

IBDF's Response to TRAI Consultation Paper dated 7 May 2022 on Issues related to New Regulatory Framework for Broadcasting & Cable Services

Preface

- A. We, IBDF, welcome this timely intervention by TRAI to address the issues being faced by the broadcasting sector relating to implementation of the new regulatory framework of 2020 (**NTO 2.0**).
- B. Today, the broadcasting sector is at a stage where, admittedly, it is losing subscribers as well as revenue. Time spent by consumers on Linear TV fell 8% in 2021 from 2020 levels and was slightly lower than 2019 levels for Hindi speaking markets¹. There is, hence, a need felt to implement commercial decisions in order to retain and eventually increase viewership. Such decisions would require flexibility in pricing and offering of channels.
- C. The new regulatory regime of 2017 (**NTO 1**) has brought about transparency for the subscriber and provided the requisite tools for exercise of choice of channels by the consumer. However, consumer choice is not homogenous, nor is the cost of content. Broadcasters and distribution platform operators (**DPOs**) have also matured in terms of understanding the needs as well as consumption patterns of the consumer as also the manner in which the market for television channels' works.
- D. The aforesaid factors/background reveal/point to the following:
- i. The industry is at a crossroad, where the next strategic and commercial decisions are likely to have a bigger and lasting impact on the survival and growth prospects of the business and the manner of consumption of channels.
 - ii. The time is ripe to implement a forbearance model, at least vis-à-vis pricing of channels and packaging of such channels. Assuming that forbearance cannot be implemented immediately, at least the framework for sunset provisions relating to price/packaging of channels should be identified and notified.
 - iii. With availability of a variety of platforms and content, viewer choice is getting increasingly heterogenous and unpredictable. Accordingly, there is demand for more varied content, even within the same household.
 - iv. That there is no legally or market accepted category of a "popular" or "unpopular" channel, especially when there is so much heterogenous content and choice being exercised by the viewers.

¹ FICCI & EY, Media & Entertainment Report, *Turning into Consumer*, March 2022, Accessed online at: https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2022/ey-ficci-m-and-e-report-tuning-into-consumer.pdf (Page 34)

Fundamental factors to be considered by TRAI

- E. A robust media and entertainment (**M&E**) sector is one of the cornerstones of a vibrant and diverse democracy like India. Being one of the key mediums of mass communication, the broadcasting industry is the vehicle for creative expression, exchange and dissemination of opinions, ideas, and accountability.
- F. The role of an unshackled broadcasting sector is equally important for the Indian economy as well as for the society which is uniquely diverse, aspirational and deserves to access best in class quality content. It is pertinent to highlight that the M&E industry employed about 4 million people in 2020 and was projected to employ double the number of employees by 2025². In 2021, linear television accounted for 44.6% of the revenues of the entire M&E sector. The linear television broadcasting industry generated revenue worth INR 720 billion in 2021³.
- G. TRAI has, since the issuance of the tariff orders in 2004 and even thereafter on several occasions, recognized the importance of forbearance in the growth of industry⁴. It is pertinent to highlight that, even for broadcasting industry, TRAI's intent had always been to move towards price de-regulation once effective competition had been achieved in the broadcasting industry⁵. Since the number of broadcasters in the country in 2019 was 350⁶, it is evident that effective competition exists in the industry for prices to be fairly determined by market forces. During the celebration of its 25th year anniversary on May 17, 2022, TRAI attributed the success of the telecom sector to the forbearance exercised by it therein. It is also noteworthy that the central government, particularly Prime Minister Mr. Narendra Modi has always placed high importance on encouraging the growth of industry, particularly by prioritising de-regulation in its 'Azadi Ka Amrit Mahotsav' initiative. Price Forbearance is also in line with the government's vision that 'Government has no business being in business' and that it should provide a healthy environment for business to grow and flourish with minimum regulatory control.
- H. In this regard, it is noteworthy that the telecom sector, which was primarily regulated by TRAI, has been under price forbearance since September 2002, barely 8-9 years after launch of private telecom services. Importantly, even though there are only 3 players in

² Asmita Dey, *M&E could generate 8 million jobs by 2025*, Financial Express, August 31, 2020, Accessed online at - <https://www.financialexpress.com/brandwagon/me-could-generate-8-million-jobs-by-2025/2070032/>

³ *Ibid*, at 1. (Page 10)

⁴ In the 'Consultation Paper on Regulatory Principles for Tariff Assessment' TRAI had highlighted the significance of 'forbearance': "*Currently, except for the tariffs for national roaming, fixed rural telephony and leased lines, tariffs for other telecommunication service are under forbearance. In accordance with the policy of 'light touch' regulation being followed, the tariff framework gives the TSPs...the freedom to design the tariffs according to the prevailing market conditions. This has resulted in emergence of new and innovative products in the market that are designed to provide telecom services at affordable and competitive price to the consumers.*"

TRAI, Consultation Paper on 'Regulatory Principles for Tariff Assessment', February 17, 2017, Accessed online at: https://www.trai.gov.in/sites/default/files/Consultation_paper_03_17_feb_17_0.pdf

⁵ TRAI, Recommendations on Issues relating to Broadcasting and Distribution of TV channels, October 1, 2004, Accessed online at - <https://www.trai.gov.in/sites/default/files/01octcable%5B1%5D.pdf> (Pg. 15)

⁶ Nathan Economic Consulting India Private Limited, *Socio-Economic Analysis of Tariff Regulation governing Indian Television Industry*, December 25, 2019

the market today, TRAI has, even as recently as 2021, decided not to re-introduce price regulation.

- I. The M&E sector has the potential to become a USD 100 billion industry by the year 2030. The sector currently contributes only 0.58% of India's GDP and significantly trails the global benchmark of approximately 4% contribution towards GDP seen in comparable economies. The Linear TV segment in the M&E in India has a huge headroom for growth with 40% of the households still not having access to television. A light touch regulatory approach may naturally nudge the industry towards the optimal equilibrium and pave way for orderly growth of this important segment.
- J. We sincerely trust that this consultation process will provide a much-needed progressive reset to the regulatory framework that will unlock the true potential of the Broadcasting and Cable Services (B&CS) industry in India. What the B & CS industry needs is bold reforms that will restore the fundamentals of the industry and enable long term viability, sustainability, and competitiveness, and not any transitory or quick-fix solution to prevent another disruption.
- K. We remain hopeful that the regulatory overhaul would be undertaken keeping in mind the above fundamental principles, and that the industry can begin to proceed towards a light-touch regulatory regime, as envisaged by TRAI in 2004.

