ASIA VIDEO INDUSTRY ASSOCIATION

Singapore,
30 May2022

To: Mr Anil Kumar Bhardwaj, Advisor, (B&CS),

Telecom Regulatory Authority of India

Via email : advbcs-2@trai.gov.in and jtadvbcs-1@trai.gov.in

Dear Sir

Submission on Consultation Paper No.5/2022 -Issues related to New Regulatory Framework for Broadcasting and Cable services

AVIA welcomes the opportunity to comment on the Consultation Paper issued by Telecom Regulatory Authority of India **(TRAI**) on the new regulatory framework for India's content subscription ecosystem. AVIA is the trade association for the video industry and ecosystem in Asia Pacific. It serves to make the video industry stronger and healthier through promoting the common interests of its members. Our membership consists of a combination of local, regional and multi-national companies, many of which are substantial cross-border investors; creating and purchasing video content to meet rapidly-expanding consumer demands and investing in India's communications and creative industries.

According to the March 2022 FICCI Media and Entertainment report, there is an increasing appreciation of the fact in India that "the Customer is King!" "From choosing which stars they want to watch, to which types of content, across formats, experiences, devices and price points they find comfortable, Indian consumers have never been more in control of their entertainment and information".

There is no doubt that rapid digitilisation has accelerated this range of choice available to the consumer. This consultation paper, which was recently released by TRAI on the new regulatory framework, questions the level of regulation required to provide what TRAI views as "a high level of transparency, non- discrimination and revenue assurance" in the content industry.

TRAI notes that historically the tariff regulations were developed to make channels more affordable and offer consumers the choice to select and pay only for those channels they want to watch (as opposed to subscribing to a bouquet of which only a few channels were driver channels). In 2020, TRAI introduced a tariff framework which sought to make amendments to the 2017 framework, including, amongst others, by (i) decreasing the maximum retail price of a channel which was to be included within a bouquet from Rs19 to Rs12 and (ii) imposing twin conditions for bouquet prices. Subsequent legal challenges resulted in only one of these twin conditions being upheld by the High Court of Bombay i.e. the sum of the a-la-carte rates of the pay channels within a bouquet cannot exceed 1.5 times the rate of the bouquet of which the channels are a part. TRAI states that since this new framework was proposed, broadcasters have significantly raised the prices of the most

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popular channels with many of these now no longer being offered as part of a bouquet. In other words, the introduction of measures to ensure that channels could be offered on an a-la-carte basis rather than within a bouquet offering, has the potential to severely impact the consumer wallet.

Bouquets are popular in India. That is simply because they tend to offer significantly more value for money than a-la-carte purchases. This holds true for any industry and indeed for any market. The introduction of these tariff measures creates regulatory instability and consumer confusion within a market which we are consistently assured remains deeply consumer-centric and price-sensitive. Most significantly, our members do not agree with TRAI's opinion that a-la-carte channels offer consumers greater choice. If anything, bouquets offer consumers an opportunity to sample new channels and also indirectly contribute to the media plurality which TRAI is so keen to foster within India. TRAI's insistence on promoting a la carte at the cost of bouquets can deny consumers the choice they need in a country like India with such a large and variegated diversity of cultures and languages and where TV viewing is a family activity. Ultimately, of course, this type of regulation could lead to fewer and less diverse programming being created with smaller, niche channels not being made available to consumers.

We are aware that TRAI has sought to find a solution in collaboration with industry after it became aware of the negative impact of the 2020 tariff framework. One of the proposals of this joint working group was a return from the 2020 proposed Rs12 to the Rs19 in the 2017 as the maximum retail price of a pay channel within a bouquet. While this is appreciated, our members are of the view that the proposals contained within the frameworks are largely being made to address the interests of distribution platform owners without properly taking into account the interests of content creators/aggregators as well as the end consumers. Content is becoming increasingly expensive both to produce and acquire; at the same time, content choices and platform options are growing exponentially – it should therefore be incumbent on the content creator or broadcaster to decide how best to price its content within the context of this competitive Indian market, taking into account the interests and viewing habits of the Indian consumer. Viewer preference does not exist in a vacuum – it tends to be largely driven by price-, convenience - and value for money considerations. Content creators and distributors are keenly aware of this and more so in India, where ARPUs generally tend to be much lower than in other markets. The imposition of a tariff on channels within a bouquet, removes the right of the content creator/aggregator to freely negotiate and conduct its business in a market where no empirical data is being offered to support a claim that competition within the market has failed. Further, capping prices on channels may instead disincentivise providers from making channels available and/or counter market forces thus making overall service offerings less varied and less efficient.

