**BY ELECTRONIC MAIL**

30.05.2022

To,

Advisor (B&CS)

Telecom Regulatory Authority of India,

Mahanagar Doorsanchar Bhawan,

Jawahar Lal Nehru Marg,

Old Minto Road,

New Delhi – 110 002

Dear Sir,

**Re: Submissions to Telecom Regulatory Authority of India ("TRAI") in response to the Consultation Paper on "Issues related to New Regulatory Framework for Broadcasting and Cable services"**

At the outset, we would like to thank the Authority for giving us an opportunity to tender our views on the Consultation Paper on "Issues related to New Regulatory Framework for Broadcasting and Cable services".

With regard to the present consultation process, we hereby submit that we have perused the said Consultation Paper and we hereby submit our comments as attached in the Annexure. The said comments are submitted without prejudice to our rights and contentions, including but not limited to our right to appeal and / or any such legal recourse or remedy available under the law and equity.

The same are for your kind perusal and consideration.

Yours sincerely,

DocuSigned by:

Daphne Menezes

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Discovery Communications India

**Encl:** ***As above***

**RESPONSE ON BEHALF OF DISCOVERY COMMUNICATIONS INDIA ("DCI") TO THE CONSULTATION PAPER ON ISSUES RELATED TO NEW REGULATORY FRAMEWORK FOR BROADCASTING AND CABLE SERVICES DATED 07.05.2022 ("Consultation Paper") ISSUED BY THE TELECOM REGULATORY AUTHORITY OF INDIA ("Ld. Authority / TRAI")**[1]

At the outset, DCI would like to thank the Ld. Authority for providing them the opportunity to tender their views on the Consultation Paper. Before proceeding with our comments / observations on the contents of the Consultation Paper, DCI would like to set out some preliminary observations on the issues addressed in the Consultation Paper.

**EXECUTIVE SUMMARY**

Our comments and observations on the Consultation Paper on Issues related to New Regulatory Framework for Broadcasting and Cable Services dated 07.05.2022 issued by TRAI ("**Consultation Paper**") can be summarized as follows:

(A) Ceiling on maximum retail price ("**MRP**") of channels provided as part of bouquet;
(B) Ceiling on MRP of pay channels as a measure for ensuring that popular television channels remain accessible to a large segment of viewers;
(C) Ceiling on discount structure on bouquet pricing;
(D) TRAI's attempt to control pricing decisions of all stakeholders in the market despite the competitive situation in the market;
(E) TRAI's presumption that deep discounting of bouquets leads to perverse pricing; and
(F) Homogeneity of channel pricing in bouquets.

**1. PRELIMINARY COMMENTS:**

Before proceeding with our comments / observations on the contents of the Consultation Paper, DCI would like to set out some preliminary observations on the legality of the issues addressed in the Consultation Paper.

1.1 DCI and certain other broadcasters had since the very stage of consultation process leading to the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 dated 03.03.2017 ("**Interconnection Regulations**") and Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 dated 03.03.2017 ("**Tariff Order**") (collectively, "**NTO 1.0**") pointed out some of the concerns that have been echoed by TRAI in the present Consultation Paper as well as in other consultation papers that have been issued by TRAI over a period of time, as discussed hereinafter in this response.

1.2 We are glad that the issues posed by TRAI in the present Consultation Paper allows a re-look at the approach of TRAI on the treatment of a-la-carte channels and their inclusion in bouquets. TRAI, while introducing NTO 1.0, had contended that some of the broadcasters resort to "perverse pricing" by fixing the a-la-carte rates of the driver channels at very high levels and then providing significant discounts on such channels for their inclusion in bouquet, thus forcing viewers to opt for bouquets that included channels which the viewer was otherwise not interested in watching. In order to stop such purported practice of perverse pricing, the cap of Rs. 19 was imposed on the price of any pay channel that was to be included in the bouquet of channels. This cap was subsequently reduced to Rs. 12 in NTO 2.0. This position that was earlier adopted by TRAI is now sought to be reversed in the present Consultation Paper by: (a) proposing a departure from the cap of Rs. 12 by referring to stakeholder proposal of reverting to a cap of Rs. 19; and (b) proposing to cap the price of pay channels *per se* so that the same can be made affordable to viewers either through low a-la-carte rates or inclusion in the bouquet. We welcome TRAI's endeavour to re-examine the entire issue having now gained from the experience of the working of NTO and its implications at the ground level.

1.3 We welcome TRAI's objectivity and openness in reviewing the stated objectives of TRAI for the NTO regime. In this background, TRAI may consider the following:

(a) Entertainment through TV channels is not an essential service and therefore should not be subject to pricing regulations at least for channels that are offered purely on a-la-carte basis.

(b) Offering of channels purely on a-la-carte basis and the lower prices of bouquets does not have an element of "perverse pricing" and therefore would not call for price regulation. We request TRAI to closely examine the literature that we have set out below in this regard.

(c) The proposals appear to be mooted primarily to address the concerns of DPOs, who are part of the stakeholder in the entire chain of broadcasting service. The interests / rights of broadcasters as the creator / aggregator of creative content should not be ignored to give preference to the DPOs. TRAI may be mindful of the different kinds of channels and programs and their quality and content while examining the issue of channel pricing. Niche broadcasters like DCI spend significant amounts in the creation of their content, which is markedly different in terms of quality and content than some of the very popular channels running regular serials and shows. Therefore, the pricing considerations for a broadcaster like DCI having a limited and discerning set of viewers will be very different from popular channels.

(d) Restructuring of plans and packages is part of the business operations of DPOs and the substantive fundamental rights of broadcasters cannot be overlooked merely on account of operational challenges of DPOs. It appears that the DPOs are trying to avoid their obligations and duties at the cost of broadcasters.

1.4 The Indian broadcasting industry is a highly competitive market with around 900 channels, 358 broadcasters, 1469 multi-system operators, 60,000 local cable operators, and 6 DTH operators. Such high levels of competition would ensure that every broadcaster offers its channels, whether in a-la-carte or as bouquet, at the best possible rates that are acceptable to viewers. While viewers may have liking / preferences for certain channels, these are not non-substitutable in nature. Consumer preferences are also driven by price considerations. It is for the broadcaster as the creative entity to determine the optimum pricing for its channels and such pricing cannot be regulated merely because of consumer preference for a particular channel. In the event that TRAI finds on facts that some broadcasters may be manipulating the market, action can be taken separately against such broadcasters. The exception however, cannot define the rules.

1.5 As elaborated hereinafter, the pricing of channels and pricing of bouquets involves a complex economic and financial exercise taking into consideration multiple factors of which, the cost of content is only one of the factors. As rightly pointed out by TRAI at para 2.4 of the present Consultation Paper, even the cost of production of different programs within the same channel varies significantly because of multiple factors. The proposal to impose a ceiling on the price of pay channels in effect means applying a homogeneous standard of pricing by the regulator for different kinds of channels with varying content. Any such effort would not only be arbitrary and discriminatory, but also detrimental to the viability of certain broadcasters and their right to freely carry on their business.

