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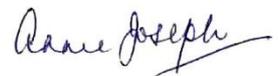
Dear Sir,

**Re: NBDA's Comments on TRAI Consultation Paper dated 7th May 2022  
on Issues related to New Regulatory Framework for Broadcasting &  
Cable Services**

Attached please find NBDA's comments on the above mentioned subject.

Thanking you,

Yours faithfully,



Annie Joseph  
Secretary General

*CC: Mr. Rajat Sharma, President, NBDA*

*Encl: As above*

## **NBDA's Comments on TRAI Consultation Paper dated 7th May 2022 on Issues related to New Regulatory Framework for Broadcasting & Cable Services**

The News Broadcasters & Digital Association (NBDA) (formerly known as News Broadcasters Association (NBA) is an association of 24x7 television and digital broadcasters who deal with news and current affairs programmes. NBDA represents several important and leading national and regional private news and current affairs broadcasters who run news channels and digital platforms in Hindi, English, and Regional languages.

NBDA appreciates this initiative by TRAI of circulating a Consultation Paper on “*Issues relating to New Regulatory Framework for Broadcasting and Cable Services*” (Consultation Paper).

At the outset, NBDA draws the attention of TRAI to certain concerns of Member Broadcasters before answering the questions in the Consultation Paper.

1. That the focus of TRAI has to be to ensure that all Distribution Platform Operators (DPOs) comply with applicable provisions of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (“Interconnect Regulations”), Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 (“Tariff Order”) and Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Subscriber Protection (Addressable Systems) Regulations, 2017 (“QoS Regulations”) (hereinafter collectively, “New Regulatory Regime”).
2. That paragraph 1.27 of the Consultation Paper notes that a Committee was formed consisting of members from IBDF, AIDCF and DTH Associations, who had been given certain terms of reference. Apparently, no member of NBDA was invited to be a part of the said Committee which seems to be the reason why the concerns of News Broadcasters have not been addressed in the current consultation process. It is NBDA’s considered opinion that issues should not be taken up in isolation, and a comprehensive viewpoint must be taken from all stakeholders of the industry and all the concerns relating to the Regulations issued by TRAI in 2019 and 2020, which have an impact on different stakeholders, must be considered together, particularly in view of the fact that the Media and in particular the ‘News and Current Affairs’ genre has the right to freedom of speech and expression under Article 19(1) (a) which can only be restricted by reasonable restrictions as stated in Article 19(2).
3. That since the present Consultation Paper has been circulated with the objective of bringing a paradigm shift to the Television (TV) distribution value chain, ensuring transparency and for increasing revenues, therefore NBDA suggests additional questions or a separate Consultation Process be initiated in order to address the concerns of the Members of NBDA as the New Regulatory Framework has not been implemented in letter and spirit nor have the due benefits accrued to the News Broadcasters.
4. That the issues posed for consultation are only limited and confined to the issues that directly arose as a result of the challenge to NTO 1.0 & 2.0 and also the Interconnection Regulations dated 3<sup>rd</sup> March 2017. The consultation process does not address or pose any questions on several other aspects which were also part and parcel of the very same Regulations and which essentially pertained to the issues faced by Free To Air (FTA)/Low priced Channels and concerns of these broadcasters, especially the news broadcasters and their issues pertaining to “Carriage Fee”, “Target Market” and the non-implementation of the TRAI Regulations dated 3<sup>rd</sup> March 2017 and 1<sup>st</sup> January 2020, etc.

5. TRAI introduced a new regulatory framework in the year 2017, which was implemented in the year 2019 (“NTO-1”), and subsequently, TRAI introduced amendments to the new regulatory framework in the year 2020 (“NTO-2”). It is submitted that NTO-1 made several modifications as it empowered the subscribers to exercise their choices when it came to the selection of channels and bouquets, broadcasters were allowed to determine the maximum retail price (“MRP”) of their channels and bouquets, DPOs were mandated not to charge over and above MRP determined by broadcasters, provisions related to “must carry” of channels by DPOs as well as provisions related to audit through empaneled auditors were also introduced.
6. However, implementation of certain issues pertaining to NTO-1 remained problematic and adversely impacted the subscribers, broadcasters and public exchequer. In this regard, it may be noted that while NTO-1 contemplated subscriber choice, correct subscriber reporting, furnishing of audit reports confirming the accuracy of subscriber reports, etc., however, such stipulations were not being adhered to and were bypassed by DPOs. Consequently, these omissions / non-compliances are *inter-alia* hampering orderly growth in the broadcasting distribution sector.
7. It is submitted that even after three (3) years since the implementation of NTO-1, the majority of DPOs are still non-compliant with various critical provisions of NTO-1. Therefore, TRAI ought to take concrete steps to fully implement the stipulations of NTO-1 at the level of DPOs. It is suggested that for the smooth implementation of the New Regulatory Regime, TRAI must ensure that all DPOs comply with the existing provisions of the New Regulatory Regime, including:-
  - (a). Submission of true and correct monthly subscriber reports by DPOs, which is one of the primary obligations of DPOs;
  - (b). The QoS Regulations stipulate that every DPO shall adopt subscriber friendly methods, including but not limited to maintaining a website and telephonic call centre, for requesting subscription of broadcasting services;
  - (c). DPOs are neither getting technical audits done nor are they getting subscription audits done in terms of clause 15.1 of the Interconnect Regulations;
  - (d). Implement the Carriage Fee Regulations in letter and spirit.
8. Further, TRAI ought to take strict action in case DPOs are found to be in non-compliance of the New Regulatory Framework.
9. TRAI may note that the broadcasters invest heavily and incur huge recurring expenses *inter-alia* in content creation, content acquisition and content delivery services to compete with other broadcasters as well as online content providers. As such, any fluidity and uncertainty in the regulatory regime, coupled with unregulated costs (relating to content production, acquisition and delivery) and issues such as evolving viewer preferences/demand for new and varied content, issues relating to content protection, piracy and under-declaration, raises serious concerns on the survivability of broadcasters. Therefore, at this stage, the broadcasting sector is losing subscribers as well as revenue. Flexibility in pricing and offering of channels is required, which would not be possible unless supported by a pragmatic light-touch regulatory framework.

