Consultation Paper on Tariff Issues related to TV Services

Dated 29TH January, 2016

In response to TRAI's consultation paper on tariff issues related to commercial subscribers, dated 29th January, 2016, our issue wise comments are stated herein under.

You may kindly note that below comments are without prejudice to our rights and contentions, including in any ongoing or future litigations and we reserve our rights to modify, change and submission of further comments or counter comments to clarify our position on the issues under this consultation paper.

Models at wholesale & retail level:

Q1. Which of the price models discussed in consultation paper would be suitable at wholesale level in broadcasting sector and why? You may also suggest a modified/ alternate model with detailed justifications.

Answer 1- The broadcasters in India in one voice have long been asking for price forbearance for the channels' pricing and packaging, the demand was not met owning to the fact that the market needed time to mature.

The consumers in India have access to multiple platforms for TV viewing and the same content is available on parallel medium like internet.

Country's high penetration of mobile and internet has aided the expansion of digital platform for TV.

Digital platforms like smartphones, PCs and laptops are widespread and easily available. The content is also available for online streaming through various modes Netflix, hotstar etc. It may be noted that a lot of content is freely available on user upload-able platforms like you tube, dailymotion etc.

Indian smart phone user base has grown to 220 Million users in end of 2015 and surpassed USA for the first time ever[1].

Internet users in India are expected to reach 402 million by December 2015, registering a growth of 49 per cent over last year, says a report by industry body IAMAI.[2] Today there are over approximately 350 million internet users in India.[3] With the governments agenda to ensure 'Internet for all' will further boost the access.

Online streaming through digital platforms is making Cable and Digital TV obsolete

Consumers today have easy access to digital platforms like smartphones, laptops, smart TVs and with widespread internet connectivity, viewing of TV content through live internet streaming is simple and convenient.

With the 3G and 4G connections now easily available live streaming is seamless. The offerings such as the mobile TV further add value and offer a great viewing experience to the users.

It is pertinent to note that it had been reported by Forbes, that in the USA consumers are giving up cable in favor of free or cheap internet TV alternatives[4]. The average customer spends 146 hours monthly watching live TV in 2011, and 4.5 hours streaming[5], the trend is sure to follow in India.

The following data published by TAM shows that the digital is growing at a faster pace as compared to Cable and Satellite in metros as well as in other areas in 2014-15. Online streaming is rapidly gaining popularity as a means of watching TV in India simply for the convenience and easy availability.

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[1] http://www.counterpointresearch.com/indiahandsetmarket2015

[2] http://indianexpress.com/article/technology/tech-news-technology/india-to-have-402-mn-internet-users-by-dec-2015-will-surpass-us-iamai-report/#sthash.FIYOmUlq.dpuf

[3] http://www.internetlivestats.com/internet-users/india/

[4] http://www.forbes.com/sites/investor/2010/11/16/will-the-internet-wreck-cable-tvs-lush-margins/#af0128d71d2b

[5] "State of the Media: U.S. Digital Consumer Report Q3-Q4 2011." Reports and Insights: Nielsen. Nielsen, 23 Feb. 2012. Web. 10 Oct. 2013.

Population Strata	Cable and Satellite		Growth %	Digital		Growth %
	Jan 2014 (in Millions)	Jan 2015 (in Millions)		Jan 2014 (In Millions)	Jan 2015 (In Millions)	
6 Metros	73	74	0.5	66	67	1.3
Rest of State 1Mn.+	54	54	1.7	49	50	2.4
0.1-1 Mn. & 0.5 Mn.+	87	88	1.5	33	37	11.9
LC1	52	53	0.5	23	25	6.1
All India	**266**	**269**	**1.0**	**171**	**178**	**4.3**

All Figures are Individuals in millions *Source TAM – Overview Universe Update 2015

Table 1.1

The consumers in metro cities in India have access to multiple platforms for TV viewing and the same content is available on parallel medium like internet.

A. SUGGESTED MODEL - 'PRICE FORBEARANCE' MODEL

In light of the fact that Indian market has developed at a fast pace technologically and is one of the most mature markets in the world today, we suggest that the time for a free regime has now arrived, atleast in the tier I cities of the country. Thus the 'Price Forbearance' model can be put to test like the CAS implementation in the four major metros cities of the country. We suggest adoption of 'Price Forbearance' model in the 4 Metro cities i.e. Delhi, Mumbai, Bangalore and Kolkata initially and then expand it to the rest of the country systematically, in phase wise manner.

International Experience on wholesale regulatory framework

Table 1.2 is a snapshot of the regulatory model adopted internationally for pricing of TV channels at wholesale level. It is clear that internationally, whole sale price of TV channels is left on forbearance with sufficient controls in place to discourage and bring to fore any monopolistic, anti-competitive or unfair trade practice of a dominant player.