## 2. ECONOMIC RATIONALE FOR PRICING OF CHANNELS ON *A-LACARTE* AND BOUQUET BASIS BY BROADCASTERS (INCLUDING DISCOVERY)

2.1 Discovery as a group is continuously involved in creating very high quality informative and educative programmes for broadcasting in various jurisdictions across the globe, including India. DCI is involved in: (a) content creation which includes: (i) in-house production, i.e. ideation, scripting, shooting, graphics addition, editing, ensuring compliance of programme with law; deciding programming order based on TRPs and viewer preferences, etc.; and (ii) outsourced production, i.e. programme feed, equipment (cameras, jibs, etc.), workspace (shoot and edit location), etc.; and (b) content delivery which includes obtaining license from the Ministry of Information and Broadcasting, obtaining transmission equipment, satellite leasing and technical compliance.

2.2 DCI, like other broadcasters, have to lease transponders from satellite companies for up-linking and downlinking of their TV channel signals. Transponders are generally leased for multiple channels. Typically, satellite companies prefer leasing of transponder for multiple channels to avoid high operational and logistic cost. Broadcasters also find it costlier to lease transponders for carrying single channels as the charges and operational costs are higher. Leasing of transponder for carrying multiple channels results in optimization and reduction of infrastructure cost. Therefore, it can be said that: (a) broadcasters find it easier and more economical to negotiate with satellite companies to avail transponder space for multiple channels; (b) the cost of transponders and other costs get socialized by bundling of channels;

(c) Bouquet with variety of channels ensures greater reach and thereby, reduces revenue requirement per subscriber; (d) at the same time, greater reach ensures higher advertisement cost which further helps in lowering subscription fee; and (e) on the other hand, providing a-la carte channels would require each of the costs to be proportionately divided towards each of the channels, which will result in increase of cost of individual channels as revenue for each channel will have to match the proportionate costing of the channel.

2.3 Provision of channels by broadcasters on bundled basis allows economies of scale. Provision of channels in bouquets brings in economic efficiency in terms of cost of broadcasting which, is socialized amongst different channels offered in a bouquet. As a result, every additional channel provided by the broadcaster, has minimal cost over and above the cost of the existing channels, and the subscribers are provided such additional channels almost free of cost. Such socialization and optimization of cost is not possible where channels are being offered on a-la carte basis.

2.4 Bundling of products for optimizing marketing costs is not unique to broadcasting of TV channels. It is seen in all businesses, e.g. (a) combined meal packs in leading food chains such as KFC, Dominos, McDonalds where combo packs consisting of number of items is priced significantly lower than the aggregate price of individual component meals; (b) Combined pack of different cosmetic items such as perfume, moisturizer, blush, etc. being sold at a cheaper price than the aggregate price of individual items; (c) discounts on clothing items where a purchase of three or 4 or more items or a purchase beyond a particular threshold price, is provided at a significant discount compared to the actual price of each individual clothing; (d) telecom companies offering packets of voice, data, SMS etc as part of single pack to the consumer; and (e) newspapers bundling a host of sections e.g. sports, politics, entertainment, articles etc. in a single newspaper.

2.5 **In fact, the rationale behind bouquet formation is to some extent, similar to newspaper publication. A newspaper typically covers items that would appeal to the widest variety of consumer preferences – this is done to attract higher readership from different sections of readers having individual preferences e.g. sports, cinema, politics, current affairs, discount coupons, etc. The idea is that people having different preferences, will subscribe to the same newspaper. Thus,**

**cost of printing and distribution is socialized amongst different section of readers. Compared to newspapers that are sold at minimal prices, specific magazines dealing exclusively with sports or entertainment or current affairs catering to the choice of specific readers (a-la-carte publications), are priced much higher, sometimes 50 times or more the cost of a regular newspaper.**

2.6 The reason for such high prices of magazines amongst other things, is due to the limited readership / market they enjoy catering to the specific preferences of readers. The cost of printing and distribution has to be distributed amongst the limited readers, thereby, pushing up cost. Moreover, newspapers, due to their wide circulation are able to attract much higher advertisement revenues. This may, however, not be the case with magazines.

2.7 In this regard, reference is made to the 2008 article of the **Loyola Consumer Law Review** titled ***A La Carte v. Channel Bundling: The Debate over Video Programming Distribution***, which points out the similarity of approach between newspapers and cable operators in terms of content regulation:

> *"Stone and Strauss contend that cable operators' "**decisions about which programs to make available, and how best to package them," are analogous to "[t]he choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper**, and treatment of public issues and public officials-whether fair or unfair- constitute the exercise of editorial control and judgment."' Case law supports this analogy. In First Amendment cases involving cable, the Supreme Court has noted that "cable operators exercise 'a significant amount of editorial discretion regarding what their programming will include."* (emphasis supplied)

2.8 Similarly, for the broadcasting industry, the preferences for channels / programs may differ on the basis of state, region, language, education background, household earning, affinity towards spending on TV, religious and social background, size of family, age and host of other factors. Accordingly, it is prudent and economical for the broadcaster to offer its entire array of channels with variety of content, to the subscribers at a price, that would be widely acceptable to the subscribers. The bundle of channels is priced in a manner that every subscriber, having a preference of certain kind of channels, finds it worthwhile to avail additional channels which they would not have otherwise subscribed to. Broadcasters design their bouquet by considering a total package price that would attract subscribers with different preferences so that they find the additional channels wherein each channel has an individual value and audience and within their expendable budget for such additional channels. Such kind of bundling strategy is adopted widely across different industries as indicated hereinbefore. Bouquet formation also encourages competition and secures consumer benefit by providing a large number of channels at low cost.

2.9 As an illustration, a person watching Discovery channel at a cost of Rs. 4/- per month may be inclined to subscribe to other DCI channels but only if it is within her total budget of Rs. 6/- to Rs. 8/- per month assigned towards other channels. In this simplistic illustration, bundling of channels and the consequent reduction in costs, allows DCI to attract multiple subscribers by offering a price that is equal or lower than her total allocated budget for her favourite channels as well as the additional channels.

2.10 In the above illustration, there is a significant benefit to the consumer as: (a) she can avail multiple channels at a cost lower than the aggregate cost of the a-la-carte channels; (b) the consumer is able to avail a wider variety of programmes in addition to their channel of preference; and (c) the additional programmes are made available within the allocated budget of the consumer. The bundling is also beneficial for DCI as a broadcaster as: (i) it is able to socialize its broadcasting cost by spreading it across multiple channels; (ii) it is in a position to develop viewership of multiple channels (though may be of different intensity level) from the same set of consumers; (iii) it can demand higher advertisement revenue with wider subscriber base; and (iv) it can finance the development of further programmes from the revenue received from the subscriber.

2.11 Broadcasters prefer to bundle channels by providing channels across all genres, e.g. general entertainment, infotainment, sports, cinema, etc. to attract higher viewership from different sections of subscribers having individual preferences. In India, each household has varied viewership depending on a myriad of factors such as regional and linguistic factors, educational background, household earning, size of the family, the age of the family members, religious background, etc. In a diverse family composition, each member will have different requirement of content and channel preference, viz. general entertainment channels, kids channels, sports channels, devotional channels, etc. The bouquets of channels are therefore priced in a manner that every subscriber, having a preference of certain channels, finds it easy to avail additional channels at minimal cost. The costs incurred by broadcasters on advertising, networking, infrastructure, etc. are socialized amongst different sections of viewers. Bundling of different channels across different genres thus enables optimization of marketing costs. Moreover, broadcasters keep on improving and altering the quality and content of their channels continuously. Channel surfing helps viewers to sample new / updated channels, which would not be available in an a-la-carte framework.

