Disney Star's Response to TRAI's CP on Issues related to New Regulatory Framework for Broadcasting and Cable services

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A. PRELIMINARY

We welcome the initiative taken by TRAI ("the Authority") to look into issues impacting the implementation of the New Regulatory Framework ("NRF"), and we sincerely hope that this consultation process will provide a much-needed reset to the regulatory framework that will unlock the true potential of the Broadcasting and Cable Services (B&CS) industry in India. Before we respond to the questions in the Consultation Paper (CP), we would like to set the context to our responses by highlighting (i) disruptions in the B&CS sector and growth challenges faced by the industry (ii) our fundamental issues with the CP and the way questions are framed, (iii) regulations in India compared with other countries (iv) the growth opportunities despite such regulations and (v) our recommendations for regulatory forbearance.

1) DISRUPTIONS IN THE B&CS SECTOR AND THE GROWTH CHALLENGES FACED BY THE INDUSTRY

The B&CS industry is currently recovering from the impact of the pandemic and disruptions caused by the implementation of the New Tariff Order in 2019 (NTO 1.0). These two disruptions in the last three years have taken the industry back to its 2017-18 level in terms of revenues and the industry is currently very fragile.

For instance, the implementation of NTO 1.0 in 2019 caused major disruptions to both the industry and consumers. As acknowledged in para 2.9 of the CP, the Distribution Platform Operators' (DPOs) IT systems did not have the capacity to handle the mass migration of consumers to the new regulatory framework. As a result, as many as *11 crores[1] TV households were forced to migrate to NTO 1.0* through the Authority's "Best-Fit-Plan" that empowered the DPOs to select channels/packages on behalf of their subscribers. Best Fit Plans defeated the stated purpose of enabling consumers to pick and pay for channels of their choice by skewing the regulatory field in favor of a-la-carte choice. In addition to such wide scale disruptions, NTO 1.0 increased consumers' monthly TV bills by 22%[2]. While the increase in TV bills resulted in a 7% growth in subscription revenues, on the flip side, rising bills and prices resulted in a *26 million reduction in the number of pay TV subscribers[3].* The number of channels available per TV household also fell from 315 channels to 265 channels post NTO 1.0, largely from the restrictions placed by NTO 1.0 on bundling and packaging of TV channels for both broadcasters and DPOs. Additionally, restrictions in bundling and bouquet formation reduced the reach (and hence advertisement revenues) for certain genres of TV channels, and as a result several niche channels had to shut shop.

Before the industry was able to recoup, the pandemic struck and deepened the disruptions. As recognized by the CP in para 1.22, Direct-to-home (DTH) subscribers decreased from 70.99 million to 68.89 million. Similarly, active subscribers of major multi-system operators (MSOs)/headend in the sky (HITS) decreased from 47.58 million to 45.55 million. Consequently, revenues of broadcasters as well as DPOs were projected to contract in FY 2020-21 by INR 55 billion and INR 15 billion respectively. Also, according to the latest report from FICCI and EY, *Covid-19 wiped out INR 102 billion of revenues from the*

[1] *Source: ChromeDM, a data and analytics firm*
[2] *According ChromeDM, monthly TV bills increased from INR 222 before NTO 1.0 to INR 271 immediately post its implementation.*
[3] *FICCI E&Y M&E Report 2020*

sector and further caused the loss of 6 million active pay TV subscribers. The same report from FICCI and EY also states the industry will take another year or so to reach its pre-Covid revenue level.

The loss in revenues and shutting down of TV channels meant loss of employment for thousands of Indians. According to report by BCG, the M&E sector creates 3.6 additional indirect jobs for every direct employment in the sector. It must be remembered that the opposite also holds true when revenues are wiped out from the sector/industry or when channels are shut down.

With this background, we would like to thank the Authority for recognizing the current fragility of growth in the industry and for its attempt to avoid any further disruptions. But unfortunately, what the industry needs is not a quick fix solution to prevent another disruption, but bold reforms that will restore the fundamentals of the industry and enable long term viability, sustainability, and competitiveness.

2) FUNDAMENTAL ISSUES WITH THE CP AND WAY THE QUESTIONS ARE FRAMED

To recommend a long-term solution to the problems that are plaguing the industry, it is extremely important to correct the Authority's allegation of "perverse pricing" of bouquets vis-à-vis a la carte (ALC) prices. Despite several attempts in the past to correct this misunderstanding, the current CP continues with this allegation and has framed questions to rectify it accordingly. This is one of our biggest concerns with the CP. In fact, this fundamental error is the primary reason for the failure of NTO 1.0 to deliver its stated objective of adequate choice at an affordable price. It also reflects a myopic understanding of the economics of the industry.