Bundling is not unique to the media and entertainment industry – we see this displayed in all forms across retail and hospitality where the bundled price is less than the price for each individual item. The consumer is able to take advantage of access to content other than simply his/her preferred content at a price-point that the consumer determines is reasonable and within budget. There is no compulsion or "perverse" behaviour involved – the decision is simply one that the consumer makes with reference to the ultimate value he/she believes the bundle offers. Similarly, bundling also works to the benefit of the content creator/aggregator in two ways:

- that creator/aggregator is able to defray its production/acquisition costs more widely; and
- with the consequent wider subscriber base that the bouquet provides, the monetization potential via advertising, also increases significantly, generating revenues to further invest in the production of content and ultimately, even greater choice for consumers.

TRAI's consultation paper does not stop at the distinction between a-la-carte and bundling pricing – it goes on to examine the impact which high bouquet discounts can have on overall consumer choice. TRAI suggests that, without the introduction of discount ceilings, one can end up with a rather incongruous scenario where a consumer gets more channels in the bouquet while paying less than that consumer would pay for the popular driver channels included within that bouquet. Again, in a competitive market like India, the consumer has immense power to make a decision as to whether a bundle, significantly discounted or not, represents value for money for that consumer. It is ultimately an individual decision and one that is likely to be different for each consumer based on a variety of factors such as affordability, content preference, genre, location and language. It is important to note that the same channels may not always be bundled together. The price of a bundle should not be subject to a specific permissible discount as the overall composition of that bundle and its target market could vary substantially.

Turning away from the issue of bouquets to the question TRAI raises with relation to the setting of maximum retail prices for "popular channels" in an attempt by TRAI to ensure these remain available to "a large segment of viewers". This is of great concern to our members. As we indicated earlier in this submission, it has been our understanding that these tariff frameworks were initially introduced with a view to offer greater transparency and to avoid the referenced "perverse pricing" of bouquets by promoting the availability of channels on an a-la-carte basis. In this consultation paper, TRAI asks whether a maximum retail price should be imposed on a pay channel without making reference to its inclusion within a bouquet. The question therefore presumably also covers the scenario where that channel is offered on an a-la-carte basis. This goes to the very heart of the principle of freedom of contract. Whether or not a channel is "popular", should not determine the price at which the content creator is able to make that channel available to the general public. If regulators start determining the prices of channels based on a fairly arbitrary and subjective assessment such as popularity within a very diverse market such as India, this will undeniably erode the very foundation of the free economy.

As an industry association, we recognize that many of our members will be lodging their own individual submissions. While we appreciate that there may be some overlap, we wanted to include a comparison document which one of our members has kindly shared with us. It shows how India compares with other countries and demonstrates that India is the only country that places restrictions on bundling, discount caps on bouquets, and price ceilings for the inclusion of channels in a bouquet.

Country / Parameter	Is broadcasting regulated	Are prices of Channels fixed?	Is bundling regulated?	Is must carry mandatory?	Are there regulations on the quality of service
Malaysia	✓	×	×	×	✓
Hong Kong	✓	×	×	×	---
Singapore	✓	×	×	✓	✓
Indonesia	✓	×	×	✓	✓
South Korea	✓	×	×	✓	✓
Japan	✓	×	×	✓	---
UK	✓	×	×	✓	✓
South Africa	✓	×	×	✓	✓
Ireland	✓	---	×	✓	✓
USA	✓	×	×	✓	✓
Russia	✓	---	×	✓	---
Canada	✓	×	×	✓	✓
Australia	✓	×	×	×	✓