2.12 TRAI has failed to consider the economic rationale behind channel pricing, and has proceeded on the assumption that pricing of bouquets is achieved by discounting individual channels. In fact, it is not so. TRAI's contention about "perverse pricing" appears to be based on the assumption that the channels that are offered in a bouquet at a given price, would be capable of broadcasting at the same aggregate price even as a-la-carte channels. Such assumption is erroneous, and not based on economic considerations that become relevant for pricing of products on an individual basis or as a bundle. While individual pricing will depend on the costs related to the provision of a single product, pricing of bundles involves economies of scale, potential reach at different prices, revenues from advertisement, potential market, socialization of costs, consumer preference, etc.

2.13 It is in this background that TRAI should approach the issue of whether bouquet pricing needs or can be regulated with a more objective outlook, considering the vast amount of economic literature related to pricing of bouquets and the welfare effects of bouquet and its pricing on consumers.

2.14 In his article ***Shedding Tiers For A la Carte? An Economic Analysis Of Cable TV Pricing***, Thomas W. Hazlett, Professor of Law & Economics and Director of the Information Economy Project, George Mason University, has noted the following in conclusion:

"*Cable and satellite TV systems face a challenge increasingly common in the Information Economy: How to efficiently price products that have high "first copy" costs, and are thereafter very cheap.* ***Cable TV networks are costless to distribute to additional households once heavy investments have been sunk to create the necessary software (the content) and hardware (the cable TV system).*** *Operators select a widespread strategy: provide a high-volume product for a fixed, monthly fee. This approach has led to rapidly expanding choices in video content.*

*A wide range of video service providers use similar bundling approaches.* ***Satellite operators offer even larger tiers than do cable systems, and do so to offer a competitive alternative appealing to the widest segment of the consuming public. Consumers gain both through access to more programs, but also because transactions are far less costly.*** *Information about what programs are available is simple to acquire; the channel surfing experience facilitated by the remote control allows for instant and continuous sampling.* ***This, in turn, allows both new and old networks a path to attract new viewers, encouraging programmers to continually experiment with new ways to attract (fickle) viewers****.*

*If a la carte were efficient, both incumbents and competitive entrants lacking market power would have strong incentives to offer such menus, sharing gains with subscribers. Instead, the marketplace converges on bundles. This outcome is particularly important to cable programmers, both popular, established networks and new, independent upstarts. These interests strongly argue that a la carte would hamper efforts to compete for viewers, making it far more expensive to market their programs to interested customers.*

***Experience in the U.S. C-Band market, DBS, and in the Canadian cable market, suggests that a la carte pricing results in higher prices and attracts few customers, even when subscribers can select between a la carte and bundled channels. Experience in other markets suggests that services are efficiently bundled under cost conditions similar to those prevailing in multi-channel video.*** *Competitive entry by two satellite radio firms has been achieved by 100-channel bundles.* ***Similar buffet style pricing occurs in***

***theme parks, ski resorts, and in health clubs. In the market for broadband Internet access, all-you-can-eat is popular with the consuming public; per-hour access fees have achieved little success in attracting customers. And a la carte rules cannot plausibly constrain cable operators' behavior without concomitant imposition of rate regulation. Not only are such controls currently ruled out via federal statute, they have proven unworkable through multiple episode***s*— precisely because operators react to controls by changing investments, marketing, and pricing, rendering the constraints impotent. Moreover, the video indecency that drives many to support regulation of cable pricing will not be confronted in any event: broadcast television, prompting by far the strongest outrage, is mandated to be included on all cable tiers, with or without a la carte pricing.*

***Nonetheless, the illusion remains that prices for bundles are unfair when users believe that they are paying to support channels they do not value.*** *There is an important sense in which network users come together to support the joint costs of creating video services. But it is equally true that this support is actually garnered because different users pay for different uses of the network.* ***Subscribers only pay for the basic tier when the value of the service they receive exceeds the cost they pay. This is the economic interpretation of bundling. It allows individual customers with diverse tastes to support efficient production of a wide range of services, and to realize their own value from that system.***" (emphasis supplied)

2.15 The following extract from the ***Report On the Packaging and Sale of Video Programming Services To the Public*** issued by the Federal Communications Commission, Washington D.C. is of significant relevance:

*"There is one critically important element of video programming that must be taken into account.* ***Consumption of video programming is non-rivalrous. Allowing an additional person to consume the good (ie.,view the programming), does not reduce the amount available for other individuals****. This can be contrasted with a more traditional good, such as a cookie. If an individual consumes a cookie, there is one less cookie for someone else to consume.* ***Because of this non-rivalrous consumption, there are no additional costs associated with providing access to more individuals. The***

***cost structure of video programming production is one of high fixed costs and marginal costs close to zero. In other words, whether one household or millions of households view a program network, the costs of producing that program do not change.***" *Goods such as this are sometimes referred to as information goods or public goods.*

***This characteristic of video programming leads to an interesting divergence between economic efficiency and cost recovery. Economic efficiency is promoted when all consumers that value a good more than its marginal cost of production are able to consume the good. In the case of video programming, this implies that every consumer that values a video program should be allowed access, since marginal cost is zero. A price of zero would be necessary to ensure that every individual that values the programming consumes it. This introduces the tension between efficiency and cost recovery. If the price must be zero, then no profit-maximizing firm would supply the product since it would be impossible to recover the fixed costs of production. A mechanism is required that can maximize the number of consumers with access to the programming while recovering the costs of production. One such mechanism is price discrimination.***

*The role of price discrimination in ensuring the production of programming that consumers desire can be illustrated by expanding on the simple example presented in the previous section. In that example, there were two consumers who had negatively correlated values for ESPN and TBS. The first individual valued ESPN at $2.00 and TBS at $5.00. The second individual valued ESPN at $5.00 and TBS at $2.00. It was demonstrated that a firm would earn higher revenue by selling the products in a bundle at a price of $7.00 rather than in individually for $5.00 each. Now, production costs are introduced into this example. Imagine that the fixed cost of producing ESPN is $6.00, as is the cost of producing TBS. First consider the case of pure a la carte sales. The highest price that can be charged for ESPN is $5.00 since any price higher than that will result in no sales. At a price of $5.00, only one consumer will purchase ESPN and revenue for ESPN will be $5.00. This level of revenue does not cover ESPN's production costs of $6.00, and consequently ESPN would not be produced. Instead of offering ESPN at $5.00, the firm could* *offer ESPN for $2.00. In that case both of the individuals would purchase the product and revenues would be $4.00. Again, ESPN would not fully recover its costs and therefore either would not be produced to begin with or would exit the market. A similar story holds for a la carte sales of TBS--there is no uniform a la carte price that would ensure production of the programming. Consideration of bundled sales leads to a different result. If the programming is sold in a bundle for a price of $7.00, both individuals will purchase the bundle and the firm will take in revenue of $14.00. This revenue is adequate to recover the cost of producing both programs, which is $12.00. It is also useful to examine the value to society, two individuals in this example, of the programming. The first individual values ESPN at $2.00 and the second individual values it at $5.00. So the total value to society of ESPN is $7.00, which is greater that the value of producing the programming at $6.00. A similar analysis holds for TBS and illustrates that society is better off due to the price discrimination offered by bundling.* <u>***The ability of price discrimination to enhance total welfare in a market economy is a common result when production is characterized by high fixed costs and low marginal costs. Price discrimination based on the class of customer is a common element of pricing in industries such as electricity and freight railroads.***</u>