Bundling Of Channels – Benefits & Impact

- L. The formation of bouquets of television channels, or bundling of channels (i.e., the practice of offering of channels in "package(s)" in addition to offering of channels on *à-la-carte* basis), is neither unique nor limited to India or to television channel distribution as an industry.
- M. Bundles exist and are popular with consumers across a range of goods and services: Computer software (e.g., Microsoft Office sold as a bundle comprising of Word, Excel and PowerPoint), automobile trim and option packages, restaurants (e.g., buffet and *à-la-carte* meals), gym memberships, even amusement park tickets. For instance, DPO's themselves offer television channels in a variety of bundled packages to the consumer. The DPO offers bundles and packaging that is comprised of the different broadcasters' channels and offer bundles of Platform Services offering other content and their own curated channels alongside their offerings of the Cable Television channels.
- N. The reason for this is that bundling benefits consumers and vendors in more ways than one. *À-la-carte* channels increase costs to consumers, since un-bundling of channels impacts advertising income and consumers are then required to bear higher cost of the channel⁷.
- O. Bouquet and *à-la-carte* offering of television channels are two different and distinct methods of offering channels to consumers. They target different audience i.e., (i) those

⁷ Bundling, The economic theory and a framework for regulatory ex-ante assessment. Economic Policy Note No. 4, September 2004. The Dutch Independent Post and Telecommunications Authority

who choose to view a limited number of channels only and would opt for *à-la-carte* method; and (ii) those, particularly families having diverse preferences, who would want a mix of variety of channels and hence would choose bouquets or a bundle of channels. The instances where viewers choose a limited number of channels are limited and chosen only by outliers and not by the general public that wants to enjoy variety and choice.

- P. Intervention against bundling is only stated to be justified when the evidence suggests that the motivation for the bundling is to affect competition. Bundling becomes an issue from the perspective of competition policy, only when one firm has strong market power or a monopoly on at least one component of the bundle.⁸ Given that the level of competition in the Indian television, cable and satellite market itself is high⁹, any anticompetitive behaviour through bundling is unlikely, and surely does not require any ex-ante or blanket regulation. All these players, in the linear broadcast television market are competing aggressively to provide greater choice to consumers through technology and content, and also competing on price.
- Q. Opting for an *à-la-carte* system alone would not only result in complete market disruption as it would require a drastic change being imposed upon consumer behaviour but will also result in higher prices for consumers for the same level of programming diversity. This is because an *a la-carte* system would drive the price of individual channels up so high that consumers choosing to retain the wide selection of channels available to them under bouquets would be required to pay more to do so. Consumers who choose as few as a dozen channels would end up with higher bills than they currently pay for hundreds of channels under their current bouquet subscription.
- R. For instance, a typical Indian family consisting of parents, grandparents and children seeking a variety of content as per the preferences of all members of the family, if made to opt for *à-la-carte* channel prices will have to pay up to 50% more than earlier to obtain the same variety of channel offerings¹⁰.
- S. Further, factors such as, input costs and inflation continue to impact the cost of creating and programming/distributing channels, and such impact varies with the nature of content on channels. Asking the broadcasters to reduce prices of channels, would either result in closure of business/channels or at the very least cause broadcasters to compromise on the quality of content being offered. This in-turn will have a domino effect of adversely impacting the overall ecosystem / all stakeholders as well. Any further restrictions on manner of offering would also drive out niche/regional channels, which may appeal to a limited section of society/viewers. One of the consequences of the said course of action would be to severely impact the diversity and plurality of content, thereby impacting freedom of speech and expression of both the creator as well as the

⁸ Kai-Uwe Kuhn, Economic Theories of Bundling and their Policy Implications in Abuse Cases: An Assessment in Light of the Microsoft Case, Law & Economics Working Papers Archive: 2003-2009

⁹ *Ibid*, at 6.

¹⁰ Gaurav Laghate, *Come December 1, TV viewers may have to shell out 50% more*, Economic Times, October 18, 2021, Accessed online at - <https://economictimes.indiatimes.com/industry/media/entertainment/media/come-december-1-tv-viewers-may-have-to-shell-out-50-more/articleshow/87113603.cms?from=mdr>

viewer. These channels would not just suffer the consequences of lower subscription revenues, but the lack of wide viewership will also significantly affect overall revenues and increase costs including marketing expenses of such channels, impacting their ability to survive. Similarly, the distribution platforms also offer bundles as they provide the ability to bring value to the customer. Further, many DPOs exist because of the support that more subscribed bundles provide therefore, bundles are not anti-consumer but pro-consumer since, in addition to making available wide variety of channels to consumers they are also beneficial to overall distribution ecosystem.

- T. In almost all other countries – and certainly in all major television markets – channel bundling is standard and widely-accepted as it is regarded as generally beneficial to consumers. Bundling is a widely prevalent market practice in Malaysia, Hong Kong, Indonesia, Japan, United Kingdom, United States of America, Russia, Canada and Australia, and restrictions on bundling exist only in India. Similarly, there is no precedent of prescriptive pricing in these countries as well. The survey of the regulatory practices in the jurisdictions referred above confirm that most countries have chosen to adopt a light-touch regulatory approach to tariff regulations of channels and related market practices such as bundling. Study of regulatory experiences in other jurisdictions would offer useful insights while framing regulations in relation to bundling and regulation of tariffs in relation thereto.
- U. The TRAI itself in para 2.4 of the Consultation Paper recognises that *“determining the cost of production of a program on a television channel at all times is an extremely difficult process, perhaps almost impossible to derive through a fixed mathematical/ statistical model. Moreover, such determination of price would be dynamic in nature and may vary with changes in programs in a channel and programs on television channels change dynamically.”* Having concluded that finding a uniform cost metric for any channel(s) or program(s) within channel(s) is virtually impossible, it only stands to reason that a uniform monetization model cannot be prescribed either. Different businesses and channels are run on different monetization models with a differing dependency on subscription and / or advertising revenue, given the varying cost structures. As a consequence, to prescribe uniform pricing and bundling mechanisms is to either incapacitate businesses from being able to recoup costs or create harmful incentives. Absent forbearance, a uniform pricing and bundling mechanism in this context skews the playing field rather than to even it. This alone should enable TRAI to conclude that a uniform pricing or bundling mechanism is not in the interest of the industry. A uniform ex-ante regulation on pricing and bundling carries an immense burden which needs to be discharged by any authority so imposing it.

