

BY HAND/ELECTRONIC MAIL

23rd September, 2019

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,

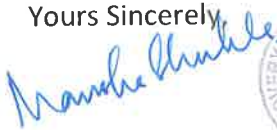
Re: Response to the Consultation Paper on Tariff related issues for Broadcasting and Cable Services (“Consultation Paper”) on behalf of Discovery Communications India.

At the outset, we would like to thank the Authority for giving us an opportunity to tender our response on the Consultation Paper on Tariff related issues for Broadcasting and Cable Services.

In regard to the present Consultation Paper, we submit that we have perused the same carefully. We hereby submit our response attached as Annexure. The said response is 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.

The same are for your kind perusal and consideration.

Yours Sincerely



Mansha Shukla
Director
Discovery Communications India

Encl: As above

Discovery Communications India

(A Private Company with Unlimited Liability)

Registered Office

125-B, Som Datt Chamber-1
5 Bhikaji Cama Place,
New Delhi-110066, India

T: +91 11 41647135

F: +91 11 46032870

Regional Office

Building No - 9, Tower A,
9th Floor, DLF Cyber City,
Gurugram - 122 002, Haryana, India

T: +91 124 4349100

F: +91 124 4349289

EXECUTIVE SUMMARY

Our comments and observations on the Consultation Paper on Tariff related issues for Broadcasting and Cable Services dated 16.08.2019 issued by TRAI (“**Consultation Paper**”) can be summarized as follows:

(A) Attempt to reintroduce capping on discount of a-la-carte channels:

TRAI’s attempt to re-introduce capping on discount of a-la carte channels included in bouquets is a clear case of overreach considering the decisions of the Hon'ble Madras High Court quashing the third proviso to Clause 3(3) of the Tariff Order and the Hon'ble Supreme Court of India affirming such decision;

(B) Attempt to control consumer behaviour:

TRAI has attempted to impose choice of a-la-carte channels on consumers, which is an interference with the consumers’ right of choice, and has proceeded to ignore the economic rationale and factual data pointing towards overwhelming preference of consumers for bouquets as opposed to a-la carte channels;

(C) The Consultation Paper in its present form lacks objectivity,

transparency and fairness of approach: TRAI has issued the Consultation Paper with a predetermined mindset and has failed to disclose the basis of presumptions on the basis of which it has proceeded with the present consultation process.

(D) TRAI’s presumption that deep discounting of bouquets leads to

perverse pricing is erroneous: TRAI has proceeded on such assumption without referring to any empirical study or providing any rational basis for arriving at such conclusion. Such decision to put a

cap on discounting is intuitive, and not based on any economic study or material.

(E) TRAI’s notion of “unwanted” or “unpopular” channels is not only vague, but also discriminatory: 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.

(F) Cap on number of bouquets: Such a restriction is a direct infringement of Article 19(1)(a) as it seeks to restrict the discretion of a broadcaster to plan his business and offer the contents created or aggregated by it in the manner it thinks fit.

(G) Choice of consumers subjected to whims and preferences of DPOs: Consumers are only allowed to choose from those channels / bouquets that have been offered by the DPOs in their respective platform. This, read along with the must provide obligations on standard terms for broadcasters and the discretion of the DPOs under Regulation 4(8) of the Interconnection Regulations to discontinue “unpopular” channels, ensures complete discretion to the DPOs to decide what to offer on its platforms for its subscribers.

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 The Consultation Paper has sought to re-introduce capping on discount of a-la carte channels included in bouquet, as a matter of stakeholder consultation. This issue stands settled by the judgment of the Madras High Court, duly affirmed by the Hon'ble Supreme Court. The Hon'ble Supreme Court after taking note of the arguments/ contentions of TRAI regarding alleged adverse effects of discounting, was pleased to uphold the order of the Madras High Court quashing the third proviso to Clause 3(3) of the Tariff Order. The SLP filed by TRAI after the judgment of the Hon'ble Supreme Court dated 30.10.2018 was dismissed as withdrawn. In this background, the effort on the part of TRAI to bring up the issue based on the self-same arguments, is clearly in disregard of the authority of the constitutional courts of the country, whose decisions are binding on TRAI as a statutory authority. It is beyond the jurisdiction of TRAI to impose such cap. Moreover, when the High Court and Supreme Court have considered these arguments while giving their verdict, it is a clear overreach of the judgment if TRAI seeks to introduce such cap on discount.
- 1.2 The Consultation Paper, in continuation of the Interconnection Regulations, seeks to control consumer behaviour by imposing a-la carte choice on the consumers even when data collected by TRAI clearly shows that consumers still prefer to avail bouquets over a-la carte channels. TRAI should appreciate and accept consumer preference and behaviour across jurisdictions where bouquet of channels are preferred because of their economic advantage, both for subscribers and broadcasters alike. TRAI is trying to impose choice of a-la-carte

channels on consumers, which is an interference with the consumers' right of choice.

- 1.3 Despite the factual data pointing towards overwhelming preference of consumers for bouquet as opposed to a-la carte channels, TRAI has suggested measures for capping of bouquets through various methods in the Consultation Paper. TRAI has proceeded with the consultation process with a predetermined mind that bouquet formation is not in consumer interest, and that consumer interest is ensured through a-la carte channels. TRAI has not carried out any economic study w.r.t. the broadcasting industry, which was a necessary pre-requisite before initiating the proposal of such wide ranging changes in the broadcasting industry. The Consultation Paper in its present form, lacks objectivity and fairness of approach, and does not meet the standards of transparency required for such a process. It is submitted that framed regulations cannot be the outcome of mere guesswork. The Hon'ble Supreme Court in ***Cellular Operators Association of India v. TRAI, (2016) 7 SCC 703*** at has held the following in this regard:

“68...These matters go out of mere guess work, and into the realm of unreasonableness, as obviously, as has been held by us, there was no intelligent care and deliberation before any of these parameters have been fixed.

.
. .

91. In Corpus Juris Secundum (March 2016 Update) it is stated:

Under the informal rulemaking requirements of the Federal Administrative Procedure Act, after a federal administrative agency considers the relevant matter presented, it must

incorporate in the rules adopted a concise general statement of their basis and purpose. The purpose of the requirement is to enable courts, which have the duty to exercise review, to be aware of the legal and factual framework underlying the agency's actions. The requirement is a means of holding an agency accountable for administering the laws in a responsible manner, free from arbitrary conduct. The statement is not intended to be an abstract explanation addressed to an imaginary complaint but is intended, rather, to respond in a reasoned manner to the comments received, to explain how the agency resolved the significant problems raised by the comments, and to show how that resolution led the agency to the ultimate rule. The statement must identify what major issues of policy were ventilated and why the agency reacted to them as it did and should enable a reviewing court to ascertain such matters. The statement must respond to the major comments received, explain how they affected the regulation, and, where an old regulation is being replaced, explain why the old regulation is no longer desirable.

*Agencies have a good deal of discretion in expressing the basis of a rule. The requirement is not to be interpreted over literally, but it should not be stretched into a mandate to refer to all specific issues raised in the comments on the proposed regulations. Although an agency must genuinely consider comments it receives from interested parties, there is no requirement that an agency discuss in great detail all comments, especially those which are frivolous or repetitive. **Although the agency need not address every comment received, it must respond in a reasoned manner to those that raise significant problems, to explain how the agency resolved any significant problems raised by the comments, and to show how that resolution led the agency to the ultimate rule. Conclusory statements will not fulfill the administrative agency's duty to incorporate in adopted rules a concise general statement of their basis and purpose. The agency must articulate a satisfactory explanation for its action, including a rational connection between the facts it found and the choices it made. Under some circumstance, agencies must identify specific studies***

or data that they rely upon in arriving at their decision to adopt a rule...

93. We find that, subject to certain well defined exceptions, it would be a healthy functioning of our democracy if all subordinate legislation were to be “transparent” in the manner pointed out above. Since it is beyond the scope of this judgment to deal with subordinate legislation generally, and in particular with statutes which provide for rule making and regulation making without any added requirement of transparency, we would exhort Parliament to take up this issue and frame a legislation along the lines of the U.S. Administrative Procedure Act (with certain well defined exceptions) by which all subordinate legislation is subject to a transparent process by which due consultations with all stakeholders are held, and the rule or regulation making power is exercised after due consideration of all stakeholders’ submissions, together with an explanatory memorandum which broadly takes into account what they have said and the reasons for agreeing or disagreeing with them. Not only would such legislation reduce arbitrariness in subordinate legislation making, but it would also conduce to openness in governance. It would also ensure the redressal, partial or otherwise, of grievances of the concerned stakeholders prior to the making of subordinate legislation. This would obviate, in many cases, the need for persons to approach courts to strike down subordinate legislation on the ground of such legislation being manifestly arbitrary or unreasonable.”

(Emphasis supplied)

The Hon'ble High Court of Delhi in **Syniverse Technologies (India) Pvt. Ltd. v. Telecom Regulatory Authority of India, 2019 SCC OnLine Del 7491** has observed the following:

“20. Keeping the above authorities in mind, therefore, we are required to assess the validity of the impugned Amendment Regulation applying the tests described above, but without going into the prohibited territory of a review on the merits of the matter. On such an analysis, for the reasons explained hereinbelow, we find that there are several infirmities in the impugned Amendment Regulations, which constitute violation of the statutory framework, and are also contrary to the mandate of Article 14 of the Constitution.

21. The first of these relates to transparency in the decision-making process, as mandated by the Act. The regulation-making power of TRAI contained in Section 36 of the Act is intended to enable TRAI to carry out the purposes of the Act. The functions of the TRAI are enumerated in Section 11, of which Section 11(4) expressly imposes an obligation of transparency on TRAI in the discharge of the powers and functions assigned to it. The interpretation of this provision has been considered in detail in the Supreme Court judgment in COAI (supra) [paragraphs 80-92]. The Court's reliance inter alia upon Section 13(4) of the Airports Economic Regulatory Authority of India Act, 2008 and the decision of the English Court of Appeals in *R.vs. North and East Devon Health Authority, ex p Coughlan* (2001) QB 213, lead to the clear conclusion that, **at a minimum, transparency requires consultation with all stakeholders, permitting them to make submissions, taking those submissions into account and clearly documenting and explaining the decisions of the authority.** The process employed by TRAI in passing the impugned Amendment Regulations fall short of the required standard on two grounds:

(a) First, the draft Amendment Regulations published by TRAI did not propose limiting PPTC to cases of successful porting alone, but contemplated continuation of the existing regime of compensating the MNP service provider for every request made. There was thus no opportunity for the stakeholders to comment on this aspect of the proposed amendment. TRAI has justified this on the basis that the change has been incorporated as a result of stakeholder comments during the consultative process and could not, therefore, have been published earlier. In fact, from this prospective, it could be suggested that this is an example of the authority's responsiveness to the stakeholder comments and adoption of an effective and transparent process of consultation. However, in our view, if TRAI was minded to accept a proposal of such a fundamental nature, some further consultation was required. **It may be that such further consultation is not called for in every case where draft regulations are modified in response to stakeholder comments, but changes which have a drastic impact on the scheme of the regulations such as the one under consideration, do require a further opportunity to be given to the affected stakeholders.** As in the present case, it is quite evident that there may be many situations where the interests of all stakeholders are not identical. The MNP service

providers [the petitioners herein] are the ones most adversely affected by the restriction placed on their entitlement. They ought to have been consulted prior to making this new amendment during the consultative process.

(b) Further, the Explanatory Memorandum of the impugned Amendment Regulations does not reveal adequate consideration of the comments offered by the MNP service providers. For example, their submission regarding the ongoing market consolidation among TSPs and the likelihood of a consequent reduction in the number of porting requests has been noted but no justification has been given for taking a different view. Similarly, the cost data, including projected costs do not appear to have been reflected in the considerations which led to the impugned Amendment Regulations. The cost data actually considered by TRAI has been criticized by the petitioners as a combination of the costs incurred by each of them. Thus, for some elements of cost, TRAI has employed the data submitted by Syniverse and for other elements it has adopted the data of MNP Interconnection. TRAI has not been able to explain satisfactorily the rationale for a consideration of this nature, which would obviously lead to a lack of coherence in the calculations made. In a regulatory exercise of the sort with which we are concerned, the integrity and objectivity of the data used by the regulator are of utmost importance.

.
.
.

25. In view of the above, we hold that the impugned Amendment Regulations are illegal and unsustainable, on several grounds. In brief, we may summarize them as follows:-

a. Lack of transparency, inasmuch as, the consultation paper issued by TRAI did not indicate that porting charges would be payable only for successful transactions.

b. The Explanatory Memorandum to the impugned Amendment Regulations does not reveal adequate consideration of the comments submitted by the MNP service providers in response to the consultation paper.

.
.
...”

(Emphasis supplied)

- 1.4 TRAI has made number of assumptions and conclusive statements about the alleged ill-effects of lower prices of bouquets offered by broadcasters. These assumptions and statements are not backed by any empirical data or economic studies. TRAI has referred to various analysis to support its theory that a-la carte distribution of channels is more beneficial than bundling, without giving any details of such analysis, the economic and financial principles applied, the hypothesis of such analysis, the details of stakeholders who have been involved in such analysis, etc. DCI and other stakeholders are not in a position to comment on any such so-called analysis of TRAI, without such details. A table of such unsubstantiated presumptions and conclusive statements is appended to DCI comments as **Appendix A**. Fairness, transparency and objectivity requires TRAI to first disclose the basis of such presumptions, before the stakeholders can be expected to provide any effective response to the Consultation Paper.
- 1.5 The approach of TRAI in the Consultation Paper shows complete disregard of the various submissions raised by broadcasters at various occasions regarding undue regulation of their business by TRAI even when there is competition amongst large number of broadcasters operating in India. TRAI has sought to rely upon the judgment of the Ld. Telecom Disputes Settlement and Appellate Tribunal dated 07.12.2015 in the case of **Noida Software Technology Park Ltd v. Media Pro Enterprise India Pvt. Ltd.** which relates to a particular stakeholder, to draw conclusion with respect to all broadcasters

irrespective of their size, resources and market share. This is arbitrary as it fails to consider the difference in broadcasters operating in India, and the difference in their operations, size, market power, etc. The Consultation Paper has treated DCI as having a repertoire of a few niche channels with behemoths like Star and Zee TV. To such extent, the Consultation Paper is arbitrary and discriminatory against small broadcasters like DCI.

- 1.6 The Consultation Paper like the New Regulations treated all channels and programs as similar and homogenous. This is a fundamental flaw in the approach of TRAI. It should appreciate that each channel is distinct in terms of content, following, cost, quality, business philosophy, marketing strategy, dependence on advertisement revenue, etc. Therefore, a “one size fits all” approach of TRAI would be treating different and distinct products by the same yardstick.
- 1.7 TRAI has brought about complete disruption in the working of the broadcasting sector through the introduction of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017, Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017 and the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 (“**New Regulations**”). The effects of the New Regulations are yet to be appreciated fully. The infrastructure and the protocol required under the New Regulations are yet to be implemented completely by the DPOs. A further proposal

under the present Consultation Paper which drastically affects the broadcasting rights of broadcasters and their day-to-day business based on unsubstantiated assumptions, will have an adverse impact on orderly growth of the entire industry, which is yet to gear up fully to the changes under the New Regulations.

