

**CUTS' Comments on TRAI's Consultation Paper on
"Tariff Order for CAS Areas"
(Consultation Paper No. 11/2006)**

General Comments:

TRAI has raised an important issue through this consultation paper. However, the approach adopted by TRAI and the manner it has sought to discuss the issues is unsatisfactory.

Earlier TRAI had arrived at certain decisions regarding the manner in which Tariff for Cable TV would be regulated in CAS areas. One particular decision was that the maximum allowable discount on a bouquet of channels would be subject to regulation. Later stakeholders (in particular consumer groups) suggested that there should be a maximum retail price for a channel to be prescribed to avoid any unrealistic fixing of individual price of popular pay channels. The concern was that there are chances of consumers getting exploited by broadcasters for watching popular channels. This perceived action on the part of broadcasters highlights that, price is often not 'the' factor determining choice of channel by subscribers, in fact, at times quality of programmes shown on a particular channel turns out to be the most important factor for opting a channel. Unfortunately, TRAI does not seem to appreciate this reasoning and the consultation paper is based on the point that price of a channel is 'the' most important factor.

In the context of CAS one wonders why should there be a bouquet of channels, when CAS has been designed to provide consumers a tool to choose individual channels. By introducing the concept of bouquet, we are moving away from this very rationale for introducing CAS. Further, the introduction of bouquet brings along with it several complexities. First, the maximum allowable discount has to be determined to ensure that bundling of channels through bouquets with a scheme of discount does not nullify the individual choice (Here again, the focus is on protecting individual choice). This would result in TRAI making all the efforts in determining what an 'acceptable' maximum allowable discount would be. Another complexity that might arise is when a broadcaster includes a popular channel in various bouquets and chooses one of these bouquets as the reference bouquet for ensuring that it is complying with the regulation on maximum allowable discount. This way, the broadcaster can fix a higher price for a popular channel by selecting a reference bouquet that allows it to do so. This would nullify the regulation on maximum allowable discount. This reinforces the need to have maximum retail price for a channel. For these reasons, forming of bouquets should not be permitted.

Considering that price is not always an important factor for choosing a channel, and the fact that there is need for a maximum retail price for individual channels, what ought to be the approach for determining the price, and secondly, should there be a premium for popular channels?

Our view is that there should be no premium (extra charge) for popular channels. A channel is made popular by viewers based on the quality of programmes that are shown. And it is a well known fact that broadcasters of popular channels charge a premium from advertisers. Since broadcasters are able to cash on the popularity of a channel by charging a premium from advertisers, where does the need arise for consumers to pay the premium, when it is they who are making the channel popular. Secondly, the premium the broadcasters charge advertisers is ultimately paid by the consumers, as advertising revenue is part of the price of any product. Then, why should a consumer be made to pay twice for premium content? It is unfortunate that TRAI does not appreciate these simple economics of the working of broadcasters-advertisers-consumers.

With this backdrop, our view is that all pay channels should have the same price and the price should be determined on the basis of carriage cost. By mentioning about including the content cost in determining prices, TRAI is presenting a misleading picture. How can content cost be the base for determining price of individual channels, when other relevant data/information is not available? For instance, the same content is telecasted and viewed by subscribers in various countries. Therefore, the content price has to be distributed equally amongst all the subscribers in India and abroad who are watching a particular channel. Since the related data is not available, this method should not be considered at all. Rather than bringing out clearly what the problems are in adopting a content-based pricing, TRAI has sought to bypass this issue by simply mentioning in the consultation paper that *'for content, cost based pricing is not feasible, and for carriage the problem is to find a representative network given the vast variety of these networks'*.

The relevant principle for determining the prices of individual channels should be the carriage cost. It is not clear what are the vast varieties of networks that TRAI is referring to while bringing out the problems in carriage-cost based pricing. As we understand, at present there are two networks – one, cable TV network, and second, DTH network. If there are significant differences in carrying channels in these two networks, then TRAI can work out different carriage costs, and hence different prices for channels telecasted through different networks.