International Practices

- V. The regulatory approach adopted by the aforementioned jurisdictions is detailed hereinbelow:
1. Malaysia: Communication and multimedia Industry in Malaysia is regulated by the Malaysian Communications and Multimedia Commission (MCMC). MCMC does not

regulate the prices either at wholesale or retail level. However, there is requirement of filing of retail rates. There are also no restrictions in the program packaging including tiering, bundling or provision of mandatory *à-la-carte* channels.

2. Hong Kong: The office of the communications Authority is responsible for overseeing both the broadcasting and telecommunications sectors.¹¹ The Office of Communications Authority doesn't regulate the prices of channels at both the retail and wholesale level. Further, there are no rules on bundling of channels.¹²
3. Indonesia: Indonesia has two regulatory bodies that have different roles in administering the broadcasting industry. The government does not regulate the prices at both the retail and wholesale level.¹³ Also there is no regulatory mandate on program packaging including tiering or bundling. The *à-la-carte* pricing of channels is not mandatory. Tiering arrangement is less popular compared to the bundling arrangement which most of the pay TV operators use.¹⁴
4. Japan: The Ministry of Internal Affairs and Communications (MIC) administers the Broadcast Law and the Radio Wave Law. MIC formulates policies through consultative councils which may include industry representatives. The Japan Commercial Broadcasters Association (JCBA) plays the role of a self-regulatory organization, which maintains specific content standards required by the Broadcast Law.¹⁵ Basic broadcasters are required to submit their pay TV terms and conditions to the Minister of MIC and disclose them publicly on their websites.¹⁶ MIC does not specifically regulate retail/wholesale rates. There are no price controls on any tier of pay TV service. The average revenue per user for the TV segment in Japan is USD 22 per month.¹⁷
5. United Kingdom: The Office of Communication (Ofcom) is the regulator for the United Kingdom communications sector, with responsibilities across television, radio, telecommunications and wireless communications services. In general, there is no regulation of the pricing of pay television content in the United Kingdom. The prices are unregulated both at the retail and wholesale levels. Though Ofcom has the power to regulate prices on a case-to-case basis (usually in the case of specific instances of abuse or malpractice), the same has been exercised sparingly. For example- Wholesale "must-offer" obligation of Sky channels. The wholesale must-offer ('WMO') obligation imposed in 2010 requires Sky to offer to wholesale its Sky Sports 1 and 2 ('SS1&2') channels to

¹¹ Broadcasting (License Fees) Regulation, Hong Kong - <https://www.elegislation.gov.hk/hk/cap562A/en.pdf?FROMCAPINDEX=Y>

¹² *Ibid*, at 11.

¹³ Asia Video Industry Association - <https://asiavia.org/rfg/>

¹⁴ Asia Video Industry Association - <https://asiavia.org/wp-content/uploads/2018/10/FINAL-2017-pay-tv-matrix-Indonesia.pdf>

¹⁵ Asia Video Industry Association - https://asiavia.org/wp-content/uploads/2018/10/FINAL_2017-pay-tv-matrix-Japan.pdf

¹⁶ TRAI, *Consultation Paper on Tariff Issues related to TV Services*, January 29, 2016, Accessed online at - https://www.trai.gov.in/sites/default/files/CP_Tariff_issues_29_Jan_2016_final.pdf

¹⁷ CARE Ratings, *Industry Research - Media and Entertainment - Television segment*, June 27, 2018, Accessed online at <http://www.careratings.com/upload/NewsFiles/Studies/Media%20and%20entertainment%20Television%20Segment.pdf> (Pg 3).

other pay TV retailers with certain prices and terms set by Ofcom. Operators must also comply with general competition law. Ofcom retains the power to regulate pricing where there are specific (case to case) competition concerns.¹⁸ Packaging and bundling of pay television content, or content together with services such as telephony, is not subject to specific regulation in the United Kingdom but these must comply with general competition law.¹⁹ Nonetheless, a market practice typically is for pay television providers to bundle a basic tier package with tiered subscriptions to premium content such as movies and sports.

6. United States of America: Federal Communication Commission (FCC) regulates interstate and international communications throughout the United States of America. It is an independent agency that is responsible for implementing and enforcing America's communication law on radio, television, wire, satellite and cable.²⁰ Basic Service Tier is regulated by local franchising authority (LFA) only if "effective competition" doesn't exist. FCC does not regulate the prices at retail level for satellite services. Cable programming service, Pay-per-view and Pay-per-channel are unregulated. At wholesale level, Cable Company may be required to give compensation to the local broadcast stations for use/re-transmission of their signals. If must carry option is invoked by these broadcast stations, then no compensation from the cable company is charged.²¹ The Government does allow the bundling of channels. The FCC takes into consideration factors such as availability of effective competition and price of basic services before deciding whether to interfere with the market.²² Instances of intervention remain on a case-to-case basis where abuse / market practices have been misused by specific players. The industry is also supposed to comply with the must carry rules. The average revenue per user is USD 88, which is amongst the highest globally.
7. Russia: The ministry of communication and mass media in Russia is a federal executive body that drafts and implements government policy and legal regulation in a plethora of fields such as information technology, telecommunications and postal service, mass communications and media and the print media. The Russian broadcasting industry is subject to two kinds of regulations, self-regulation and state regulation. The Russian ministry of communication and mass media has imposed must carry rules on a set of channels such as channel one, TV channel Russia (Russia 1), TV channel Russia (Russia2), TV company NTV. Under Resolution of Federal Anti-Monopoly Service of East Siberian District from November 9, 2012, with regard to case № A33-4149/2012, a consumer has the right to obtain must carry channels without paying fees for signal reception and broadcasting of such channels.²³ Russia has one of the lowest average revenue per user

¹⁸ Asia Video Industry Association - https://asiavia.org/wp-content/uploads/2018/10/FINAL_2017-pay-tv-matrix-UK.pdf

¹⁹ *Ibid*, at 16.

²⁰ Federal Communications Commission, United States - <https://www.fcc.gov/about/overview>

²¹ *Ibid*, at 16.