In the following paragraphs, we explain how broadcasters are able to discount the prices of bouquets vis-à-vis the sum of the prices of ALC channels in each bouquet, factors that determine the depth of these discounts, and the impact of bouquets on consumer welfare and the industry as a whole.

i. **The economics of why bouquet prices can be significantly less than the sum of the ALC channels is simple**. Bundling results in two efficiencies which help reduce costs to consumers – (i) more the channels in a bouquet, more the consumers who become subscribers to it thereby making it more economical; and (ii) bouquet being the preferred mode of channel consumption, the higher the chances for advertising revenue which in turn allows broadcasters to further subsidize subscription costs for the consumers. It is a well-known fact that advertising revenue constitutes on an average 70% of a pay broadcaster's revenue profile.

   Let us look at a simple case of a bouquet formed by bundling two channels with different subscriber bases. When these two channels are bundled, the subscriber base for the bouquet will equal the sum of the subscriber bases of the two channels. The subscribers of these two channels stand to gain from economies of scale because with a combined subscriber base they may subsidize each other's preference. Further, in B&CS terminology, this effect is called increase in the target audience or reach from bundling, ***and it is fundamental to explaining why bouquets are able to attract more advertisements***. When a target audience or reach increases, the bouquet becomes more attractive for advertisers (increased subscribers mean more eyeballs), and as a consequence helps earn more advertisement revenue for the broadcasters. As economies of scale and advertisement revenues increase, broadcasters are able to reduce the prices of the bouquet. Attractive prices in any price-sensitive market increases demand, and hence it results in more subscribers for the bouquet. To push an a-la-carte model would result in these efficiencies being stripped away from consumers and the entire burden would be passed on to consumers making the channel prices more expensive. This already stands demonstrated from the fact that between 2018 and 2021, about 28 million[4] people have fallen off the pay television ecosystem since the introduction of NTO 1.0 which for the first time introduced a uniform price for all channels across the country.

This in simple terms is how broadcasters are able to offer discounts on bouquets. There is nothing perverse about it. It is a simple case of a larger subscriber base and more advertisement revenue allowing broadcasters to reduce the prices of the bouquet, eventually benefitting the consumers.

ii. **The discounts on bouquets depend on many inter-related variables and they are different for each permutation and combination of a pay TV channel**. For instance, these variables are the advertisement-subscription revenue mix of the TV channels, the subscriber base (or reach) of each individual channel in the bouquet, the cost of production and distribution, the demand elasticity of each channel, and so on. All these variables are inter-related, and their permutation and combination produce different levels of discounts.

For instance, ***bundling of homogenous channels*** may not increase the reach of the bouquet and hence it may not result in an increase of advertisement revenues. On the other hand, ***bundling of heterogenous channels*** will increase the reach of the bouquet, attract more advertisement revenues, and allow broadcasters to offer more discounts. This is true for other industries as well – e.g., a *thali* with homogenous dishes, say 5 different preparations of rice, will have fewer takers than a *thali* with 5 different dishes. That is why *thalis* have different dishes – to cater to the different tastes and preferences of consumers. The same is true for a bouquet of TV channels.

The above is one such example where these variables interact. There are multiple permutations and combinations in which these variables interact in the market where there are several external factors. For instance, according to the Ministry of Information and Broadcasting (MIB), there are 40 pay TV broadcasters in India who together own around 327 pay channels. Each pay channel (as a set of different programs or copyright works) is unique, and so are the underlying business models, the advertisement-subscription revenue mix, the subscriber base (or reach), the demand, the costs, the competition, and so on.

[4] *Source: FICCI-EY M&E Report 2019 and 2022*

This means every permutation and combination of pay channels by a broadcaster to form a bouquet will result in different levels of discounts and hence one cannot prescribe a relationship between the price of the bouquet and the price of individual channels. Doing so by capping discounts is illogical and takes away the economic freedom of the stakeholders and undermines the market's ability to offer consumers value for money.

iii. **Painting "discounts on bouquets" in a bad light disregard the welfare benefits of bundling that have kept the prices of cable TV low and affordable for the last 15 years.** Inflation is a concept that needs no explanation in today's world. But in context of the current CP, we would like to draw the Authority's attention to the fact that costs as measured by the ***Consumer Price Index (CPI) increased by 153% between 2004 and 2017***[5]. This means INR 100 in 2014 would be equivalent to INR 253 in 2017 in terms of purchasing power.

