaper_23042019.pdf

[25] TRAI Recommendations on Infrastructure Sharing in Broadcasting TV Distribution Sector (2017), available at: https://main.trai.gov.in/sites/default/files/Recommendation_broadcasting_29_03_2017.pdf; TRAI Recommendations on Ease of Doing Business in the Broadcasting Sector (2018), available at: https://main.trai.gov.in/sites/default/files/Recommendation_EODB_26022018.pdf.

internet penetration as well. However, to operationalise voluntary uptake of infrastructure sharing, relevant incentives will need to be provided to market participants.

For broadcasters

The Authority can facilitate competition among content creators by lowering barriers to entry in this segment of the market. Significant barriers to entry for broadcasters include high entry fees, limited availability of transponders, and licensing conditions which are especially onerous for small broadcasters to comply with. In 2018, TRAI recommended that the process for granting uplinking and downlinking licenses be streamlined, and an open sky policy be adopted for Ku band. It also suggested that the processes for leasing transponder capacity and obtaining security clearances for satellite use be smoothened[26]. Implementing these recommendations in a timely manner will facilitate new investments in TV broadcasting in India.

Additionally, it is important to bring transparency and reliability to the process of TV audience measurement so that content producers can accurately respond to audience preferences and advertising revenues are allocated efficiently. TRAI has undertaken a consultation on this issue, which explores themes including the ownership of ratings agencies, the sample size and design, and competition in the market for audience measurement[27].

3. Recognise and Leverage the Benefits of Bundling

Bundling of channels is an effective way to cater to the diversity in consumer preferences over different types of content. Bouquets allow consumers to buy a variety of channels for lower prices than they would have to pay if they were to purchase these channels individually. These lower prices stem from lower costs of distributing bundles for broadcasters. This also justifies investment in diverse types of content, some of which may not be produced if very few consumers subscribed to it a la carte. Bundling reduces search costs for consumers, as bouquets allow consumers to choose many channels in one go. Viewers may also discover content on channels that they would not have subscribed to a la carte. Therefore, channel bouquets enhance the value derived from producing and consuming TV content[28]. Competitive markets have been shown to produce an efficient mix of bundles and a la carte offerings[29].

In India, channels are usually bundled on the basis of genre and language. When viewers subscribe to a bouquet, they are aware of the trade-off between lower prices and buying a few channels which they might not like as much as the others. If they opt for the bouquet for a lower price instead of buying only desirable channels at a higher price, the Authority should not interpret this as the lack of choice. Reforms instituted by the new regulations ensure that consumers can access channels a la carte if they wish to do so. In fact, in the new regime, the Network Capacity Fee paid by consumers depends on the number of channels that they subscribe to, irrespective of whether these channels are opted for in a bouquet or a la carte. Thus, it is expensive for consumers to choose a bundle with many undesirable channels and few desirable channels due to the NCF. Instead, they are likely to opt for their desired channels a la carte.

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[26] Ibid

[27] TRAI Consultation Paper on Review of Television Audience Measurement and Ratings in India (2019), available at: https://main.trai.gov.in/sites/default/files/CP_TAM03122018.pdf

[28] Crawford, Gregory S., and Ali Yurukoglu. 2012. "The Welfare Effects of Bundling in Multichannel Television Markets." American Economic Review, 102 (2): 643-85, available at https://www.aeaweb.org/articles?id=10.1257/aer.102.2.64;

[29] Jeffrey Eisenach, The ABCs of Pick and Pay (2014), available at: https://www.nera.com/content/dam/nera/publications/2014/EisenachALaCarteReportFinal062614.pdf

In light of these benefits, we submit that neither should the Authority cap the number of bouquets that are available, nor should it prevent broadcasters from offering bouquets to customers. Adopting any of these approaches would limit the choices that consumers have. Instead, the regulator should make EPGs easier for consumers to navigate. For example, websites and apps should be made available for consumers to choose channels, with interfaces similar to those of e-commerce websites that may have features such as filters for language and genre. The Authority should collaborate with distributors to equip them with the technology and know-how to implement such norms.