²² TRAI, *Consultation Paper on Tariff Issues related to Cable TV Services in Non CAS Areas*, March 25, 2010, Accessed online at - <https://www.trai.gov.in/sites/default/files/cpaper25mar10.pdf>

²³ European Audio-visual Observatory, *TV Market and Video on Demand in the Russian Federation*, December 2013 - <https://rm.coe.int/ru-tv-and-vod-2013-kvg-research-en-pdf/1680783541> (page 13)

in the whole of Europe. As a result of stagnation in the market, the broadcasters are now increasing the average revenue per user. It has increased from 166 RUB/month (USD 2.88) in 2017 to 182 RUB/month (USD 2.62) in 2018.²⁴

8. Canada: The Canadian Radio-Television and telecommunication commission (CRTC) is responsible for regulating and supervising the broadcasting and telecommunication. CRTC refrains from regulating newspapers, magazines, the quality and content of TV and radio programs or the retail rates for most communication services.²⁵ CRTC does not regulate the prices at both the retail and wholesale level. While the CRTC has requisite powers of intervention for regulation of prices in cases where prices are found to be unfair, such a power has never been exercised. Consumers are provided with option of a small bundle or to choose what they pay for. The Canadian Radio-Television and Telecommunication commission has a must carry rule in the broadcasting industry with a view to ensure the diversity of Canadian programming services. For instance, there is a basic package that offers French-based broadcasting channels for the minority environment. These basic channels form an entry-level package that is to be priced at no more than \$25 a month. This package must be made available to consumers mandatorily.
 9. Australia: Australian Communication and Media Authority (ACMA) is an independent statutory authority that is tasked with legislation, regulation and ensuring the code of practice operates effectively and efficiently. There is no price regulation both at the retail and wholesale levels and there is no must carry regulation imposed on the broadcasting industry. Further, there are also no mandatory rules for bundling, tiering or *à-la-carte* pricing.²⁶ However, ACMA compels the service providers to provide the consumers with Critical Information Summaries (CIS)²⁷ which enables the consumers to make an informed choice. Australia also has the highest average revenue per user from DTH operators in the Asia-Pacific region at \$ 64.67 per month in 2016.²⁸
- W. At this crucial juncture where the M&E Industry needs to create a progressive and enabling regulatory framework for the broadcasting sector, it is important to underscore the constitutional principles which are central to all the issues under consideration. It is contextually relevant here to highlight that creation and dissemination of content forms the bedrock of the entire broadcasting sector. Given the prime importance of creation and production of quality content for the well-being of the entire sector, it is most crucial to ensure that there is adequate incentive to create and disseminate content in the form of freedom to package and price the content offering.

²⁴ European Audio-visual Observatory (Council of Europe), *Russian Pay TV and SVOD: Is Cord-cutting Really Happening?* Strasbourg, 2019, Accessed online at – <https://rm.coe.int/russian-pay-tv-and-svod-2019/1680989395>

²⁵ Canadian Radio-television and Telecommunications Commission - <https://crtc.gc.ca/eng/acrtc/acrtc.htm>

²⁶ *Ibid*, at 16. (page 98)

²⁷ Australia Communication and Media Authority, *Critical Information Summaries*, Accessed online at: <https://www.acma.gov.au/critical-information-summaries>

²⁸ Asia Video Industry Association - <https://asiavia.org/wp-content/uploads/2018/08/PUB-Asia-Pacific-Multichannel-TV-2018.pdf>

Issue-wise Response

Q1. Should TRAI continue to prescribe a ceiling price of a channel for inclusion in a bouquet?

- a. If yes, please provide the MRP of a television channel as a ceiling for inclusion in a bouquet. Please provide details of calculations and methodology followed to derive such ceiling price.**

Answer:

- i. No. There should be no prescription of any ceiling price of a channel for inclusion in a bouquet. As outlined in the preface, *À-la-carte* and bouquets are different offerings catering to different target audiences supporting to different value propositions.
- ii. As also elaborated above, bundling of channels is a standard business practice across sectors as well as an internationally accepted practice. It offers several advantages and is adversely affected by price ceilings. Bundling not only allows broadcasters to experiment by introducing new and niche channels but also, allows consumers to sample such channels as well as other channels. It is also unfathomable to expect consumers to remember each and every channel that they may want to watch and subscribe accordingly, and as such, bundling allows consumers to have access to wide pool of content at affordable prices. Even historically, bundles seem to be the usual choice of consumers when it comes to subscribing channels. Additionally, ample evidence exists, in the form of global regulatory practices, that forbearance in relation to channel tariff and bundling thereof is the norm.
- iii. Whenever any stakeholder refers to a consumer in the B&CS sector, that consumer is not an individual, but a household, ***whose average family/ household audience size is 4.25***, and according to Broadcast Audience Research Council (BARC), 98% of the 210 million TV households are single-TV homes. For this reason, bouquets are the default choice of Indian TV consumers/Households. Therefore, any price ceiling for inclusion in the formation of a bouquet will restrict the ability to form a package that caters to the majority of Indian TV households, which prefer bouquets because of their family size and to cater to diverse preferences.
- iv. As has been observed by TRAI in the Consultation Paper, price ceilings on channel prices for inclusion in bouquets and regulation of bouquet prices have neither resulted in consumer satisfaction nor have they benefitted any stakeholder. On the contrary, they are counterproductive both from consumer as well as DPO / broadcaster's perspective since, it hampers robust channel offering to consumers. The restrictions on bouquet pricing have also led to market disruptions, such as decrease in active subscriber base as well as revenues of broadcasters. Moreover, the change necessitated in all broadcasters' bouquet offerings has led to distributors being tasked with repeating the large-scale consumer migration exercise that had been completed, with much difficulty in 2019. This has also impacted consumer interest, as many consumers, after having been compelled to migrate to a new regime by exercising their choice, are now left without the bouquet offerings that they had chosen under the earlier regime.