There has been no attempt in the consultation paper to bring out the experiences of other countries in this regard. One does not have to go too far to bring out relevant experiences. In Pakistan, the methodology used by Pakistan regulator is considered to be sound. TRAI could have made a mention of this, but surprisingly these good practices do not find any mention in the consultation paper.

The various options and alternatives given in the consultation paper for determining price of individual channels are:

- i) Use maximum historical price from the range of historical prices of the same genre of channels, as a benchmark for all channels falling under the particular genre. Certain problems are identified with respect to this alternative. One of the problem is based on the presumption that price is 'the' determining factor for choosing a channel and based on this the consultation paper questions the very rationale for fixing prices. As argued above this presumption is not always true.
- ii) Another alternative is to pick up any price in the range as a representative price for all the channels falling under a particular genre. This is a ridiculous proposal. When there is no justified basis for determining a representative price, this option should not have been considered at all.
- iii) The third alternative is to recognize the individual historical channel prices as the benchmark for that channel. However, here again the consultation paper has tried to venture into the method of content-based pricing, when it is clear that it is not feasible. Anyhow, from the viewpoint of consumers, this would imply variations in prices across channels. Why should consumers pay different prices for different channels, when the cost of carrying these is the same?

If TRAI considers that historical pricing is the most appropriate method for determining price of individual channels, it is not clear why the regulator has not considered the method of determining prices based on measures of central tendency. One option could have been to consider a simple average of prices; another option could have been to calculate the simple average of the minimum and maximum historical price. Surprising such methods do not find any mention. And TRAI has mentioned about other methods which are unrealistic and full of

problems. Since no effort has been made to mention other methods of determining price of individual channels or of the practice followed in other countries, the consultation paper concludes that *'there is no clear method for fixing prices that will meet all objections'*. With this, the paper brings out the following disadvantages of fixing prices:

- i) Fixing prices could distort the incentives to produce quality programmes
- ii) Since the consumers have choice in CAS, fixation of prices is an unnecessary intervention in the market.

These disadvantages highlight the poor information that TRAI possesses of the economics of broadcasting and cable services. For one, it is learnt that broadcasters of pay channels get 70% of their revenues from advertising and 30% from subscription. Thus advertisement revenue forms a significant and major portion of broadcaster's total revenue. Now the level of advertisement charges on a pay channel is positively related to its popularity. Hence, the broadcaster's incentive would be to enhance a channel's popularity, which amounts to increasing viewership. In this context, CAS would be an important tool to bring transparency in number of subscribers watching particular channels. This in turn would determine the popularity of a channel, and form the basis for higher advertising revenues for broadcasters. Therefore, with CAS and the transparency that it would bring in, broadcasters would have the incentives to produce quality programmes.

The relationship between prices and incentives to produce quality programmes as brought out in the paper is misleading. In fact, the relation is other way round i.e. if quality of programmes is good and the channel is popular and if broadcasters charge a premium for it, then considering that price of a channel is 'the' factor determining choice of a channel (as brought out repeatedly in the consultation paper), any increase in price, might reduce the viewership. This in turn would reduce the popularity of the channel and affect the broadcasters ability to charge more for advertising, and hence reduce its revenue significantly (as advertising forms a major portion of the total revenues)!

The consultation paper has highlighted the problem of categorising channels under various genres. As regards categorising, the various genres of channels that can be identified are:

- News channels (can be further sub-categorised as per language)
- Movies (can be further sub-categorised as per language)
- Religious (can be further sub-categorised as per language)
- Educational (e.g. National Geographic, Discovery, History, etc.)
- Children (e.g. Cartoon Network, Pogo)
- Songs
- Sports
- General Entertainment (e.g. Star Plus, Sony, Zee TV, Star World, etc.). (This can be further sub-categorised as per language)

The above categories could be followed for defining various genres of channels. The consultation paper mentions about the difficulty of categorising a channel under a genre, particularly when a channel has mixed programme content. However, there is no example given of such channels. As far as we know, and the above categorisation also shows that almost all channels could be put in the above categories. It would have been better if the consultation paper had given relevant examples to further clarify the matter.