For a broadcaster, rising costs are reflected in increased rents, salaries of employees, equipment and most importantly, talent for content/films/programs, and rights acquisition for various genres of content, which are acquired under market determined rates, and hence a rise in the costs of the TV channels. ***Despite these rising costs, broadcasters have been able to keep the prices of TV low with more choice for consumers.*** For instance, according to a survey commissioned by MIB[6] in 2004, the average monthly TV bill in 2004 was around INR 190 and the average household had access to around 80 channels. Adjusting for inflation, INR 190 in 2004 would be equivalent to INR 481 in 2017. But in reality, the average monthly TV bill in 2017 was only INR 222. ***This is INR 259 less than what it would be if we accounted for inflation***. That is not all - TV households on average had access to 315 channels before NTO 1.0, up from 80 in 2004. This is because broadcasters were able to bundle to keep prices low for consumers. Also, bundling enabled the launch of new channels and hence consumers had access to more TV channels at a cost lower than the inflation-adjusted monthly fee before NTO 1.0. Further, given India's uniquely diverse audience base, the ever-evolving taste for consumption of content and increasingly aspirational population, it is imperative that the content offering ought to be dynamic and diverse, which cannot be achieved without the ability to offer bouquets with flexibility.

iv. Right of speech and expression

We would like to take this opportunity to also highlight that Broadcasters enjoy and exercise their fundamental right of speech and expression when they price their television channels as well as the manner of offering i.e., á-la-carte and bouquet offering, both being independent and distinct of each other.

Content creators enjoy Article 19(1)(a) rights regardless of the medium on which such content finds place. This right extends to broadcasters who also exercise their Article 19(1)(a) right in deciding the way in which their television channels are to be offered as part of a bouquet and

[5] *Source: World Bank CPI for India*
[6] *A survey by CUTs titled "Consumer Friendly Cable TV System, 2004"*

which channel is to be bundled in what manner and pricing thereof individually and as a bundled offering. Therefore, any imposition that impacts this right would fall foul of Constitutional mandates and be liable to be struck down. You will appreciate that our submission herein is without reference / effect on such rights that inhere in us as content creators and broadcasters.

3) REGULATIONS IN INDIA COMPARED WITH OTHER COUNTRIES

A quick comparison of regulations in India compared with other countries shows that India is the only country that places restrictions on bundling, discount caps on bouquets, and price ceilings for the inclusion of channels in a bouquet.

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

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

In addition to regulating the formation of bouquets by placing caps on discounts etc, every economic activity along the B&CS value chain is regulated and these regulations minutely prescribe the manner in which stakeholders can conduct their business.

For instance, the Authority's regulations ***mandate every broadcaster to provide*** its TV channels to any DPO upon request ("must provide"). Such regulation takes away a very important component of a broadcaster's economic freedom, i.e., the ability to negotiate better conditions for the supply of its TV channels, such as better content protection systems/practices by the DPOs, timely payment of dues, transparent reporting of their subscriber base etc. The regulations also ***prohibit all forms of market-based negotiations*** and transactions between broadcasters and DPOs and mandate all broadcasters to transact with DPOs only on the former's Reference Interconnect Offer (RIO) or published rate cards. This means that all DPOs are treated equally regardless of their size or number of subscribers (or volume of sales). Such artificial imposition of equality prevents efficient DPOs from striking better deals with broadcasters and discourages market-based incentives for improved sales and services. The regulations also ***prescribe the manner in which broadcasters are to bundle their bouquets, prohibit the bundling of free-to-air (FTA) channels with pay TV channels, cap the discounts on bouquets, and prohibit all forms of incentives at the wholesale level for bouquets.*** These restrictions on bundling are despite the Authority's own data [Source CP 2019] clearly indicating that bouquets are the default choice of consumers. Additionally, the regulation imposes a price ceiling on ALC channels that can be included into a bouquet.

On the distribution front, the Authority's regulations forbid the bundling of FTA and pay channels thereby making pay channels unlikely to be available as a part of the basic tier. This is further compounded by the mandate for every DPO to carry 27 Doordarshan (DD) channels as a part of the basic package despite the Government providing free TV services i.e., DD FreeDish. Both these mandates take up precious availability in the basic tier and often comes at the cost of small broadcasters who then have to pay carriage fees for utilizing a DPO's network. Increasingly the regulations incentivize advertising revenue dependency which in the long term may have its own undesirable effects on quality of content. The regulations also prescribe the manner in which DPOs are to offer their Basic Service Tier (BST) or the Network Capacity Fee (NCF), along with price ceilings and restrictions in the numbers of channels that can be included in such NCFs/BSTs. The regulations also prescribe the way DPOs are to bundle their channels, offer discounts to their subscribers/consumers, and their share of revenues from the maximum retail price (MRP) of the channels. The regulations further prescribe the revenue share between MSOs and local cable operators (LCOs). Additionally, the Authority's regulations impose a ceiling on the price of channels that DPOs can charge their consumers and impose restrictions on the discounts that be offered.