- v. The Authority's admission, as observed in para 2.4 of the Consultation Paper, is that an optimal channel price is impractical to determine or does not exist. *"While framing the new regulatory framework 2017, the Authority noted that it is impractical to determine the price of a television channel. In this regard the Authority observed that generally a channel consists of number of the programs. The cost of the production of different programs varies based on the actors, setup cost, script, copy rights, and other miscellaneous factors. Various programs on a given channel also get changed frequently based on their Television Rating Points (TRP) and advertisement potential. Hence, determining the cost of production of a program on a television channel at all times is an extremely difficult process, perhaps almost impossible to derive through a fixed mathematical/statistical model. Moreover, such determination of price would be dynamic in nature and may vary with change in programs in a channel and programs on television channels change dynamically. Accordingly, the Authority in the Tariff Order 2017 did not prescribe any ceiling on the prices of channels and left it to the broadcasters to decide the prices of their channels."* That apart, as has been observed by TRAI itself in the Consultation Paper, since it is not possible for a third-party to determine the price of a TV channel, any ceiling price for such a channel to retro-fit into any formula for linking *à-la-carte* or bouquet and/or determining either *à-la-carte* price or bouquet price would undoubtedly suffer from unworkability and speciousness.
- vi. There is no empirical study linking consumer satisfaction to bundling of channels as per their choice, to lend credibility to the conclusion that Indian consumers prefer to make higher payment, if necessary, in exchange for receipt of channels of their choice alone. There is also lack of data on the impact of such price restrictions and regulation, on the entry of niche and smaller players in the market. On the contrary, ample evidence exists, in the form of global regulatory practices, that forbearance in relation to channel tariff and bundling thereof is the norm and has enabled the TV market to grow for all stakeholders, in line with the market and the consumers ability to receive and consume the service.
- vii. As witnessed, the INR 19 ceiling for a channel that can be included in a bouquet effectively becomes the price ceiling for *à-la-carte* channels. Not being in a bouquet denies that *à-la-carte* channel the ability to reach 80% of the TV households in India²⁹. In NTO 2.0, by pushing this price ceiling to INR 12 under NTO 2.0, it became totally unfeasible for several channels to be included in a bouquet. As a result, those channels were pushed out from bouquets and priced much higher since the revenue loss from advertisements (from not being in a bouquet) had to be compensated for by higher subscriptions revenues through higher prices.
- viii. Accordingly, TRAI should discontinue prescribing ceiling price of a channel for inclusion in a bouquet and leave the fixation of prices of channels as well as bouquets to market forces of demand and supply.

²⁹ Comments of Indian Broadcasting Foundation to the Consultation Paper on Tariff Related Issues for Broadcasting and Cable Services, Accessed online at https://traigov.in/sites/default/files/IBF_25092019.pdf

- b. If no, what strategy should be adopted to ensure the transparency of prices for a consumer and safeguard the interest of consumer from perverse pricing? Please provide detailed reasoning/ justifications for your comment(s).

Answer:

- i. It is reiterated that market forces of demand and supply are the best parameters for determining prices of channels, and broadcasters seeking to ensure highest market penetration will be incentivised to invest in high quality content and to price the same competitively. Market forces will also ensure that these prices remain stable.
- ii. To recommend an enduring solution to the problems that are plaguing the industry, it is extremely important for clarification/correction of TRAI's misconception of "perverse pricing" of bouquets vis-à-vis *à-la-carte* prices. Due to this misconception, the questions framed in the present consultative exercise are aimed at rectifying or solving something that is not 'perverse' but in fact reasonable, accommodating and involving mutual assistance in working towards a common goal. Perpetuating this mistaken perception will prevent the industry from achieving the stated objective of NTO 1 i.e., adequate choice to consumers at affordable price(s). We have noted the reference to the Hon'ble Supreme Court's observation on the a-la-carte and bouquet linkage in paragraph 37 of the judgment dated October 30, 2018. It may be noted that the TRAI thereafter filed an SLP challenging the judgment of the Hon'ble Madras High Court by which the capping of the price of bouquets at 85% of the sum of the a-la-carte prices of pay channels was struck down as being arbitrary and un-enforceable. Therefore, the SLP sought to reinstate ability for the TRAI to reintroduce a linkage between a-la-carte and bouquet prices. It may be noted that this SLP was dismissed as withdrawn. The 2017 tariff order and regulation were therefore implemented (and continue as on date) as a consequence without any linkage between a-la-carte and bouquets in keeping with the judgment of the Hon'ble Madras High Court which found such linkage to be **arbitrary and un-enforceable**. In any event, the judgment of the Hon'ble Supreme Court was rendered in the factual context of the 2017 Regulations while the current exercise pertains to the 2020 framework.
- iii. The only strategy that needs to be adopted to ensure the transparency of prices as well as safeguarding the interest of a consumer, is to inform the consumer of its available options. The consumer has the benefit of information openly available on the price and the packaging in a broadcaster's bouquet, the price and packaging in various kinds of DPO bouquets, as well as the price of an *à-la-carte* channel. Thus, under the present regulatory regime, a consumer has a clear line of sight and can make an informed choice. The factors that influence the price in a package are supported by advertising and subscription, as explained in question 1 above. Like any business, various overt and ancillary costs are factored when offering packages and subscriptions. The fact is the consumer, especially in India, benefits from the price being supported heavily from advertising where subscription cannot meet the costs alone.
- iv. Between 2004 and 2019 (before the NTO 1 was brought into effect), there was no evidence that consumers were exploited as far as pricing was concerned. India has always been and continues to be a market that provides the most affordable access to content

across the world. The fierce and intense competition in the sector explains this stability of channel pricing. In fact, between 2004 and 2017, when the NTO 1 was deliberated, the Consumer Price Index (CPI) increased by 153% and broadcasters along with other businesses were faced with rising costs and challenges. However, the saving grace for the TV broadcast industry was bundling, as it kept monthly TV bills significantly lower than what they would otherwise have been if adjusted for inflation. According to a survey commissioned by MIB³⁰, in 2004 the average monthly TV bill was around INR 190 and the average household had access to around 80 channels. Adjusting for inflation, INR 190 in 2004 would be equivalent to INR 402 in 2018. However, thanks to bundling, the average monthly TV bill in 2018 was only INR 222, being **INR 180 LESS** than what it would have been if we accounted for inflation. Moreover, TV households had access to 315 channels before NTO 1, up from 80 in 2004. This is primarily because broadcasters were able to bundle channels to keep prices low for consumers.

- v. Accordingly, no strategy or additional steps are required to be adopted to ensure the transparency or for safeguarding interests of consumer since, sufficient measures already exist under the extant regulatory regime. It is however submitted that need of the hour is to eventually exercise complete forbearance on regulation of channel pricing and that the same should be left to market forces.

Q2. What steps should be taken to ensure that popular television channels remain accessible to the large segment of viewers. Should there be a ceiling on the MRP of pay channels? Please provide your answer with full justifications/reasons.

Answer:

- i. At the outset, it is reiterated that TV watching patterns differ amongst different persons and within different households, and accordingly, there is no definition of what constitutes a ‘popular’ channel. Further, categorization of channels as ‘popular’ for the purpose of access is not in the interest of the public. It is of utmost importance, in keeping with the freedom of speech and expression – both of the creator as well as the viewer – that there should be access to plurality of views and it is hence arbitrary to classify channels as “popular” and certainly not in line with good regulatory practice to use that classification to make regulatory decisions. No study has been conducted to appreciate the specifics of consumer behaviour that drives TV consumption patterns in a home.
- ii. What is popular may differ across regions, languages and genres, as also in the same household. In fact, popularity of a particular channel may even change seasonally or on the happening of a particular event. For instance, popularity of devotional channels increases around festivals such as Navratri, while sports channels find more popularity during events like IPL, FIFA World Cup etc.