<u>***The example also shows the fallacy behind the claim that bundling forces consumers to pay for programming they do not want. Bundling forces a consumer who places a high value on a program network to pay more for it than someone who places less value on the network, but it does not force a consumer to pay more for the bundle than the value to consumer places on the programming contained in the bundle.***</u> *In a free society there is no way to force a consumer to pay more for a product than the value they place on it. Consumers always have the option of declining to purchase a product.* <u>***In fact, bundling brings more consumers into the market for some types of programming because it allows a consumer to view programming for which they have a low value and would not purchase if they were required to pay a so-called "fair share" of the production costs.***</u>

*Much of the economic analysis of bundling has involved analyzing the behavior of a monopolist. Cable and satellite operators actively compete for customers.* ***Bakos and Brynjolfsson have examined the nature of competition between firms that engage in bundling of information goods. They find that a firm that bundles its products will dominate competition against a firm that sells products a la carte. On the other hand, when all competing firms offer bundles, they find that competition is more intense, and consequently prices are lower, than when all firms are selling on an a la carte basis. Finally, Bakos and Brynjolfsson find that firms that offer bundles have a greater incentive to innovate due to the increased ability to recover the costs of innovation through incorporating the innovations into existing bundles****".* (emphasis supplied)

2.16 In 2006, when Kevin J. Martin, who was a strong proponent of a-la-carte system, took over as the Chairman of FCC, it is widely believed that he tried to discredit the findings of the report through a further report prepared in 2006. However, despite his efforts, it appears from an article of Joe Nocera in the New York Times dated 24.11.2007 that the US Senate Commerce Committee rejected a bill for a-la carte channels by a vote of 20-to-2. The structure of the US television market resembles the Indian market wherein 4-6 large broadcasters enjoy major share of the market. There has been a consistent view that bouquet formation is more beneficial to consumers, and that prices of channels would increase significantly, in the case of a-la-carte channels.

2.17 DCI, even at the stage of NTO 1.0, had pointed out that there would be significant increase in the cost of the channels under the *a-la-carte* approach which will have adverse effect on the marketability of channels. DCI is a small broadcaster in India with high quality and niche content that ordinarily should be promoted as a matter of public policy because of its informative and educative value for people of all age and social background. However, in the event that DCI is required to provide the channels on *a-la-carte* basis, the aggregate cost of the channels will be much higher, which will result in gradual erosion of its subscriber base. This in turn will not only affect its subscription revenue but also development revenue, which will have a consequential effect on the quality of the programme provided by DCI.

2.18 In a study titled ***The Welfare Effects of Bundling in Multichannel Television Markets*** carried out by Gregory S. Crawford (Department of Economics, University of Warwick and Centra for Economic Policy Research) and Ali Yurukoglu (Graduate School of Business, Stanford University), after a detailed study of pricing strategies in USA, come to the following conclusion:

> *"We measure how the bundling of television channels affects short-*run social *welfare. We estimate an industry model of viewership, demand, pricing, bundling, and input market bargaining using data on ratings, purchases, prices, bundle composition, and aggregate input costs. We conduct counterfactual simulations of à la carte policies that require distributors to offer individual channels for sale to consumers.* ***<u>We estimate that negotiated input costs rise by 103.0% in equilibrium under à la carte. These are passed on as higher prices, offsetting consumer surplus benefits from purchasing individual channels. Mean consumer and total surplus change by an estimated -5.4% to 0.2% and -1.7% to 6.0%, respectively. Any implementation or marketing costs would reduce both, and would likely make à la carte welfare-decreasing</u>***". (emphasis supplied)

2.19 Edward Nissan and Shahdad Naghshpour of University of Southern Mississippi in their study titled ***Costs and Revenues of à la Carte (ALC) Versus Bundling in Television Markets***, has compared the pricing characteristics of a number of channels under the a-la carte and bouquet approach, and concluded as follows:

> *"This paper compares costs and revenues of two modes of provision of pay-television by cable and satellite providers. The two modes are bundling and à la carte, both of which are subscription-based services.* ***<u>Results of this research show that on average à la carte is more expensive to deliver than bundling, while revenues of both are comparable</u>****.*
>
> *Descriptive statistics are provided in Table 2, giving the mean, the standard deviation, the minimum, and the maximum of the costs and revenues for both bundling and ALC.* ***<u>While input costs on average seem to be significantly different at $0.372 for bundling compared to $0.755 for ALC, their revenues seem to be comparable at $0.600 for bundling compared to $0.616</u>***

***for ALC. The analysis of variance confirms, as shown in Table 3, that the costs differ significantly (p-value=0.000), while the revenues do not (p-value=0.8832)***.*"*

(emphasis supplied)

2.20 It would therefore be improper for TRAI to presume that broadcasters provide huge discounts on bouquet prices resulting in "*perverse pricing*" to prevent consumers from choosing a-la carte channels. Bouquets result in natural economies of scale for broadcasters due to resultant widening of reach, thereby actually reducing the cost for consumers. This rationale has been lucidly explained by Joe Nocera in ***Bland Menu if Cable Goes à la Carte*** in the New York Times dated 24.11.2007:

> *"True, if you decide to take only one or two channels, à la carte pricing will save you money. But how many people are going to limit themselves to one or two channels?* ***In fact, even if you pick as few as a dozen channels, à la carte will almost surely cost more than your current "exorbitant" cable bill.***
>
> ***The reason is that unmoored from the cable bundle, individual networks would have to charge vastly more money per subscriber.*** *Under the current system, in which cable companies like Comcast pay the networks for carriage — and then pass on the cost to their customers — networks get to charge on the basis of everyone who subscribes to cable television, whether they watch the network or not. The system has the effect of generating more money than a network "deserves" based purely on viewership. Networks also get to charge more for advertising than they would if they were not part of the bundle.*
>
> ***Take, for instance, ESPN, which charges the highest amount of any cable network: $3 per subscriber per month. (I'm borrowing this example from a recent research note by Craig Moffett, the Sanford C. Bernstein cable analyst.) Suppose in an à la carte world, 25 percent of the nation's cable subscribers take ESPN. If that were the case, the network would have to charge each subscriber not $3, but $12 a month to keep its revenue the same.*** *(And don't forget: with its $1.1 billion annual bill to the National*

*Football League alone, ESPN is hardly in a position to tolerate declining revenues.)*