USA	UK	AUSTRALIA	SINGAPORE	CHINA
Price Forbearance Model	**Price Forbearance Model**	**Price Forbearance Model**	**Price Forbearance Model**	**No wholesale rate Regulation**
Safeguards: FCC has adopted a rebuttable presumption that cable operators are subject to "effective competition," requiring local regulators to demonstrate that this competition does not exist before regulating basic cable rates.	Safeguards: Ofcom has the power to regulate pricing where there are specific competition concerns, such as the "wholesale must offer" ("WMO") obligation imposed on Sky in 2010 in light of a 'fair competition' concern concerning sports.	Safeguards: None, other than under general competition law.	Safeguards: Reporting requirements ensuring transparency	Safeguards: Basic cable prices determined by local National Development and Reform Commission (NDRC) bureaus in consultation with The State Administration of Press, Publication, Radio, Film and Television of the People's Republic of China (SAPPRFT). Pricing of value-added cable service or digital TV services above the basic level can be solely determined by the operators.

*CASBAA, http://www.casbaa.com/rfg/

Table 1.2

1. Advantages of 'price forbearance' model

a) Level playing field for broadcasters and other stakeholders. It is unfair that currently, while there are negligible restrictions at the retail level pricing of channels by DPOs, at wholesale level the pricing is highly regulated.

b) The 'price forbearance' model will allow sustenance in light of the fast paced technological developments.

c) The investors in the Broadcasting and Media space will get the fundamental freedom of doing business and ensuring reasonable returns on investment.

d) The model will boost the quality of content. Restrictions in recovery of investment impede the innovation and quality of content development. Wholesale pricing of channels should also be unregulated, thereby allowing the broadcaster to invest in development of quality of content at par with the technological developments.

2. Disadvantages of 'price forbearance' model and mitigation plan

Monopolistic control of TV channels by dominant market players.
Suggestions for Mitigation –

a) It is suggested that a regulatory framework be developed by TRAI mandating the disclosure of wholesale price and discounts on channels offered to the DPOs.

b) Revenue sharing between the DPOs and broadcasters should be linked to viewership. In a bouquet the revenue share of each broadcaster of channel should be directly proportion to the viewership of its channel in that bouquet. The DPOs should be mandatorily required to disclose to the regulator the viewership and subscription of channels periodically which in turn should be made available on public domain in a transparent manner.

c) Non-discriminatory access to DPOs network to all broadcasters - All channels should be made available at the retail level to the consumer on both bouquet and a-la-carte basis. We strongly advocate that "must carry" should also be introduced as a regulatory mandate for the DPOs. The purpose of digitization is defeated unless the "must carry" requirement is introduced.

d) Vertical Integration of DPOs and broadcasters should be strictly disallowed.

Limited consumer choice and bundling of channels by DPOs.

a) Suggestions for Mitigation –

i. All channels should be made available at the retail level to the consumer on both bouquet and a-la-carte basis, therefore "must carry" should also be introduced as a regulatory mandate for the DPOs.

ii. Genre based bundling of channels should be introduced at wholesale as well as the retail level. Provision of bundling being allowed only genre wise will ensure that the broadcasters with larger number of channels are not able to unjustly push the channels with low viewership along with their driver channels to the DPOs. We also foresee that such mandate will standardize the bouquets offered by the last mile operators and make it easy for the consumer to compare and make choice. Genre based bundling of channels will also check the practice of pushing driver channels with non-driver channels in bouquets structured by the DPOs.

B. <u>OPTIONAL MODEL -'FLEXIBLE RIO MODEL, WITH A PRICE CAP ON CHANNELS'</u>

In the event that the Authority considers that the market is still not mature for the 'Price Forbearance' model, we suggest the **'Flexible RIO model, with a price cap on channels'**.

We recommend for the ‘Flexible RIO’ model with a price cap on channels wherein the broadcaster shall have the flexibility to enter into mutual agreement with the DPO, however, it shall be mandatory to notify the RIO to the regulator and disclose the wholesale price of the channel for both a-la-carte and bouquet. The following are inherent features of the ‘Flexible RIO with a price cap on channels’ suggested by us.

a) Non-discriminatory access to DPOs network to all broadcasters - All channels should be made available at the retail level to the consumer on both bouquet and a-la-carte basis. We strongly advocate that “must carry” should also be introduced as a regulatory mandate for the DPOs. The purpose of digitization is defeated unless the “must carry” requirement is introduced.

b) TRAI should declare a maximum and minimum wholesale price cap for each genre of channels. The genre of channels as suggested above should be same as adopted by Broadcast Audience Research Council.

c) No vertical integration should be allowed between DPOs and broadcasters.

d) It is suggested that a regulatory framework be developed by TRAI mandating the disclosure of wholesale price and discounts offered by broadcasters on each channel to the DPOs.

e) Revenue sharing between the DPOs and broadcasters should be linked to viewership. The DPOs should be mandatorily required to disclose to the regulator the viewership of channels. In a bouquet the revenue share of each broadcaster of channel should be directly proportion to the viewership of its channel in that bouquet.

f) Genre based bundling of channels should be introduced at wholesale as well as the retail level. This provision of bundling being allowed only genre wise will ensure that the broadcasters with larger number of channels are not able to unjustly push the channels with low viewership along with their driver channels to the DPOs. We also foresee that such mandate will standardize the bouquets offered by the last mile operators and make it easy for the consumer to compare and make choice. Genre based bundling of channels will also check the practice of pushing driver channels with non-driver channels in bouquets structured by the DPOs.