All these regulations restrict stakeholders' economic freedom[7] and prevents the sector from reaping the potential benefits of the "invisible hand of the market[8]" that delivers quality content, customer services, consumer choice and value for money, while creating wealth and prosperity. ***Such prescriptive regulation also takes away stakeholders' focus from quality of product and services for their customers. Instead, the perverse regulation encourages the stakeholders to "game the system" for their own benefit as opposed to focusing on consumer welfare.*** This is nothing but a classic case of "regulatory failure" as highlighted in the Economic Survey of India 2019-20.

> "*Government intervention, sometimes though well intended, often ends up undermining the ability of the markets to support wealth creation and leads to outcomes opposite to those intended."*
> ***Source: Economic Survey of India 2019-20***

[7] https://www.fraserinstitute.org/economic-freedom/economic-freedom-basics; https://www.heritage.org/index/about
[8] *Economic Survey of India 2019-20 - Wealth Creation: The Invisible Hand Supported by the Hand of Trust*

For instance, the intent of TRAI via NTO 1.0 was to make TV channels more affordable and offer consumers the choice and ability to select and pay for only those channels that they want to watch. In reality, the outcome was the opposite. End-consumer prices for B&CS rose and as a result, the sector lost its competitiveness vis-à-vis emerging platforms. This is similar to outcomes in the pharmaceutical sector as highlighted in the Economic Survey of India 2019-20.

> *"The regulation of prices of drugs through the DPCO 2013, has led to increase in the price of a regulated pharmaceutical drug vis-à-vis that of a similar drug whose price is not regulated. Our analysis shows that the increase in prices was witnessed for more expensive formulations than for cheaper ones and those sold in hospitals rather than retail shops, reinforcing that the outcome is opposite to what DPCO aims to do - making drugs affordable."*
> ***Source: Economic Survey of India 2019-20***

Therefore, we recommend that the Authority undertake a larger exercise where it evaluates and assesses every regulatory intervention in the B&CS sector. While the objectives behind these interventions may be noble, the regulatory means to achieve them have produced different outcomes. Moreover, the rationales for these interventions are as old as the industry itself and the competitive landscape of the industry and the Media & Entertainment (M&E) sector has changed significantly since then. Hence, we strongly recommend the Authority revisit all of its regulatory interventions and carefully evaluate the impact that these regulations have had on economic freedom and the competitiveness of the sector.

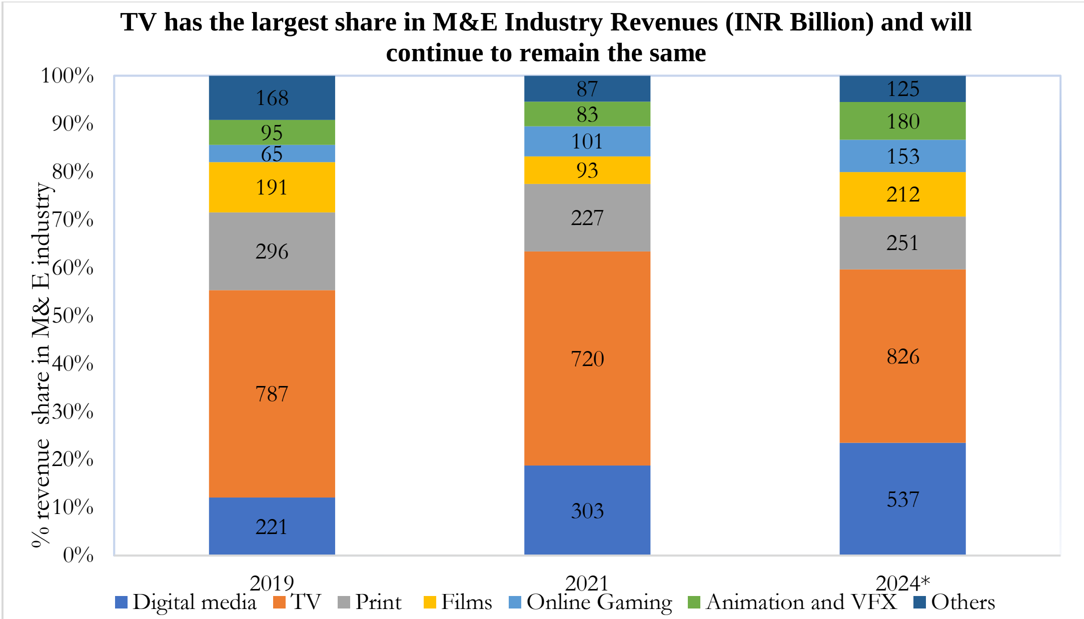
4) THE GROWTH OPPORTUNITIES DESPITE TRAI REGULATIONS

Contrary to several opinions about the future of the B&CS industry in India, the sector still presents enormous opportunities for growth.