- 1.8 The power of TRAI to notify charges u/s 11(2) of the TRAI Act, and to define the terms of interconnectivity amongst service providers, needs to be construed and applied by TRAI to the broadcasting sector, having regard to the historical development of the TRAI Act, and the technological, operational and sectoral distinctions between telecommunications and broadcasting as services. The TRAI Act, 1997 and the Broadcasting Bill (Broadcasting Bill, 1997 and Draft Broadcast Services Regulation Bill, 2006) – which never saw light of the day even though they were brought about the same time as TRAI Bill, deal with telecom and broadcasting, respectively, as independent subjects. Further, the National Telecom Regulatory Policies of 1999 and 2012 treat ‘broadcasting’ as distinct from ‘telecom’, while recognising that telecom and broadcasting industries are entering each other's markets (NTP 1999, Para 1.3) and the need to move towards convergence between telecom, broadcast and IT services, networks, platforms, technologies and overcome the existing segregation of licensing, registration and regulatory mechanisms in these areas (NTP 2012, Preamble Para 6).
- 1.9 In this background, it is important for TRAI to consider the development of broadcasting sector in light of the rules applicable to the broadcasting

sector in different jurisdictions of the world, and having regard to the market dynamics and economics of the sector. Terms of interconnectivity vis-à-vis telecommunication is very different from broadcasting, since in telecom sector, interconnection involves coordination by two competing entities providing similar services, whereas inter-connection in broadcasting sector are between upstream and downstream entities. Moreover, each of the broadcaster is providing distinct services. Therefore, the rules of interconnection cannot be applied independent of the business and operational realities of each of these service providers based on the approach of a-la carte channels, which is not sustainable in the long term for broadcasters, DPOs or subscribers.

- 1.10 The suggestions of TRAI in the present Consultation Paper regarding capping of number of bouquets provided by broadcasters, exclusion of so-called “unwanted” channels, and review of price limit of channels included in bouquets, are matters that directly and substantially interfere with the rights of broadcasters to freely arrange their business and express and propagate their contents to viewers, and thus an infringement of Article 19(1)(a) of the Constitution of India. Similarly, forcing of an a-la carte regime on consumers, who, even as per TRAI’s own data contained in Annexure – II of the Consultation Paper, are more keen to subscribe to bouquets, on the basis of unsubstantiated presumptions and theory of a-la carte welfare, will result in (i) extinction of small and niche channels like DCI; (ii) reduce the versatility and quality of content that are presently being offered by broadcasters; and

(iii) raise the cost of TV channels significantly. This in turn violates the freedom of viewers to be informed and educated, which forms an equally important facet of Article 19(1)(a) of the Constitution of India. The Hon'ble Supreme Court of India in **Secretary, Ministry of Information & Broadcasting, Govt. of India v. Cricket Association of Bengal & Ors., (1995) 2 SCC 161** observed the following:

“43. We may now summarise the law on the freedom of speech and expression under Article 19(1)(a) as restricted by Article 19(2). The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfillment. It enables people to contribute to debates of social and moral issues. It is the best way to find a truest model of anything, since it is only through it, that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of all sorts. The right to communicate, therefore, includes right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, movie, article, speech etc. That is why freedom of speech and expression includes freedom of the press. The freedom of the press in terms includes right to circulate and also to determine the volume of such circulation. This freedom includes the freedom to communicate or circulate one's opinion without interference to as large a population in the country as well as abroad as impossible to reach.

44. This fundamental right can be limited only by reasonable restrictions under a law made for purpose mentioned in Article 19(2) of the Constitution.

45. The burden is on the authority to justify the restrictions. Public order is not the same thing as public safety and hence no restrictions can be placed on the right to freedom of speech and expression on the ground that public safety is endangered. Unlike in the American Constitution, limitations on fundamental rights are specifically spelt out under Article 19(2) of our Constitution. Hence no restrictions can be placed on the right to freedom of speech and expression on grounds other than those specified under Article 19(2).

78. ... But to contend that on that account the restrictions to be imposed on the right under Article 19(1)(a) should be in addition to those permissible under Article 19(2) and dictated by the use of public resources in the best interests of the society at large, is to misconceive both the content of the freedom of speech and expression and the problems posed by the element of public property in, and the alleged scarcity of, the frequencies as well as by the wider reach of the media. If the right to freedom of speech and expression includes the right to disseminate information to as wide a section of the population as is possible, the access which enables the right to be so exercised is also an integral part of the said right. The wider range of circulation of information or its greater impact cannot restrict the content of the right nor can it justify its denial. The virtues of the electronic media cannot become its enemies. It may warrant a greater regulation over licensing and control and vigilance on the content of the programme telecast. However, this control can only be exercised within the framework of Article 19(2) and the dictates of public interests. To plead for other grounds is to plead for unconstitutional measures.”

(Emphasis supplied)

The Hon'ble Supreme Court has further observed the following in the aforesaid judgment:

“75. ...It is also true that a person desiring to telecast sports events when he is not himself a participant in the game, does not seek to exercise his right of self-expression. However, the right to freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained. The former is the right of the telecaster and the latter that of the viewers.”

(Emphasis supplied)

- 1.11 The suggestion to fix the limit on discount that can be offered by broadcasters, thereby prescribing the minimum price of bouquet, or to

restrict the number of bouquets to be offered by a broadcaster is 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

restrictions 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 purchasing 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 expected 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.”

1.12 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.

1.13 There can be two scenarios in case bundling is done away with. In Scenario 1, where the industry bears all of the economic impact of TRAI's proposed approach, consumers on average pay perhaps the same amount to get far fewer channels. The Indian TV industry will lose millions of dollars, through both lower revenue and increased costs, resulting directly in less funding for the Indian content production sector, and indirectly in unemployment. Programming diversity would be compromised, and significant programming services could risk

insolvency. In Scenario 2 we assume that industry players will adjust their pricing and costs to maintain their current margins. The average price of consumers will increase in order to compensate for the higher costs of the broadcasters with much fewer channels and options for consumers. In this scenario, there is a higher likelihood of consumers shifting to OTT platforms and disconnecting television signals at their homes as OTT today has numerous and diverse content/ programming options with a comfort of viewing at consumer's convenience. This will lead to a slow but steady downfall of television industry in India with only a few larger broadcasters remaining who can withstand the competition from the OTT and the price restrictions imposed by TRAI. In both scenarios, Indian television industry will lose huge revenues, programming diversity, investments, subscribers and finally leading to unemployment in the sector.

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

2.1 DCI is presently broadcasting thirteen channels in India namely, Discovery Channel, Animal Planet, DSC Kids, TLC, DSC Science, Dsport, DSC Turbo, Jeet Prime, D Tamil, DSC HD World, AP HD World, TLC HD World and Jeet Prime HD. For transmitting these channels, the signal is uplinked from Singapore through Intelsat 20, except Dsport which is uplinked from Hongkong using satellite APSTAR 7.

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: (i) broadcasters find it easier and more economical to negotiate with satellite companies to avail transponder space for multiple channels; (ii) the cost of transponders and other costs get socialized by bundling of channels; (iii) Bouquet with variety of channels ensures greater reach and thereby, reduces revenue requirement per subscriber; (iv) at the same time, greater reach ensures higher advertisement cost which further helps in lowering subscription fee; and (v) 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 Apart from the cost of leasing of transponders, 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. Therefore, 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 vary 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.

2.4 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.

2.5 The nature of broadcasting activities is such that the cost towards leasing of transponder, marketing and other costs once incurred for a particular set of channels, can support broadcasting of additional channels, to additional subscribers, at minimal cost. Once the network has been set up for a particular set of channels, any incremental channel or incremental supply to subscribers is provided almost at a zero value. This is because the necessary network and infrastructure cost for broadcasting a single channel / set of channels is not required to be replicated for the additional channels or supply to additional subscribers. As a result, a larger number of channels can be made available to subscribers by way of bouquet, at costs significantly lower than the aggregate price of such channels individually. Considering the fact that broadcaster find it more economical and convenient to negotiate with satellite companies for lease of transponder for multiple channels, offering such channels on a bundled basis by way of a bouquet, results in efficient management of cost of broadcasting.

2.6 Bundling of products for optimizing marketing costs is not unique to broadcasting of TV channels. It is seen in all businesses e.g. (1) 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; (2) 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; (3) 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; (4) Telecom companies offering packets of voice, data, SMS etc as part of single pack to the consumer; (5) newspapers bundling a host of sections e.g. sports, politics, entertainment, articles etc. in a single newspaper.

2.7 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.

2.8 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.

- 2.9 Similarly, for the broadcasting industry, it is difficult for any broadcaster or DPO to identify beforehand, the consumer preference of channels for every household vis-à-vis the viewership value ascribed by each household to a particular channel, and the maximum allocated budget of such household for such channel. The preferences 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.

2.10 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. . DCI would therefore endeavour to price its bouquets in a manner wherein both the Discovery channel and other DCI channels fall within the monthly budget of such consumer.

2.11 In the above illustration, there is a significant benefit to the consumer as (1) she can avail multiple channels at a cost lower than the aggregate cost of the *A-la carte's* channels; (2) the consumer is able to avail a wider variety of programmes in addition to their channel of preference; and (3) 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; (iv) it can finance the development of further programmes from the revenue received from the subscriber.

2.12 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.”

2.13 The Hon'ble Supreme Court of India in ***Secretary, Ministry of Information & Broadcasting, Govt. of India v. Cricket Association of Bengal & Ors., (1995) 2 SCC 161*** observed the following:

“46. What distinguishes the electronic media like they television from the print media or other media is that it has both audio and visual appeal and has a more pervasive presence. It has a greater impact on the minds of the viewers and is also more readily accessible to all including children at home. Unlike the print media, however, there is a built-in limitation on the use of electronic media because the airwaves are a public property and hence are owned or controlled by the Government or a central national authority or they are not available on account of the scarcity, costs and competition.”

2.14 Offering of multiple channels at a lower price is possible since the cost of broadcasting is socialized. Some of the channels are more widely viewed by subscribers based on their preferences, known as the driver channels. The driver channels may be different in different locations, or

even amongst different communities, etc. The broadcasting cost gets distributed between the main driver channels and other channels. At the same time, the additional reach that the other channels provide, and the consequent availability of a larger subscriber base, due to wider reach of subscribers with varied preferences, helps the broadcaster in charging higher advertisement revenue, which in turn subsidizes the cost of broadcasting of all the channels in a bouquet, including the driver channels.

- 2.15 TRAI has failed to consider the economic rationale behind channel pricing, and has erroneously assumed that the consideration relevant for pricing of individual channel and a bouquet of channels is similar, and that pricing of bouquets is achieved by discounting individual channels. TRAI while repeatedly harping on the issue of heavy discounting of channel prices forming part of bouquet, has proceeded on an erroneous presumption 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 presumption 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 etc.
- 2.16 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.

- 2.17 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 episodes— 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)

- 2.18 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 than 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. **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.**

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. 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. **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.**

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)

- 2.19 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.
- 2.20 The issue of a-la carte vs bouquet as a measure for enhancing consumer welfare has been a matter of ongoing discussion amongst economists and authorities for a long time, and 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.
- 2.21 TRAI should appreciate the following as to why bundling of channels as bouquet is beneficial to consumer interest: (1) bundling lowers distribution and marketing cost. If each of the channels was to be supplied to the subscriber on *a-la carte* basis, the broadcaster would be required to engage in costly marketing campaigns to promote each of the channels, which, along with other infrastructure cost, would result in pushing the cost of individual channel upwards, as these additional cost of distribution and marketing would have to be ultimately passed on to the subscribers; (2) bundling of channels produces a more efficient

system for pricing and distribution of channels because of scale of operation.

2.22 The difference in the price of a bouquet offered by DCI as a broadcaster vis-vis the total cost of the channels supplied under *a-la carte* cannot be similar. The treatment of channels on *a-la carte* basis will invariably result in increase of cost of channels, as each channel will have to be treated as a separate product with related cost. Therefore, while the entirety of the channels of DCI can be marketed to the DPO's and the subscriber as a bouquet, the marketing of each of these channels separately will require additional marketing cost thereby pushing up the price of the channels. Further, since under the *a-la carte* approach, only some of the viewers will subscribe to specific channels, the cost of infrastructure, manpower, transponder leasing, etc will have to be allocated separately to each of the channels, thereby raising the cost of the channels.

2.23 The significant increase in the cost of the channels under the *a-la carte* approach 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. Once there is a deterioration in the quality of product, it will resultantly cause further erosion of viewership thereby resulting in downward spiral effect.

- 2.24 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. **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**”.* (emphasis supplied)

- 2.25 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. **Results of this research show that on average à la carte is more expensive to deliver than bundling, while revenues of both are comparable.**”*

*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. **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 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)

2.26 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)

2.27 The concept of unwanted or unpopular channels adopted by TRAI while framing the Interconnection Regulations and also under the present Consultation Paper, is not only vague, but also discriminatory. TRAI has failed to appreciate that the demand for any product (including TV channel) is a function of price and dependant 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. Therefore, such a channel would be unwanted/unpopular at Rs. 10 per month but not at Rs. 2 per month. 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 therefor trying to balance amongst other things (1) the variety of choice of the subscriber base; (2) the varying value that subscribers in different location or of different background

are ready to allocate to a group of channels; (3) an optimized distribution of broadcasting and marketing cost; (4) affordable pricing for attracting maximum viewership; (5) 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 channel would have to be marketed and provided as a separate product having its distinct cost.

2.28 One of the parameters that TRAI appears to have adopted to define “unwanted channels” are those that are running repeats of programs already available on other channels. It is pointed out that such approach is not well-founded and not in sync with the realities of the broadcasting sector. A case in point is the innumerable number of Hindi classic movies that are repeated on various occasions by different channels.

2.29 Moreover, a glaring example of the re-run demand of programs is the serial “FRIENDS”, whose rights have been sold by Warner Bros. to Netflix for a year at a value of USD 80 million, even after 15 years of production. Therefore, clearly, the approach adopted by TRAI is without any rationale or factual justification. Kindly refer to the following articles for reference: (a) “Why Netflix Spent \$80 Million to Keep Friends for Another Year” dated 05 December 2018 by Josef Adalian; and (b) “How Much the Cast of Friends Makes from Reruns” dated 26 August

2019 by Chelsea Ritschel, which have been appended to DCI comments herewith as **Appendix B**.