**NBDA wishes to bring to the attention of TRAI to the problems that arise from this Consultation Paper.**

1. It is extremely important for clarification/correction to emerge on the misconception of “perverse pricing” of bouquets vis-à-vis *à-la-carte* prices. It is submitted that due to this misconception, the questions framed in the present Consultation Paper are aimed at rectifying or solving something that is not ‘perverse’ but is, in fact, a reasonable and accommodating approach. Perpetuating this mistaken perception will prevent the industry from achieving its full potential as well as the stated objective of the New Regulatory Regime, i.e., adequate choice to subscribers at affordable prices.
2. The nature and price of a channel depends on market forces and the same principle holds good even in the case of pricing of bouquets. In any event, discounting of bouquet rates that used to hover around 80-90% have fallen drastically post implementation of NTO-1. This itself shows that market forces of demand and supply are influencing the pricing of services, and consequently, no regulatory intervention or prescription is required.
3. The formation of bouquets of TV channels, or bundling of channels (i.e., the practice of offering of channels in “package(s)” in addition to offering of channels on an *à-la-carte* basis), is neither unique nor limited to the Indian TV industry or to TV channel distribution as an industry and it is beneficial to the subscribers.
4. Bundling becomes an issue from the perspective of competition policy only when one entity has strong market power or a monopoly on at least one component of the bundle. Given that the number of broadcasters and channels as well as the level of competition in the Indian TV, cable and satellite market, which itself is high, bundling does not require any *ex-ante* or blanket regulation. In this regard, it may also be noted that all stakeholders are competing aggressively to provide greater choice to subscribers through technology and content at extensively competitive prices.
5. Bundling of channels offers several advantages and is adversely affected by price ceilings. Bundling not only allows broadcasters to experiment by introducing new and niche content / channels but also, allows subscribers to sample such content / channels. 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 subscriber behaviour, but it will also result in higher prices for subscribers for the same level of programming diversity.
6. Bundling of channels offers convenience to the subscribers as well as services providers in subscription management. Removing the ceiling on MRP of channels provided as part of bouquets will give an opportunity to broadcasters to include more channels in the bouquet offerings, which will ultimately be beneficial to the subscriber. By displaying a channel’s tariff in the Electronic Programme Guide (EPG), the subscriber is transparently and conveniently made aware of the actual price of any TV channel. Therefore, following a hypothesis that the subscriber knows what is best for her/ him, there is no need for regulatory intervention.
7. Factors such as increasing input costs, etc., continue to impact the cost of creating and acquiring programming and distributing channels which varies with the nature of the content on channels. Directing the broadcasters to reduce the prices of channels would either result in the 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, including other stakeholders in the value chain and subscribers as well. Any further restrictions on the manner of offering would also drive out, especially niche / regional channels, which may otherwise be popular or appeal to a limited

section of society/viewers. Bouquets are not anti-subscriber but pro-subscriber since, in addition to making available a wide variety of channels to subscribers, bouquets are also beneficial to the overall distribution ecosystem.

8. TRAI's assumption that choosing channels on an *à-la-carte* basis is the subscriber's preferred route does not appear to be backed by any data since ground realities appear to indicate quite the opposite, and the subscribers themselves prefer bouquets of channels.
9. The discounts offered by broadcasters/distributors are beneficial for the subscribers, who get to enjoy a greater diversity of content at lower prices. There is no reasonable justification for preventing discounts being offered on bouquets. Disallowing discounts on bouquets can potentially result in an unintended outcome where for higher margins/discounts, unscrupulous DPOs may resort to push/mis-sell subscriptions of some TV channels on an *à-la-carte* basis when some or all such channels may be available in a bouquet at a cheaper price. Any such action/practice will neither be in the interests of subscribers nor broadcasters.
10. TRAI has, since the issuance of the tariff orders in 2004 and even thereafter on several occasions, recognised the importance of forbearance in the growth of the industry. It is pertinent to highlight that, even for the broadcasting industry, TRAI's intent has always been to move towards price de-regulation once effective competition has been achieved in the broadcasting industry. Since the number of broadcasters in the country has substantially increased, it is evident that effective competition exists in the industry for prices to be fairly determined by market forces.
11. In paragraph 2.4 of the Consultation Paper, TRAI 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 change in programs in a channel and programs on television channels change dynamically.”* Having concluded that finding a uniform cost metric for any channel or program within the channel is virtually impossible, it only stands to reason that a uniform monetization model cannot be prescribed either. To prescribe uniform pricing and bundling mechanisms is to incapacitate businesses from being able to recoup costs. A uniform pricing and bundling mechanism in this context skews the playing field. Therefore, TRAI should conclude that uniform pricing is not in the interest of the subscribers and the industry as a whole.
12. That the imposition of the price ceiling is an extremely restrictive measure and will have an adverse effect on the growth of the industry. The capping of prices at such a low rate may result in closure of channels or degrade the quality of content as some channels may not be able to afford higher production costs to maintain themselves. Broadcasters and service providers have a right to freedom of trade and regulators should not intervene and infringe this right beyond reasonable limits. Structural regulations indirectly trample upon the free speech right enjoyed by the media entities. This is despite the fact that the right to free speech of media entities has been affirmed by the Supreme Court in a number of judgments.<sup>1</sup> Measures adopted by TRAI to restrict bundling of channels in 'bouquets' is not justifiable, since there is a high degree of competition in the Indian television market, which is an effective check for fair or unreasonable pricing.<sup>2</sup>

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<sup>1</sup> *Sakal Newspaper v. Union of India*, AIR 1962 SC 305; *Bennett Coleman & Co. v. Union of India*, (1972) 2 SCC 788; *Indian Express Newspapers v. Union of India*, (1985) 1 SCC 641.

<sup>2</sup> Nathan Economic Consulting India Private Limited, *Socio-Economic Analysis of Tariff Regulation governing Indian Television Industry* (Dec 25., 2019).

13. Market forces of demand and supply are, therefore, 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. Therefore, TRAI should reconsider its policy in light of the practical consequences of such a decision on the broadcasters as well as the subscribers.
14. In almost all other countries – and certainly, in all major TV markets – channel bundling is standard, widely accepted and regarded as generally beneficial to subscribers. 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.
15. One approach which needs to change when it comes to the exercise of choice by a subscriber should be that the rule of exercise of choice should only be made applicable in the case of a “Pay channel”, and there should not be any requirement to do so in the case of “FTA channel” and the same must become and should be compulsorily made available as a part of the Network Capacity Fee (NCF) charged by the DPO to the subscriber. The NCF (which is paid for by the subscriber) on its own has “no value” per se unless and until there are channels being made available on it, and when it comes to an FTA channel, the rule of exercising choice by a subscriber need not be made applicable, and the same must be offered on a compulsory basis by the DPO.

Further, no Pay channel should be included in NCF as it is a violation of the TRAI Regulations and if any Pay channel is found to be part of the NCF, the Multi-System Operator (MSO) and/or the Local Cable Operator (LCO) should be penalised for carrying the Pay channel.