1. Advantages of 'Flexible RIO model, with a price cap on channels'.

a) Ensures level playing field among stakeholders and transparency.

b) Freedom for broadcasters and DPOs to negotiate and get the best value for their property, ensuring reasonable return on investment. This model will allow flexibility to the broadcasters to enter into mutual agreement with each DPO.

c) The investors in the Broadcasting and Media space will get the fundamental freedom of doing business and ensuring reasonable returns on investment. Restrictions in recovery of investment impede the innovation and quality of content development.

d) This is a sustainable model in light of the fast paced technological developments.

e) The model will boost the quality of content.

2. Risks of 'Flexible RIO model, with a price cap on channels'.

Monopolistic control of TV channels by dominant market players.

a) Mitigation: Implementation of a regulatory framework that mandates necessary disclosures and reporting of wholesale price and discounts offered by broadcasters on each channel to the DPOs.

b) Revenue sharing between the DPOs and broadcasters should be linked to viewership. DPOs should also disclose the viewership of each channel with the regulator which in turn will publish it in public domain periodically.

Q2. Which of the corresponding price models discussed in consultation paper would be suitable at retail level in broadcasting sector and why? You may also suggest a modified/ alternate model with detailed justifications.

Answer to 2- At present, there is already price forbearance at the retail level except for the basic pack and the ceiling for the minimum monthly subscription.

Suggested Model

A. We suggest that '**Price Forbearance'** model be adopted, subject to regulation. The Price Forbearance model when adopted with regulation to a limited extent will ensure that the risks in implementation of this model are mitigated. Our suggestion is that TRAI may exercise regulation on following issues while implementing the 'Price Forbearance'.

1. Presently, the a-la-carte rates of TV channels at retail level are exorbitant, which is not in consumer interest. The Broadcaster should be allowed to declare the a-la-carte MRP of its channels. This will ensure that the product of the broadcaster is made available to the end user at a reasonable and attractive price.

2. TRAI shall declare a cap on genre wise bouquet rate. TRAI while declaring the cap on bouquet rate of each genre, take into account the following:

a) Average wholesale rate and discounts offered by broadcasters to DPOs for channels in that genre.

b) The bouquet rate of channel must be discounted in comparison to a-la-carte rate. The formula to be adopted for determining the bouquet price of channel may be the same as is currently provided vide the Telecommunication (Broadcasting and Cable) Services (Fourth) Addressable Systems Tariff (Sixth Amendment) Order, 2015.

> *"sum of a-la-carte rates of all the channels in the bouquet shall not exceed three times the bouquet rate."*

3. Universal access to DPO's network to all broadcasters. All channels should be made available at the retail level to the consumer on both bouquet and a-la-carte basis. We strongly advocate that "must carry" should also be introduced as a regulatory mandate for the DPOs. The purpose of digitization is defeated unless the "must carry" requirement is introduced.

4. Consumer is currently bound by the choice of bouquets offered by DPOs, whereby non driver channels are pushed along with driver channels.

5. The bouquets offered to customer at retail level should be declared by TRAI genre wise. We suggest that the Broadcast Audience Research Council's (BARC) list of genre in TV channels be adopted by TRAI (Refer to table 1.3). This shall also ensure parity at retail level for all stakeholders.

6. The discounts offered by broadcasters to DPO's are not passed on to the customers at retail level. Our suggestions in this regard are as follows:

   a) It is suggested that a regulatory framework be developed by TRAI mandating the disclosure of wholesale price and discounts offered by broadcasters on each channel to the DPOs.

   b) The DPOs should be mandatorily required to disclose to the regulator the viewership of channels periodically and the same should be available in public domain.

7. Revenue sharing between the DPOs and broadcasters should be linked to viewership. In a bouquet the revenue share of each broadcaster of channel should be directly proportion to the viewership of its channel in that bouquet.

The reasons thereof have been discussed under relevant issues, hereinafter. Placement or LCN/ EPG fee paid for each channel should be made rationale, reasonable and non-discriminatory by regulations mandating it to be disclosed and made available in public domain for each channel paid to each DPO.

Q3. How will the transparency and non-discrimination requirements be fulfilled in the suggested pair of models? Explain the methodology of functioning with adequate justification.

Answer to 3- While suggesting the regulatory model to be adopted at wholesale and retail level we have made following recommendations to ensure transparency and non-discrimination.

Model for wholesale pricing of TV channels –

A. Price Forbearance model.

a) It is suggested that a regulatory framework be developed by TRAI mandating the disclosure of wholesale price and discounts on channels offered to the DPOs.

b) Vertical Integration of DPOs and broadcasters should be strictly disallowed.

c) Non-discriminatory access to DPOs network to all broadcasters - All channels should be made available at the retail level to the consumer on both bouquet and a-la-carte basis.

d) DPOs should also disclose the viewership of each channel with the regulator which in turn will publish it in public domain periodically.