2.30 The preference of providing channels on *a-la carte* basis vis-vis bouquet, will be an impediment for introduction of new channels. The launch of new channel on individual basis as compared to its inclusion in a bouquet, will require significant investment, which cannot be recouped immediately. It has been DCI's experience that viewer loyalty in TV channel developed over a period of time through consistent marketing efforts, innovation in content and presentation, and providing a certain consistent standard of programmes. It would be a challenge for new channels, without any loyal subscriber base, to be able to recover the cost of broadcasting on an individual channel basis without socializing the broadcasting cost with other channels. Even a seasoned broadcaster like DCI would find it discouraging to launch any new channels in such adverse conditions.

3. RESPONSE ON SPECIFIC ISSUES / QUERIES RAISED IN THE CONSULTATION PAPER:

3.1 Bouquet v. A-la-carte: Deep discounting of bouquets leading to perverse pricing

3.1.1 TRAI has stated at various places in the Consultation Paper that in the absence of any restriction on discount on the offering of bouquets, broadcasters have made prices of a-la-carte channels "illusory" thereby impacting choice of consumers who are "forced" to opt for bouquets

instead of a-la-carte channels. TRAI has alleged that bouquets are offered by broadcasters at a discount of up to 80% - 90% of the sum of a-la-carte rates of pay channels constituting those bouquets which indicates that a-la-carte rates of pay channels constituting the bouquet are intentionally kept exorbitantly high with a purpose to force the consumers to take bouquets only and reduce consumer choice.

3.1.2 TRAI has further alleged that broadcasters with popular driver channels push “unpopular” channels with such driver channels in the form of bouquets on consumers by offering deep discounts on such bouquets, thus resorting to “perverse pricing” of bouquets vis-à-vis individual a-la-carte channels.

3.1.3 TRAI has made a conclusive statement in the Consultation Paper that unreasonable amounts of discounts lead to illusionary/ perverse pricing and non-level playing field, without referring to any empirical study or providing any rational basis for arriving at such conclusion. TRAI’s decision to put a cap on discounting is intuitive, and not based on any economic study or material. 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. TRAI has not conducted any study, let alone even consider and discuss the large volume of literature by eminent economists, on the economic rationale of a-la-carte vis-à-vis bouquet before giving a finding on market failure. TRAI’s observations on pricing of a-la carte channels and bouquets and “perverse pricing” of bouquets demonstrates its lack of understanding of broadcasting economics,

which it is essential to understand and appreciate, while discharging its role as a economic regulator for the broadcasting sector.

3.1.4 It is most humbly submitted that proceeding on intuitive basis based on assumptions without a proper appreciation of market economics of the sector, will have adverse impact on consumers in the long run, who will be denied of small, niche and quality channels.

3.1.5 The considerations for pricing structure for a-la-carte and bouquet are very different and based on market forces. As discussed earlier in our comments, provision of channels by broadcasters on bundled basis, i.e. in the form of bouquets, allows economies of scale as the cost of broadcasting (i.e. costs broadcasters incur towards leasing of transponders, advertising and marketing its products, network development, infrastructure, etc.) is socialized amongst different channels offered in a bouquet. This is because broadcasters are generally constrained to take bandwidth in transponders for multiple channels, and the necessary network and infrastructure cost for broadcasting a channel is not required to be replicated for the additional channels or for supply to additional subscribers. As a result, a larger number of channels can be made available to subscribers by way of bouquets, at the cost of a few individual channels. Consequently, subscribers end up receiving additional channels free of cost/ at minimal cost over and above the popular driver channels offered by broadcasters. Such economies of scale and socialization of costs would not be possible where channels are being offered only on a-la-carte basis.

3.1.6 Bundling of products occurs in all sectors such as the FMCG, retail, healthcare, food and beverages, print media and telecom sectors wherein discounts are provided on combined packs consisting of a number of items such that they are priced significantly lower than the aggregate individual items. Similar to bouquet formation in the broadcasting sector, newspapers cover print items across all genres, e.g. sports, cinema, politics, current affairs, etc. to attract higher readership from different sections of readers having individual preferences. The cost of printing and distribution is socialized amongst different section of readers. In essence, the “bundling” of items from different genres enables optimization of marketing costs. In comparison, magazines specifically dealing with particular genres cater to highly individualized choices of readers/ limited readership, thereby pushing up advertisement costs, and they are thus priced much higher than regular newspapers.

3.1.7 Similarly, 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. 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.

3.1.8 In addition to the benefits of bundling discussed earlier, bouquets enable a consumer to avail of additional channels within their monthly budget; avail of multiple channels at a cost lower than the total cost of the a-la-carte channels; and avail of channels from different genres outside their original preference.

3.1.9 Correspondingly, bundling allows broadcasters to recoup their investment and marketing costs; invest in unique content which is informative and satisfies the curiosity of its viewers by developing viewership of multiple channels from the same set of subscribers; and demand higher advertisement revenue with a broader subscriber base, thereby further augmenting its returns.

3.1.10 As per the Asia Video Industry Association's Summary Report on "OTT TV Policies in Asia" (2018), regulatory bodies in most jurisdictions do not place any restrictions on bundling or packaging of channels in bouquets which is accepted as a very common commercial practice in such countries. Bundling of channels is not subjected to specific regulation in countries such as Australia, the UK and the USA and in most of Asia. In China, there are no specific restrictions on tiering or

bundling for Pay TV services; however, customers must be able to subscribe to basic cable packages only and not be forced to subscribe to additional channels or value-added services. In Taiwan, mandatory carriage of a large basic package of 90–100 channels is prescribed, and above such cable basic level, and for all IPTV, a-la-carte prices must be set but in practice. Some bundling is permitted, with prices lower than the sum of a-la-carte rates. Packaging and bundling are not subject to further review/ approval by regulators within those constraints. On the whole, bundling/ tiering is a widely-accepted practice and is considered to be beneficial to consumers as it augments consumer choice and ensures that niche, esoteric channels other than mass-market driver channels reach a wider consumer base.

3.1.11 Further, a report published by Indian Council for Research on International Economic Relations in March, 2019 titled “An Analysis of Competition and Regulatory Intervention in India’s Television Distribution and Broadcasting Services” conclusively provides that the prices of channels offered in India are the cheapest amongst other major jurisdictions. The table used in the said report is provided below for reference:

Comparison of DTH packages across select countries

| DTH provider | Country | | Pack names | Channels | Monthly Price (USD PPP) as of December 2017 |
|---------------------|----------------|--|-------------------|-----------------|--|
| Tata Sky | India | | My99 channel pack | 248 | 5.53 |

| | | | | | |
|-------------|----------|--|-------------------------------------|-----|------|
| Astro | Malaysia | | Family (without mini package) | 40 | 26.3 |
| True Vision | Thailand | | Happy Family | 109 | 24.3 |
| Sky | UK | | Entertainment | 350 | 22 |
| DirectTV | USA | | Select | 155 | 35 |

3.1.12 Offering channels on a-la-carte basis ultimately affects the viability of niche and small channels, such as the channels offered by DCI. TRAI's efforts to compel broadcasters to shift to pricing their channels on purely an a-la-carte basis will remove any incentive for broadcasters to produce innovative and diverse content, and thereby reduce choices available to consumers.

3.1.13 TRAI should appreciate that the fact that bouquet formation lowers the cost of channels and that in the case of a-la-carte channels, the prices of channels would increase significantly, has been affirmed by many reports and studies which have been set out above. As has been submitted earlier, bundling of channels in a bouquet is more beneficial to consumer interest and augments consumer choice since distribution and marketing costs are lowered and the broadcaster does not have to engage in costly marketing campaigns to promote each of channel, as in the case of a-la-carte channels. Further, bundling of channels produces economies of scale and is therefore more efficient for pricing and distribution of channels.

3.1.14 TRAI has further failed to consider that the price of a bouquet of channels offered by a broadcaster shall understandably be lesser than the aggregate cost of the same channels supplied on a-la-carte basis.

As each channel sold on a-la-carte basis shall have separate costs relating to marketing, infrastructure costs, etc., the cost of each such channel increase proportionately. Further, since under the a-la carte approach, only some of the viewers will subscribe to specific channels, the various costs incurred by broadcasters on such channels will have to be allocated separately to each of the channels, thereby raising the cost of the channels. Therefore, there is no dubious motive or sinister intent behind the lower cost of bouquets. It is the outcome of applicable economic principles having regard to the structure and operational dynamics of the broadcasting sector.

3.1.15 In this regard, it is submitted that the Ld. Telecom Disputes Settlement and Appellate Tribunal in its judgment dated 07.12.2015 in the case of ***Noida Software Technology Park Ltd v. Media Pro Enterprise India Pvt. Ltd.*** has clearly recognized the business rationale behind formation of bouquet of channels in the following words:

*“27. The ability of television broadcasting to generate a second, equally lucrative stream of revenue by attracting advertisements, coupled with the economics of broadcasting not only determines the way the broadcaster finds it profitable to give its channels for distribution but also has a bearing on the way it might find gainful to negotiate with the distributor on the commercial terms. **The amicus invited our attention to studies that have found that the broadcaster has huge fixed cost but practically nil***

*marginal cost. This means that production of content (TV programme) entails heavy cost but it does not require any additional cost to make the same content available for viewing to more than one viewer. It is also evident that there is great variation in individual preferences for TV programmes - one may like to watch soap operas while the other the news channels. It is equally evident that it is impossible for the broadcaster to ascertain individual preferences. Thus, the marginal cost being zero and the individual preferences being unknown, the broadcaster finds that its channels have greater reach to the viewers when packaged together in a bouquet than on a la carte basis. Hence, unless compelled by law, the broadcaster would always prefer to give its channels for distribution in bouquets. The Regulations though require the broadcaster to offer its channels on a la carte basis, apparently in recognition of this basic fact, do not prohibit it from giving its channels for distribution in bouquets. **The first choice for the broadcaster, therefore, as dictated by the market dynamics, is to give its channels for distribution in the form of bouquets.***

(Emphasis supplied)

- 3.1.16 While TRAI has relied on the NSTPL judgment to support its arguments w.r.t. consumer choice vi's-a-vi's a la carte choice, it has failed to consider the valuable observations made in the judgment on

the rationale and benefits of bouquet formation. TRAI has resorted to selective reading of specific portions of the judgment to justify its stand, without paying heed to other relevant and important observations of TDSAT.

3.1.17 If broadcasters are compelled to provide channels on an a-la-carte basis, rather than in the form of bouquets, due to capping of discounts, there will be a significant increase in the cost of the channels provided on a-la-carte basis, thus affecting the marketability of channels. If DCI, being a small broadcaster in India which provides unique, innovative and niche content, is compelled to provide its channels on an a-la-carte basis, the aggregate cost of its channels will be much higher resulting in DCI losing most of its subscriber base, which in turn will adversely affect its revenue collection and the quality of the content produced by it, and finally its extinction as a niche channel in India. The insistence of TRAI in the present Consultation Paper and in the Interconnection Regulations, for providing a-la carte channels, without any reasonable and valid justification, is violative of Article 19(1)(a) as viewers will be ultimately deprived of the ability to receive and enjoy the informative content of DCI's channels.

3.1.18 Para 3.15 of the Consultation Paper states the following: "The Authority has analyzed the data submitted by the service providers post implementation of the new regime and has observed that the uptake of channels on a-la-carte basis still continue to be very less as compared to the bouquet subscriptions (refer Annexure II). Analysis yields that such poor uptake of a-la-carte channels could be attributed to the

highly disproportionate a-la-carte rates of channels in comparison to bouquet rates. No well-defined relationship between these two rates exists in the new framework. As per data available with TRAI, some bouquets are being offered at a discount of upto 70% of the sum of a-la-carte rates of pay channels constituting these bouquets.”

3.1.19 TRAI’s reliance on Annexure – II of the Consultation Paper to bring out the percentage of subscribers who have opted for channels on a-la-carte basis vis-à-vis those who have opted for channels as part of a bouquet does not conclusively establish that consumers are forced to choose a-la-carte channels by ignoring bouquets and that consumers are more inclined to opt for a-la-carte channels. TRAI has proceeded on the assumption that consumers are incapable of choosing a-la-carte channels without carrying out any study based on the data collected by it. While, TRAI has referred to “analysis” carried out by it, it has not specified the nature of the analysis, the hypothesis forming the basis of the analysis, the economic and financial principles applied for such analysis, the sample of the viewers who were studied to come to the conclusion that viewers are incapable of making sane and independent choices, the social, financial and educational profile of such viewers, etc. Without these details, DCI as a broadcaster is unable to comment on the so-called “analysis” of TRAI.

3.1.20 In fact, Annexure – II of the Consultation Paper clearly 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. The data is in fact, in line with the position explained by economists in the studies referred by DCI that, consumers see greater value in bouquet of channels because of variety of content and large number of channels at lower price, and the ease of not having to choose individual channels. This is the normal consumer behaviour. TRAI is trying to control consumer behaviour to choose a-la carte channels to subscribe to its theory that a-la carte channels are more beneficial.

3.1.21 TRAI has proceeded on the erroneous assumption that there is a nexus of discount between a-la-carte prices and pricing of bouquets consisting of such channels, and that the prices of driver channels are discounted in bouquets. As has been highlighted above, the formation of bouquets is a distinct exercise which involves considerations that are very different from those relevant for purposes of a-la carte pricing.

3.1.22 The conclusion drawn by TRAI with regard to the pricing strategy of broadcasters before and after the implementation of the new regulatory regime as demonstrated in Annexure – I to the Consultation Paper may be true of certain large broadcasters, who have the capability and the market power to force the DPOs to accept all their non-driver channels along with their driver channels in the base pack, because of large scale demand of the driver channels. However, this assumption does not hold true for small broadcasters such as DCI which provides niche content for a specific group of consumers. Smaller broadcasters

like DCI do not have the market power to force all their channels in the base pack of the DPO.

3.1.23 The capping of discounts by TRAI has been proposed on the basis of assumed realistic price without conducting study on pricing rationale of the broadcasting industry, which is arbitrary, discriminatory and not based on any relevant material. TRAI's assumption that discounts hamper the commercial interests of various stakeholders and are detrimental to subscribers is completely incorrect in view of the economic rationale provided by various economists in favour of bouquet pricing. TRAI's assumption is not based on any supporting study or material.

3.1.24 Further, the explanation given by TRAI for capping of discounts is to persuade broadcasters to declare "realistic" prices of their channels. However, the reason given by TRAI for capping the ceiling on discounts no longer holds ground in view of the fact that the Hon'ble Supreme Court of India has struck down Clause 3(3) of the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 ("Tariff Order") and thereby has set aside any restriction on broadcasters to price its channels.

3.1.25 The Consultation paper sets out the same arguments that had been placed before the Hon'ble Madras High Court and the Hon'ble Supreme Court by the TRAI, and rejected. Therefore, the effort on the part of TRAI to re-introduce the same issue, is clearly an effort to override and disregard the findings of the Hon'ble High Court of Madras, which have been affirmed by the Hon'ble Supreme Court of India. It is

submitted that the issue of capping on discounts which has already been struck down by the Hon'ble High Court of Madras cannot be raised again on the selfsame grounds.