i. **A 10% increase in TV penetration will result in INR 31 billion additional revenues/income:** According to the Broadcast Audience Research Council (BARC), only 210 million homes out of the total 300 million homes in India have TVs. In other words, TV penetration in India is only 70% compared to 98.8% in the US, 96.4% in the UK, 90% in China, 98.1% in Thailand, 100% in South Korea, and 98.1% in Malaysia. At the current average revenue per user (ARPU) of INR 223[9], a 10% increase in TV penetration will result in approximately an INR 31 **billion** increase in revenues.

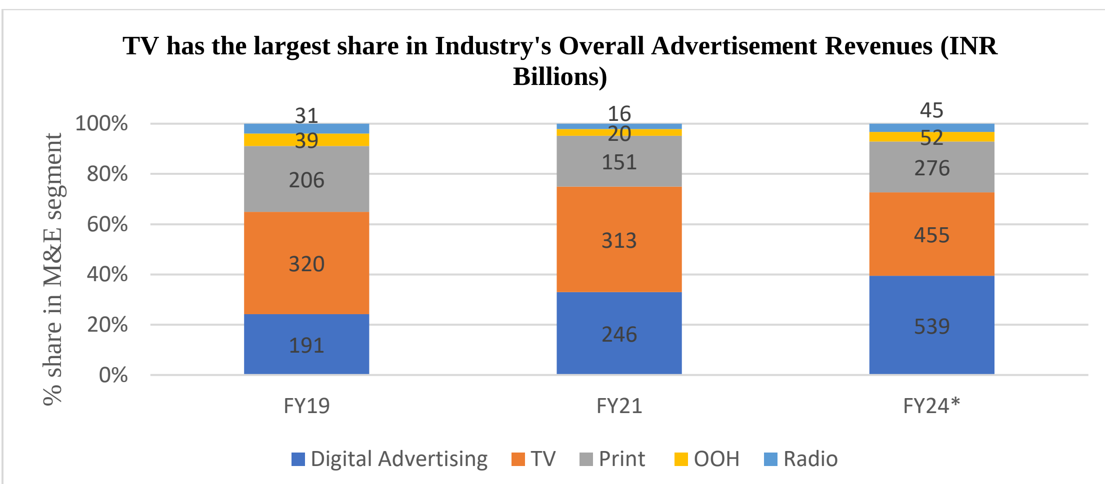
ii. **TV commands the highest share in M&E, in terms of revenues, and will continue to do so for the foreseeable future**

[9] *(Source: FICCI-EY Report 2020)*



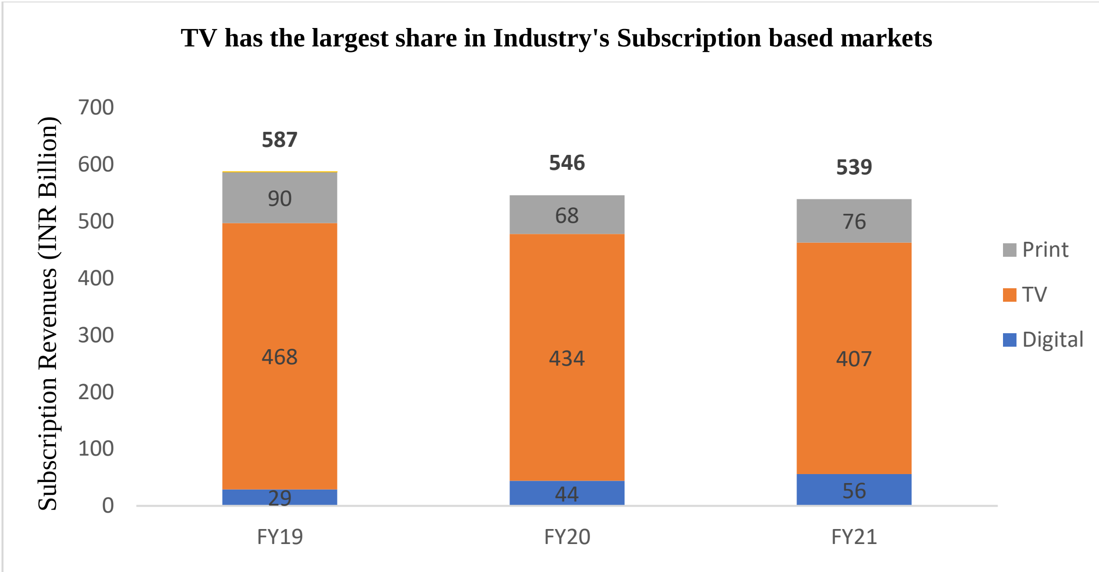
Source: *FICCI-EY M&E 2022; Note: Numbers inside the bar graph denote absolute revenue for each segment.*

iii. Advertisers still prefer TV, which accounts for 42% of all advertisements in M&E