B. 'Flexible RIO model, with a price cap on channels'.

a) Under the 'Flexible RIO with a price cap on channels' we have suggested that while the broadcaster shall have the flexibility to enter into mutual agreement with the DPO, it shall be mandatory to notify the RIO to the regulator and disclose the wholesale price of the channel for both a-la-carte and bouquet.

b) Prescribed cap on maximum discount that can be offered by the Broadcaster to the DPOs for its channels/ bouquets.

c) Non-discriminatory access of DPOs network to all broadcasters - All channels should be made available at the retail level to the consumer on both bouquet and a-la-carte basis. "Must carry" should be introduced as a regulatory mandate for the DPOs.

d) TRAI should declare a maximum and minimum wholesale price cap for each genre of channels. The genre of channels as suggested above should be same as adopted by Broadcast Audience Research Council.

e) No vertical Integration should be allowed between DPOs and broadcasters.

f) Revenue sharing between the DPOs and broadcasters should be linked to viewership. The DPOs should be mandatorily required to disclose to the regulator the viewership of channels. In a bouquet the revenue share of each broadcaster of channel should be directly proportion to the viewership of its channel in that bouquet.

g) Genre based bundling of channels at wholesale level should be introduced at wholesale as well as the retail level. This provision of bundling being allowed only genre wise will ensure that the broadcasters with larger number of channels are not able to unjustly push the channels with low viewership along with their driver channels to the DPOs. We also foresee that such mandate will standardize the bouquets offered by the last mile operators and make it easy for the consumer to compare and make choice. Genre based bundling of channels will also check the practice of pushing driver channels with non-driver channels in bouquets structured by the DPOs.

h) Monopolistic control of TV channels by dominant market players should be controlled as it is against the fundamental of level playing field and consumer interest. We have suggested that a regulatory framework be developed by TRAI mandating the disclosure of wholesale price and discounts offered by broadcasters on each channel to the DPOs.

Transparency shall discourage and bring to fore any monopolistic, anti-competitive or unfair trade practice of a dominant player in the broadcasting sector under check.

Model for retail pricing of TV channels –

A. Price Forbearance model with limited regulation

The Price Forbearance model with limited regulation, as suggested by us will ensure that the requirement of transparency and non-discrimination are adequately met. Our suggestion is that TRAI may exercise regulation on following issues while implementing the 'Price Forbearance'.

1. Presently, the a-la-carte rates of TV channels at retail level are exorbitant, which is not in consumer interest. The Broadcaster should be allowed to declare the a-la-carte MRP of its channels. This will ensure that the product of the broadcaster is made available to the end user at a reasonable and attractive price.

2. TRAI shall declare a cap on genre wise bouquet rate. TRAI while declaring the cap on bouquet rate in each genre, take into account the following:

a) Average wholesale rate and discounts offered by broadcasters to DPOs for channels in that genre.

b) The bouquet rate of channel must be discounted in comparison to a-la-carte rate. The formula to be adopted for determining the bouquet price of channel may be the same as is currently provided vide the Telecommunication (Broadcasting and Cable) Services (Fourth) Addressable Systems Tariff (Sixth Amendment) Order, 2015.

> *"sum of a-la-carte rates of all the channels in the bouquet shall not exceed three times the bouquet rate."*

3. Universal access to DPO's network to all broadcasters. All channels should be made available at the retail level to the consumer on both bouquet and a-la-carte basis. We strongly advocate that "must carry" should also be introduced as a regulatory mandate for the DPOs. The purpose of digitization is defeated unless the "must carry" requirement is introduced.

4. Consumer is currently bound by the choice of bouquets offered by DPOs, whereby non driver channels are pushed along with driver channels.

5. The bouquets offered to customer at retail level should be declared by TRAI genre wise. We suggest that the Broadcast Audience Research Council's (BARC) list of genre in TV channels be adopted by TRAI (Refer to table 1.3). This shall also ensure parity at retail level for all stakeholders.

6. The discounts offered by broadcasters to DPO's are not passed on to the customers at retail level. Our suggestion in this regard are as follows:

a) It is suggested that a regulatory framework be developed by TRAI mandating the disclosure of wholesale price and discounts offered by broadcasters on each channel to the DPOs.

b) The DPOs should be mandatorily required to disclose to the regulator the viewership of channels periodically and the same should be available in public domain.

7. Revenue sharing between the DPOs and broadcasters should be linked to viewership. In a bouquet the revenue share of each broadcaster of channel should be directly proportion to the viewership of its channel in that bouquet.

8. Carriage fee/ LCN/ EPG fee paid for each channel should be made rationale, reasonable and non-discriminatory by regulations mandating it to be disclosed and made available in public domain for each channel paid to each DPO. Our suggestions on carriage fee/LCN/EPG fee have been given separately in answer to the specific question on the same.

Q4. How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested pair of models? Give your comments with detailed justifications.

Answer to 4 - While suggesting the regulatory models to be adopted at wholesale and retail level we have made following recommendations to ensure that consumer interests are protected adequately.

Following features are suggested to protect consumer interest. For detailed and comprehensive reading of each model suggested by us please refer to answers on question 1 and 2 above.

1. Vertical Integration of DPOs and broadcasters should be disallowed to avoid monopolistic, unfair anti-competitive pricing of TV channels for consumers.