16. While TRAI has addressed the aspects of cost of production and the revenue generated by the program in the nature of subscription as also the advertisement, it is important to appreciate that when it concerns the news & current affairs genre, the cost of production is a very essential factor. Being a niche genre, news broadcasters are constrained to offer the channels as FTA or at negligible prices. Over and above the same, by creating its dependency on advertisement revenue alone, the news and current affairs channels are further constrained to incur the cost of carriage on any distribution network. TRAI must also, therefore, address the concerns of FTA channels and ensure strict implementation of the “Carriage Fee” regime and also revisit the provisions thereof in the light of changed market scenarios resulting from the pandemic, emerging technologies like OTTs, etc. The role of news broadcasters during the pandemic and the treatment of them as an “essential service”, necessitates that they be treated differently as a “genre” even for the purpose of implementation of TRAI Regulations and Tariff Order. News broadcasters deserve preferential treatment over other broadcasters and thus should be the beneficiaries of less or no Carriage Fee costs and must be treated at par with the notified Channels under Section 8 of the Cable Television Networks (Regulation) Act, 1995, which are to be mandatorily carried.
17. The broadcasting industry is at a crossroad, where the next strategic, regulatory, financial 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. It is submitted that there is no need for TRAI to intervene in the pricing structures adopted by broadcasters with respect to ‘bouquets’ and ‘a-la-carte’ pay channels, since the market is highly competitive and pricing is heavily influenced by subscriber preference i.e. convenience in channel selection. It would also be difficult to arrive at a standard ceiling for all the stakeholders involved in the

business, since it is difficult to determine pricing for channels owing to the dynamic nature of business.<sup>3</sup>

18. The time is ripe for TRAI to implement a “forbearance model”, at least vis-à-vis pricing and packaging of channels. Assuming that forbearance cannot be implemented immediately, at least the framework for sunset provisions relating to the price and packaging of channels should be identified and notified.

### **Question No.1**

**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.**

### **NBDA Comments:**

At the first instance, NBDA states that there should be no ceiling price prescribed for a channel for inclusion in a bouquet for the reasons mentioned below:

- i. That ceilings on channel prices for their inclusion in bouquets and regulation of bouquet prices have neither resulted in subscriber satisfaction nor have they benefitted any stakeholder. On the contrary, they are counterproductive both from the subscriber as well as DPO/broadcaster’s perspective since it interferes with robust channel offering to subscribers. The restrictions on bouquet pricing have also led to market disruptions such as decrease in the active subscriber base as well as revenues. Moreover, the change necessitated in all broadcasters’ bouquet offerings has led to distributors being tasked with repeating the large-scale subscriber migration exercise that had been completed with difficulty in 2019. This has also impacted subscriber interest, as many subscribers, after having been compelled to migrate to a New Regulatory Regime by exercising their choice, are now left without the bouquet offerings that they had chosen under the earlier regime.
- ii. That the concern should not be the fixation of a price ceiling to ensure fair and affordable pricing for the consumers/subscribers but that the market forces are balanced. A light touch regulatory regime should be adopted in a reasonable manner while taking into consideration various financial and economic considerations and consequences thereof.
- iii. That as part of its endeavour to provide cheap channel prices to subscribers, TRAI revised its New Tariff Order ( NTO 2.0) in January 2021. Through the amendments, TRAI reduced the cap on the MRP of individual channels, which can form part of any bouquet, from Rs. 19 to Rs. 12 per month. However, this amendment did not have the desired result as broadcasters fixed the prices of most of their top channels above this ceiling and therefore, they could not be included in the bouquet of channels. The subscribers could only opt for them on *à-la-carte* basis.
- iv. That TRAI has not provided any formula or reasonable justification to arrive at the figure of Rs.12 per month as the price ceiling for TV Channels. In fact, TRAI had itself noted in 2017 that it is impractical to determine the price of TV channels as the cost of production of various programmes is highly variable and dynamic and therefore, it should be left to the broadcasters to determine the pricing of their channels. This fact has been mentioned in paragraph 11 above.

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<sup>3</sup> Page 17-18, TRAI Consultation Paper on Issues related to New Regulatory Framework for Broadcasting and Cable services

TRAI should move towards de-regulation and forbearance that does not force broadcasters to exclude their popular channels from the channel bouquet(s) offered to consumers.

- v. That under the New Regulatory Framework (NRF), with the experience of over one and half decades in the broadcasting sector, TRAI had adopted the model of price forbearance for TV channels. There has been no change in the scenario in the last three years of implementation of NRF or NTO 1.0, which necessitates relooking at this position. If TRAI were to implement a ceiling price for a channel, this would result in a situation where an industry with unregulated input costs is mandated to offer its services at a regulated cost.
- vi. That due to TRAI's amended NTO 2.0, both the broadcasters and the subscribers have been restricted from being able to offer and select channels freely. The broadcasters are unable to include their 'flagship' channels, which are more likely to incur higher costs of production, in the bouquet of channels. As these channels are not being included in the bouquet, subscribers have to choose them on an *à-la-carte* basis, which is an avoidable scenario. Whenever any stakeholder refers to a subscriber in the broadcasting sector, that subscriber is not an individual, but a household, **whose average family/ household audience size is 4.25**, and according to the Broadcast Audience Research Council (BARC), 98% of the 210 million TV households are single-TV homes and 'bouquets' are likely to be their default option. Additionally, according to a report by ChromeDM, as many as 98% of the 67 million cable TV subscribers opted for bouquets of channels.
- vii. That the bouquet and *à-la-carte* offering of TV channels are two different and distinct methods of offering channels which cater to different target audiences and support different value propositions. This method targets different audiences, i.e., (a) those who choose to view a limited number of channels only and would opt for the *à-la-carte* method; and (b) families having diverse preferences, who would want a mix of a variety of channels and hence would choose bouquets or a bundle of channels. Therefore, any reference to a subscriber ought not be looked at from the prism of an individual subscriber but a household comprising of 'at least' 4-5 family members.
- viii. That bouquet or bundled offering is a standard business practice across sectors as well as an internationally accepted practice. Bundling is widely prevalent market practice in Malaysia, Hong Kong, Indonesia, Japan, United Kingdom, United States of America, Russia, Canada and Australia, but is restricted in India. Additionally, ample evidence exists in the form of global regulatory practices that forbearance in relation to tariffs and bundling of channels is the norm. The reason that bundling is popular is because it reduces costs to subscribers. A Stanford study conducted by two economists in 2011 estimated that under an *à-la-carte* regime, the equilibrium input costs rise by 103% as compared to when distributors sell bundles.<sup>4</sup> Similarly, Dmitri Byzalov conducted an empirical analysis in 2010 and found that subscribers do not gain much from unbundling – in the best case, their subscriber surplus increased only by 35 cents per household per month.<sup>5</sup> Conversely, bundling increased the pressure on cable networks, who stood to lose many subscribers and hence suffer a loss of subscription fees. In such a scenario, cable networks will be likely forced to increase their subscription fees, thereby passing on the burden to subscribers.
- ix. That by forming bouquets, broadcasters are able to offer a different mix of channels of various languages, genres and types (i.e., SD or HD), which are aimed to cater to the needs of different