Source: *FICCI-EY M&E 2022*

iv. TV accounts for 75% of subscription revenues in M&E



Source: FICCI-EY M&E 2022; Note: The reduction in TV subscription revenues is due to a fall in pay-tv households and reduced TV ARPU. Print witnessed a reduction in absolute circulation. Note: It excludes films as sales from tickets are not considered subscriptions

v. TV has the largest audience in the M&E sector

Segment	Numbers
TV (Viewers)	892 Mn
Digital (Video viewers)	497 Mn
Print (readership)	407 Mn
Radio (listenership)	51 Mn

Source: BARC India, FICCI-EY M&E Report 2022, News Articles on Radio, News Articles on Print

5) OUR RECOMMENDATIONS

Unlike in the past, unlocking these growth opportunities will require bold reforms by the Authority, reforms that will unshackle the industry from all the above-mentioned regulatory interventions. Given the significant change in the M&E landscape in the last 15 years and the presence of effective competition both at the broadcasting and distribution levels, we recommend that the Authority forbears on all economic regulations in the sector and gives "market-led growth" the chance that it rightfully deserves.

B. REPONSES TO QUESTIONS

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.**
    b. **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:

No. The Authority should not prescribe a ceiling price of a channel for inclusion in a bouquet. As mentioned in the preliminary, ALC and bouquets are different offerings catering to different target audiences with different value propositions. Therefore, any imposition on the formation of a bouquet in the form of a price ceiling or otherwise will restrict broadcasters' ability to form bouquets and cater to the majority of Indian TV households which prefer bouquets because of their family size and diverse preferences.

We would like to highlight two very important features of the Indian B&CS market and its consumers.

1. Unlike consumers for other products and services, ***the Indian TV consumer is a household whose average family size is 4.25,*** and according to Broadcast Audience Research Council (BARC) 98% of the 210 million TV households are single-TV homes. Hence, it must be remembered that whenever any stakeholder refers to a consumer in the B&CS sector, that consumer is not an individual, but a household with more than 4 members. For this reason, bouquets are the default choice of Indian TV consumers/Households.

2. TRAI's own data from Annexure II (page no 81) of the "Consultation Paper on Tariff related issues for Broadcasting and Cable services" dated 16th August 2019, supports the fact that bouquets are the default choice of 80%[10] of TV subscribers in India. According to a report by ChromeDM, as many as 98% of the 67 million cable TV subscribers opted for bouquets.

Market	Bouquets Subscribers	A-la-carte Subscribers
ANDN & NCBR	100.00%	0.0%
AP & TELANGANA	98.46%	1.54%
ASSAM & NORTH-EAST	98.85%	1.15%

[10] The framing of the statistic lends to an interpretation that 80% of the base **only chose bouquets** while the remaining 20% may have chosen a-la-carte **in addition to bouquets**. Therefore it is likely that virtually all 100% did subscribe to bouquet(s).

BIHAR	98.43%	1.57%
CHHATTISGARH	98.65%	1.35%
DELHI	97.08%	2.92%
GUJ, D&D & DNH	98.02%	1.98%
HHPJ&K	98.74%	1.26%
JHARKHAND	98.10%	1.90%
KARNATAKA	97.28%	2.72%
KERALA	98.44%	1.56%
MADHYA PRADESH	98.42%	1.58%
MAH & GOA	98.00%	2.00%
ODISHA	98.85%	1.15%
PUN & CHA	98.22%	1.78%
RAJASTHAN	98.38%	1.62%
TN & PONDICHERRY	98.64%	1.36%
UP & UTTARAKHAND	98.40%	1.60%
WEST BENGAL	98.07%	1.93%
ALL INDIA	98%	1.87%

Source: Chrome Track 2.0 WK 35, 2019 (U+R) 201 MN HHs

Therefore, any restriction on bundling in the form of "price ceiling of a channel for inclusion in a bouquet" will lead to restrictions of choice for a large majority of consumers/TV households.

Also, as witnessed in the NTO 1.0, the INR 19 ceiling for a channel that can be included in a bouquet effectively becomes the price ceiling for ALC channels. Not being in a bouquet denies that ALC channel the ability to reach 80% of the TV households in India. However, by pushing this price ceiling to INR 12 under NTO 2.0, it became unfeasible for several channels to be included in a bouquet. As a result, those channels were pushed out from bouquets and priced much higher because revenue loss from advertisements (from not being in a bouquet) had to be compensated for by higher subscription revenues through higher prices.