In view of the above, the best option is:

- Forming of bouquets are not permitted

- TRAI determines the price of channels, depending on the cost of carriage, and if carriage cost is difficult to calculate, then fix the ceiling price for each individual genre based on a simple average of historical prices of all channels falling under a particular genre as per categorisation given above.

Issues for discussion

i) Should TRAI fix the maximum retail price for each individual channel?

CUTS' Response: Yes, TRAI should fix the maximum retail price for each individual channel. Earlier TRAI had arrived at certain decisions regarding the manner in which Tariff for Cable TV would be regulated in CAS areas. One particular decision was that the maximum allowable discount on a bouquet of channels would be subject to regulation. Later stakeholders (in particular consumer groups) suggested that there should be a maximum retail price for a channel to be prescribed to avoid any unrealistic fixing of individual price of popular pay channels. The concern is that there are chances of consumers getting exploited by broadcasters for watching popular channels.

ii) If so, what should be the methodology and principles to be adopted for the same?

CUTS' Response: Our view is that there should be no premium (extra charge) for popular channels. A channel is made popular by viewers based on the quality of programmes that are shown. And it is a well known fact that broadcasters of popular channels charge a premium from advertisers. Since broadcasters are able to cash on the popularity of a channel by charging a premium from advertisers, where does the need arise for consumers to pay the premium, when it is they who are making the channel popular. Secondly, the premium the broadcasters charge advertisers is ultimately paid by the consumers, as advertising revenue is part of the price of any product. Then, why should a consumer be made to pay twice for premium content?

All pay channels should have the same price and the price should be determined on the basis of carriage cost. By mentioning about including the content cost in determining prices, TRAI is presenting a misleading picture. How can content cost be the base for determining price of individual channels, when other relevant data/information is not available? For instance, the same content is telecasted and viewed by subscribers in various countries. Therefore, the content price has to be distributed equally amongst all the subscribers in India and abroad who are watching a particular channel. Since the related data is not available, this method should not be considered at all. Rather than bringing out clearly what the problems are in adopting a content-based pricing, TRAI has sought to bypass this issue by simply mentioning in the consultation paper that *'for content, cost based pricing is not feasible, and for carriage the problem is to find a representative network given the vast variety of these networks'*.

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iii) Should TRAI promote individual choice of channels by fixation of the maximum price as a percentage of the average price of a channel in a bouquet and if so, what should be this percentage?

CUTS' Response: In the context of CAS one wonders why should there be a bouquet of channels, when CAS has been designed to provide consumers a tool to choose individual channels. By introducing the concept of bouquet, we are moving away from this very rationale for introducing CAS. Further, the introduction of bouquet brings along with it several complexities. First, the maximum allowable discount has to be determined to ensure that bundling of channels through bouquets with a scheme of discount does not nullify the individual choice (Here again, the focus is on protecting individual choice). This would result in TRAI making all the efforts in determining what an 'acceptable' maximum allowable discount would be. Another complexity that might arise is when a broadcaster includes a popular channel in various bouquets and chooses one of these bouquets as the reference bouquet for ensuring that it is complying with the regulation on maximum allowable discount. This way, the broadcaster can fix a higher price for a popular channel by selecting a reference bouquet that allows it to do so. This would nullify the regulation on maximum allowable discount. This reinforces the need to have maximum retail price for a channel. For these reasons, forming of bouquets should not be permitted.

iv) If the individual MRPs are fixed by TRAI, along with a formula as indicated in (iii) above, should TRAI also regulate the maximum permissible discount for the bouquet of channels?

CUTS' Response: As mentioned in our response to (iii) above, in the context of CAS forming of bouquets should not be permitted, as it defeats the very purpose of having an addressable system.

v) Which of the Options at para 10 should be adopted and why? Is there any other Option that should be adopted ? If so please give details along with

CUTS' Response: The best option is:

- Forming of bouquets are not permitted
- TRAI determines the price of channels, depending on the cost of carriage, and if carriage cost is difficult to calculate, then fix the ceiling price for each individual genre based on a simple average of historical prices of all channels falling under a particular genre as per categorisation given above.

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