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<sup>4</sup> 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](https://web.stanford.edu/~ayurukog/bundling_welfare.pdf) (Page 31)

<sup>5</sup> Dmitri Byzalov, *Unbundling Cable Television: An Empirical Investigation*, July 2010, <https://dbyzalov.com/cable.pdf>

target audience depending/based on the profile of a household, age group, purchasing power, anticipated choice of genres, etc. Putting a ceiling on the price of a channel for its inclusion in a bouquet creates hurdles for broadcasters to create meaningful bouquets as well as unnecessarily deprives subscribers of quality content.

- x. That the broadcaster having invested a huge amount of money towards content, would never want that its channel be available to only select few, and hence in spite of price forbearance, the broadcaster will price its product, i.e., channel in a manner which will be acceptable in the market. The very fact that there is no dearth of number of TV channels in all genres itself is an efficient check on the pricing. The history of the growth of TV services also gives credence to the same as the channels have always been accessible to the viewers at an affordable cost irrespective of whether the regulations were present or not. Therefore, TRAI should take steps to de-regulate the pricing and move to a regime of forbearance.

In a bouquet system, not only do subscribers get to see a variety of channels, the broadcasters also get to earn revenue, which helps broadcasters in cross-subsidizing cost of acquisition/production of content, thereby lessening the commercial burden on subscribers and improving the channel/content offering.

- xi. That the primary aim of TRAI should be to offer value for money to the subscriber, which are derived by market forces, and not by putting restrictions around it, which either makes the product expensive or restricts the choices of viewers.
- xii. That after the implementation of the Tariff Orders, it was observed that subscribers prefer bouquets to *à-la-carte* channels, for the reason that channels which are high-priced would not be subscribed to by the subscriber, and therefore such channels would face challenges with regard to their survival. The channels that are being excluded from the bouquet are likely to be high TRP channels, which the subscriber would want to opt for, and, consequently, will have to pay an additional charge since it is not included in the bouquet. Therefore, the inclusion of highly-priced channels in a bouquet is beneficial for both the broadcasters and the subscribers.
- xiii. That bouquet(s) are losing their attractiveness without the flagship TV channels being included in them, which may result in lower revenue for the cable service operators. Therefore, the policy of fixing a price ceiling on MRPs of TV channels that are to be included in a bouquet is creating an additional burden on the subscribers, broadcasters and cable service operators.
- xiv. That bouquet formation with various price point channels helps subscriber to have large and balanced choice instead of a few selective channel choices. The reason for imposing a cap on discounts (i.e., it forces subscribers to take bouquets only and thus, reduces subscriber choice) is a flawed assessment inter-alia since the huge number of channels makes it impossible for subscribers to choose channels on an *à-la-carte* basis thereby, making bouquet offering the convenient as well as a natural choice since it gives subscribers ready access to a variety of content. Opting for channels on an *à-la-carte* basis is a tedious and herculean 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 subscribers. It is because of the huge number of TV channels available for subscription that the usual pattern for availing TV channels by subscribers is to primarily subscribe to bouquets and thereafter, if need be, subscribe to few channels on an *à-la-carte* basis.
- xv. That bundling not only allows broadcasters to experiment by introducing new and niche channels but also allows subscribers to sample such channels as well as other channels. It is also unfathomable to expect subscribers to remember each and every channel that they may

want to subscribe to and as such, bouquets allow subscribers to have access to a wide pool of channels/content at affordable prices. Lowering the *à-la-carte* prices of channels to accommodate the same within a bouquet is not a commercially viable option inter-alia since producing channels with high-quality content is a continuous cost-intensive exercise.

- xvi. That any unilateral condition that places restrictions on the ceiling price of a TV channel to be included in a bouquet or imposes conditions for formation of the bouquet would compel the broadcasters either to reduce the quality or the quantity of the content or the number of TV channels or to raise the prices. While the former will naturally restrict the dissemination of the content as a form of expression, the latter would significantly cut down the circulation of the TV channel and the quality of content. Both scenarios would adversely impact the rights of the stakeholders.

**b. If no, what strategy should be adopted to ensure the transparency of prices for a subscriber and safeguard the interest of subscriber from perverse pricing?**

**NBDA's Comment:**

NBDA suggests that the following steps should be adopted to ensure the transparency of prices for a subscriber and to safeguard the interest of subscribers from perverse pricing:-

- i. That TRAI ought to exercise its powers to allow forbearance and permit the broadcasting sector to at least freely price and bundle the TV channels, keeping the overall subscriber interest in mind. The key strategy that ought to be adopted to ensure the transparency of prices as well as to safeguard the interest of a subscriber is to inform the subscriber of options available to it and ensure that the subscriber is allowed to exercise those options.
- ii. That accordingly, no other strategy or additional steps are required to be adopted to ensure transparency or to safeguard the interests of subscribers since sufficient measures already exist under the extant regulatory regime. It is reiterated that TRAI should permit complete forbearance on pricing and bundling of channels.

**Question No. 2.**

**What steps should be taken to ensure that popular television channels remain accessible to the large segment of viewers.**

**NBDA's Comments:**

NBDA submits that there should be no categorization of TV Channels as “popular” for the reasons mentioned below:-

- i. That with the availability of a variety of platforms and content, viewer choice is getting increasingly heterogeneous and unpredictable. Accordingly, there is a demand for more varied content, even within the same household. In any event, there is no universally accepted or applicable category of a “popular” or “unpopular” channel, especially when there is so much heterogeneous content and choice is being exercised by the viewers.
- ii. That categorization of channels as ‘popular’ for the purpose of access is not in the interest of the public. In keeping with the freedom of speech and expression granted to the media as well as the viewers, there should be access to diverse and plurality of views, and it is therefore arbitrary to classify channels as “popular” or to make regulatory decisions on the basis of such classifications.