2. All channels should be made available at the retail level to the consumer on both bouquet and a-la-carte basis.

3. Presently, the a-la-carte rates of TV channels at retail level are exorbitant, which is not in consumer interest. Our suggestions in this regard are as follows:

a) The Broadcaster may be given the freedom to declare the a-la-carte MRP of its channels, subject to the cap declared by TRAI.

b) TRAI shall declare a cap on a- la- carte MRP genre wise. TRAI while declaring the cap on a-la-carte MRP of channels of each genre, take into account the following:

   i. Average wholesale rate and discounts offered by broadcasters to DPOs for channels in that genre.
   ii. Channel's bouquet price should be lower than a-la-carte price and there will be a regulatory cap on a-la-carte price of channel.

c) The formula to be adopted for determining the bouquet price of channel may be the same as is currently provided under the extant Regulations.

4. Consumer is currently bound by the choice of bouquets offered by DPOs, whereby non driver channels are pushed along with driver channels.

The bouquets offered to customer at retail level should be declared by TRAI genre wise. We suggest that the Broadcast Audience Research Council's (BARC) list of genre in TV channels be adopted by TRAI (Refer to Table 1.3). This shall also ensure parity at retail level for all stakeholders.

5. The discounts offered by broadcasters to DPO's are not passed on to the customers at retail level. Our suggestions in this regard are as follows:

a) The retail price of the channels/ bouquets should be linked to the wholesale price on which the DPOs have got the channels from the broadcasters.

b) It is suggested that a regulatory framework be developed by TRAI mandating the disclosure of wholesale price and discounts offered by broadcasters on each channel to the DPOs.

c) The DPOs should be mandatorily required to disclose to the regulator the viewership of channels periodically and the same should be available in public domain.

Integrated Models:

Q5. Which of the integrated distribution models discussed in consultation paper would be suitable and why? You may also suggest a modified/ alternate model with detailed justifications.

Q6. How will the transparency and non-discrimination requirements be fulfilled in the suggested models? Explain the methodology of functioning with adequate justification.

Q7. How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested integrated distribution models? Give your comments with detailed justifications.

Answer to 5, 6 & 7 - We have suggested separate models at retail and wholesale level in answer to question 1 and 2 above and do not suggest adoption of an integrated model.

Channel Pricing Framework

Q8. Is there a need to identify significant market powers?

Q9. What should be the criteria for classifying an entity as a significant market power? Support your comments with justification.

Answer to 8 & 9 – Yes, there is a need to identify significant market players amongst broadcasters. It is important to note that in the broadcasting sector content ownership is one of the key factors that must be taken into account while determining the Significant Market Power (SMP). Today there are 51 pay broadcasters with 262 pay channels. However, nearly half of pay channels belong to the top five broadcasters**.** There are only a few driver channels controlled by a limited number of broadcasters. Enhanced pull for driver channels by subscribers have resulted in monopolistic practices.

Broadcasters with powerful driver channels succeeded to piggy back their not so popular TV channels with the driver channels to their subscribers. This resulted in a large number of bundled channels being pushed to the subscribers as a bouquet with very little choice.

The pricing of the bouquets is done in such a manner that it is significantly lower than the sum of the individual channel prices.

Discounts are offered if the operator agrees to package all channels into their basic package. This continues to create a skewed level playing field in the broadcasting sector among the stakeholders. Significant market powers have also influenced distribution networks.

Aforementioned facts have been recorded by TRAI in its Consultation Paper at clause 4.13.4. Top 5 significant market players in the broadcasting have been also been correctly identified by TRAI in its consultation paper at Annexure II.

Number of Pay	Name of the Company	Number of Pay

channels provided top five broadcasters S. No.		**channels**
1.	Star India Private Ltd. & its group companies	43
2.	Taj Television (I) P. Ltd (including ZEE & its group companies)	40
3.	TV 18 Broadcast Ltd. & its group companies	35
4.	SUN TV network & its group companies	33
5.	Sony Pictures Networks & its group companies	17

It is important to note that in the broadcasting sector content ownership is one of the key factors that must be taken into account while determining the Significant Market Power (SMP).

Exclusivity of the content should be taken into account while determining the market power of a broadcaster. News is not an exclusive content and is easily available across multiple news channels with practically no time gap. The same news content is also available across various platforms like internet, newspapers, radio etc.

Following parameters have been accepted by Commission for Communications Regulation (ComReg) to identify Significant Market Power (SMP) in wholesale markets for radio and television broadcasting transmission services, based on EU Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic networks and services, OJ 2002 C 165/3, ("the SMP Guidelines"):

i. Market shares;
ii. Barriers to entry

iii. Absence of countervailing bargaining power;
iv. Lack of potential competition;
v. Vertical Integration; and
vi. Evidence of market behavior [6]

Following key parameters for identification of abuse of dominant position are identified by J.J. Welfens, European Institute for International Economic Relations at the University of Wuppertal:

i. Predatory pricing
ii. Tied Sales/Bundling: Service 1 sold only if service 2, 3 etc. are also bought – this is anti-competitive if firm has a dominant position in one of these markets
iii. Excessive pricing: price above or below the level under competition. [7]

In light of the above TRAI should accept Market share, bargaining power, Evidence of market behavior, Predatory pricing, Tied Sales/Bundling, Excessive pricing as indicators for identification of SMP.