³⁰ Centre for Competition, Investment, & Economic Regulation, *Consumer Friendly Cable TV System, 2004*, Accessed online at <https://cuts-ccier.org/consumer-friendly-cable-tv-system/>

- iii. It is also relevant to highlight that the proposal for capping of *à-la-carte* MRP of pay channels was deliberated upon and rejected by the TRAI during consultations held prior to NTO 1, as it was felt that “*full freedom and business flexibility should be given to the broadcasters to monetize their channels*”. Therefore, there is no requirement for a renewed consideration of this aspect, and TRAI ought to instead move towards forbearance and de-regulation.
- iv. As per TRAI’s own assessment, the active subscriber base of pay TV users has shrunk exponentially since the implementation of the NTO 1³¹. Active paid subscriptions reduced from 131 million in 2020 to 125 million in 2021.³² This is because any regulatory intervention, though well-intentioned, in the pricing of channels, which should be prerogative of the broadcaster (who is the owner of copyright in the content on the channel as well as the broadcast reproduction right in the telecast of such content), is counter-productive and has a cascading effect on broadcasters’ content / channel offering and business. The implementation of NTO 1 also impacted subscription revenues, which witnessed a fall owing to the uncertainties caused by the NTO 1.³³ Non-renewal of subscription revenues, increased in the number of choices available to viewers for accessing fresh content and blackouts in the cable ecosystem led to erosion in the active subscriber base.³⁴
- v. Broadcasters are conscious of market dynamics and are keen to make available good content at affordable prices to consumers.
- vi. Further, any proposal to impose a price ceiling on channel or bouquet prices effectively curtails the fundamental rights guaranteed to the creator of the content, and even more-so to the creator of niche, regional or diversity content, for whom the medium of TV broadcast is existential, in achieving dissemination of its expression and speech through its work.
- vii. It is submitted that no steps are required to be adopted to ensure availability of television channels to subscribers since, sufficient safeguards already exist that ensure availability of all channels to consumers at affordable prices. In this regard, it may be noted that current regulatory regime requires mandatory *à-la-carte* offering of all channels. Further, there is sufficient competition in the market to ensure reasonable pricing of all channels. In view thereof, no price ceiling ought to be imposed on the MRP of pay channels.

³¹ Consultation Paper on Issues related to New Regulatory Framework for Broadcasting & Cable Services (Pg. 8)

³² *Ibid*, at 1.

³³ *Ibid*, at 6.

³⁴ *Ibid*, at 6.

Q3. Should there be ceiling on the discount on sum of a-la-carte prices of channels forming part of bouquets while fixing MRP of bouquets by broadcasters? If so, what should be appropriate methodology to work out the permissible ceiling on discount? What should be value of such ceiling? Please provide your comments with justifications.

Answer:

- i. There should not be any ceiling on the discount on sum of *á-la-carte* prices of channels forming part of bouquets while fixing MRP of bouquets by broadcasters. Broadcasters, and distributor platforms, should be free to offer discount on both their *á-la-carte* and bouquet offerings.
- ii. Imposition of discount ceiling is aimed at encouraging consumers to opt for *a la carte* options, which are viewed by TRAI as being in consumer interest. However, it needs to be considered that opting of channels on *á-la-carte* basis is a tedious task considering that currently there are approximately 1,000 TV channels available for subscription in the country, and generally, DPOs offer around 350-500 TV channels for subscription to consumers. It is because of the huge number of TV channels available for subscription, that the usual pattern for availing TV channels by consumers is to primarily subscribe to bouquets, and thereafter, if need be, subscribes to few channels on *á-la-carte* basis. As such, imposition of ceiling on discount on sum of *á-la-carte* prices of channels forming part of bouquets of broadcasters while fixing MRP of bouquets will accentuate the problem of exclusion a greater number of channels from bouquets thereby, requiring consumers to go through the rigmarole of choosing a greater number of channels on *á-la-carte* basis. While we have already delved into the comparative benefits of bouquet/bundling over *a la carte* offerings, it may be pertinent to highlight that the prevalence of bundling is owing to consumer preference, which favours bouquets. This is also acknowledged by TRAI in its press release dated February 12, 2019³⁵, where it noted that 35% of cable subscribers and 65% of DTH subscribers had not yet exercised their “choices” for *a la carte*/bouquet channels and thus, directed DPOs to migrate them to their “best fit plans” created for such consumers. We will delve into the illustrative details of consumer preference for bouquet in our response to Issue 4 below, which may be read as part of our response to the issue 3 as well.
- iii. Bundling of channels has been shown to improve the quality of service provided to subscribers by allowing more consumer choice, variety and differentiation for subscribers at an affordable price. A Stanford study conducted in 2011 found that an *á-la-carte* regime would result in increase of 103% in the total input costs for 49 channels³⁶.
- iv. It is pertinent to note that the reasoning for imposing a cap on discounts (i.e., it forces subscribers to take bouquets only, and thus, reduce subscriber choice) is a flawed assessment *inter-alia* since, the huge pool of channels makes it impossible for consumers to choose channels on *á-la-carte* basis thereby, making bouquet offering the convenient choice since, it gives them access to larger channels / content pool to choose from. Further, it stems from the flawed belief that a-la-carte and bouquet propositions can be

³⁶ Gregory S. Crawford and Ali Yurukoglu, *The Welfare Effects of Bundling in Multichannel Television Markets*, April 2011, Working paper accessed online https://web.stanford.edu/~ayurukog/bundling_welfare.pdf (Page 31)

compared. The fact of the matter is that they are distinct products with vastly differing business / economic models which inform their composition and pricing i.e. a-la-carte is a subscription led proposition while a bouquet is an advertising led proposition.

- v. Tariff forbearance in broadcasting sector should also be exercised given the success of such regulatory approach adopted in the telecom sector. The rates for voice calls, SMS and data in telecom are the lowest only because the Authority has, since 2002, left the tariff fixation to market forces and, prices are fixed depending on the demand and supply of services. In this regard, it may be noted that even the subscription charges of TV channels are amongst the lowest in the world, which is all on account of huge competition as well as availability of alternate sources for content consumption to consumers.
- vi. Accordingly, TRAI ought to exercise forbearance and permit the broadcasting sector to freely bundle the TV channels, keeping the overall consumer interest in mind.
- vii. It has also been noted by TRAI in the present Consultation Paper that it is difficult to determine a scientific formula for determination of channel and bouquet prices for different genres. TRAI has also acknowledged that, since bouquets are formed by small as well as larger broadcasters, and the size of such bouquets may vary due to various reasons, it is not possible to ascertain the content costs in order to derive a standard bouquet price.