*We all have our particular interests and tastes, and under its current business model, cable does a remarkable job of satisfying those interests.* ***Diversity of programming is one of the real benefits that cable has over the old over-the-air broadcasting system. When we pay for the cable bundle we are, in effect, subsidizing those channels for everybody — including ourselves****."*

(emphasis supplied)

2.21 It is imperative to consider that the demand for any product (including TV channel) is a function of price and dependent amongst other things, largely on the incremental value that a subscriber is willing to pay for such channel. Therefore, a channel which has no demand at Rs. 10 per month may have demand at Rs. 2 per month, which is the incremental value that the subscriber is ready to pay to avail the channel. Similarly, the popularity of channel depends on region, location, social, economic, religious and political preference of viewers in a particular area/ household. What may be popular for some viewers may be unwanted for others and vice versa. While pricing a bouquet of channels, a broadcaster is therefore trying to balance, amongst other things, (a) the variety of choice of the subscriber base; (b) the varying value that subscribers in different location or of different background are ready to allocate to a group of channels; (c) an optimized distribution of broadcasting and marketing cost; (d) affordable pricing for attracting maximum viewership; (e) projected advertisement revenue based on expected viewership. However, in the case of *a-la carte* pricing of channels, the broadcaster has to primarily take into consideration the cost of broadcasting, marketing and infrastructure divided by the expected number of subscriber, as offered cannel would have to be marketed and provided as a separate product having its distinct cost.

2.22 It is pertinent to point out that TRAI had also issued a similar Consultation Paper on Tariff Related Issues for Broadcasting and Cable Services dated 16.08.2019 which was challenged by DCI before the Hon'ble Delhi High Court on the ground that it was marred by judicial impropriety inasmuch as it proceeded with a pre-determined and pre-conceived notion that broadcasters have distorted the broadcasting market and consumer choice through perverse pricing and deep discounting. The said writ petition is presently pending consideration before the Hon'ble Delhi High Court. TRAI's proposals in in the present Consultation Paper can result in interfering with the consumers' right of choice by ignoring the economic rationale and factual data pointing towards overwhelming preference of consumers for bouquets as opposed to a-la-carte channels.

2.23 TRAI's assumption that unreasonable amounts of discount results in illusionary perverse pricing affecting consumer choice, was without any basis and not based on any study. Further, the conclusion that consumers were not availing a-la-carte channels due to high costs compared to bouquets does not consider any economic or empirical evidence.

2.24 DCI had pointed out at the stage of consultation in respect of the NTO 2.0 framework that its operation will translate to fewer choices for the subscribers at higher prices, thus completely ignoring public interest and failing to recognize the need of the consumers to access wide variety of content across different genres. TRAI has recognized such issue in the present Consultation Paper as follows: "*The proposed RIOs by Broadcasters may cause significant changes in the packages, especially due to keeping popular channels at higher ala-carte prices, not being part of bouquets. This enjoins DPO to make very large number of plans and package offerings. Therefore, the DPOs require support from broadcasters so that they do not have to make large number of plans/ bouquets*" and "*Stakeholders also suggested that in order to have smooth implementation, popular channels of the broadcasters may need to be made available in the bouquets offered to consumers by broadcasters as well as DPOs*".

2.25 TRAI has made several conclusive statements in the present CP without providing any supporting material / market survey / data to substantiate such claims. DCI is not in a position to address / counter such statements in the absence of the basis / material forming the basis of such conclusions. Therefore, the process of regulation-making of the New Regulations fails to conform to the fundamental tenets of transparency.

2.26 TRAI may consider that the broadcasters are at the discretion and mercy of the DPOs in relation to the distribution / reach of their channels to the consumers as the broadcasters have no control over the DPOs in matters of delivery of their channels to subscribers either through placement of channels in a particular position or bouquet.

2.27 Similarly, the consumers are effectively at the mercy and at the sole discretion of the relevant DPO for access to any particular channel and would either have to choose the bouquet and / or the relevant DPO which carries the particular channel as decided by the DPO or pay additional individual amounts for accessing the same on a-la-carte basis. In the absence of any regulation of the manner of development / augmentation of its carrying capacity by the DPOs, DPOs will try to maximise their revenue by pushing popular channels to the subscribers.

**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.**

**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).**

**Response:** The query raised by TRAI on the basis of the stakeholder comments is a welcome move to re-consider its position with regard to the maximum price of pay channels to be included in bouquets. In view of this, TRAI may consider the various submissions made by DCI on the rationale for pricing of a-la-carte and bouquet channels while taking a view on whether to prescribe any ceiling price for channels for their inclusion in a bouquet. As explained earlier, the pricing of bouquets involves a completely distinct and different process and takes into consideration very different factors than a-la-carte prices. Therefore, it would not be possible to identify prices of individual channels in a bouquet. There is no occasion for perverse pricing while working out bouquet prices. It is respectfully submitted without prejudice, that the first test on discounting included in the regulations and upheld by the Hon’ble Bombay High Court would inure to the interests of consumers.

The suggestion to fix the ceiling on price of channels vis-à-vis bouquet prices is an unwarranted restriction on right to broadcast and on viewer's right to receive such broadcast. The Hon'ble Supreme Court in ***Sakal Papers Pvt. Ltd. v. the Union of India, AIR 1962 SC 305*** has observed the following:

> "*24. A bare perusal of the Act and the Order thus makes it abundantly clear that the right of a news-, paper to publish news and views and to utilise as many pages as it likes for that purpose is made to depend upon the price charged to the readers. Prior to the promulgation of the Order every news-paper was free to charge whatever price it chose, and thus had a right unhampered by State regulation to publish news and views. This liberty is obviously interfered with by the Order which provides for the maximum number of pages for the particular price charged. The question is whether this amounts to any abridgment of the right of a newspaper to freedom of expression. Our Constitution does not expressly provide for the freedom of press but it has been held by this Court that this freedom is included in "freedom of speech and expression" guaranteed by clause (1)(a) of Article 19, vide Brij Bhushan v. The State of Delhi. This freedom is not absolute for, clause (2) of Article 19 permits restrictions being placed upon it in certain circumstances. That clause runs thus:*
>
> > *"Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restric- tions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."*
>
> *It is not claimed on behalf of the State that either the Act or the Order made thereunder can be justified by any of the circumstances set out in this clause. The right to propagate one's ideas is inherent in the conception of freedom of speech and expression. For the purpose of propagating his ideas every citizen has a right to publish them, to disseminate them and to circulate them. He is entitled to do so either by word of mouth or by writing. The right guaranteed thus extends, subject to any law competent under Article 19(2), not merely to the matter which he is entitled to circulate, but also to the volume of*

*circulation. In other words, the citizen is entitled to propagate his views and reach any class and number of readers as he chooses subject of course to the limitations permissible under a law competent under Article 19(2). It cannot be gainsaid that the impugned order seeks to place a restraint on the latter aspect of the right by prescribing a price page schedule. We may add that the fixation of a minimum price for the number of pages which a newspaper is entitled to publish is obviously not for ensuring a reasonable price to the buyers of newspapers but for expressly cutting down the volume of circulation of some newspapers by making the price so unattractively high for a class of its readers as is likely to deter it from pur- chasing such newspapers.*

*25. It is not disputed that every newspaper evolves a plan of its own for carrying on its activities. Bearing in mind factors such as the place of publication, the class of the reading public which may be excepted to subscribe to the paper, the conditions of labour, the price of material, the, availability of advertisements and so on it decides upon its size, the proportion of different kinds of matter published in the newspaper, such as news, comments, views of readers, advertisements etc., and the price to be charged. The plan evolved by it is sought to be rudely shaken if not completely upset by an order which it is open to the Central Government to make under Section 3(1) with a view to curtailment of circulation of newspapers. No doubt, under Section 3(4) the Government is required to consult associations of publishers. Apart from the fact that the Government is not bound by the opinion of the associations, the mere circumstance that consultation with them is made obligatory, the action of the Government in formulating an order does not cease to be a direct interference with the freedom of speech and expression of a citizen*."