It may be noted that the Competition Act contemplates a synergistic relationship between the CCI and sector regulators.

While the Competition Act provides a general framework to regulate competition in India by disallowing anti-competitive agreements, prohibit of abuse of dominant position and regulation of combinations, it is important that TRAI as a sector specific regulator identifies the significant market players in the broadcasting sector and ensure that any unfair trade practice is identified and curbed. [8]

[6] Comission for Communications Regulation (ComReg), "Market Analysis – Wholesale Broadcasting Transmission Services **Decision No: D6/04, Document No: 04/47,Date: 27 April 2004**

[7] **Paul J.J. Welfens (Jean Monnet Chair for European Economic Integration),** European Institute for International Economic Relations at the University of Wuppertal**,** Seminar **Economic Dynamics in Newly Liberalized Telecommunications Markets in CEE Countries and Baltic States**

Q10. Should there be differential regulatory framework for the significant market power? If yes, what should be such framework and why? How would it regulate the sector?

Answer to 10 – Yes, in order to curb anti-competitive and monopolistic practice we recommend that there be a differential regulatory framework for SMPs Regulation in accordance with competition law principles. Such principles should include restrictions viz.:

1. Anti-competitive agreements between Broadcasters and DPOs, where either of them is SMP viz. undue discounts and benefits, price fixing, market divisions – agreements among firms not to compete in each other markets – and group boycotts (refusing to do business with specific supplier, competitor, customer)

2. Restrict or prohibit mergers & acquisitions which could have – considerable – negative impact on competition

3. Abuse of dominant position = significant market power

Channel pricing methodologies

Q11. Is there a need to continue with the price freeze prescribed in 2004 and derive the price for digital platforms from analog prices? If not, what should be the basic pricing framework for pricing the channels at wholesale level in digital addressable platforms?

Answer to 11- We suggest that the price freeze as prescribed by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) on 01.10. 2004 be done away with and new pricing framework should be prescribed. There should be no link between the digital and analogue price of TV channels.

Q12. Do you feel that list of the Genres proposed in the consultation paper (CP) are adequate and will serve the purpose to decide genre caps for pricing the channels? You may suggest addition/ deletion of genres with justification.

Answer to 12- We suggest that the Broadcast Audience Research Council's (BARC) list of genre in TV channels be adopted by TRAI for bundling of channels.

List of Genre of TV Channels				
Bangla	English Entertainment	Hindi Movies	Kids	Tamil
Bhojpuri	English Movies	Hindi News	Malayalam	
English news	Hindi Business News	Infotainment	Marathi	
English Business News	Hindi GEC	Kannada	Music	
Oriya	Sports	Telgu	Youth	

*Source Broadcast Audience Research Council, Table 1.3

Currently the genre defined by TRAI and mentioned in Table 2 at clause 4.14.4 of the consultation paper will result in anomalies as there is scope of overlap and duplication.

The criteria for defining genre should be that similar content should be clubbed in different languages, to ensure that nature of uptake and popularity is similar.

Q13. Is there a need to create a common GEC genre for multiple GEC genre using different regional languages such as GEC (Hindi), GEC (English) and GEC (Regional language) etc? Give your suggestions with justification.

Answer to 11 - The criteria for defining genre should be that similar content should be clubbed in different languages, to ensure that nature of uptake and popularity is similar. We suggest that the Broadcast Audience Research Council's (BARC) list of genre in TV channels be adopted by TRAI for bundling of channels.

Q14. What should be the measures to ensure that price of the broadcast channels at wholesale level is not distorted by significant market power?

Refer to answers to question 1, 3, 4 & 10

Q15. What should be the basis to derive the price cap for each genre?

The Authority should devise a standard formula for arriving at the cap for each genre based on the following:

1. Popularity of the content being part of the channel of that genre
2. Number of channels in the genre
3. Viewership of channels in the genre based on disclosures made by DPOs
4. Manpower and other resources

Q16. What percentage of discount should be considered on the average genre RIO prices in the given genre to determine the price cap?

We suggest that a maximum of 33% discount on wholesale price should be considered across all genres.

Q17. What should be the frequency to revisit genre ceilings prescribed by the Authority and why?

We agree with TRAI's suggestion that genre ceilings should be revised every 2 years as this will give reasonable opportunity to see the impact of ceiling prescribed.

Q18. What should be the criteria for providing the discounts to DPOs on the notified wholesale prices of the channels and why?

The criteria for providing the discounts to DPOs on the notified wholesale prices of the channels should include:

1. DPO's sub-base/ viewership
2. DPO's Retail prices
3. DPO's distribution platform
4. Discounts should non-discriminatory and equal for similar placed DPOs.
5. Discounts should be reported to the Authority.

Q19. What would be the maximum percentage of the cumulative discount that can be allowed on aggregated subscription revenue due to the broadcasters from a DPO based on the transparent criteria notified by the broadcasters?