3.1.26 In light of the above, it is evident that 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. The conclusive finding of TRAI that: (a) the pricing of bouquets of channels involves discounting of pricing of driver channels; and (b) that such unreasonable discounting is detrimental to consumer choice and interest, is not correct either from an economic perspective or from the perspective of consumer interest. 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.

3.1.27 Further, the assumption of TRAI that broadcasters are pushing unwanted channels to subscribers as part of the bouquet is completely misconceived, in view of the economic rationale of pricing of bouquets. TRAI has failed to consider that (i) exclusion of unwanted / unpopular channels on grounds other than those provided under Article 19(2) of the Constitution of India, amounts to infringement of right of speech

and expression; (ii) unwanted / unpopular channel is a vague concept inconsistent with the economic principles of price-demand co-relationship.

3.1.28 The suggestion by TRAI that bundling of unwanted channels results in “artificial occupation of distributor’s network capacity” thereby causing scarcity of capacity, is completely flawed. It demonstrates the undue and unreasonable preferential treatment of TRAI towards DPOs by not subjecting network development to regulatory oversight. It is pointed out that in other sectors, e.g. electricity and oil and gas, sector regulators have framed detailed procedure and rules for regulation of transmission and distribution services. However, TRAI has given a complete free hand and discretion to DPOs to decide the extent to which, they want to develop network capacity.

3.1.29 The real challenge to consumer choice is the limited network capacity maintained by DPOs. DPOs do not want to make investments for augmenting capacity, which is comparatively less substantial compared to initial investments. DPOs are not ready to augment their capacity, in order to create artificial scarcity of network to be able to dictate terms to broadcasters.

3.1.30 It is submitted that the cost of transporting 300 channels on a 2 gig bandwidth from point A (location/ city) to point B (another city/ location) on Airtel leased line is Rs. 15 lakhs per annum. This, when broken to per channel basis, comes out to Rs. 415 per month. Therefore, it is just a fraction of the cost in the entire investment that a

DPO makes and is just an alibi/ excuse for limited channel carrying capacity. However, in case where DPOs cannot provide bandwidth due to pipe not being available, costs may increase more as fresh laying of cable is required.

3.1.31 It is further pointed out in this regard that platform services provided by certain DPOs, which are often in the nature of competing programs/ channels, block significant amount of network capacity of DPOs. Accordingly, platform services should be allowed only in case of spare capacity.

3.1.32 The reference placed by TRAI on Table 3.2 of the Consultation Paper to suggest that small broadcasters have converted their pay channels to FTA channels in view of the non-level playing field created by large broadcasters by offering deep discounts on bouquets, will have to be seen in light of the channels listed out in Table 3.2. These represent single channel broadcasters, whose channels were earlier sold as part of bouquet prior to the New Regulations. However, under the New Regulations, the price of these single channels would have gone up significantly for the reasons elaborated earlier in our comments. These channels, by themselves, would not be able to draw viewership in view of significantly high a-la carte price. It is very likely in such scenario, for the broadcaster to convert his channel to FTA channel to include the same within the pack of 100 FTAs mandated to be provided by the DPOs. Once included in the FTA, it would ensure a greater reach of viewers than as an a-la carte channel.

3.1.33 In view of the above, our comments on the following issues set out in the Consultation Paper are as follows:

Q1. Do you agree that flexibility available to broadcasters to give discount on sum of a-la-carte channels forming part of bouquets has been misused to push their channels to consumers? Please suggest remedial measures.

Response: At the outset, it is pointed out that pricing of content is an inherent right of any broadcaster as part of its business. Secondly, the query framed by TRAI is completely erroneous and misleading, as there is no discount provided on a-la carte channels for forming bouquets. Moreover, the very tone and tenor of the query shows a predetermined conclusion that broadcasters have “misused” the so-called flexibility to give discount to “push their channels to consumers”. The consultative process lacks objectivity and openness and is marred by prejudices and presumptions on the part of TRAI.

As set out above, we believe that TRAI has proceeded on an erroneous assumption that broadcasters with popular driver channels push “unpopular” channels with such driver channels in the form of bouquets on consumers by offering deep discounts on such bouquets, or that they resort to “perverse pricing” of bouquets vis-à-vis individual a-la-carte channels. DCI has already referred to several economic studies that clearly conclude that (i) bouquet pricing is different from a-la carte pricing and that the two have no relationship; and (ii)

bouquets are in effect more beneficial for consumers as they result in natural economies of scale for broadcasters due to resultant widening of subscriber base thereby actually reducing the cost for consumers. Therefore, we do not agree that bouquet prices are directly co-relatable to a-la carte prices through discounts on sum of a-la-carte channels as it consists of various other factors discussed in detail above.

Q2. Do you feel that some broadcasters by indulging in heavy discounting of bouquets by taking advantage of non-implementation of 15% cap on discount, have created a non-level field vis-a-vis other broadcasters?

Response: The query framed by TRAI is completely erroneous and misleading, as there is no heavy discounting of bouquets as suggested by TRAI. As explained earlier, the bouquet prices are generally lower than aggregate of a-la carte prices due to economies of scale, socialisation of costs and other factors. Moreover, the very tone and tenor of the query shows a predetermined conclusion by TRAI that some broadcasters have created a non-level field vis-a-vis other broadcasters through discounts in bouquet. The consultative process lacks objectivity and openness and is marred by prejudices and presumptions on the part of TRAI.

As has been set out above, we believe that TRAI has proceeded on an erroneous assumption that unreasonable amounts of discounts lead to illusionary/ perverse pricing and non-level playing field vis-à-vis

other broadcasters, without referring to any empirical study or providing any rational basis. Discounting is an important business tool for a broadcaster to arrange its affairs in a manner which is attuned to market demand. 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. Moreover, discounting in general is a tool of competition among rival businesses that result in lowering consumer cost. It is pertinent to note that apart from facing competition from other broadcasters, we have to face challenge from other platforms, which provide similar services. When a broadcaster provides discounts on its bouquets, consumers are enabled to avail channels at lower prices. By providing bouquets enables DCI to invest in unique content which is informative and satisfies the curiosity of its viewers by developing viewership of multiple channels from the same set of subscribers; and demand higher advertisement revenue with a broader subscriber base. If DCI is compelled to provide channels on an a-la-carte basis, rather than in the form of bouquets, due to capping of discounts, there will be a significant increase in the cost of the channels provided on a-la-carte basis, thus affecting the marketability of DCI's channels, considering the fact that DCI incurs significant costs and heavy investment to produce high-quality niche content. DCI provides discounts on its bouquets in a manner so as to be able to compete with larger broadcasters whose channels have a higher market demand being

entertainment channels, as compared to the niche, educative content produced by DCI. 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. Therefore, discounting of bouquet prices by smaller broadcasters such as DCI is essential in order for DCI to reach a wider subscriber base. This is without prejudice to the contentions of DCI before the Hon'ble Delhi High Court in W.P. (C) No. 6915 of 2017, wherein, it has challenged the cap of 15% on discounts allowed to be provided by broadcasters on non-discriminatory basis to all DPOs.

Q3. Is there a need to reintroduce a cap on discount on sum of a-la-carte channels forming part of bouquets while forming bouquets by broadcasters? If so, what should be appropriate methodology to work out the permissible discount? What should be value of such discount?

Response: In light of the discussion above, it is not open to TRAI to reintroduce cap on discounts in light of the fact that the third proviso to Clause 3(3) of the Tariff Order has been struck down by the Hon'ble High Court of Madras, whose findings have been affirmed by the Hon'ble Supreme Court of India.

3.2 “Unwanted” channels affecting consumer choice [Refer to following paras of Consultation Paper: paras 2.5, 3.6, 3.16, 3.20 and 3.24]

- 3.2.1 TRAI has alleged in the Consultation Paper 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.
- 3.2.2 TRAI has further alleged that bundling of large number of unwanted channels in bouquets also resulted in artificial occupation of distributors’ network capacity.
- 3.2.3 It is reiterated that the notion of “unwanted” or “unpopular” channels adopted by TRAI while framing the present Consultation Paper, is not only vague, but also discriminatory. 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, as explained above, the demand of channels is dependent on various factors and may vary from person to person.
- 3.2.4 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.

3.2.5 Regulation 4(8) of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 dated 03.03.2017 (“Interconnection Regulations”) allows DPOs to discontinue carrying a television channel in case the monthly subscription percentage for such channel is less than 5% of the monthly average active subscriber base of that DPO in each of the immediately preceding six consecutive months. The power of DPOs to discontinue airing a channel is based on a fundamentally flawed and incorrect premise. Regulation 4(8) of the Interconnection Regulations suggests that only ‘popular’ channels with a certain level of viewership may be made available for subscription.

3.2.6 It is a clear infringement of Article 19(1)(a) of the Constitution of India as it allows a DPO to obstruct the rights of a broadcaster to circulate its programs. The reason for such restriction is to avoid blocking of capacity, which is not a ground under Article 19(2). TRAI has thus brought about the concept of unwanted / unpopular channel by which it is restricting the right of smaller broadcasters to propagate and broadcast their channels. It is respectfully submitted that no broadcaster, however small their consumer base, can be denied the right to broadcast their channels when they are ready to pay for the bandwidth, on any ground other than those specifically provided under Article 19(2). The fundamental right of viewers that seek to access the content curated in the ‘less popular’ channels is violated by allowing DPOs to discontinue carrying such channels.

- 3.2.7 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. This amounts to treating smaller and niche broadcasters such as DCI at par with other broadcasters of entertainment channels, which is violative of the principles of fairness and equality under Article 14 of the Constitution of India.
- 3.2.8 TRAI has resorted to social regulation by advocating the cause of “popular channels” as the basis for DPO choice, thereby conclusively proceeding on what consumer choice should be allowed. This creates entry barrier for small and niche channels. TRAI has not conducted any regulatory impact assessment on such approach. Further, TRAI has not provided the basis for categorizing a channel as “unpopular”. TRAI should appreciate that the provision of multiple channels in a bouquet apart from the so called “driver” channels improves the quality of viewership, provides variety of programs, increases the reach of broadcasters which, in turn, enhances advertisement revenue and reduces broadcasting costs. Therefore, bundling of channels is a boon for consumers, contrary to the view of TRAI.
- 3.2.9 Moreover, no obligation subsists requiring the DPOs to improve / enhance their network capacity. Regulation 4(8) of the Interconnection Regulations is thus arbitrary and excessive insofar as it imposes

restrictions on broadcasters while not regulating development of network capacity.

3.2.10 The Hon'ble Supreme Court of India in ***Life Insurance Corporation of India v. Manubhai D. Shah, (1992) 3 SCC 637*** has observed the following:

“8. The words 'freedom of speech and expression' must, therefore, be broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. It, therefore, includes the right to propagate one's views through the print media or through any other communication channel e.g. the radio and the television. Every citizen of this free country, therefore, has the right to air his or her views through the printing and/or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution. The print media, the radio and the tiny screen play the role of public educators, so vital to the growth of a healthy democracy. Freedom to air one's views is the life line of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship. It cannot be gainsaid that modern communication mediums advance public interest by informing the public of the events and developments that have taken place and thereby education the voters, a role considered significant for the vibrant functioning of a democracy. Therefore, in

any set up, more so in a democratic set up like ours, dissemination of news and views for popular consumption is a must and any attempt to deny the same must be frowned upon unless it falls within the mischief of Article 19(2) of the Constitution. It follows that a citizen for propagation of his or her ideas has a right to publish for circulation his views in periodicals, magazines and journals or through the electronic media since it is well known that these communication channels are great purveyors of news and views and make considerable impact on the minds of the readers and viewers and are known to mould public opinion on vital issues of national importance. Once it is conceded, and it cannot indeed be disputed, that freedom of speech and expression includes freedom of circulation and propagation of ideas, there can be no doubt that the right extends to the citizen being permitted to use the media to answer the criticism leveled against the view propagated by him. Every free citizen has an undoubted right to lay what sentiments he pleases before the public; to forbid this, except to the extent permitted by Article 19(2), would be an inroad on his freedom. This freedom must, however, be exercised with circumspection and care must be taken not to trench on the rights of other citizens or to jeopardise public interest. It is manifest from Article 19(2) that the right conferred by Article 19(1)(a) is subject to imposition of reasonable restrictions in the interest of, amongst others, public order, decency or morality or in relation to defamation or incitement to an offence. It is, therefore, obvious that

subject to reasonable restrictions placed under Article 19(2) a citizen has a right to publish, circulate and disseminate his views and any attempt to thwart or deny the same would offend Article 19(1)(a)."

(Emphasis supplied)

3.2.11 TRAI should consider the nature of operations and opportunities for small broadcasters such as DCI with unique and niche products are to be treated separately from broadcasters of "popular" channels, whose content as well as cost of production of content is significantly different. The exclusion of channels on the ground of "non-popular" channels squatting on network capacity, is thus completely arbitrary as it does not consider the business of small and niche broadcasters who have limited viewership and is violative of Articles 19(1)(a) as well as 19(1)(g) of the Constitution of India

3.2.12 The Hon'ble Supreme Court of India in **Secretary, Ministry of Information and Broadcasting, Govt. of India and Ors. v. Cricket Association of Bengal and Ors., (1995) 2 SCC 161** has affirmed that the right to be informed, educated and entertained is part of the inviolable right of subscribers under Article 19(1)(a) of the Constitution of India. Such right can be curtailed by law only on grounds specified under Article 19(2) of the Constitution of India. The Interconnection Regulations are in violation of the fundamental right of subscribers to be informed, educated and entertained as DPOs have been given an uncanalized discretion to curtail channels for its commercial gain.

3.2.13 Further, the concern of TRAI regarding blocking of network capacity by “unwanted channels” is completely unfounded in view of our submissions hereinabove. As already submitted above in para 3.1.30, the cost of transporting channels is a fraction of the cost in the entire investment that a DPO makes. The approach of TRAI in not regulating the role of DPOs qua development of network capacity, is arbitrary and in abdication of its functions under Section 11 of the TRAI Act, 1997.

3.2.14 In view of the above, our comments on the following issues set out in the Consultation Paper are as follows:

Q5. What other measures may be taken to ensure that unwanted channels are not pushed to the consumers?

Response: As has been stated above, we believe that the notion of “unwanted” or “unpopular” channels adopted by TRAI while framing the present Consultation Paper, is not only vague and discriminatory, but also in violation of the rights of broadcasters and viewers to be informed, educated and entertained. 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. Suggesting measures to ensure that such alleged “unwanted” channels are not pushed to the subscribers amounts to treating smaller and niche broadcasters such as DCI at par with other broadcasters of entertainment channels, which is violative of the

principles of fairness and equality under Article 14 of the Constitution of India. Further, the fundamental right of viewers that seek to access the content curated in the 'less popular' channels is violated by allowing DPOs to discontinue carrying such channels.