The Hon'ble Supreme Court has further held the following in ***Bennett Coleman & Co. and Ors. v. Union of India, (1972) 2 SCC 788***:

"82. …*In the garb of distribution of newsprint the Government has tended to control the growth and circulation of newspapers. Freedom of the press is both qualitative and quantitative. Freedom lies both in circulation and in* *content. The newsprint policy which permits newspapers to increase circulation by reducing the number of pages, page area and periodicity, prohibits them to increase the number of pages, page area and periodicity by reducing circulation. These restrictions constrict the newspapers in adjusting their page number and circulation.*"

Apart from the stiff competition faced by smaller broadcasters like DCI, from other broadcasters, they are also facing increasing competition from other technologies / platforms that are providing similar services at highly competitive prices. Unless the broadcasters are allowed a free hand in forming its business and pricing strategy, it will also create adverse level playing field against such competing platforms, which are operating on a free market basis, without any price or content restrictions.

The reasons for channels of broadcasters to be priced close to Rs. 19/- pursuant to the NTO 1.0 regime, and thereafter close to Rs. 12/- pursuant to the NTO 2.0 regime, by either increasing the price or decreasing it from more than Rs. 19/- or Rs. 12/- can be deciphered in view of the economic rationale of pricing elaborated by DCI in the earlier part of its comments:

(i) **Capping of channel prices up to Rs.19/- or Rs. 12/-**: This is the natural economic outcome of the mandatory requirement to offer all channels on a-la-carte basis. As explained earlier, every channel will have to work out their costs on individual basis, which was earlier being shared / socialized in the bouquet. Nonetheless, the price was limited to Rs. 19/- pursuant to the NTO 1.0 regime, and to Rs. 12/- pursuant to the NTO 2.0 regime, to ensure that these channels are still capable of being sold in a bouquet, where the cost of broadcasting would be reduced significantly, and the channel can be easily sold in a bundle, with other channels.

(ii) **Decrease in channel prices to Rs. 19/- or Rs. 12/-**: Prior to the NTO framework, there was no compulsion to offer every channel on a-la-carte basis, and neither did there exist a price cap for channels to be included in a bouquet. Accordingly, some of the channels may have been priced much higher as a-la-carte depending on the cost of broadcasting. Nonetheless, they were also sold in bouquets. However, once the NTO framework came into force, the price of such individual channels had to be necessarily reduced, to retain the ability to bundle them with other channels. This was not necessarily in the best interest of the broadcaster as far as packaging and pricing of bouquet was concerned.

(iii) DCI had submitted in its earlier representations before TRAI that the data relied upon by TRAI in its past consultation papers actually supports and demonstrates the position that despite being provided the facility of opting for a-la-carte channels, the majority of the consumers prefer bouquets and that they do not have any grievance with regard to formation of bouquets or alleged "unpopular" channels being "pushed" on subscribers.

(iv) TRAI has further noted in para 2.23 of the present Consultation Paper that *"…it is further observed that channel prices in a bouquet may vary widely, ranging from few paise to as high as ceiling limit of an a-la-carte channel forming the bouquet.* ***This causes clubbing of low value non popular channels with high priced popular channels and therefore creates non-homogeneity in bouquet composition. This strategy of broadcasters' makes subscribers to opt for bouquets, those are not their choices. This practice may not be curbed only by capping on discount on sum of a-la-carte prices in a bouquet. Therefore, there is a reason to ensure that an effective a-la-carte choice is available to consumers without being susceptible to perverse pricing of bouquets and to maintain homogeneity in type of television channels within a bouquet.***" Such an assumption is erroneous and contrary to general tendency of prices for a-la-carte and bundled channels. TRAI has not disclosed any empirical basis or study on which such assumption has been made as opposed to the multiple literature referred above that suggests otherwise. It is reiterated that broadcasters prefer to bundle channels by providing channels across all genres, e.g. general entertainment, infotainment, sports, cinema, etc. to attract higher viewership from different sections of subscribers having individual preferences. The bouquets of channels are therefore priced in a manner that every subscriber, having a preference of certain channels, finds it easy to avail additional channels which they would not have otherwise subscribed to across different genres. The costs incurred by broadcasters on advertising, networking, infrastructure, etc. are socialized amongst different sections of viewers. Bundling of different channels across different genres thus enables optimization of marketing costs. Therefore, bouquets offered by broadcasters will necessarily have channels of very less prices clubbed with one or two high-price channels.

(v) The considerations for pricing structure for a-la-carte and bouquet are very different and based on market forces. It is reiterated that provision of channels in bouquets allows costs of different channels to be socialized. Broadcasters have been compelled to offer channels at the ceiling cap of Rs. 19/- pursuant to the NTO 1.0 framework, and Rs, 12/- pursuant to the NTO 2.0 framework, so as to be included in bouquets. Even if it is assumed that prices of individual channels in a bouquet get hedged while opting for a bouquet by subscribers, it is to their benefit as they receive a larger number of channels at a lower cost, as opposed to opting for channels on an a-la-carte basis. TRAI has not conducted any study on the economic rationale of a-la-carte vis-à-vis bouquet to conclusively show what benefit subscribers would derive by taking channels on a-la-carte basis rather than in the form of bouquets. In fact, if the insistence is on a-la carte choice, broadcasters should be allowed to price a-la carte channels freely based on their financial and marketing projections.

(vi) In view of the discussions above, it is submitted that the ceiling of Rs. 12/- on MRP of a-la-carte channel for it to be included in bouquet is an undue and unwarranted restraint on the free pricing of TV channels. It results in distortion of pricing. The imposition of such limit artificially on any channel, will either (a) result in increase in consumer spending if the channel cannot be included as part of a bouquet; and (b) result in extinction of smaller broadcasters who rely on some of the driver channels and provide additional channels as part of the bouquet to increase viewership and lower costs. The imposition of artificial ceiling on prices of channels for inclusion in bouquets amounts to interference with the business of the broadcasters, and their ability to effectively disseminate information and ideas. DCI has to work out the a-la-carte cost of channels in the present dispensation having regard to competition from other broadcasters, potential market for bouquets and advertisement revenues, and competing service providers in other platforms, e.g. Amazon.

(vii) In light of the above, TRAI **<u>should not</u>** continue to prescribe a ceiling price of a channel for inclusion in a bouquet in our opinion. TRAI should consider regulatory forbearance and leave channel prices to be determined by market forces. There is sufficient competition in the market to ensure reasonable pricing of all channels. In view thereof, no price ceiling ought to be imposed for inclusion of a channel in a bouquet.