- iii. That what is considered “popular” may differ across regions, languages and genres, as also across households. In fact, the popularity of a particular channel may even change seasonally or on the happening of a particular event or for that matter during different time-bands. For instance, popularity of devotional channels increases around festivals such as, Navratri, while sports channels find more popularity during sporting events like IPL, FIFA World Cup, etc.
- iv. That without prejudice to the above and in any event, ensuring the reach of a “popular” channel to maximum viewers is the right intent but measuring the popularity of channel is subjective.
- v. That in view of the above submissions, the most effective manner to make the channels available to viewers is by removing artificial restrictions imposed by the regulations on broadcasters. Such artificial restrictions have adversely affected the industry and reduced the availability of number of channels to the subscribers. The HD services have taken a deeper hit due to restrictions in bouquet formation of HD/SD channels. Hence, there is no requirement for making available the “popular” television channels to a large segment of viewers.

**Should there be a ceiling on the MRP of Pay channels? Please provide your answer with full justifications/reasons.**

**NBDA’s Comment:**

NBDA submits that there should be no ceiling on the MRP of Pay channels for the reasons mentioned below:-

- i. That the proposal for capping of *à-la-carte* MRP of Pay channels was deliberated upon and rejected by TRAI during consultations held prior to NTO 1.0, 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 lay stress on forbearance and de-regulation.
- ii. That broadcasters are conscious of market dynamics and are keen to make available good content at affordable prices to subscribers since failure to do so would eventually affect the broadcasters. While determining the price of a channel/bouquet, broadcasters have to consider various factors, which inter-alia include the cost of content, administrative cost, paying capacity of the target audience, blend of the target audience, revenue estimated from subscription as well as advertisement, future plans, pricing of similarly placed competing channels, etc. Further, there is a need to maintain a balance between reach and revenue while determining the price of channels. It is submitted that if channels of the same language and genre are not relatively priced *vis-à-vis* similarly placed competing channels, then the higher priced channels may resultantly have very limited uptake. Therefore, the pricing of a channel depends on market forces. Pricing a channel irrationally will have a direct adverse impact on its uptake, which will ultimately affect the reach of the channel. It may be noted that eighty per cent of all news channels in the country are FTA channels, and consequently, market conditions compel the remaining news channels to be priced in such a manner that they do not get overlooked in favour of FTA news channels.
- iii. That no steps are required to be adopted to ensure the availability of TV channels to subscribers since sufficient safeguards already exist that ensure the availability of all channels to subscribers at affordable prices. In this regard, it may be noted that the current regulatory regime requires mandatory *à-la-carte* offering of all channels and choice to subscribers. 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. In any event, there is no justification whatsoever for prescribing a ceiling on MRP of Pay channels.

- iv. That every channel has its own content investment strategy designed to deliver and reach the target audience, and hence putting a ceiling on MRP of Pay channels will not only restrict the investment, innovation, initiative and creativity but will also impact the QoS and be detrimental to the quality of content offered to the viewers. Any ceiling on the price of a Pay channel would also adversely impact the subscriber interest.
- v. That the development of TV services have been in the most democratic manner without making any differentiation in the classes or on the basis of socio-economic differences. In India, TV services are at a fraction of the cost to what is available elsewhere in the world. The FTA channels far outnumber the Pay channels, and the viewer has the option not only to avail FTA channels by just paying the NCF to private DPOs but also have another option of free access to Free Dish DTH by which they can avail hundreds of channels without paying any amount. In view of the above, pricing of Pay channels should be left to the market forces and the broadcasters instead of restricting or regulating the same.
- vi. That the concern should not be the fixation of a price ceiling to ensure fair and affordable pricing for the subscribers but that the market forces are balanced. A light-touch regulatory regime should be adopted in a reasonable manner while taking into consideration various financial and economic considerations and consequences thereof. TRAI had earlier increased the price cap of a channel from Rs. 15 to a cap of Rs.19/- (taking into account, inter alia, content, inflation and the distribution fee). This raise in price cap was also approved by the Supreme Court in its judgment, *Star India Pvt Ltd v. DIPP & Ors, Civil Appeal nos.7326-7327 of 2018*, wherein it noted that such a price limit is being fair to both the subscriber and the broadcaster. However, this has now been reduced to Rs.12/-, without any basis whatsoever and without accounting for inflationary pressures and cost escalation. Therefore, to ensure that “flagship channels” remain accessible, TRAI should move towards de-regulation and forbearance that does not force broadcasters to exclude their “flagship channels” from the channel bouquet(s) offered to subscribers. Complete flexibility should be given to the broadcasters to arrive at cost-effective and reasonable prices instead of adopting unreasonable and restrictive price ceilings that would impose financial burden on the stakeholders.
- vii. That other than the information available on selection of channels being made available in vernacular languages, no steps need to be adopted to ensure availability of TV channels to subscribers since, sufficient safeguards already exist that ensure the availability of all channels to subscribers at affordable prices.

### Question No.3

**Should there be ceiling on the discount on sum of *à-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.**

#### **NBDA's Comments:**

NBDA submits that there should be no ceiling on the discount on the sum of *à-la-carte* prices of channels forming part of bouquets while fixing the MRP of bouquets by broadcasters. Further, broadcasters and DPOs should be free to offer discount on both their *à-la-carte* and bouquet offerings for the following reasons:-

- i. That under the NTO 2.0, the twin conditions for structuring the bouquet was introduced that effectively put a cap on discounts being offered by the broadcasters on the channel

bouquets. The first condition means bouquets can be priced at a maximum of 33.33% discount *qua* the sum of *à-la-carte* prices of channels in the bouquet.