3.3 Cap on number of bouquets

3.3.1 TRAI has alleged in the present Consultation Paper that no restriction on number of bouquets has created a problem wherein broadcasters and DPOs are offering too many bouquets, wherein many such bouquets contain the same set of channels, with very few changes. Such bouquets create confusion among consumers and also become a hurdle in choosing channels by consumers.

3.3.2 TRAI has failed to disclose the details of analysis of consumers' need which has prompted TRAI to expect "reasonable" number of bouquets from broadcasters and DPOs. TRAI has proceeded on the assumption that larger number of bouquets offered by broadcasters and DPOs makes it inconvenient for consumers to select channels of their choice while exercising their option. However, TRAI has not disclosed the information / details based on which, it has arrived at such conclusion. Unless such information is provided, the stakeholders including DCI will not be in a position to deal with the proposition set forth by TRAI in an effective manner. It is therefore, of utmost importance that TRAI clearly discloses complete information based on which, it has proposed such drastic steps to restrict the right of broadcasters to decide the manner in which, they want to provide their content to the viewers.

- 3.3.3 TRAI has further stated that no restriction on the number of bouquets encourages broadcasters to continue with the formation of new bouquets. TRAI has alleged that as per some stakeholders, large number of bouquets not only makes consumer choice difficult but also causes unnecessary burden on IT and billing systems of DPOs.
- 3.3.4 It is submitted that broadcasters have the right to offer channels in whichever manner or form they want, including as part of bouquets. Any restriction on the broadcaster's right to decide on the manner in which, it wants to provide its channels, is an infringement of its right of expression and propagate its content, especially since multiple bouquets do not involve usage of additional network capacity of DPOs. Moreover, the argument of confusion amongst consumers due to large number of bouquets hardly has merits, considering that consumers have to choose from more than 800 channels if they have to avail a-la carte TV channels.
- 3.3.5 It will not be appropriate for TRAI to enter into micro-management of business decision of broadcasters, as the same does not fall within the scope of TRAI's functions under the Act. Moreover, the Act does not allow for such interference. The capping of bouquets that can be offered by a broadcaster is similar to a situation where a publishing house or newspaper is restricted on the number of newspapers/ magazines they would want to publish. Such a restriction is a direct infringement of Article 19(1)(a) as it seeks to restrict the discretion of a broadcaster to plan his business and offer the contents created or aggregated by it in the manner it thinks fit.

3.3.6 Broadcasters have to be allowed complete freedom to market its channels, by including them in bouquets in a manner that fits into the market requirements, the broadcaster will not be able to operate in an efficacious and conducive manner. Capping of number of bouquets in this case will be arbitrary and will be in violation of Article 19(1)(g) of the Constitution of India.

3.3.7 Further, as already stated above, the Hon'ble Supreme Court of India in ***Life Insurance Corporation of India v. Manubhai D. Shah, (1992) 3 SCC 637*** has observed that “*The words 'freedom of speech and expression' must, therefore, be broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. It, therefore, includes the right to propagate one's views through the print media or through any other communication channel e.g. the radio and the television... Freedom to air one's views is the life line of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship... It follows that a citizen for propagation of his or her ideas has a right to publish for circulation his views in periodicals, magazines and journals or through the electronic media....*” A broadcaster has the right under Articles 19(1)(a) and 19(1)(g) of the Constitution of India to package its channels in whichever manner it wants. Further, packaging of channels in bouquets is an imperative exercise wherein the broadcaster takes into consideration the variety of choice of the subscriber base depending on different demographics, target areas, language spoken, etc.; the varying value

that subscribers in different location or of different background are ready to allocate to a group of channels; an optimized distribution of broadcasting and marketing cost; affordable pricing for attracting maximum viewership; and projected advertisement revenue based on expected viewership. In essence, the different bouquets formulated by broadcasters is a matter under the Copyright Act, and the scope of TRAI Act would limited in its application to such decisions.

3.3.8 In the simple illustration set out earlier, a consumer watching the Discovery channel may be inclined to subscribe to a channel offered by DCI from a different genre (which might not originally be preferred by such consumer), such as DSC Turbo, but only if such channel is within the consumer's monthly budget. DCI would therefore endeavour to price its bouquets in a manner wherein both the Discovery channel and DSC Turbo fall within the monthly budget of such consumer. Such bundling by DCI would enable a consumer to avail multiple channels at a cost lower than the total cost of the a-la-carte channels; and avail of channels from different genres in addition to channels of their preference.

3.3.9 TRAI has further stated in the present Consultation Paper that "if a consumer once chooses a bouquet, he cannot remove unwanted channel. If he wants to remove unwanted channel which is part of the bouquet, he is required to remove the bouquet as a whole and then individually select each desired channel which makes process more complicated for the consumers and in this manner they are able to push more and more channels. As a result, consumers are not able to

optimize their plan and are forced to pay more.” It is reiterated that the notion of “unwanted” or “unpopular” channels adopted by TRAI while framing the present Consultation Paper, is not only vague, but also discriminatory. 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, larger numbers of bouquets would mean a larger number of combinations of channels. Therefore, the chances of a consumer selecting a bouquet with channels he might not prefer would be lowered.

3.3.10 A large number of bouquets therefore only serves to further augment consumer choice and further lowers cost of channels for consumers. A large number of bouquets would be beneficial for consumers in households with varied viewership wherein each subscriber may have highly individualized preferences across various genres.

3.3.11 In view of the above, our comments on the following issues set out in the Consultation Paper are as follows:

Q6. Do you think the number of bouquets being offered by broadcasters and DPOs to subscribers is too large? If so, should the limit on

number of bouquets be prescribed on the basis of state, region, target market?

Response: As has already been stated above, broadcasters have the right to offer channels in whichever manner or form they want, including as part of a large number of bouquets. Unless the broadcaster is allowed complete freedom to market its channels, by including them in bouquets in a manner that fits into the market requirements, the broadcaster will not be able to operate in an efficacious and conducive manner. Capping of number of bouquets in this case will be arbitrary and will be in violation of Articles 19(1)(a) and 19(1)(g) of the Constitution of India and in breach of the broadcasters' copyright in formulation of bouquets after taking various factors into consideration. Further, TRAI has failed to disclose any empirical data/ consumer survey which evidences the fact that consumers have grievances relating to choosing channels from large number of bouquets. A large number of bouquets is in fact more beneficial and convenient for consumers as it augments consumer choice. Therefore, we do not agree that the number of bouquets being offered by broadcasters and DPOs to subscribers is too large and that there should be a limit on number of bouquets be prescribed on the basis of state, region, target market.

Q7. What should be the methodology to limit number of bouquets which can be offered by broadcasters and DPOs?

Response: Kindly see response to Question 6 above.

3.4 Cap on MRP of channels forming part of bouquet

3.4.1 TRAI has pointed out that prices of some channels in both SD and HD format, priced more than Rs. 19/- in earlier framework, have been reduced to Rs 19/- which is upper ceiling for any channel to be carried as part of the bouquet. According to TRAI, this demonstrates that the intent of the broadcasters is to push the channels in the form of bouquet rather than permitting consumers to take channels of their choice on a-la-carte basis. TRAI has noted in para 3.38 of the present Consultation Paper that “...*in the old regime broadcasters used to give 80-90 percent discount over RIO price while offering their bouquets to DPOs. This clearly indicates that prices of most of the SD channels have increased significantly. The flexibility given to broadcasters has been grossly misused and consumer interest has been seriously hurt. In fact, many SD channels which were much below Rs.19 in the previous regime have been increased to the threshold price of Rs.19 so that they can be part of a bouquet to maximize their revenue and at the same making it a choice on a-la-carte prices difficult.*”

3.4.2 TRAI has without any rationale or basis made a conclusive statement that “*the flexibility to the broadcasters to price their channels was given on the premise that quality of the TV channels will be improved and consumers will be provided a high value channel on their choice. However, the re-adjustment of the channel prices by the broadcasters clearly indicates that flexibility of the framework has not only been*

misused to increase the channel prices but also denied choice of the channels to the consumers.”

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

- (i) Increase in channel prices upto Rs.19/-: 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 therefore, have to work out their costs on individual basis, which was earlier being shared / socialized in the bouquet. Nonetheless, the price increase has been limited to Rs.19/- 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/-: Prior to the New Regulations, there was no compulsion to offer every channel on a-la carte basis, neither there existed 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 New Regulations came into force, the price of such individual channels had to be necessarily

reduced, to retain the ability to bundle them with other channels.

3.4.4 TRAI has proceeded on the assumption that consumers are incapable of choosing a-la-carte channels without relying on any empirical data/study. Annexure – II of the Consultation Paper clearly 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.

3.4.5 TRAI has further noted in para 3.40 of the present Consultation Paper that “a bouquet is normally expected to have same or similarly priced channels”. Such an assumption is clearly erroneous and contrary to general tendency of prices for a-la carte and bundled channels. TRAI has failed to disclose any empirical basis or study on which such assumption has been made. 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.

3.4.6 Further, if the mandate of declaring MRP for a pay channel and imposition of maximum ceiling of discount on such pay channel, as per TRAI's own reasoning, would result in discovering the optimum price for a channel, then it does not stand to logic as well as reasonableness as to why there should be a further prohibition from including a pay channel in a bouquet whose MRP is more than Rs. 19. The argument of "abnormally high" price of bouquet so as to justify prescription of Rs. 19 as cap does not stand to reason because if the price of a pay channel which is going to form part of the bouquet is fairly and optimally derived, then the ultimate price of bouquet which is nothing but summation or aggregation of price of individual pay channels, is also a fairly and optimally derived price.

3.4.7 TRAI has noted in para 3.37 of the present Consultation Paper that small broadcasters, who are not able to make bouquets of their channels and are handicapped to face competition from big broadcasters, have converted their pay channels to FTA as survival strategy. It is submitted that these small broadcasters are single-channel broadcasters who would incur huge costs on advertising, networking and infrastructure for broadcasting their channels. Such high broadcasting costs would lead to such single channels becoming unsaleable. By converting their pay channels to FTA, such single-

channel broadcasters can at least hope to get their channels included in the FTA basic pack which includes 100 mandatory FTA channels and earn advertisement revenue to recoup their investment. If such single channels are sold on a-la-carte basis, their prices will undeniably be high, thus impacting their saleability.

3.4.8 In view of the above, our comments on the following issues set out in the Consultation Paper are as follows:

Q8. Do you agree that price of individual channels in a bouquet get hedged while opting for a bouquet by subscribers? If so, what corrective measures do you suggest?

Response: The query framed by TRAI is misleading. As has been discussed above, 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/- so as to be included in bouquets which would not only provide a wider range of channels to subscribers across all genres, but also lower costs for consumers to avail of such additional channels. 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. The basis of the above question is illogical and fallacious as TRAI has not conducted any study on the economic rationale of a-

la-carte vis-à-vis bouquet and has not been able to conclusively prove what benefit subscribers would derive by taking channels on a-la-carte basis rather than in the form of bouquets.

Q9. Does the ceiling of Rs. 19/- on MRP of a-la-carte channel to be part of a bouquet need to be reviewed? If so, what should be the ceiling for the same and why?

Response: In view of the discussions above, it is submitted that the ceiling of Rs.19/- 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 (i) result in increase in consumer spending if the channel cannot be included as part of a-la carte; (ii) 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 a-la carte prices 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. In the event, an a-la-carte regime is introduced, DCI will be forced to review its entire pricing strategy, and may turn out to be unviable.

3.5 Flexibility to make bouquets should lie with DPOs

3.5.1 TRAI has alleged in the present Consultation Paper that the flexibility given to broadcasters to make bouquets of channels was in order to make the process of selection of channels by subscribers “easy” as broadcasters were expected to make “small bouquets of same genres or some popular channels”. TRAI has also highlighted that DPOs have pointed out that broadcasters are using this flexibility given to them to make bouquets of their channels to push their non-driver channels along with some driver channels on the subscribers. TRAI noted that DPOs were of the opinion that a large number of bouquets not only created confusion among subscribers but also choked the IT systems of DPOs.

3.5.2 TRAI has further alleged that according to some stakeholders, since DPOs have market-based data relating to subscribers’ habits, viewership pattern, and language priorities, therefore, the flexibility to form such bouquets should lie only with DPOs as they interact with subscribers and they may create a better mix of channels across the broadcasters, for its subscribers. DPOs can therefore offer bouquets of homogenous channels as per the tastes and choices of subscribers by picking channels of same genres across the broadcasters or a mix of different genres as per the prevailing choice of subscribers.

3.5.3 TRAI has further stated in the present Consultation Paper that “*the earlier market was operating in the analog manner, where channels were priced in such a manner that all the channels of the broadcasters were*

taken by the DPOs and all the channels were pushed to consumers. This unfair treatment of the consumers continues despite the digitization of the sector.”

3.5.4 TRAI has failed to disclose the details of analysis of subscribers’ needs or the relation between “small bouquets” and ease in selection of channels by subscribers. The Consultation Paper does not disclose any study carried out by TRAI in this regard. As already discussed above, TRAI has proceeded on the basis of an erroneous assumption that larger number of bouquets offered by broadcasters and DPOs makes it inconvenient for consumers to select channels of their choice while exercising their option. TRAI has further failed to disclose details of the feedback received by TRAI post implementation of the new regime that large number of bouquets further complicates the choice of consumers, and that the very purpose of facilitation of selection of channels through use of bouquets has been completely defeated. TRAI has further proceeded on the flawed consideration that “small bouquets” should contain TV channels of the same genres. 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.

3.5.5 The new regulatory regime has brought about complete opacity between the broadcasters and the subscribers, thereby impeding true consumer choice. The choice of consumers has been subjected to the whims and preferences of DPOs, as consumers are allowed to choose from those channels / bouquets that have been offered by the DPOs in their

respective platform. This, read along with the must provide obligations on standard terms for broadcasters and the discretion of the DPOs under regulation 4(8) of the Interconnection Regulations to discontinue “unpopular” channels, ensures complete discretion to the DPOs to decide what to offer on its platforms for its subscribers. This results in the consumer being reliant on the sole discretion of the relevant DPO for access to any particular channel wherein he either has to choose the bouquet and/ or the particular channel as decided by the DPO. Consumer is not entitled to avail channels of its choice even on payment of additional individual amounts for accessing the same on a-la-carte basis, if the DPO does not subscribe to such channel for its platform. Thus, the DPO, who is supposed to discharge the function of a mere transmission utility, has been given the sole discretion on what broadcasters need to offer to its subscribers as “popular channels”, and what the subscriber will be entitled to choose for viewing.