We suggest that the discount on aggregated subscription revenue due to the broadcasters from a DPO may be capped at 33% of MRP to safeguard against unfair trade practice of excessive discounts being offered by the SMPs to distort the market for other players.

We also suggest that the discounts offered to DPOs must be mandatorily disclosed to the regulator and made public in transparent manner.

Q20. What should be parameters for categorization of channels under the "Niche Channel Genre"?

We recommend following 2 categories of channels:

1. New Channels

Newly introduced channels that have previously not been viewed by audiences in the country and require time to be accepted and adopted by the audience should be considered to fall under '**New channels'.**

A 'New channel' should be allowed forbearance in pricing for a period of 4 years, post the expiry of 4 years the channel shall cease to be classified under 'new channel' and shall automatically fall under one of the classified genre. .

2. Niche Channels

'Niche Channels' should be defined based on subscription. TRAI can declare that if a channel has subscription below a certain number for the first 3 months of its launch, it shall be categorized as 'niche channel'.. A niche channel should be allowed forbearance in pricing perpetually.

Any channel to fall under the 'niche channel genre' should have a subscriber base below a certain value, as may be prescribed by TRAI, for first 3 months of its launch. In case, the subscriber base exceeds the prescribed limit within three months of launch, the channel shall cease to qualify under the 'niche channel genre'.

Introduction of Niche channels

Q21. Do you agree that niche channels need to be given complete forbearance in fixation of the price of the channel? Give your comments with justification.

Answer 21- Yes, we agree that channels that fall under the 'niche channel genre' should be given complete forbearance in fixation of the price.

Q22. What should the maximum gestation period permitted for a niche channel and why?

Answer 22 - A 'niche channel' should be allowed complete perpetual forbearance in pricing.

However, 'new channel' should be allowed forbearance only for a period of 4 years, post the expiry of 4 years the channel shall cease to be a niche channel. 4 years is a reasonable time for allowing foothold to a new entrant.

Q23. How misuse in the name of "Niche Channel Genre" can be controlled?

Answer 23- Any new entrant, in order to avail the benefit of forbearance in pricing for 4 years from the date of its launch shall have to apply for an approval to be treated as one before launch of channel. Only newly introduced channels that have previously not been viewed by audiences in the country and require time to be accepted and adopted by the audience should be allowed to fall under 'New channels genre'.

Any channel to fall under the 'niche channel genre' should have a subscriber base below a certain value, as may be prescribed by TRAI, for first 3 months of its launch. Incase, the subscriber base is exceeds the prescribed limit within three months of launch, the channel shall cease to qualify under the 'niche channel genre'

Q24. Can a channel under "Niche Channel Genre" continue in perpetuity? If not, what should be the criteria for a niche channel to cease to continue under the "Niche Channel Genre"?

Answer 24- Yes, a channel shall be allowed to be under 'niche channel genre' for perpetuity, subject to the fact that its subscriber base is below the limit prescribed for 'niche channels' by TRAI. .

Pricing of High Definition (HD) channels

Q25. How should the price of the HD channel be regulated to protect the interest of subscribers?

Answer 25- HD channels subscribers are still at very low compare to other channels. Most of the HD channels already have their SD variants. In view of this we recommend that HD channels should be given price forbearance for another 4 years, after that it can be reviewed on the prevailing circumstances.

Q26. Should there be a linkage of HD channel price with its SD format? If so, what should be the formula to link HD format price with SD format price and why?

Answer 26 - We recommend for price forbearance for HD channels.

Q27. Should similar content in different formats (HD and SD) in a given bouquet be pushed to the subscribers? How this issue can be addressed?

Answer -27 We suggest that status quo be maintained with no regulatory intervention.

Manner of offering

Q28. Do you agree that separation of FTA and pay channel bouquets will provide more flexibility in selection of channels to subscribers and will be more user friendly? Justify your comments.

Answer 28- Yes we agree that separation of FTA and pay channel bouquets will provide more flexibility in selection of channels to subscribers and will be more user friendly. .

Ease of channel or bouquet subscription
Carriage fee

Q29. How channel subscription process can be simplified and made user friendly so that subscribers can choose channels and bouquets of their choice easily? Give your suggestions with justification.

Answer 29- We suggest that genre based bouquets be introduced at retail level across all last mile service providers. Uniform genre wise packaging will simplifying choice for consumer. Currently each DTH operator has different bouquets, which is very confusing for the consumers.

Q30. How can the activation time be minimized for subscribing to additional channels/bouquets?

Answer 30- Introduction of new and innovative technological means for subscription of an additional channel or bouquet is suggested.

Q31. Should the carriage fee be regulated? If yes, what should be the basis to regulate carriage fee?

Answer 31- The concept of carriage fee should abolished. The DPOs should not be allowed to charge any kind of Carriage fees. The reasons for abolishing carriage fee are as under:

1. For the platform owner there is no under declaration. No revenue leak as after the implementation of DAS. There is 100% declaration of subscribers.