- ii. That the Madras High Court has held that the capping of price of bouquets at 85% of the sum of *à-la-carte* prices of the Pay channels, as provided for in the third proviso to clause 3(3) of the Tariff Order 2017, is arbitrary and unenforceable.<sup>6</sup> TRAI has reintroduced a cap on discounts for bouquets to discourage broadcasters from offering extremely low prices, which results in subscribers preferring bouquets over *à-la-carte* channels.<sup>7</sup>
- iii. That such a strategy is, however, highly intrusive and restricts the broadcasters from arriving at their own price structures as per market forces and business interest. It is also important that nearly 80% of subscribers are still choosing to procure bouquets. Approximately only 20% of the 150 million Pay-TV households in India purchased channels on an *à-la-carte* basis at the aforementioned prices. Further, selection of “bouquets” is the most convenient option for subscribers, since selecting *à-la-carte* channels is a cumbersome and confusing process. Restrictions on discounts would deny subscribers the benefits of competition. Such subscriber behaviour is also reflected in FICCI’s Media and Entertainment Report of 2022, which noted that on account of the NTO’s implementation, there was “*little scope for pack discounting by DPOs*” and that most subscribers “*opted for packs created by the MSOs and LCOs with minimal customization.*”<sup>8</sup>
- iv. That as stated above, there is no need for TRAI to intervene in the pricing structures adopted by broadcasters with respect to ‘bouquets,’ ‘*à-la-carte*’ and Pay channels since the market is highly competitive and pricing is heavily influenced by subscriber preference, i.e. convenience in channel selection. It would also be difficult to arrive at a standard ceiling for all the stakeholders involved in the business since it is difficult to determine pricing for channels owing to the dynamic nature of a business.
- v. That imposition of ceiling on discount on sum of *à-la-carte* prices of channels forming part of bouquets of broadcasters while fixing MRP of bouquets will accentuate the problem of exclusion of a greater number of channels from bouquets thereby requiring subscribers to go through the rigmarole of choosing a greater number of channels on an *à-la-carte* basis. The bundling of channels allows more subscriber choice, variety and differentiated content for subscribers at an affordable price.
- vi. That the fact of the matter is that *à-la-carte* and bouquet offering are distinct products with vastly differing business / economic models, which determine pricing and bouquet composition. Accordingly, TRAI ought to allow forbearance and permit the broadcasting sector to freely price and bundle the TV channels, keeping the overall subscriber interest in mind.
- vii. That it has also been noted by TRAI that it is difficult to determine a scientific formula for the determination of channel and bouquet prices for different genres. TRAI has also acknowledged that since bouquets are formed by small as well as large broadcasters, and the

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<sup>6</sup> *Star India Private Limited vs Department Of Industrial Policy*, W.P.Nos.44126 & 44127 of 2016.

<sup>7</sup> Page 23-28, TRAI Consultation Paper on Issues related to New Regulatory Framework for Broadcasting and Cable services

<sup>8</sup> E&Y, Tuning into Consumer: Indian M&E Rebounds with a Customer-Centric Approach”, March 2022, [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](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), pg 28

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.

- viii. That in view of the above, it is submitted that there should not be any ceiling on the discount on sum of *à-la-carte* prices of channels forming part of bouquets while fixing MRP of bouquets by broadcasters, and that broadcasters and DPos ought to be allowed to offer discount on both their *à-la-carte* and bouquet offerings.
- ix. That under the previous regime, there was no capping on the bouquet discounting. Different bouquets are formed with different criteria like number of channels, genre of channels, format of channels and all of this influences the discounting percentage, and the same should be market/competition driven. The goals for every channel is different, some channels want to reach to maximum viewers while others want to reach the targeted viewers in the niche category. In the long run discount will be automatically adjusted due to the market forces including the competition offering, uptake of channels, quality of channels, channels' own strategy of developing the advertisement and/or subscription revenue model. Therefore, the market forces will determine discounting of sum of *à-la-carte* prices of channels forming part of bouquets. Subscribers have the ultimate choice, and they will not pick up any bouquet because of the discount only. The broadcaster will align the prices or increase the discount which will be helpful for the entire ecosystem instead of artificially controlling the same.
- x. That there is no question of distortion of subscriber choice by bundling. It may be noted that:-
- Discounting and clubbing of products and services is a practice followed across all Industries;
  - Practice of giving higher discounts and making more number of channels available to viewers to suit their budget cannot be termed as "*practices not in subscriber interest*". The broadcasters try to create different products for the sake of subscriber interest and choice thereby making channels available for sampling at a negligible or nil incremental cost in a bouquet. Eventually, the choice of watching the channel or not is the subscriber's choice.
  - The purpose of bouquet is not only a commercial concept but it also provides varied content to the subscribers. To meet the varied requirements of its viewers, a broadcaster would offer a wide variety of channels having a wide program mix of different genre/language so that when the channels are distributed, it is able to offer the complete package to the viewer at a competitive cost. Such bundling of services also helps in optimizing the operational costs through combined marketing, promotion activities and revenue generation through ad sales etc.
  - Putting unreasonable restriction on the broadcasters may result in a situation wherein many channels will be forced to shut operations and there will be unemployment of the skilled and specialized workforce who are generally not employable in other industries.

That in view of the above, it is reiterated that there should not be any ceiling and broadcasters should be permitted to offer discounts on their *à-la-carte* and bouquet offerings as they deem fit in view of the market forces and subscriber preferences.

**Question No.4:**

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?**

**NBDA's Comment:**

NBDA submits that the channel prices in bouquet cannot be homogeneous, for the following reasons:-

- i. That pricing of a channel and bouquet depends on multiple factors e.g., type of content, cost of content production / acquisition, target audience, revenue models, future plans, etc. and as such, it is neither desirable nor possible to have a uniform pricing structure for channels for the sake of ensuring homogeneity for inclusion of channels in bouquets.
- ii. That a bouquet is formed to make available different channels under one umbrella. Heterogeneity is the basic nature of a bouquet, hence price homogeneity is neither possible nor desirable. Heterogeneity is the genesis of bundle offering in any industry. Formation of a homogenous bouquet will not benefit the subscriber and will, in fact, adversely impact the subscriber's preferences and choices.
- iii. That the very purpose of bouquets is to offer variety to viewers. It is fallacious to assume that a broadcaster will have different channels which will be homogenous in price. A broadcaster would generally have a variety of channels based on different genres, languages, transmission formats (SD/HD) etc. which will be priced differently and generally the pricing will not be homogenous. Even if the prices are homogenous, it may not serve any purpose in bundling as a homogeneous product may not be a good fit for a particular bouquet, for example, if two channels of different languages are clubbed, it may not appeal to most of the targeted subscribers.
- iv. That, in fact, bundling cannot be homogenous in terms of genres of channels, nor can it be homogenous in terms of pricing of the channels, as the pricing of channels may vary between Rs. 19/- and Rs. 1/-. If homogeneity is attempted to be mandated based on the pricing of channels, the broadcaster will have to create multiple bouquets, and the subscriber will be forced to subscribe to multiple bouquets. The broadcaster may not be able to offer similar discounts, and the pricing may be higher, creating multiple difficulties for both the broadcaster and the subscriber. Furthermore, such a mandate is against the principles of bundling and negates the benefits of bundling.
- v. That it would be difficult for TRAI to arrive at a standard price range for all the channels as all channels cannot be measured against the same parameters.
- vi. That it would force the broadcaster to equalise the prices of channels which could have adverse financial effects on the broadcasters' business. This is because the cost of production and maintenance among channels is variable and dynamic.
- vii. That such a strategy would be highly impractical and would have an adverse effect on the growth of the industry as companies will have little to no control in determining their prices which can result in lowering of quality and closure of channels.