3.5.6 While suggesting that the flexibility to form bouquets should lie only with DPOs since DPOs have market-based data relating to subscribers’ viewing patterns, and genre and linguistic preferences, TRAI has failed to consider that the broadcaster and the subscriber constitute the most important stakeholders in the broadcasting activity – the broadcaster being the content provider, which is ultimately viewed and enjoyed by the subscriber. The DPOs carry out the function of a conduit between the broadcaster and the subscriber providing the necessary connectivity between the producer and the consumer of TV channels. However, the new regulatory regime has brought about a complete lack

of transparency between the broadcaster and the end subscriber vis-à-vis the choice of channels, and vested the entire decision-making process in the broadcasting activity in the DPOs, which aspect has been completely disregarded by TRAI in the present Consultation Paper.

3.5.7 The allocation of channels in the absence of sufficient / spare network capacity on the part of DPO is not carried out at the behest of the subscribers or even based on subscriber demand as borne out from Consumer Application Forms (“**CAF**”) but on the basis of RIOs signed by the DPO. Therefore, consumer choice is contingent on the discretion of a DPO to carry a particular channel/ bouquet. The framework of the new regulations fails to achieve the purported objective of benefiting consumer interest and on the contrary cause detriment to consumer choice by vesting excessive unregulated discretion with the DPOs. This has been treated as the prerogative of DPOs. Regulation 4(2) of the QoS Regulations requires DPOs to provide broadcasting services on obtaining duly filled CAF from subscribers. However, the CAF is based on the channels/ packages offered by the DPO / local cable operator. Therefore, the ability on the part of the broadcaster to supply and on the part of the subscriber to enjoy any channel is ultimately decided by neither, but by the DPO, thereby defeating the very purport of the new regulations.

3.5.8 Further, it is open to a DPO to not provide a particular channel requested by a local cable operator (“**LCO**”) on the ground of feasibility; however, the Interconnection Regulations do not provide any indication of the nature of “non-feasibility”. Therefore, the DPO has the discretion

to decide what would be provided to the LCO in a target market without reference to the preferences of consumers. Naturally, the DPO will be more inclined to provide conventional “popular” channels over the niche, high quality, discerning, informative and educational channels provided by DCI, which may not enjoy wide viewership, but may have a group of passionate subscribers, who would have no say in the availability of channels through LCOs.

3.5.9 At the DPO level, DPOs have been already given the discretion to determine packaging of TV channels in particular bouquets or as a-la-carte channels to subscribers. Therefore, it is for the DPOs to decide how and in what manner, the various channels will be provided to the subscribers.

3.5.10 In addition, while the new regulatory framework provides for network capacity fee to be paid by the subscriber and carriage fee (apart from distribution fee) to be paid by the broadcaster just for carrying TV channels on its network, the DPO is entitled under Regulation 4(8) of the Interconnection Regulations to discontinue carrying a television channel in case the monthly subscription percentage for such channel is less than 5% of the monthly average active subscriber base of that DPO in each of the immediately preceding six consecutive months. This allows the DPO to decide the fate of the channel qua the subscriber and the broadcaster alike irrespective of the fact that niche channels like the one supplied by DCI may not enjoy a broad consumer base, but has more informative and educative relevance than many popular channels.

Moreover, no obligation subsists requiring the DPOs to improve / enhance their network capacity.

3.5.11 It is pertinent to appreciate that popularity cannot be the only determinative factor in a democratic setup and by facilitating disconnection of channels on the basis of subscriber base, TRAI has ventured into the area of social editing of channels, which is clearly in violation of the principles of freedom of speech and expression under Article 19(1)(a) of the Constitution of India. 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 that is more aligned with public policy of dissemination of informative and educative content, and cater to a specific and limited set of subscribers. TRAI has made a fundamental error of treating contents of programs and channels as a homogenous product, and thereby treating all channels alike. This amounts to treating broadcasters like DCI at par with other broadcasters of entertainment channels, which is violative of the principles of fairness and equality under Article 14 of the Constitution of India. The fundamental right of viewers that seek to access the content curated in the 'less popular' channels is violated by allowing DPOs to discontinue carrying such channels.

3.5.12 Further, as already stated above, the Hon'ble Supreme Court of India in ***Life Insurance Corporation of India v. Manubhai D. Shah, (1992) 3 SCC 637*** has observed that “*The words 'freedom of speech and*

expression' must, therefore, be broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. It, therefore, includes the right to propagate one's views through the print media or through any other communication channel e.g. the radio and the television... Freedom to air one's views is the life line of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship... It follows that a citizen for propagation of his or her ideas has a right to publish for circulation his views in periodicals, magazines and journals or through the electronic media...."

3.5.13 A broadcaster has the right under Articles 19(1)(a) and 19(1)(g) of the Constitution of India to package his channels in whichever manner it wants. Further, packaging of channels in bouquets is an imperative exercise wherein the broadcaster takes into consideration the variety of choice of the subscriber base depending on different demographics, target areas, language spoken, etc.; the varying value that subscribers in different location or of different background are ready to allocate to a group of channels; an optimized distribution of broadcasting and marketing cost; affordable pricing for attracting maximum viewership; and projected advertisement revenue based on expected viewership.

3.5.14 The DPO decides the market for a channel and not the subscribers, which leads to the broadcasters not being able to provide for content which may suit their likeness. There is no visibility of actual

and potential subscriber base for the broadcasters. The access to target market is based on DPO preference and not consumer preference.

3.5.15 TRAI's intent to vest excessive power in DPOs to make bouquets was further underscored by the issuance of press release dated 12.02.2019 whereby TRAI directed all DPOs to migrate all subscribers who do not exercise their options of choosing TV channels under the new regulations to a 'Best Fit Plan' to ensure that "non-exercise of the option" should not create any inconvenience to the subscribers. DPOs were directed to design such 'Best Fit Plan' based on consumers' usage pattern, language spoken, and containing a blended combination of various genres. As a result, consumers who had chosen not to move to the scheme of things under the New Regulations, were forced to migrate to a choice of channels picked by the DPO.

3.5.16 The consistent stance of TRAI that "*a consumer becomes the real decision maker of what she/he views, has complete freedom to chose what he/she wishes to watch and pay only for that*" was completely at odds with the issuance of the aforesaid press release wherein the DPOs were directed to create 'Best Fit Plans' for subscribers and choose channels on behalf of the consumers. DCI has consistently maintained that choice of channels/ bouquet of pay channels under the new regulatory framework envisaged under the new regulations would not be exercised by consumers but by DPOs, and that consumers are mere takers of the pay channels/ bouquets that have been included by DPOs in their network. It is submitted that the issuance of the aforesaid press release by TRAI further reinforced the contention that the new

regulations completely ignore subscriber right of choosing channels of their choice inasmuch as the press release expressly vests complete discretion on DPOs for providing channels/ bouquets (through ‘Best Fit Plans’) from which consumers have to pick their choice, thereby curtailing the right of consumers to continue with their erstwhile choice. This suggests that TRAI is predisposed towards addressing the concerns of the DPOs rather than balancing the interests of all stakeholders.

3.5.17 TRAI has even acknowledged market dominance of MSOs and LCOs in Consultation Paper on Monopoly/Market dominance in Cable TV services dated 03.06.2013 as follows:

“There are instances where the dominant MSOs are misusing their market power to create barriers of entry for new players, providing unfair terms to other stakeholders in the value chain and distorting the competition. MSOs with significant reach (i.e. a large network and customer base) are leveraging their scale of operations to bargain with broadcasters for content at a lower price and also demand higher carriage and placement fees. Such MSOs are in a position to exercise market power in negotiations with the LCOs on the one hand, and with the broadcasters on the other.

There are currently no restrictions on the area of operation and accumulation of interest in terms of market share in a city, district, State or country by individual MSOs and LCOs in the Cable TV Sector. It has been observed in some States that a single entity has, over a period of time, acquired several MSOs and LCOs, virtually monopolising the cable TV distribution. In such States, operation of a major portion of the cable TV network is controlled by a single entity. Such monopolies/market dominance are clearly not in the best interest of consumers and may have serious implications in terms of competition, pricing, quality of service and healthy growth of the cable TV sector.”

(Emphasis supplied)

3.5.18 It is further submitted that in ***Competition Commission of India v. Fast Way Transmission Private Limited, (2018) 4 SCC 316***, the Hon'ble Supreme Court of India has observed that there was abuse of dominant position by a cable operators' group by unlawful premature termination of agreement with broadcaster of a TV channel resulting in denial to broadcaster of market access.

3.5.19 While TRAI has relied on the NSTPL judgment in the Consultation Paper to proceed on the basis that broadcasters are distorting free choice of subscribers by abusing market power, the Consultation Paper does not in any manner discuss or deal with the above findings on abuse of dominant market power by DPOs.

3.5.20 In the **Draft (Second Amendment) to The Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations 2017** issued by TRAI on 09.08.2019, it has noted the following observations from consumers on the conduct of DPOs w.r.t. exercise of free choice of consumers, while proposing third party apps for exercising consumer choice:

“5. It was alleged that DPO has no interest to provide consumer friendly options to consumers as easy channel selection options clashes with their own vested interest. Consumers complaint that DPOs want to impose their preferred pack/bouquet to the subscribers without providing easy options as envisaged by TRAI. They felt that DPOs interest is to maximize their revenue.”

3.5.21 It is submitted that broadcasters have the right to offer channels in whichever manner or form they want, including as part of a large

number of bouquets. Unless the broadcaster is allowed complete freedom to market its channels, by including them in bouquets in a manner that fits into the market requirements, the broadcaster will not be able to operate in an efficacious and conducive manner. Capping of number of bouquets in this case will be arbitrary and will be in violation of Article 19(1)(g) of the Constitution of India.

3.5.22 In view of the above, our comments on the following issues set out in the Consultation Paper are as follows:

Q10. How well the consumer interests have been served by the provisions in the new regime which allows the Broadcasters/Distributors to offer bouquets to the subscribers?

Response: As already set out above, consumers do not exercise real and effective choice of channels under the new regime since DPOs choose channels/packs from which consumers pick their choice. The new regulations vest complete discretion on DPOs for carrying channels / bouquets of its choice. The present Consultation Paper fails to acknowledge that the new regulatory regime have brought about complete opacity between the broadcasters and the subscribers, thereby impeding true consumer choice. The choice of consumers has been subjected to the whims and preferences of DPOs who are more inclined to provide conventional mass-entertainment channels, which may not enjoy wide viewership, over the niche, esoteric channels provided by DCI which have a group of passionate subscribers, who would have no say in the availability of channels through LCOs. The

proposed approach will further strengthen the position of DPOs to manipulate market behaviour. The proposal does not take into consideration the established instances of abuse of market power by DPOs. Therefore, we are of the opinion that consumer interests are not served by the provisions in the new regime which allows the Broadcasters/Distributors to offer bouquets to the subscribers. The new regulations in fact serve to impede true consumer choice since consumer choice is contingent on the discretion of a DPO to carry a particular channel/ bouquet.

Q11. How this provision has affected the ability and freedom of the subscribers to choose TV channels of their choice?

Response: Kindly see response to Question 10 above.

Q12. Do you feel the provision permitting the broadcasters/Distributors to offer bouquets to subscribers be reviewed and how will that impact subscriber choice?

Response: Kindly refer to our aforesaid submissions and response to Question 10 above.

Q13. How whole process of selection of channels by consumers can be simplified to facilitate easy, informed choice?

Response: Consumers generally prefer to complete their purchase in one easy swoop rather than purchase multiple products separately. For eg. a consumer's willingness to upgrade car packages (such as

navigation, wifi, music systems, rear camera etc.) all at once, but points out how difficult it often is for the brain to justify each individual upgrade. These individual purchases create individual pain points, whereas a bundled purchase creates only one pain point, even if the price is a little higher. Additionally, choosing a bundle offer diversity of products to a consumers rather than a consumer having to make a choice of channels individually which is not only a hassle to choose from more than 800 channels but also results in purchase pain points to a consumer. This is also established from the data provided by TRAI in Annexure II to the Consultation Paper.

In the **Draft (Second Amendment) to The Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations 2017** issued by TRAI on 09.08.2019, it has noticed that the DPOs with their current technology have not been able to address the issue of ease of choice of channels for viewers:

“4. While all the DPOs time and again assured TRAI that they are taking necessary actions and their IT systems are being modified to provide consumer friendly options, nothing changed on the ground. Despite repeated efforts of TRAI, consumer complaints continued unabated and no major change to facilitate consumer choice happened on the ground.”

It is submitted TRAI has not taken an objective view of the matter, and has been trying to interpret normal conduct of subscribers to choose a bundle of channels as an effect of so called “perverse pricing” of bouquets vis-à-vis a-la carte channels. Moreover, TRAI has not been

taking necessary steps to ensure complete transparency in the system, and rigid compliance of regulations by DPOs.

3.6 Other issues

Q16. Whether broadcasters may also be allowed to offer different MRP for a multi-home TV connection? If yes, is it technically feasible for broadcaster to identify multi TV connection home?

Response: DCI does not have any data with respect to multiple TV connections in any premises. It is not possible to comment on the issue in the absence of data.

Q17. Whether Distributors should be mandated to provide choice of channels for each TV separately in Multi TV connection home?

Response: DCI does not have any data with respect to multiple TV connections in any premises. It is not possible to comment on the issue in the absence of data.

Q22. How the channels should be listed in the Electronic Program Guide (EPG)?

Response: In our view, the manner in which channels are presently listed on the Electronic Programming Guide (EPG) seems to be adequate. Any change in EPG at this point may cause inconvenience to subscribers in locating channels in EPG as they have accepted/familiarized themselves with the present placement of channels on the

EPG. However, it is pointed out that “Lifestyle” should be treated/ listed as a separate genre than “Infotainment” as the nature of content is very distinct from that of Infotainment.

Q23. Whether distributors should also be permitted to offer promotional schemes on NCF, DRP of the channels and bouquet of the channels?

Response: In our opinion, DPOs should not be permitted to offer promotional schemes on NCF, DRP of channels and bouquets of channels since, as has already been set out above, DPOs are already vested with excessive unregulated power and discretion in carrying a particular channel/ bouquet. Allowing DPOs to provide promotional schemes on NCF would hamper its ability to augment and upgrade its systems in line with the demand of subscribers and broadcasters. TRAI should instead, set up a mechanism by which, it can assess the requirement of increase in band width of DPOs based on subscriber / broadcaster demand to issue necessary directions to develop capacity.

The proposal further paves way for treatment of channels at the whims of the DPOs and exclude niche channels provided by smaller broadcasters such as DCI, which may not enjoy wide viewership, but may have a group of passionate subscribers. The proposal further facilitates larger broadcasters to push their channels to the DPOs by using their market power, and for DPOs (who admittedly enjoy a

dominant market power) to make unwarranted demand on broadcasters to include their channels in the DPO packs.

Q24. In case distributors are to be permitted, what should be the maximum time period of such schemes? How much frequency should be allowed in a calendar year?

Response: In our opinion, this should be left for determination by market forces.

Q25. What safeguards should be provided so that consumers are not trapped under such schemes and their interests are protected?

Response: In our opinion, this should be left for determination by market forces.