2. Unlike analogue systems there is no shortage of bandwidth and capacity to carry channels. An analog cable system can generally carry around 80-100 channels while the number of channels available for broadcast outweighed the network capacity. However, in the digital addressable cable TV systems, the network capacity for carrying digital channels increased significantly to around 500 channels per head-end. The number of permitted private satellite TV channels also sharply increased to around 800. In the DTH Platform (another digital addressable platform) also the network capacity to carry channels is much greater than analog.

3. Subscription revenues have increased substantially.

4. The timeframe for return-on-investments for DPOs have become shorter.

5. DPO has multiple revenue streams it also has the option to sell his EPG/LCN.

If the TRAI considers not to interfere with the carriage fee at this point of time We suggest that transparent and fair mechanism of charging carriage fee should be introduced. Currently, there is no parity, transparency in the charge of carriage fee by DPOs. If carriage fee is required to compensate for the cost of the infrastructure utilized for carrying the TV channel, then the carriage fee must be derived from the cost of the bandwidth to carry a channel and there must be a regulatory cap to avoid any misuse by dominant DPOs. There is a need to examine the applicability of carriage fee payments, TRAI should to examine whether DPOs are compensated with the subscription revenue share for providing carriage capacity to TV channels.

Maximum reimbursement for TV carriage capacity should linked with percentage of subscribers available on the channel on a distributor's platform. DPOs should be mandated to disclose their subscriber base to the regulator and the same should be made available in public domain.

Q32. Under what circumstances, carriage fee be permitted and why?

Answer 32- Refer to answer 31.

Q33. Is there a need to prescribe cap on maximum carriage fee to be charged by distribution platform operators per channel per subscriber? If so, what should be the "price Cap" and how is it to be calculated?

Answer 33- Yes we recommend a regulatory cap on carriage fee for details refer to answer 31.

Q34. Should the carriage fee be reduced with increase in the number of subscribers for the TV channel? If so, what should be the criteria and why?

Answer 34- Yes, for details refer to answer to question 31.

Placement & Marketing fee

Q35. Should the practice of payment of placement and marketing fees amongst stakeholders be brought under the ambit of regulation? If yes, suggest the framework and its workability?

Answer 35- We recommend that the placement fees or LCN fees should pre-fixed by the DPOs and put in public domain and reported to TRAI. The placement should rationalistic, non-discriminatory and reasonable.

Further, the placement fees or Logical Channel Number fees should be pre-fixed for a certain bracket of channel numbers by the MSO and put in public domain and reported to TRAI. The placement fees or Logical Channel Number fees should be divided as per premium a certain LCN holds in the EPG:

1. **Genre wise premium:** As a popular practice by DPOs, the GEC channels are amongst first group of channels that appear in EPG, followed by movies, sports, news and regional. Thus the genre appearing first on the EPG should be highest priced genre and followed by next genre immediately after it and so on and so forth.

2. **Top LCN in a genre wise premium**: The top 10 channels LCNs should have the highest premiums in genre, followed by the next 10 and so on and so forth.

The placement of channels across platforms shall then become rationalistic, non-discriminatory and viewership linked.

Variants of Channels

Q36. Is there a need to regulate variant or cloned channels i.e. creation of multiple channels from similar content, to protect consumers' interest? If yes, how should variant channels be defined and regulated?

Answer 36- The creation of cloned channels may be regulated and only a certain percentage of content may be allowed to be repeated. However, keeping in mind the fact that technological development needs to be supported, HD channels should be exempt from the provisions of any such clause, if implemented.

Channel visibility on Electronic Program Guide (EPG)

Q37. Can EPG include details of the program of the channels not subscribed by the customer so that customer can take a decision to subscribe such channels?

Answer 37- We suggest that EPG norms should not be regulated and the same must be left open for negotiation between the DPO and broadcaster.

Q38. Can Electronic Program Guide (EPG) include the preview of channels, say picture in picture (PIP) for channels available on the platform of DPOs but not subscribed by the customers at no additional cost to subscribers? Justify your comments.

Answer 38- Yes, EPG can include the preview of channels.

Pay-per-program viewing and tariff options

Q39. Is the option of Pay-per-program viewing by subscribers feasible to implement? If so, should the tariff of such viewing be regulated? Give your comments with justification.

Answer 39- We agree that pay per program or low denomination daily subscription packs be allowed as this allows consumer better choice and flexibility.

Q40. Will there be any additional implementation cost to subscriber for pay-per-view service?

Answer 40- We suggest that the cost of pay per program or low denomination daily subscription packs be less than the cost of subscription of channel on a-la-carte basis. No additional implementation cost should be charged.

Audit and reporting issues related to tariff

Q41. Do you agree with the approach suggested in para 5.8.6 for setting up of a central facility? If yes, please suggest detailed guidelines for setting up and operation of such entity. If no, please suggest alternative approach(s) to streamline the process of periodic reporting to broadcasters and audit of DPOs with justification.

Answer 41- Yes, we agree to the suggestions made in clause 5.8.6 of the consultation paper. ICTs thus established should be a third party appointed by the regulator and broadcaster should have the access to such central monitoring data/ reports. Further, the broadcasters should also be allowed to audit the SMS and CAS of the DPOs.

Q42. Stakeholders may also provide their comments on any other issue relevant to the present consultation.

Answer 42- No comments.