- viii. That in view of the above, it is submitted that it would be impractical, arbitrary and unreasonable to impose homogeneity in the pricing of the channels that are part of the same bouquet as it would be highly restrictive, giving broadcasters no freedom or flexibility in determining how they wish to structure their bouquets and the prices.
- (b) **If no, what measures should be taken to ensure an effective *à-la-carte* choice which can be made available to subscribers without being susceptible to perverse pricing of bouquets?**

**NBDA's Comment:**

NBDA submits as under:-

- i. That there is an effective *à-la-carte* choice available with the viewer. If a particular viewer is interested in watching few channels, he/she will surely select those channels on *à-la-carte* basis only. The higher uptake of bouquets by viewers cannot be termed as perverse pricing of bouquets. There are various factors which results in higher uptake of bouquets, as has been discussed above.
  - ii. That TRAI's assumption that a subscriber's choice between *à-la-carte* channel and bouquets is merely determined on the basis of price is an oversimplification of subscriber preferences. It is reiterated that while price is a relevant criteria but, importantly, it is definitely not the only criteria on the basis of which a subscriber decides whether to subscribe to a channel or a bouquet.
  - iii. That the assumption that choosing channels on an *à-la-carte* basis is the subscribers' preferred route is misplaced. On the contrary, most subscribers continue to opt for packs despite the fact that *à-la-carte* prices of channels have, in comparison, significantly decreased for subscribers after the implementation of NTO1.0. This shows that Indian subscribers prefer bouquets, irrespective of the low price of *à-la-carte* channels. In this regard, TRAI needs to take cognizance of various factors which contribute to the subscribers subscribing to bouquets as against subscription of channels on an *à-la-carte* basis.
  - iv. That subscriber preference for bouquets and not choosing channels on an *à-la-carte* basis is also evident from the negligible uptake of *à-la-carte* channels when the prices of certain channels were lowered by several broadcasters for the promotional period in October 2019 following the implementation of NTO 1.0. Further, there is no empirical basis to suggest that price is the only criteria of a subscriber when it comes to choosing between *à-la-carte* channels and bouquets.
  - v. That therefore, there is no need for any measures to push *à-la-carte* choice, which is more costly and less desirable by subscribers for various reasons given in the paragraphs above. 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 bouquets as well as channels on an *à-la-carte* basis *inter-alia* in view of the competition in the market.
  - vi. That the subscribers are not being made subject to any 'perverse pricing' by broadcasters in the form of low 'bouquet' prices.
- (c) **Should the maximum retail price of an *à-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 *à-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 subscriber choice is not distorted.**

**NBDA's Comment:**

NBDA submits as under:

- i. That there is no question of capping of MRP of an *à-la-carte* Pay channel forming part of a bouquet with reference to average prices of all Pay channels forming the same bouquet as this is a hypothesis. There is no appropriate criteria, either price or genre, which can ensure such homogeneity, and therefore such a step will be regressive in nature and will severely impact the TV industry in India.
- ii. That with respect to the need for regulation of MRP of an *à-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 of bouquets and, consequently, leave them available for subscription solely on an *à-la-carte* basis.
- iii. 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 be executed between stakeholders *inter-alia* on a fixed fee basis. Importantly, the “twin conditions” were in varied forms and were never concurred to by the broadcasters and by other stakeholders. The earlier twin conditions were arbitrary and without any basis as well as subject to various challenges and, as such, cannot be used as a precedent. Further, twin conditions were consciously rejected by TRAI while formulating NTO 1.0 in the first instance itself.
- iv. That the concept of twin conditions has been tested and experimented by TRAI in tariff orders and their amendments issued under the previous regime, both at the wholesale level as well as the retail level. The previous iterations of the twin conditions have been constantly opposed, challenged, retracted and altered. Thus, when twin conditions have not been accepted or successful in the past, TRAI ought not to treat the twin conditions as an accepted norm. In any case, in the previous iterations of the twin conditions, there was no condition of MRP as a ceiling price, and the twin conditions being linked to MRP have never been tested prior to its introduction by way of NTO 2.0. Without determining the impact when implemented with the ceiling on the pricing of channels for being included in bouquet, TRAI ought not to have adopted the earlier twin conditions. Furthermore, it is TRAI's own admitted position that even under the wholesale-tariff based regime, broadcasters and DPOs were operating *inter-alia* on the basis of fixed fee deals or deals based on cost per subscriber. It is submitted that twin conditions were applicable only in the case of RIO-based agreements and not in the case of deals that were based on fixed fees or on cost per subscriber basis.
- v. That 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 the pricing of *à-la-carte* channels as opposed to the pricing of bouquets. In this regard, it may be noted that the pricing of TV channels 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.

- vi. That offering of bouquets facilitates subscribers who may not be able to afford *à-la-carte* offerings and are yet desirous of enjoying a variety of content through bouquets. Thus, any attempt at linking the price of bouquet of channels with *à-la-carte* prices or capping the discount on the sum of *à-la-carte* is bound to adversely impact subscribers as well as broadcasters.
- vii. That any mathematical formula for price fixation will be ultimately unworkable and is also likely to lead to increased market uncertainty, which will ultimately be harmful to the interest of the stakeholders.

**Question No. 5-**

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

**NBDA's Comment**

NBDA submits that there should not be any condition in the bouquet formation with regard to containing channels with homogenous prices for the following reasons:

- i. That as has been highlighted above, subscriber choice is in favour of bouquets, which provide more value at affordable prices. Further, homogeneity in pricing will defeat the objective of bouquet formation and even globally, there is no precedent for regulating pricing/bundling of channels, let alone mandating homogeneity of channel prices in a bouquet. The imposition of any formula/measure in this regard 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. Pricing of channels and bouquets, as well as bouquet composition, ought to be left to individual broadcasters, who are best placed to decide on the same based on market dynamics, competition, subscriber uptake, etc. Any prescriptive steps are bound to have an adverse and cascading effect on channel offering and the business of broadcasters.
- ii. That any such stipulation will negate the very purpose for which bouquets are created as a bouquet is meant to offer variety. If similarly priced channels are made part of the bouquet, then the entire concept of bundling will be defeated, and the subscriber interest will be affected wherein he/she will not be able to get the desired variety of channels.
- iii. That if any homogeneity requirement is enforced in terms of a Genre or Language of the channels, it will be fallacious.
- iv. That making any such homogeneity requirement at the level of broadcaster bouquet will make broadcasters' bouquets ineffective as there will be no such homogeneity compulsion on the DPOs in the formation of DPO bouquet, and the DPOs will package various bouquets of the broadcasters in its DPO bouquet putting the broadcasters in a disadvantageous position *vis-a-vis* DPOs.