**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.**

**Response**: It is respectfully submitted that TRAI's very notion of "popular" channels is not only vague, but also discriminatory and is in violation of the rights of broadcasters and viewers to be informed, educated and entertained. TRAI fails to provide any basis for categorizing a channel as "popular" and in doing so, discriminates against the niche channels like the ones provided by DCI which serve a unique purpose and cater to a specific and limited set of subscribers.

TRAI has proceeded on the erroneous assumption that bouquets formed by broadcasters contain only a few popular channels, and thus subscribers end up paying for "unwanted" channels and this, in effect, restricts consumer choice. TRAI has failed to take into account the fact that the demand for any product (including TV channels) is a function of price and dependent amongst other things, largely on the incremental value that a subscriber is willing to pay for such channel. Therefore, a channel which may be undesirable / unwanted to a consumer at Rs. 10 per month may be desirable at Rs. 2 per month, which is the incremental value that the subscriber is ready to pay to avail the channel. Further, it is reiterated that the demand of channels is dependent on various factors and may vary from person to person.

India is a very diverse country with varying preferences and tastes depending on regions. Bollywood may be 'popular' for north India but it may not be so 'popular' for south India. Similarly regional channels and movies will be popular in their respective regions and not to popular in other regions, even though they are subscribed in other regions also. When IPL is playing Star sports becomes popular but if Star sports runs a cycling tournament the channel may not be popular. Hence it is content which is important and not the Channel.

As discussed above, the pricing of a bouquet of channels is a distinct exercise which requires broadcasters to consider a variety of factors such as different demand level for different channels, optimization of distribution cost, comparative utility value of channel, difference in consumer base, territory, etc., affordable pricing for attracting maximum viewership, and projected advertisement revenue based on expected viewership.

Broadcasters have to incur significant cost towards advertising and marketing its products (channels / bouquet); arranging necessary capital infrastructure for network development; maintaining employees and offices for on-ground operations, etc. DCI incurs substantial marketing costs and makes heavy investment in this regard on an annual basis. Discovery
as a group is continuously involved in creating very high quality informative and educative programmes for broadcasting in various jurisdictions across the globe, including India. This entails substantial cost on the part of Discovery as a group, including DCI.

A broadcaster is involved in: (a) content creation which includes: (i) in-house production, i.e. ideation, scripting, shooting, graphics addition, editing, ensuring compliance of programme with law; deciding programming order based on TRPs and viewer preferences, etc.; and (ii) outsourced production, i.e. programme feed, equipment (cameras, jibs, etc.),
workspace (shoot and edit location), etc.; and (b) content delivery which includes obtaining license from the Ministry of Information and Broadcasting, obtaining transmission equipment, satellite leasing and technical compliance. The focus on broadcasters varies widely with respect to the nature of content of their channel, e.g. general entertainment, sports, movies, infotainment; the quality of content and production; the target viewers, etc. Even though every broadcaster is involved in providing channels, each of these channels have a distinct characteristic. A general entertainment channel, e.g. Star Plus, SAB TV, Zee TV, is very different in terms of content from the Discovery Channel of DCI.

It is pertinent to appreciate that popularity of a channel cannot be the only determinative factor in a democratic setup. It is respectfully submitted that typically entertainment-based channels have higher viewership than channels that carry esoteric or educative content. However, despite having limited viewership, the niche channels like the ones provided by DCI serve a unique purpose and cater to a specific and limited set of subscribers. TRAI has itself, in para 2.24 of the present Consultation Paper, stated that "*...given that the television channels constitute a specific product, one channel is not substitutable by other television channel. Individual consumer preference decides which television channel is subscribed by her/ him. Therefore, in a multi-channel scenario, each channel constitutes a non-substitutable product fulfilling the choice and need of a certain set of consumers*."

Prescribing a ceiling on MRP of pay channels would be counterproductive to TRAI's objective of encouraging foreign investments in this sector and the Central Government's initiative of ease of doing business in India.

The pricing of channels is the discretion of the broadcasters as in the case of any creative pursuit, whether it be literature, drama, art, cinema or TV programs. While viewers may have preference for a particular channel / program, in most cases, such channels / programs are not independent of and untouched by the fierce competition of channel content and prices in the Indian broadcasting market. Any broadcaster would therefore work towards the most optimum a-la-carte price at which it can secure maximum viewership as the TRP rating of channels / programs is essential for earning advertisement revenue. It is most respectfully submitted that the imposition of a ceiling on the MRP of pay channels is similar to imposing an MRP on the price of a book or of a painting by a particular author / artist on the ground that such work is of high preference among art connoisseurs. It is submitted that imposition of price ceiling on a-la-carte channels that are not co-related with bouquet formation would amount to a direct infringement of the broadcaster's rights under Article 19(1)(a) of the Constitution of India. It is most respectfully submitted that TV programs / channels, not being an essential service, is not an indispensable service to the viewers. TRAI may kindly consider that any broadcaster has an absolute discretion to discontinue any channel / program despite high consumer preference and such discretion would equally extend to pricing to the extent it does not involve inclusion of such channel in the bouquet.

In light of the above, we are of the opinion that TRAI **<u>should not</u>** prescribe a ceiling on the MRP of pay channels  Prescribing a ceiling on the MRP of pay channels amounts to treating different channels with different pricing considerations equally. This is violative of the principles of fairness and equality under Article 14 of the Constitution of India.

TRAI should exercise regulatory forbearance and leave channel prices to be determined by market forces. 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 MRP of pay channels.

**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.**

**Response**: The third proviso to Clause 3(3) of the Tariff Order earlier provided that the MRP per month of bouquet of pay channels could not be less than 85% of the sum of MRPs per month of the a-la-carte pay channels forming part of that bouquet, i.e. amounting to 15% cap on discounts. Such provision was struck down by the Hon'ble High Court of Madras as being arbitrary, and the Hon'ble Madras High Court’s findings were affirmed by the Hon'ble Supreme Court of India, thereby setting at large the pricing ability of broadcasters to price its channels.

However, TRAI issued and re-introduced such cap on discount in an indirect and circumlocutory manner vide the twin conditions in an amendment to the third proviso to Clause 3(3) of the Tariff Order which amounted to a 33% cap on discounts. While the Hon’ble Bombay High Court upheld the first twin condition, it has held that the second twin condition or ‘average test’ in the third proviso to Clause 3(3) of the amended Tariff Order - which provides that the MRP per month of any a-la-carte pay channel, forming part of a bouquet, shall in no case exceed three times the average MRP per month of a pay channel of that bouquet – is arbitrary, being contrary to the mandate of Section 11(4) of the TRAI Act, 1997 of ensuring transparency and violative of the petitioner broadcasters' fundamental rights under Article 14 of the Constitution of India.