Q27. In view of the fact that DPOs are offering more FTA channels without any additional NCF, should the limit of one hundred channels in the prescribed NCF of Rs. 130/- to be increased? If so, how many channels should be permitted in the NCF cap of Rs 130/- ?

Response: In our opinion, increased number of FTA channels in the prescribed NCF of Rs. 130/- would be a burden on the network capacity. As already submitted above, TRAI has given a complete free hand and discretion to DPOs to decide the extent to which, they want

to develop network capacity. The real challenge to consumer choice is the limited network capacity maintained by DPOs. DPOs do not want to make investments for augmenting capacity, which is comparatively less substantial compared to initial investments. DPOs are not ready to augment their capacity, in order to create artificial scarcity of network to be able to dictate terms to broadcasters. Therefore, increasing the number of FTA channels in the NCF cap of Rs. 130/- would only lead to occupation of network capacity and block significant amount of network capacity of DPOs, which could otherwise be occupied by pay TV channels which the consumers would actually prefer.

Q28. Whether 25 DD mandatory channels be over and above the One hundred channels permitted in the NCF of Rs. 130/-?

Response: In our opinion, the system currently introduced and in place should be continued and tested for a longer period of time. There should not be any changes made in the NCF pack even before the new regime is fully implemented. In our view, TRAI should allow the current NCF pack to continue with 25 DD channels for at least 2 years before it starts reviewing the regime again. Therefore, in our opinion, the 25 mandatory DD channels should continue to be included in the 100 FTA channels permitted in the NCF of Rs. 130.

APPENDIX A

**TABLE OF CONCLUSIVE STATEMENTS/ ASSUMPTIONS MADE BY TRAI
IN THE PRESENT CONSULTATION PAPER**

| S. No. | Issue | Conclusive Statements/ Assumptions made by TRAI in Consultation Paper |
|---------------|--|---|
| 1. | Bouquet v. A-la-carte: Deep discounting of bouquets leading to perverse pricing | <p>Para 1.10: <i>“The Authority has observed from the tariff declared by the broadcasters under new regulatory framework that broadcasters are offering bouquets at a discount of upto 70% of the sum of a-la-carte rates of pay channels constituting those bouquets. It indicates that in absence of any restriction on the discount on the offering of bouquets, broadcasters are making prices of a-la-carte channels illusory thereby impacting the a-la-carte choice of channels by consumers and giving huge discounts on bouquets to push even those channels which are not the choice of subscribers.”</i></p> <p>Para 2.5: <i>“Broadcasters with powerful driver channels succeeded to piggyback their not so popular TV channels with the driver channels in form of bouquets to MSOs/LCOs by offering deep discounts on bouquets as compared to a-la-carte channels, thus resorting to perverse pricing of bouquets vis-à-vis individual a-la-carte channels.”</i></p> <p>Para 2.9: <i>“Though the broadcasters were mandated to offer their channels on a-la-carte basis to MSOs/LCOs by the tariff amendment order dated 4th October 2007, they continued to provide channels on bouquet basis to MSOs/LCOs with skewed commercial conditions in favor of bouquets. As a result, MSOs/LCOs were denied the desired flexibility of providing channels on a-la-carte basis to subscribers.”</i></p> |

| S. No. | Issue | Conclusive Statements/ Assumptions made by TRAI in Consultation Paper |
|---------------|--------------|--|
| | | <p>Para 2.15: <i>“Analysis yielded that the prime reason for such poor uptake of a-la-carte channels was that the a-la-carte rates of channels were disproportionately high as compared to the bouquet rates and further, there was no dynamic relationship between these two rates.”</i></p> <p>Para 2.19: <i>“Even after the above-mentioned tariff amendment order, a-la-carte choice of TV channels for subscriber remained illusory either because a-la-carte rates of TV channels were disproportionately high in comparison to bouquets which forces subscribers to opt for bouquets or they were simply denied the a-la-carte choice by distributors of television channels. The main reason for this cited by the DPOs was the economic un-viability as the wholesale a-la-carte rates of channels were too high and the bouquets were heavily discounted even to the extent of 90% of the sum of a-la-carte rates of channels... Even after the NSTPL judgment, the RIOs submitted by broadcasters continued to have unrealistically high a-la-carte rates and heavily subsidized bouquet rates. This forced DPOs to opt for bouquets for their economic survival and thus they were not offering a-la-carte choice of channels to the subscribers.”</i></p> <p>Para 3.4: <i>“Analysis yielded that the prime reason for such poor uptake of a-la-carte channels was that the a-la-carte rates of channels were disproportionately high as compared to the bouquet rates and further, there was no well-defined relationship between these two rates.”</i></p> <p>Para 3.5: <i>“In fact, in the earlier framework, due to heavy discount in bouquet, consumers were confused and misled to find more illusionary value for money in the bouquet. Further, some bouquets were being offered by broadcasters at a discount of upto 80% -90% of the sum of a-la-carte rates of pay channels constituting those bouquets. These discounts were based on certain eligibility criteria/ conditions to be fulfilled by the DPOs. This indicated that a-la-carte rates</i></p> |

| S. No. | Issue | Conclusive Statements/ Assumptions made by TRAI in Consultation Paper |
|---------------|--------------|---|
| | | <p><i>of pay channels constituting the bouquet were kept exorbitantly high with a purpose to force the consumers to take bouquets only and reduce consumer choice.”</i></p> <p>Para 3.6: <i>“In such a scenario, at the retail end, the DPOs had no option but to somehow push all channels to maximum number of customers so as to recover costs. This marketing strategy based on forcing all the channels upon the subscribers through bouquets essentially resulted in ‘perverse pricing’ vis-à-vis the individual channels.”</i></p> <p>Para 3.7: <i>“It was expected that broadcasters will consider requirements of consumers and make bouquets of those channels which are demanded by the subscribers. However, post implementation analysis of new regulatory framework indicates that freedom given to broadcasters has been misused. The prices of the channels have been either increased or decreased in new regulatory framework when compared with their prices declared in old framework just to make these channels to be a part of the bouquets (refer Annexure I). This clearly indicates that focus of broadcasters have been to push as many channels as possible in the form of bouquets rather than giving choice to consumers on ala- carte basis.”</i></p> <p>Para 3.8: <i>“The Authority observed that a-la-carte rates of pay channels constituting the bouquet are kept high by the broadcasters with the intent to force the customers to subscribe bouquets only and kill consumer choice. One can say that while technically a-la-carte rates of channels are declared to comply with the regulatory provisions, these are illusive, and customers are left with no choice but to opt for bouquets. Bouquets formed by the broadcasters are generally a combination of a few popular channels and several not so popular channels. Huge discounts are offered on bouquet make them commercially appealing to consumers and making the a-la-carte choice of the popular channels a less attractive option.”</i></p> |

| S. No. | Issue | Conclusive Statements/ Assumptions made by TRAI in Consultation Paper |
|--------|-------|---|
| | | <p>Para 3.15: <i>“Analysis yields that such poor uptake of a-la-carte channels could be attributed to the highly disproportionate a-la-carte rates of channels in comparison to bouquet rates. No well-defined relationship between these two rates exists in the new framework. As per data available with TRAI, some bouquets are being offered at a discount of upto 70% of the sum of a-la-carte rates of pay channels constituting these bouquets.”</i></p> <p>Para 3.20: <i>“Heavy discounts are applied to bouquets making the a-la-carte prices of channels irrelevant in comparison... On the flipside, this perverse pricing strategy renders the a-la-carte subscription of the channels meaningless for the consumers and reduces option of choice. They end up subscribing to channels not of their original choice and even paying for those channels which they are not inclined to watch without even taking notice of.”</i></p> <p>Para 3.22: <i>“Heavy discounts in the form of bouquets to manipulate selection behavior of the consumers and pricing of a-la-carte channels on illusionary basis continue unabated. This clearly demonstrates the intention on the part of broadcasters offering large number of channels to somehow push maximum number of channels to the consumers, disregarding consumers’ legitimate right to choose channels of their choice. This in a sense defeats the very purpose of digitization and demonstrates misuse of flexibility which has been given to broadcasters in forming and pricing their channels.”</i></p> <p>Para 3.23: <i>“Some broadcasters during discussions have also shown their concerns about heavy discounts given on the sum of a-la-carte channels while forming the bouquet by broadcasters offering large number of channels. They stated that broadcasters offering large number of channels use the power of their popular channels and resort to heavy discounts to push their own not so popular channels as part of bouquets to subscribers, resulting in non-level playing field. The ability</i></p> |

| S. No. | Issue | Conclusive Statements/ Assumptions made by TRAI in Consultation Paper |
|---------------|---|--|
| | | <p><i>of broadcasters offering large number of channels to form bouquets and to hugely discount the bouquets is forcing small broadcasters either to exit from the market or convert their pay channel to FTA channel for survival. This fact has been substantiated to some extent by the data available with TRAI. While broadcasters offering large number of channels have converted their FTA channels to pay channels at token prices, less than a rupee per month in many cases, (Refer table 3.2), some broadcasters have converted pay channels to FTA during same period for survival. Such non-level paying fields, if they exist, need to be addressed so that all players in the sector are able to conduct business on fair terms.”</i></p> <p>Para 3.24: <i>“As mentioned above, in some cases, the price of the bouquet is less than the price of one single channel in that bouquet. This is clear case of illusory price of a-la-carte channel aimed to push the maximum channels by the broadcasters to the consumers. No subscriber will like to purchase a channel on a-la-carte basis when bouquet of multiple channel including that one available at a cheaper price than that of one single channel. In this process, subscriber end up taking even those TV channels which are not their natural choice. Such incidences clearly demonstrate the strategy of broadcasters to push maximum number of channels to the subscribers at the cost of the customers’ right to choose what they want to watch and pay for that only.”</i></p> |
| 2. | “Unwanted” channels: Consumer choice | <p>Para 2.5: <i>“Additional discounts were offered if MSOs/LCOs agreed to package all channels into their basic package and provide it to their maximum number of subscribers. The consumer pull for few driver channels made MSOs/LCOs apprehensive about the viability of their businesses in absence of such channels not being available on their platform. This resulted in large number of bundled channels being pushed to the subscribers as a bouquet, irrespective of their choice. The cost of unwanted channels was also passed on by the MSOs/LCOs to the consumers.”</i></p> |

| S. No. | Issue | Conclusive Statements/ Assumptions made by TRAI in Consultation Paper |
|--------|-------|--|
| | | <p>Para 3.6: <i>“Bouquets formed by the broadcasters contained only a few popular channels. The DPOs were often forced to take all channels of a broadcaster as otherwise they were denied the popular channels altogether. To make the matters worse, the DPOs had to pay as if all the channels were being watched by the entire subscriber base, when in fact only the popular channels might have high viewership... Thus, in the process, the subscribers, in general, ended up paying for “unwanted” channels and this, in effect, restricted consumer choice.”</i></p> <p>Para 3.16: <i>“TRAI also analyzed the viewership of the channels forming part of most popular bouquets subscribed by subscribers to find out whether subscribers are viewing all the channels in such bouquets. The viewership data obtained from Broadcast Audience Research Council (BARC) shows that only few popular channels in such bouquets are viewed by subscribers and other channels have very insignificant viewer-ship in comparison, establishing the fact that not all channels in popular bouquets are equally wanted or watched by subscribers. Evidently, the formation of bouquets by broadcasters is not based on consumer demands. It is purely driven by the motive of earning higher revenues at the cost of consumers. Such bouquet formation has least consideration of consumer choice.”</i></p> <p>Para 3.20: <i>“MRP of the popular channels are declared at the maximum permissible limit of Rs19/- so as to qualify to be the part of a bouquet and then these are bundled along with number of other channels, mostly marginally priced non-popular channels. By following this business model, the broadcasters gain in maximizing their reach even for not so popular channels, increasing subscription revenues.”</i></p> <p>Para 3.24: <i>“Further, such channels that are not so popular; but pushed to the subscribers misusing the flexibility in pricing by the broadcasters, are reducing the</i></p> |

| S. No. | Issue | Conclusive Statements/ Assumptions made by TRAI in Consultation Paper |
|---------------|----------------------------------|---|
| | | <i>competition in broadcasting space by reducing the available capacity with DPOs and creating entry barrier for new TV channels.”</i> |
| 3. | Cap on number of bouquets | <p>Para 1.11: <i>“Further, no restriction on number of channels has created another problem wherein broadcasters and DPOs are offering too many bouquets. TRAI has observed that too many bouquets are formed by the broadcasters/ Distributors and many of them contain the same set of channels, with very few changes. This too many bouquets are not only creating confusion among consumers but also becoming a hurdle in choosing the channels by consumers.”</i></p> <p>Para 3.27: <i>“Post implementation of the regime, TRAI has received feedback that too many bouquets are formed by the broadcasters, many of them contain more or less the same set of channels with very few changes. DPOs have highlighted that they have to configure all the bouquets offered by the broadcasters in their system irrespective of the value these bouquets offer to the subscribers. DPOs have further informed that it becomes very difficult for the consumer as well to choose from a large number of bouquets offered by broadcasters and frequent changes in composition of bouquet further complicate the choice of the consumers. In this manner, the very purpose of giving choice to consumers and extending a helping hand to facilitate selection of channels through use of bouquets has been completely defeated.”</i></p> <p>Para 3.30: <i>“It is evident from above that the number of bouquets offered by broadcasters is quite large and it creates confusion in the minds of consumers. There are already around 900 a-la-carte channels and no restriction on number of bouquets could encourage broadcasters to continue with formation of new bouquets. Some stakeholders have pointed out that apart from making the consumer choice difficult, this would also cause unnecessary burden on IT and billing systems of the DPOs. Suggestions have been received by the Authority that</i></p> |

| S. No. | Issue | Conclusive Statements/ Assumptions made by TRAI in Consultation Paper |
|---------------|---|---|
| | | <p><i>restrictions must be imposed on number of the bouquets that can be formed by broadcasters for these reasons.”</i></p> <p>Para 3.52: <i>“In the new framework, Authority has given flexibility of formation of bouquet to both broadcasters and DPOs. The objective to give this flexibility to broadcaster was so that they can make small bouquet of same genre or some popular channels so that it makes life ease for the subscribers in selecting the channel. However. During meeting with DPOs, they pointed that broadcasters are using this flexibility to push their non-driver channels along with some driver channels. DPOs further informed that large number bouquet not only created confusion among consumers but also choked IT system of DPOs.”</i></p> |
| 4. | Cap on MRP of channels forming part of bouquet | <p>Para 3.36: <i>“It has also been observed that prices of some channels both SD and HD format, priced more than Rs. 19/- in earlier framework, have been reduced to Rs 19/- which is upper ceiling for any channel to be carried as part of the bouquet (refer Annexure IV). This also demonstrates that intent of the broadcasters is to push the channels in the form of the bouquet rather than permitting consumers to take channels of their choice on a-la-carte basis.”</i></p> <p>Para 3.38: <i>“It may not be out of place to mention here that in the old regime broadcasters used to give 80-90 percent discount over RIO price while offering their bouquets to DPOs. This clearly indicates that prices of most of the SD channels have increased significantly. The flexibility given to broadcasters has been grossly misused and consumer interest has been seriously hurt. In fact, many SD channels which were much below Rs.19 in the previous regime have been increased to the threshold price of Rs.19 so that they can be part of a bouquet to maximize their revenue and at the same making it a choice on a-la-carte prices difficult.”</i></p> |