Therefore, an important question arises as to ***what should be the optimal price ceiling that the Authority should prescribe for a channel's inclusion*** into a bouquet. The Authority's admission, as observed in para 2.9 of the CP, is that such a price does not exist or is impractical to determine.

While framing the new regulatory framework 2017, the Authority noted that it is impractical to determine the price of a television channel. In this regard the Authority observed that generally a channel consists of number of the programs. The cost of the production of different programs varies based on the actors, setup cost, script, copy rights, and other miscellaneous factors. Various programs on a given channel also get changed frequently based on their Television Rating Points (TRP) and advertisement potential. Hence, determining the cost of production of a program on a television channel at all times is an extremely difficult process, perhaps almost impossible to derive through a fixed mathematical/statistical model. Moreover, such determination of price would be dynamic in nature and may vary with change in programs in a channel and programs on television channels change dynamically. Accordingly, the Authority in the Tariff Order 2017 did not prescribe any ceiling on the prices of channels and left it to the broadcasters to decide the prices of their channels.

We too agree that it is impractical to determine a price ceiling for a channel's inclusion into a bouquet. Doing so despite this observation will be tantamount to willfully committing harm to the industry despite knowing its consequences.

2. 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 to the first part of the question:

First of all, we would like to request the Authority to define what it means by "popular channels" as it could have multiple meanings depending on who defines it or where it is defined from. For instance, a popular channel could mean a channel that is subscribed to by a majority of TV households in India. If that is the case, then it is being accessed by millions of households and the issue of accessibility does not rise. On the other hand, it could also mean a channel that is popular among certain age groups / region or a channel that has strong brand re-collection regardless of its subscriber base, or a channel with popular programs, and so on. Hence, the lack of clarity creates confusion. It is terminology that is misplaced and incapable of definition. What is popular for one person may be unpopular for another. To use BARC data to establish popularity by audience size is doing grave injustice to content creators and consumers who passionately follow varying programs. It further does grave injustice to India's identity as the world's largest democracy where diversity is celebrated and cherished.

Regardless of the definition, the Authority, to uphold the principle of "non-discrimination" in B&CS should be concerned about the accessibility of all the 898 registered TV channels[11] and not just what it calls "popular channels". Such objective principle-based regulations will enable the growth of diversity in TV channels/programming, and promote the growth of all channels, particularly special interest

[11] *MIB Broadcast Seva Portal*

channels that are struggling to sustain themselves with the restrictions on bundling and packaging from NTO 1.0.

The question also seems to suggest that there are issues with the accessibility of certain TV channels among certain segments of viewers. We would like to request the Authority to specify what these issues are. If the alleged issue of accessibility is at a broadcaster's level, then we would like to reiterate that all broadcasters are subject to a "must provide" provision under TRAI Interconnect Regulations and no broadcaster can refuse to supply any channel to a DPO. So, the issue of accessibility of TV channels does not arise. If the issue of accessibility is at the DPO level, then we recommend that TRAI ensure that all TV channels are carried by DPOs to ensure that they are available to any consumers who want to subscribe to them. We reiterate that in our assessment a lot of these requirements are antiquated notions which have long outlived their utility.

Response to the second part of the question:

There should not be any price ceiling on pay TV channels for the reasons mentioned in our response to Question 1. Doing so will be tantamount to willfully committing harm to the industry despite knowing its consequences.

We would also like to highlight that the question of accessibility should not be confused with affordability. Additionally, the Authority must avoid any price ceiling or any other form of price controls on pay TV channels as the outcomes are often the opposite of what is intended as witnessed with the implementation of NTO 1.0. This is not only true of the B&CS sector, but also in other sectors like pharmaceuticals, as highlighted in the Economic Survey of 2019-20.

Finally, we would like to reiterate that complete forbearance on bundling formation or removing all economic restrictions on the formation of bouquets will ensure that all channels are accessible for all consumers at affordable prices. As elaborated in point no 2(iii) of the preliminary, bundling has ensured that the prices of TV channels remained low throughout 2004 to 2017 while at the same time increasing access to the number of TV channels. To reiterate, the Consumer Price Index (CPI) increased by 153% between 2004 and 2017 and broadcasters, like all other businesses were faced with the challenges of rising costs. However, the saving grace for the industry was bundling, as it kept monthly TV bills significantly lower than what they would otherwise have been if adjusted for inflation. For instance, according to a survey commissioned by MIB[12] in 2004, the average monthly TV bill in 2004 was around INR 190 and the average household had access to around 80 channels. Adjusting for inflation, INR 190 in 2004 would be equivalent to INR 481 in 2017. But in reality, the average monthly TV bill in 2017 was only INR 222. ***This is INR 259 less than what it would be if we accounted for inflation***. That is not all - TV households on average had access to 315 channels before NTO 1.0, up from 80 in 2004. This is because broadcasters were able to bundle to keep the prices low for consumers. Therefore, the only option to

[12] *A survey by CUTs titled "Consumer Friendly Cable TV System, 2004"*

ensure that all channels are accessible is by removing all economic restrictions on the formation of bouquets for all stakeholders in the industry.