In view of the economic rationale of a-la-carte and bouquet pricing explained above, it is thus clear that there is no co-relation between the two and that there is no occasion for discounting of a-la-carte prices for purposes of bouquet formation. Without prejudice to this position, with regard to the specific query raised by TRAI, it is submitted that capping of discounts and price capping, where applicable, directly interferes with broadcasters' freedom of speech and expression under Article 19(1)(a) of the Constitution of India, by affecting its ability to structure its business, and right to broadcast contents in a way most conducive to its business. Such restrictions to address the operational constraints of DPOs to plan and prepare multiple bouquets and packages would not be in public interest and therefore, would be in violation of Article 19(1)(a). Bundling and discounting is beneficial for the consumers and TRAI should allow market forces to determine such discounting which will be beneficial for the consumers and allow the healthy competition, therefore in order to create an enabling environment and light handed regulatory regime there should be no ceiling on discounting.

**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 criterion for ensuring homogeneity in pricing the channels to be part of same bouquet?**

**Response:** As elaborated above in this response, the pricing of channels and pricing of bouquets involves a complex economic and financial exercise taking into consideration multiple factors of which, the cost of content is only one of the factors. As rightly pointed out by TRAI at para 2.4 of the present Consultation Paper, even the cost of production of different programs within the same channel varies significantly because of multiple factors. Further, TRAI has itself, in para 2.24 of the present Consultation Paper, stated that "*...given that the television channels constitute a specific product, one channel is not substitutable by other television channel. Individual consumer preference decides which television channel is subscribed by* *her/ him. Therefore, in a multi-channel scenario, each channel constitutes a non-substitutable product fulfilling the choice and need of a certain set of consumers*." The proposal to impose a ceiling on the price of pay channels in effect means applying a homogeneous standard of pricing by the regulator for different kinds of channels with varying content. Any such effort would not only be arbitrary and discriminatory, but also detrimental to the viability of certain broadcasters and their right to freely carry on their business.

Ensuring homogeneity in pricing the channels to be part of same bouquet amounts to treating different channels with different pricing considerations equally. This is violative of the principles of fairness and equality under Article 14 of the Constitution of India. **Therefore, we firmly believe that channel prices in bouquets should not be homogeneous**.

**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?**

**Response:** It is most respectfully submitted that TRAI's entire approach in alleging that broadcasters indulge in "perverse pricing" of bouquets lacks a holistic understanding of the economic rationale of pricing of channels in the broadcasting sector, as has been detailed above in this response. TRAI has failed to consider and discuss the large volume of literature by eminent economists on the economic rationale of a-la-carte vis-à-vis bouquet pricing before giving such finding.

TRAI is wholly mistaken in assuming that broadcasters provide huge discounts on bouquet prices resulting in "perverse pricing" to prevent consumers from choosing a-la-carte channels. Bouquets result in natural economies of scale for broadcasters due to resultant widening of subscriber base, thereby actually reducing the cost for consumers. Unless the broadcaster is allowed complete freedom to market its channels, by discounting in a manner that fits into the market requirements, the broadcaster will not be able to operate in an efficacious and conducive manner. Discounting is an important business tool for a broadcaster to arrange its affairs in a manner which is attuned to market demand.

There has been no study conducted by TRAI that capping of a-la-carte channels has resulted in increase in subscription numbers; on the contrary, since there is a capping of price, the prices of cable TV has increased along with the cost for consumers, and the choice or variety offering which the consumers used to get prior to the NTO framework has decreased.

Therefore, we do not agree that any measures need to 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*". TRAI's assumption that broadcasters provide huge discounts on bouquet prices resulting in "perverse pricing" to prevent consumers from choosing a-la-carte channels is erroneous, ill-founded, and not based on any empirical study or data.

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.**

**Response:** It is respectfully submitted that the Hon'ble Bombay High Court has held the second twin condition or 'average test' in the third proviso to Clause 3(3) of the amended Tariff Order - which provided that the MRP per month of any a-la-carte pay channel, forming part of a bouquet, can in no case exceed three times the average MRP per month of a pay channel of that bouquet – to be arbitrary, being contrary to the mandate of Section 11(4) of the TRAI Act, 1997 of ensuring transparency, and violative of the petitioner broadcasters' fundamental rights under Article 14 of the Constitution of India. It is thus not open to TRAI to raise such issue of capping of MRP of an a-la-carte pay channel forming part of a bouquet with reference to average prices of all pay channels forming the same bouquet, as the same has been set aside by the Hon'ble Bombay High Court.

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

**Response:** Kindly refer to response to Q4(a) above.

**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.**

**Response:** While the NTO 1.0 framework allowed broadcasters to provide discounts capped at 15% on both bouquet and a-la-carte offerings, the NTO 2.0 framework took away broadcasters' ability to provide discounts on bouquets. Broadcasters are now permitted to offer discounts to distributors of television channels on the MRP of a-la-carte pay channels only, i.e. not exceeding 15% of the MRP of such pay channel, but not on bouquets of pay channels.

It is respectfully submitted that taking away broadcasters' ability to provide discounts on bouquets, while allowing the same for a-la-carte channels, is arbitrary and discriminatory since it gives undue advantage to one set of products, i.e. a-la-carte channels vis-à-vis bouquets. TRAI has ignored the fact that bouquets and a-la-carte channels are two completely separate products subject to distinct pricing considerations.

By taking away broadcasters' ability to provide discounts on bouquets of channels, TRAI has resorted to dictating terms regarding the business decisions of broadcasters on how to offer their products which directly interferes with broadcasters' business operations and is thus violative of Article 19(1)(a) of the Constitution of India. Such restriction directly interferes with broadcasters' freedom of speech expression under Article 19(1)(a) of the Constitution of India, by affecting their ability to structure their business, and right to broadcast contents in a way most conducive to their business.

Since the NTO 2.0 framework only allows discounts to be offered on a-la-carte channels now, and not on bouquets of channels, there has been a significant increase in the prices of bouquets, thus, affecting the marketability of channels and resulting in smaller broadcasters losing most of their subscriber base, which in turn has adversely affect their revenue collection and consequently, the quality of the content produced by them.

It is most respectfully submitted that discounting is an essential part of business strategy in order to ensure maximum reach of a product to the widest possible market. It is an established legal principle that the freedom of speech and expression encompasses the freedom of the press and that the freedom of the press is both qualitative and quantitative. This freedom lies both in circulation and in content.

Any discount on MRP would be beneficial for consumers if such discount is ensured to be passed on by the DPOs to the consumers. It is respectfully submitted that under the present regulatory dispensation, TRAI has failed to put in place a mechanism to ensure that discounts provided by DPOs to subscribers at retail level are not significantly different from the discounts provided by broadcasters to DPOs at wholesale level so as to ensure that a substantial part of the benefit of discount provided by broadcasters ultimately flows to the subscriber.

Allowing broadcasters to offer discounts to DPOs may increase the efficiency and the motivation of a DPO to aggressively sell a broadcaster’s channel and in the process, expand its subscriber base. Small broadcasters such as DCI should be permitted to offer further discounts to DPOs as per their business strategy to incentivize / reward efficient DPOs for reaching out to different target markets and expanding the broadcaster’s subscriber base. Strategic pricing through discounts on the pay channels / bouquet of pay channels is necessary to generate and expand on viewership, which is the primary factor for securing revenue for any channel for a small and niche broadcaster such as DCI.