Further, as submitted above, any linkage between a-la-carte and bouquet emanates from a flawed understanding of the industry. Therefore as is the position today, there should not be any linkage between a-la-carte and bouquet and no discount cap ought to be prescribed in this regard.

Q4. Please provide your comments on following points with justifications and details:

- a. **Should channel prices in bouquet be homogeneous? If yes, what should be an appropriate criteria for ensuring homogeneity in pricing the channels to be part of same bouquet?**

Answer:

- i. No. Channel prices in a bouquet cannot be homogenous, as that would forcefully try to equalise the price of each channel. It is relevant to have heterogeneity for a package, also to allow the probability of any of those channels to be considered for subscription outside the bouquet. Homogeneity is antithetical to the very concept of bundling and any requirement for homogeneity in a bouquet either with price or genre of the channel will defeat the very objective of bundling. The TRAI itself has found a lack of homogeneity by concluding that it is impossible to find a uniform cost structure for this industry. From an economic standpoint, any pricing exercise first needs to discover a broad cost structure that can be used as a base to derive a uniform pricing structure. The fact that the TRAI concludes this to be impossible militates against any homogeneity. It is therefore submitted that for the TRAI to then find homogeneity on pricing will be contrary to its conclusion in the consultation paper itself.

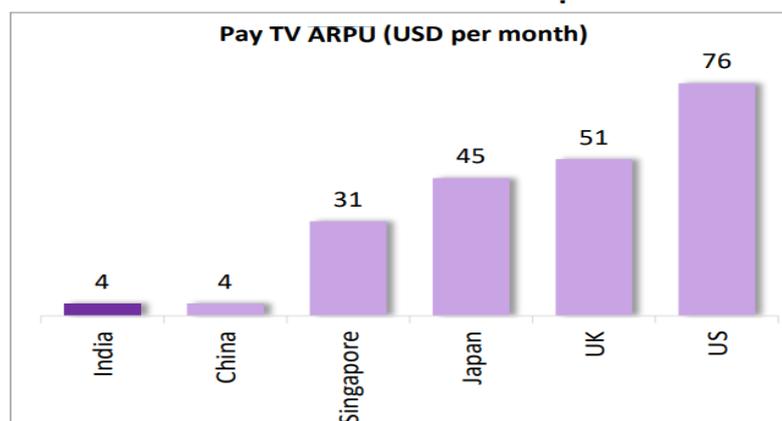
- ii. Moreover, TRAI's assumption that a consumer's choice between *à-la-carte* channel and bouquets is merely determined on the basis of price is an oversimplification of consumer preferences.
- iii. This arises from TRAI's assumption that choosing channels *à-la-carte* is the consumer preferred route. There is no data provided by TRAI to substantiate this assumption. On the contrary, the FICCI Media & Entertainment Report 2022³⁷ too reveals that most consumers continued to opt for packs created by the MSOs and LCOs with minimal customization. Nearly 80% of subscribers are still choosing to procure bouquets³⁸, despite the fact that the sum of all *à-la-carte* prices of channels has significantly decreased for subscribers after implementation of NTO 1. This shows that the preference of Indian consumer is bouquets, irrespective of the low price of *à-la-carte* channels. In this regard, TRAI needs to take cognizance of various factors such as, impact of huge number of channels available to consumers to choose from as well as viewing habits / patterns and habit of sampling content from various channels by consumers, which makes bouquets natural choice for consumers as against subscription of channels on an *à-la-carte* basis.
- iv. Indian TV consumers prefer bundled channel offerings since they find significantly more value for money in the same. For instance, a monthly bill of INR 190 for 80 channels in 2004, when adjusted for inflation would have been as high as INR 402 in 2018, but bundling has reduced the monthly bill by INR 180 (INR 402 less INR 222) and increased the number of channels per household to 315³⁹.
- v. In fact, across the world, bouquets have been firmly established as the preferred route by consumers. A Canadian study conducted in 2014 concluded that "unbundling" could have adverse effects for the broadcasting sector and could result in 26% of the channels operative then becoming unviable⁴⁰. As per CASBAA, in a study of broadcast regulations in 10 countries, apart from India, no country mandated *à-la-carte* selling, and bouquets were the preferred choice of consumers. Compared to countries like the USA, Canada and countries in South Asia, India is much more culturally and linguistically diverse and a bouquet would be the most cost-effective solution for a consumer to receive a variety of channels.
- vi. Consumer preference for bouquets is also evident from the negligible uptake of *a-la-carte* channels when the prices thereof was lowered by several broadcasters for a brief period following the notification of NTO 1.
- vii. Pay TV average revenue per user (**ARPU**) in India is one of the lowest in the world. Low ARPU of USD 4 per month makes Pay TV one of the most affordable and preferable medium of entertainment in India.

³⁷ *Ibid*, at 1.

³⁸ *Ibid*, at 29.

³⁹ STAR India's Response to TRAI's Consultation Paper on Tariff related issues for Broadcasting and Cable services, September 23, 2019, Accessed online at https://main.trai.gov.in/sites/default/files/STAR_India_Pvt_26092019.pdf

⁴⁰ Oliver Wyman, *TV Unbundling: An Economic And Consumer Experience Impact Assessment Of The CRTC's Proposed Approach*, July 2014, Accessed online at https://www.oliverwyman.de/content/dam/oliver-wyman/global/en/2014/jul/2014_Oliver_Wyman_CMT_TV_Unbundling.pdf (pg. 2)



Source: MPA

Source: Zee Entertainment Investor Presentation June 2021

- viii. ARPU reflects the bill paid by a Pay TV customer to a DPO. The fact that consumers at large prefer bouquets demonstrates that they prefer lower monthly outgo than the so-called convenience of *à-la-carte* choice. Such a choice should be left to be decided by market forces instead of the regulator mandating it.⁴¹
 - ix. There is no empirical basis to suggest that the choice between *à-la-carte* channel and bouquets has any basis in the price of the channel as opposed to the composition of the bouquet and variety/diversity of channel/content therein, the need for homogeneity in channel offerings does not arise.
- b. If no, what measures should be taken to ensure an effective a la carte choice which can be made available to consumers without being susceptible to perverse pricing of bouquets?**

Answer:

As has been elucidated in our response to Issue 4 (a) above, consumer preference is for bouquet/bundling, with or without any price ceilings. Accordingly, there is no need for any measures to push *à-la-carte* choice, which is more costly and less desirable by consumers. By allowing pricing and offering to be unfettered, it would enable the broadcasters and the distributors to offer the most viable market price for the bouquet and the *a-la-carte* channels in view of the competition in the market.