**Question No. 6:**

**Should there be any discount, in addition to distribution fee, on MRP of *à-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.**

**NBDA Comment:**

NBDA submits that there should be no restriction on the quantum of discounts/incentives to be offered.

- i. That NTO 1.0 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 the broadcaster's discretion.
- ii. That NTO 2.0, however, 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/DPOs are beneficial to the subscriber, who gets to enjoy a greater diversity of content at lower rates. It has already been explained above that the subscriber's choice is in favour of bouquets, and hence, there is no reasonable justification for preventing discounts being offered on bouquets. Failure to extend discount offering on bouquets can potentially result in an unintended outcome where, for higher margins/discounts, unscrupulous DPOs may resort to pushing subscription of some TV channels on an *à-la-carte* basis, when such channels may be available in bouquet at a cheaper price. Any such action/practice will neither be in the interests of subscribers nor broadcasters. An illustration of the above statement is that an unscrupulous DPO may cause a subscriber to subscribe to eight (8) TV channels on an *à-la-carte* basis at the rate of, say, INR 5/- for each TV channel, even though the subscriber may have wanted ten (10) TV channels, all of which are otherwise, available in a bouquet priced at say, INR 40/-. In this illustration – broadcaster loses out on number of viewers for two of its channels whereas, the subscriber pays INR 40/- for fewer channels however, the DPO makes INR 6/- in the form of discount for each such subscriber.
- iii. That there should not be any cap on the discount that broadcasters offer to DPOs on the MRP of *à-la-carte* and bouquets as such discounts are important market tools to incentivise a DPOs performance.
- iv. That the time is ripe to implement a forbearance model on discounting and commission. Further, as the ultimate beneficiaries of discounts are subscribers, TRAI should also allow discounts on bouquets since the same are evidently preferable to subscribers. There are sufficient safeguards to ensure that discounts and commissions are offered on a non-discriminatory basis, and as such, no additional stipulations are required. It is also submitted that discount and commission too should be eventually left to market forces to give complete flexibility to stakeholders to decide and manage their affairs.
- v. That ideally, there should be no restriction on the quantum of discount/incentive to be offered on bouquets/ *à-la-carte* channels, which is offered on objective parameters and is available to all DPOs without discrimination.
- vi. That there may be a requirement to offer different discounts in different target markets or for new product launches. Hence, when such discounts are offered on measurable parameters, on a parity basis without discrimination, such discounts/incentives should be freely allowed as per the business requirements.

**Q7. Stakeholders may provide their comments with full details and justification on any other matter related to the issues raised in present consultation.**

**NBDA's Comment:**

NBDA submits as under:-

- i. That there is a need to increase the capacity offered in the NCF charged to the subscribers especially keeping in mind that there is no dearth of capacity in the modern age and networks to ensure that FTA Channels and especially the news channels are compulsorily carried by the DPOs. In the New Regulatory Framework of 2020, the NCF of INR 130/- was prescribed for 200 SD Channels and all mandatory channels and a maximum of INR 160/- was prescribed for more than 200 SD Channels. NBDA submits that in the ceiling of INR 130/- the number of SD channels offered must be increased to 400 from prevailing 200 channels.
- ii. That flexibility was also offered to the DPOs to declare different NCF for different geographical regions/areas. The DPOs catering to any particular region or State or who have a significant or major market share in any State, must ensure compulsory carriage of regional channels/regional news channels and the same should be offered without any additional cost to the broadcasters, since the subscriber has already paid and has been charged the NCF. All FTA Channels catering the News & Current Affairs Services (which were also considered as “essential services” during the pandemic times) must be made available “free of cost” or in the alternative “as a part of the NCF charged by the DPOs” from the subscriber. The news broadcasters should not have any burden to pay a “Carriage Fee” to the DPO since it has already been benefitted for having charged the end subscriber by having collected the NCF. In other words, FTA news channels must be compulsorily carried, and it must apply with more emphasis in the case of a DPO who holds a majority market share in any particular State when it comes to carrying the channel of the regional broadcaster/regional news broadcaster.
- iii. That the DPOs should also be mandated to publicly display and create awareness about the date from which the Logical Channel Number (LCN) is granted to any particular Channel.
- iv. That in respect of the TRAI Regulations dated 1<sup>st</sup> January 2020 and its implementation which impacts the Carriage Fee regime, NBDA suggests that the Regulations should be implemented in letter and spirit particularly in respect of ‘Target Market’, ‘Carriage Fee,’ requirements of EPG including displaying of the Hindi genre State-wise, collating and combining all regional news channels at one place in the EPG, displaying the Active Subscriber Base publicly in a transparent manner by the DPOs on its website on a monthly basis and ‘Placement fee’ charged by MSOs/LCOs which causes financial hardships to various channels especially FTA channels where there is no possibility of setting off the heavy costs against subscription revenue.
- v. That excessive regulation by TRAI will be detrimental to the development of the broadcasting sector and other technologies which greatly enhance TV viewing experience of the viewers will not develop or be subscribed to. The broadcasting industry, which is a shining example of the liberalized economic era and built on the principles of “Atmanirbharta” will be pushed backwards and there will be no major capital investments by the companies. This may also deter foreign companies from investing in the broadcasting space, in spite of the fact that the Government wishes to attract more foreign capital in this sector and has recently permitted higher FDI in the broadcasting sector.
- vi. That frequent and numerous changes in the key regulatory provisions have far-reaching consequences, which not only disturb the working of the industry but also result in subscriber angst and ire towards the other stakeholders in the industry resulting in subscriber migration to alternative mediums or technology. Therefore, when a Regulatory regime is adopted, it should be allowed to continue for some time without modifications.

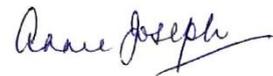
- vii. That the Indian TV industry not only caters to the viewers in India but also reaches the Indian diaspora in almost all the countries of the world. Therefore, there is a need to promote the growth and development of the broadcasting industry and to provide an enabling environment where it can flourish and contribute in India's emerging position as a soft power in the changing world order.

Apart from the issues raised through the questions of the Consultation Paper, TRAI is requested to revisit the issues raised by NBDA, particularly in answer to Question 7, and in view of the changed market scenario post-pandemic and the advent of emerging technologies and new viewing habits of the viewers in respect of OTTs.

It is reiterated that TRAI should move towards light-touch regulations wherein it promotes healthy growth of the broadcasting industry and the subscribers are benefitted by the state of the art technological offerings and innovations at affordable costs.

The term "broadcaster" used in these submissions/comments implies "news broadcasters".

NBDA submits that these submissions/comments are made on behalf of the Members of NBDA.



**Annie Joseph**  
Secretary General

**June 6, 2022**