| S. No. | Issue | Conclusive Statements/ Assumptions made by TRAI in Consultation Paper |
|---------------|--|--|
| 5. | “Artificial occupation” of DPOs’ network capacity | <p>Para 2.2: <i>“Some broadcasters launched new channels which usually broadcast programs already available on driver channels. The analog system prevailing at that point of time have limited capacity to carry maximum 50-60 channels. These broadcasters occupied major portion of the limited bandwidth of the analog cable networks and thus killed the competition artificially for new entrants. As a result, majority of pay channels including driver channels belonged to a limited number of broadcasters.”</i></p> <p>Para 3.6: <i>“Bundling of large number of unwanted channels in bouquets also resulted in artificial occupation of distributors’ network capacity.”</i></p> |
| 6. | Digital addressability | <p>Para 2.19: <i>“Therefore, it was evident that fruits of addressability had not been passed on to the subscribers and subscribers were not able to exercise their choice in subscribing to channels.”</i></p> <p>Para 3.4: <i>“While finalizing the new regulatory framework the Authority noted that even after introduction of addressability the uptake of channels on a-la-carte basis was negligible as compared to the bouquet subscriptions.”</i></p> <p>Para 3.22: <i>“The very purpose of addressability was to bring transparency in reporting of number of the subscribers while ensuring effective choice of channels to the consumers. The implementation of digitalization in the country has ensured the transparency in number of subscribers.”</i></p> |
| 7. | Flexibility to make bouquets should lie with DPOs | <p>Para 3.53: <i>“Some stakeholders have pointed out that subscribers get their subscription either directly from DPO or through LCOs. They are aware about their choices and interests. DPOs are having market-based data of subscribers’ habit, viewership pattern, language priorities, and genre mix. DPOs are also offering bouquets of channels by bundling a-la-carte and bouquet of channels offered by</i></p> |

| S. No. | Issue | Conclusive Statements/ Assumptions made by TRAI in Consultation Paper |
|-------------------|--------------|---|
| | | <i>different broadcasters. DPOs have also stated that the very purpose of formation of bouquet is to help the consumers to easily select channels of their choice with minimal efforts. Therefore, the flexibility to form such bouquet should lie only with the DPOs as they are facing subscribers and they may create better mix of channel across the broadcasters for its subscribers. DPOs can offer bouquets of homogenous channels as per the taste and choice of the consumers by picking channels of same genre across the broadcasters or mix of different genre as per prevailing choice of consumers.”</i> |

APPENDIX B

Netflix doesn't want to go on a break with *Friends* ...

It's very clear Netflix considers *Friends* Must-Stream TV: The company is paying Warner Bros. Domestic Television Distribution close to \$80 million to keep the show as part of its vast programming library through 2019, an entertainment industry insider familiar with the deal tells Vulture. (Reps for both companies declined to comment on the terms of the deal.) Even for Netflix, that's a *lot* of money. "Nuts" was the one-word answer a top agent used to describe the payout. Another agent, reflecting on the current state of the showbiz economy and Netflix's run of huge overall deals with talent, wrote in an email that the sum sounded "reasonable to me because WHAT IS FUCKING REASONABLE ANYMORE?????" Still, the \$80 million figure actually may not be completely out of step with other deals Netflix has made for desirable TV shows. Another agent with general knowledge of Netflix's spending on network reruns says it's not unusual for the company to drop \$10 million per year on a moderately successful series with 100 or so episodes in its library. Given that *Friends* made 236 episodes over its 10-season run, and was a top-five show in all but its first season, \$80 million is not quite as ridiculous as it sounds.

As for its current performance, Netflix famously doesn't release viewing statistics, so there's no way to know for sure how many people watch *Friends* on the service. But Netflix content chief Ted Sarandos told me last spring the series was very much a hit on the site, and not just among American audiences. "*Friends* is hugely popular all over the world," he said. And indeed, given the depth of other content Netflix has in its library, it's not a stretch to suggest that the company wouldn't be paying this much for *Friends* if it weren't one of its most popular titles. Remember: Netflix execs regularly point out that they make programming decisions based on what their subscribers want. Clearly the data is telling Netflix execs *Friends* is worth the high price tag. Netflix also wasn't the only streaming service interested in making a deal for *Friends* — Warner Bros. entertained offers from multiple bidders, a person familiar with the situation tells Vulture. When I asked Sarandos about the state of Netflix's *Friends* licensing agreement earlier this year, he told me it would be "determined by what other buyers are circling it ... There will be competitors." Per Recode, the two main bidders were Hulu (quite logically) and Apple (a bit more surprising).

Another detail underscoring the show's value: Netflix's deal with Warner Bros. includes a provision that could result in *Friends*' streaming on both Netflix and WarnerMedia's upcoming streaming service, which is currently scheduled to launch next fall. It's not unprecedented for Netflix to share rerun rights on a show: CBS Corp.-owned *Cheers*, for example, can be seen on multiple on-demand services in addition to Netflix. But *Cheers*

doesn't cost very much and isn't anywhere near as high-profile as *Friends*. That Netflix seems open to a future deal in which it is the non-exclusive home to *Friends* is telling. (Worth noting: If *Friends* ends up streaming on the WarnerMedia service, Netflix will almost surely pay a *lot* less for it.)

... but Netflix will be fine if it loses the show

40% off unlimited access to Vulture and everything New York.

SAVE NOW »

As much as Netflix would like to hold on to *Friends* for as long as it can, the show's fate is ultimately out of its hands. AT&T and WarnerMedia will decide whether it makes more sense to share the series with Netflix or to use exclusive rights to the show to drive consumers to sign up for their own new streaming service. That's the inherent risk involved with licensing content from outside suppliers, and a key reason for why Netflix decided years ago to spend aggressively on building up its own library of originals. Netflix knew the media giants selling it shows such as *The Office* and *American Horror Story* and, yes, *Friends* would one day decide to get into the streaming game themselves. And when that day came, Netflix wanted to be prepared.

Last week, *Saturday Night Live* poked fun at the ridiculous number of new shows and movies Netflix churns out. But the streamer has been purposely making so many different kinds of shows so that its subscription numbers wouldn't suffer when favorite titles eventually disappeared. It's the same thinking that informs Netflix's increasingly quick trigger finger on its own originals: You might post a few angry tweets when *Everything Sucks* or *American Vandal* get canceled, but you're probably going to keep your Netflix subscription, because there are three other things you really love on the service. So, yes, *Friends* could very well end up on Netflix's dreaded list of expiring titles a year or two from now. But if it does, the odds are that very few people will flee the service as a result. And if some do? Well, Netflix will take the tens of millions of dollars it once gave to Warner Bros. and use it to make even more new shows and movies — content that will almost surely result in new folks signing up for Netflix not only in the U.S., but around the world.

The TV industry has seen this play before

While Netflix and streaming are relatively new, the underlying business model for subscription video services has been around for decades. Long before *House of Cards* arrived, HBO and Showtime shook up the TV world by convincing folks to pay as much as \$20 a month for a steady supply of premium content. And in the early years of both networks, that content was primarily blockbuster Hollywood movies. HBO and Showtime

spent years outbidding each other for the rights to various film studios' output, shelling out hundreds of millions of dollars to be the first place on TV viewers could see big feature films or classic titles. Eventually, however, the networks realized it made much more sense to control their own destinies and offer consumers things they couldn't find at Blockbuster or on a basic cable channel. About 15 years ago, Showtime dramatically slashed spending for film rights and decided to invest subscriber fees in first-run comedies and dramas. Some critics wondered whether audiences would keep paying for Showtime; the network saw its subscriber base grow by millions.

Netflix has been on a similar trajectory over the past decade. When the company first began its shift from DVDs to streaming, Sarandos and top lieutenant Cindy Holland snatched up as much outside content as they could, be it classic TV shows or feature film libraries. It grabbed DreamWorks Animation family movies from HBO, then stole Disney titles away from their former home at Starz. HBO didn't miss a beat when it lost those family-friendly titles, making up for their absence (in part) by snagging *Sesame Street* from PBS. And it's probably not a coincidence that in 2012, Starz made its big-budget bet on *Outlander* right around the same time it found out the Disney movies would be heading to Netflix. Bottom line: Losing access to other company's big content libraries didn't cripple HBO, Showtime, or Starz. History suggests Netflix will do just fine even if it's no longer the place to find your favorite TV shows from other networks.

In the end, WarnerMedia might not want to keep *Friends* to itself

After all the drama surrounding the show this week, Randall Stephenson, CEO of WarnerMedia parent AT&T, made news again on Tuesday by suggesting that when all was said and done, his company might be fine with sharing the streaming rights to *Friends*. Speaking at the annual UBS media conference in New York, Stephenson said that while the show is "content that we would definitely want on our platform" — meaning the upcoming WarnerMedia streaming service — it's not at all a given the show will end up there exclusively. "It is obviously very important to Netflix as well," Stephenson said. "Is it necessary to be exclusive to WarnerMedia on their product? No, it's not necessary, it's just important that we have the content."

While Stephenson didn't rule out that *Friends* could end up being exclusively available on the conglomerate's streaming platform, his cautious tone suggests the company isn't so sure it wants to give up the tens of millions Netflix is willing to pay to keep the show in some form. WarnerMedia also might not want to spend the sums necessary to stream *Friends* exclusively. Remember: While Warner Bros. TV produced and owns the show, it has to

share a not-insignificant portion of its profits from the series with the show's creators and its stars. When series are as popular as *Friends* was during its initial run on NBC, studios negotiate so-called profit participation agreements, allowing key staff to share in future windfalls associated with the show — like, you know, an \$80 million, one-year deal with Netflix. Warner Bros. can't just sell streaming rights to its future sibling streaming platform for \$1, even though they're all part of the same company. The new streaming service will have to pay the going market rate for *Friends* or else risk a so-called “self-dealing” lawsuit from the producers. Given how much Netflix just paid for one season of *Friends*, WarnerMedia won't be able to get exclusive rights to the show for cheap.

None of this is to suggest the company can't or won't be able to do just that, but legacy media companies such as AT&T and Warner Bros. are notorious for their quarter-to-quarter thinking. They've found themselves playing catch-up with Netflix in no small part because they weren't initially willing (or able) to spend the needed money to adapt to the new streaming universe. And Matthew Ball, a former Amazon Studios exec who now analyzes the industry at Redef.com, worries that that's exactly what WarnerMedia seems to be doing with *Friends*. In a lengthy Twitter thread Tuesday, he said he was “stunned” by WarnerMedia's decision to renew its *Friends* deal with Netflix and at the company's apparent hesitancy to reclaim the show for itself. “Despite saying they were committed to winning in [subscription streaming], Big Media wants to have their cake, eat it — and then hope they get a 3rd cake,” Ball tweeted.

In their defense, WarnerMedia and AT&T are just getting started on their streaming platform and haven't even worked out all the details of their new service (which, right now, is likely to take the form of three different subscription-based offerings). And unlike Netflix, whose business model allows it to deficit-spend seemingly unlimited sums, Wall Street hasn't shown a willingness to cut old media companies a similar amount of slack when it comes to spending. Turning down tens of millions of dollars just so that one 25-year-old show (albeit a *very* successful one) is available only on one platform isn't an easy call to make, particularly before the company has streaming data of its own to analyze. Nothing will prevent WarnerMedia from launching its streaming platform with a non-exclusive *Friends* and then pulling the plug on the Netflix deal a year or two later, once it gets a better feel for the direct-to-consumer space. Plus, the show has already made Warner Bros. *billions* of dollars over its lifetime, thanks to syndication deals with cable networks, local TV stations, and now Netflix. And because of Netflix, the series has become popular with a whole new generation of viewers. A little caution with such an important show might be warranted. After all, we all know what happens when you rush into a new relationship without thinking things through.

INDY/

HOW MUCH THE CAST OF FRIENDS MAKES FROM RERUNS

Warner Bros makes \$1bn each year from syndication revenue

Chelsea Ritschel New York | Monday 26 August 2019 17:23 |

Friends may have ended in 2004, but the show has remained popular and binge-worthy 15 years on.

As a result of the continued support from fans, the cast continues to make significant profits from their iconic roles, even after giving up their regular spots at the Central Perk.

For the six main cast members, who earn two per cent of the show's syndication revenue, it means an annual income of \$20m each - just from reruns.

When *Friends* first aired, each cast member was paid \$22,500 per episode, according to [MarketPlace](#).

Friends's top 30 episodes – from worst to best

[Show all 30](#)

However, by the third season, [Jennifer Aniston](#), Courteney Cox, Lisa Kudrow, Matt LeBlanc, Matthew Perry and David Schwimmer were reportedly making \$100,000 per episode.

By season nine, the cast had negotiated a salary of \$1m each per episode, a deal that was, at the time, the largest-ever for a 30-minute television show.

During negotiations two years prior, it had been decided that the cast would receive syndication profits - a benefit that had previously only been offered to stars who had ownership rights in a show, according to *The New York Times*.

[SUBSCRIBE NOW](#)[LOGIN](#) **INDEPENDENT**

Jennifer Aniston reignites the possibility of a Friends reunion

And despite it being 15 years since the last episode aired, it seems likely that the six main cast members will continue to profit from the sitcom - as **Netflix** proved *Friends* is still an extremely desirable commodity when it paid a **reported** \$80m to Warner Bros to keep the show on the streaming service through 2019.

This article was originally published in June 2019.

An Independent voice you can trust. Enjoy unlimited access to free-thinking journalism with Independent Premium. [Start your free trial today.](#)

MORE ABOUT [FRIENDS](#) | [JENNIFER ANISTON](#) | [WARNER BROS](#) | [NETFLIX](#)

Promoted stories

UK POLITICS

Live: PM facing resignation calls over alleged public funds corruption

AMERICAS

Police officer arrests 6-year-old child after 'tantrum' at school

PREMIER LEAGUE

Man United mystique fades away to leave Solskjaer appearing delusional

Coming Soon Godrej South Estate at Okhla, Delhi. 2/3/4 BHK Starting @ Rs. 2.49 Crs*

GODREJ SOUTH ESTATE DELHI | Sponsored

Anti-Snoring Device Everybody in India Is Talking About

SILENTSNORE | Sponsored

OC Received 3 & 4 Bed Homes Near Delhi by Mahindra from 4.18 cr*

MAHINDRA LIFESPACES GURGAON | Sponsored

भारत को एक सर्वे में बताया सबसे खतरनाक, पाकिस्तान-बांग्लादेश से भी आगे

AAJ TAK | Sponsored