Note: ✓ refers to regulation prevailing in the country | × refers to parameter not regulated | --- refers to information not available

Tariff regulation is clearly not the norm in other markets. TRAI's original intention was to preserve customer choice yet nothing within this consultation paper suggests that such choice has been compromised. Bundling is not of itself harmful to a consumer – instead, the fact that it is popular with 80% of households in India, indicates that it has found favour with the general public and that the value it offers, is recognized and appreciated. As Rajat Kathuria wrote in his 2019 article in the Financial Express, entitled, "Bundling beneficial for both consumers, producers", *"The challenge for regulators, therefore, is to identify bundles that cause harm to consumers, and result in suppression of competition. No doubt, the task is hard—but, prescription ought to be a last resort, rather than the first option."*

In our humble opinion, without the benefit of a full regulatory assessment, the premature introduction of these tariffs could impede, rather than accelerate the growth of the industry and, ultimately therefore either restrict the range of choices available to consumers or make those choices infinitely less affordable.

The impression our members have is that the Indian content market is highly dynamic and competitive and, as a result, offers consumers an unrivalled degree of choice. Ashish Pherwani, M&E sector leader for Ernst &Young LLP encapsulates this view as follows:

"We love quantity and bundles; but we pay for value. We are amongst the top smartphone markets; and a large feature phone base. We subscribe to global OTT platforms; yet binge on Youtube and watch free satellite TV. And we are thirsting for curated knowledge and escapism, while creating millions of pieces of content each day ourselves".

The words, "we pay for value" are of particular significance. The content creator builds consumer engagement by offering compelling content at an affordable price-point, and chooses whether that content is best served and monetised as a standalone option or included within a bouquet. The consumer, in selecting and paying for content, makes an active choice. AVIA recommends that those choices should not be unnecessarily curtailed by regulation, especially in a market which is already so competitive.

In closing and on behalf of our members, we would respectfully urge TRAI to kindly consider adopting a light-touch regulatory approach which allows market forces to determine the technical and commercial arrangements between stakeholders in the industry. This approach would permit the market to settle down after witnessing what has certainly been a phenomenal rise in the number of platforms and content choices available to consumers. Adopting this approach would also afford TRAI an opportunity to conduct a robust regulatory assessment in order to determine whether consumer choice is indeed being compromised.

We thank you for your consideration and remain ready to answer any questions you may have.

Sincerely yours,

Louis Boswell
Chief Executive Officer
Asia Video Industry Association

About the Asia Video Industry Association (AVIA)

20/F Leighton Centre, 77 Leighton Road, Causeway Bay, Hong Kong/ 5008 Ang Mo Kio Avenue 5, #04-09 Techplace II Singapore 569874 avia.org

AVIA is the non-profit trade association for the video industry and ecosystem in Asia-Pacific. It serves to make the video industry stronger and healthier through promoting the common interests of its members. AVIA is the interlocutor for the industry with governments across the region, leads the fight against video piracy and provides insight into the video industry to support a vibrant industry ecosystem. AVIA evolved from CASBAA in 2018.

AVIA's leading members include: Amazon, AsiaSat, Astro, BBC Studios, Discovery Networks, The Walt Disney Company, WarnerMedia/HBO Asia, NBCUniversal, Netflix, now TV, Star India/Hotstar, TrueVisions, TV5MONDE, ViacomCBS Networks International, A&E Networks, Akamai, Baker McKenzie, BARC, beIN Asia Pacific, Bloomberg Television, Brightcove, Canal +, Cignal, Converge ICT, Dolby, Eutelsat, France 24, Globecast, Globe Telecom, Invidi, iQiYi, Irdeto, Intelsat, KC Global, La Liga, Limelight, Magnite, Mayer Brown, Measat, MediaKind, Motion Picture Association, NAGRA, NBA, NHK World, Nielsen, Planetcast, Premier League, Singtel, Skyperfect JSAT, Sony Pictures Television, SES, Synamedia, TMNet, TV18, TVBI, The Trade Desk, Vidio, Viaccess, Viacom18, White Bullet and Zee TV