3. **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:

No. There should not be any "ceiling on the discount on sum of a-la-carte prices of channels forming part of bouquets while fixing MRP of bouquets by broadcasters". In other words, the Authority should not cap the discounts on bouquets for the following reasons:

Firstly, bouquets and ALC are different offerings catering to different classes of consumers. Therefore, a cap on discounts on bouquets is nothing but a **"floor price"** on bouquets. This further gives rise to several important questions such as (a) What should be that optimal floor price? (b) How will the Authority derive this floor price? (c) Isn't floor price anti-competitive? and (d) Won't floor price increase monthly TV bills and hence the accessibility of TV channels?

Secondly, according to TRAI data, 80% of TV households subscribe to bouquets and hence imposing a "floor price" or a cap on discounts will be against the interest of 80% of TV households or 98% of cable TV households, as per ChromeDM's data.

Finally, and as mentioned above, a cap on discounts is nothing but a floor price. By the Authority's own admission, determining an optimal price is impractical. Therefore, like in our response to Questions 1 and 2, doing so will be tantamount to willfully undertaking impractical exercise despite knowing its consequences.

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?**
    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?**
    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:

Channel prices in bouquets should not be homogeneous. Homogeneity is antithetical to the very concept of bundling and any requirement for homogeneity in a bouquet either with price or genre of the channel will defeat the very objective of bundling. Additionally, a requirement for homogeneity could result in an increase in the ALC prices of channels (which would otherwise be lower) because consumers demand the inclusion of such channels in the bouquet.

Having 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" is nothing but another way of imposing a price ceiling on the ALC price of a channel that can be included. And for the reasons mentioned in our responses to the previous questions, we do not see the rationale for imposing a price ceiling on TV channels either directly or indirectly through one of the twin conditions.

We would also like to bring to the Authority's notice that there have been multiple attempts by the Authority to introduce the twin conditions into its regulations. For instance, the twin conditions were first introduced in 2007[13] at the wholesale level. But they were never implemented. Then TRAI tried implementing them at the retail level in 2012[14], 2013[15] and again in 2015[16] and all three times, they were either set aside or never implemented by TRAI.

Therefore, we do not see any change in circumstances that warrants their re-introduction into the regulatory framework.

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

Response:

Please refer to our response to the same question from Question no 4

6. **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:

We strongly recommend that there be discounts, in addition to distribution fees, on the MRP of a-la-carte channels and bouquets of channels to be provided by broadcasters to DPOs.

[13] *Tariff Order dated 04.10.2007*
[14] *Tariff Order dated 30.04.2012*
[15] *Tariff Order dated 20.09.2013*
[16] *Tariff Order dated 28.12.2015*

In fact, we recommend that there should not be any cap on the discount that broadcasters can offer to DPOs on the MRP of ALC and bouquets. Such discounts are important market tools to incentivise a DPO's performance.

In the absence of such tools (and as mentioned in our preliminary) all DPOs are treated equally through broadcasters' non-discriminatory RIOs. This means that all DPOs are offered the same rate card regardless of their subscriber base or sales, and hence such regulations are discriminatory for DPOs that have invested millions of rupees to increase their subscriber bases.

In this context, we would like to point out that the prohibition on discounts of bouquets sold by broadcasters to DPOs in the 2020 amendment to the tariff was arbitrary and not in the interest of 80% of TV households who subscribe to bouquets, and against the interest of all DPOs who distribute such bouquets to the consumers.

Therefore, we recommend that there should be discounts, in addition to distribution fees, on the MRP of a-la-carte channels and bouquets of channels to be provided by broadcasters to DPOs. Not only that, but we also recommend that broadcasters be given the freedom to give discounts to DPOs without any caps on such discounts.

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

Response:
As mentioned in our recommendations, unlocking growth opportunities in the B&CS industry will require bold reforms by the Authority, reforms that will unshackle the industry from all its regulatory interventions. Given the significant change in the M&E landscape in the last 15 years and the presence of effective competition both at the broadcasting and distribution levels, we recommend that the Authority forbears on all economic regulations in the sector and gives "market-led growth" the chance that it rightfully deserves.