⁴¹ *Ibid*, at 6.

- c. **Should the maximum retail price of an a-la-carte pay channel forming bouquet be capped with reference to average prices of all pay channels forming the same bouquet? If so, what should be the relationship between capped maximum price of an a-la-carte channel forming the bouquet and average price of all the pay channels in that bouquet? Or else, suggest any other methodology by which relationship between the two can be established and consumer choice is not distorted.**

Answer:

- i. With respect to the need for regulation of MRP of *á-la-carte* pay channel within the bouquet in relation to the average of the prices of pay channels forming part of that bouquet, it is pertinent to note that the same is unnecessary *inter-alia* since, it makes the stipulation on ceiling price of a channel for inclusion in a bouquet illusory. The same also has the potential to push greater number of channels out from bouquets and consequently, leaving them available for subscription solely on *á-la-carte* basis.
- ii. It is pertinent to highlight that, in the erstwhile regulatory regime while the “twin conditions” did exist, but only at the wholesale level when agreements used to happen between stakeholders *inter-alia* on a fixed fee basis. Importantly, the “twin conditions” were in varied forms, and were never concurred to by broadcasters and in some cases by other stakeholders as well. The earlier twin conditions were arbitrary, whimsical and without any basis, and as such, cannot be used as a precedent. In fact, prior to NTO 2.0, twin conditions have never existed at the retail level and certainly not in the DAS regime. Further, these were consciously rejected by TRAI while formulating NTO 1 in the first instance itself.
- iii. Imposition of any formula/measure such as, the twin condition on the pricing of bouquets or the channels within such bouquets would ignore the complex economics involved in pricing of *á-la-carte* channels as opposed to pricing of bouquets. Pricing of a TV channel depends on multiple factors including direct costs incurred towards the production and distribution of a TV channel, the expected revenues, future plans including continuity / contingency plans, etc. Prices of bouquets are uniquely determined *inter-alia* taking into account the supply and demand factors of two markets viz., Advertisement market and TV broadcasting market for content.⁴²
- iv. Offering of bouquets facilitates subscribers who may not be able to afford *á-la-carte* offerings yet are desirous of plurality and diversity of views and may be keen to explore / sample different content, thereby enabling them to enjoy a wide array of quality programming through bouquets. The importance of viewpoint plurality has also been highlighted by TRAI⁴³. Thus, any attempt at linking the price of bouquet of channels with

⁴² *Ibid*, at 6.

⁴³ Consultation Paper on Issues Relating to Media Ownership, Accessed online at https://www.trai.gov.in/sites/default/files/CP_IRMO_12042022.pdf (Page 3)

its *à-la-carte* prices or cap the discount on the sum of *à-la-carte* is bound to adversely impact consumers who prefer bouquets.

- v. Moreover, any mathematical formula for price fixation will be ultimately unworkable and is also likely to lead to increased market uncertainty, which is ultimately harmful to the consumer.
- vi. Accordingly, pricing of channels and bouquets as well as bouquet composition ought to be left to be decided by broadcasters on the basis of market dynamics, competition, consumer uptake, etc. It is also reiterated that the TRAI's own finding in para 24 of the CP militates against any such imposition.

Q5. Should any other condition be prescribed for ensuring that a bouquet contains channels with homogeneous prices? Please provide your comments with justifications.

Answer:

No. There is no need for homogeneity in channel offerings. As has been highlighted in response to Issue 4, consumer choice is in favour of bouquets which provide more value at affordable prices. It has also been highlighted that homogeneity in pricing will defeat the objective of bouquet formation, and that globally, there is no precedent for mandating homogeneity of channel prices in a bouquet. Imposition of any formula/measure will also be unworkable and would likely result in market distortions. Accordingly, no condition ought to be imposed to ensure that a bouquet contains channels with homogeneous prices.

Q6. Should there be any discount, in addition to distribution fee, on MRP of a-la-carte channels and bouquets of channels to be provided by broadcasters to DPOs? If yes, what should be the amount and terms & conditions for providing such discount? Please provide your comments with justifications.

- i. NTO 1 permitted broadcasters to provide discount of up to 15% on both *à-la-carte* and bouquet offerings. The decision of whether or not to offer such discounts, subject to the maximum ceiling prescribed, and the exact quantum of the discount was left to broadcaster's discretion.
- ii. However, NTO 2.0 restricted discounting to *à-la-carte* channel prices alone, and prohibited discounting on bouquets, thereby taking away a broadcaster's discretion. The discounts offered by broadcasters/distributors are beneficial to the subscriber, who gets to enjoy greater diversity of content at lower rates. It has already been established above that consumer choice is in favour of bouquets, and hence, there is no reasonable justification for preventing discounts being offered on bouquets.
- iii. Failure to extend discount offering on bouquets can potentially result in an unintended outcome where, for higher margins / discounts, dishonest DPOs may resort to push / mis-sell subscription of some TV channels on *à-la-carte* basis, when some or all such channels

may be available in bouquet at a cheaper price. Any such action / practice will neither be in the interests of consumers nor broadcasters.

Illustration –

- A DPO may cause a consumer to subscribe to eight (8) TV channels on an *à-la-carte* basis at the rate of say, INR 5/- for each TV channel (*a-la-carte rate of 8 channels @ INR 5 each = INR 40*), even though, the consumer may have wanted ten (10) TV channels, all of which are otherwise, available in a bouquet priced at say, INR 40/.
 - As a result, the broadcaster loses out on number of viewers for two of its channels whereas, the consumer pays INR 40/- for fewer channels however, the DPO makes INR 6/- in the form of discount for each such subscriber, who it would have otherwise missed out on in case the subscriber would have opted for bouquet.
- iv. We believe that there should not be any cap on the discount that broadcasters can offer to DPOs on the MRP of *a-la-carte* and bouquets. Such discounts are important market tools to incentivise a DPO's performance.
- v. It is submitted that the time is ripe to implement a forbearance model on discounting and commission.
- vi. Further, as the ultimate beneficiaries of discounts are consumers, TRAI should also allow discount on bouquets, since the same are evidently more preferable to consumers. The NTO 1 contains sufficient safeguards to ensure that discounts and commission are offered on non-discriminatory basis and as such, no additional stipulations are required.