TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,
PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 10th February, 2014

# THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (SEVENTH AMENDMENT) REGULATION, 2014

No. 1 of 2014

No. 6-11/2014 - B&CS.-- In exercise of the powers conferred by section 36, and by sub-clauses (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39,---------

(a) issued, in exercise of the powers conferred upon the Central Government by proviso to clause (k) of sub-section (1) of section 2 and clause (d) of sub-section (1) of section 11 of the said Act, and

(b) published under notification No. 39 (S.O. 44 (E) and 45 (E)) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part II- Section 3- Sub-section (ii), ----

the Telecom Regulatory Authority of India hereby makes the following regulations further to amend the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004), namely:-

**1.** (1) These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Seventh Amendment) Regulation, 2014 (1 of 2014).

(2) They shall come into force with effect from the date of their publication in the Official Gazette.

**2.** In regulation 2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004), (hereinafter referred to as the principal regulation),-----

(a) for clause (b), the following clause shall be substituted, namely:----

"(b) "authorised agent or intermediary" means any person including an individual, group of persons, public or private body corporate, firm or any organization or body authorised by a broadcaster or multi-system operator to make available its TV channels to a distributor of TV channels and such authorised agent or intermediary, while making available TV channels to the distributors of TV channels, shall always act in the name of and on behalf of the broadcaster or multi-system operator, as the case may be;"

(b) for clause (e), the following clause shall be substituted, namely:----

"(e) "broadcaster" means a person or a group of persons, or body corporate, or any organization or body who, after having obtained, in its name, uplinking permission or downlinking permission, as may be applicable for its channels, from the Central Government, provides programming services;"

(c) for clause (m), the following clause shall be substituted, namely:----

"(m) "multi system operator" means a cable operator who has been granted registration under the Cable Television Networks (Regulation) Act, 1995 and who receives a programming service from a broadcaster and re-transmits the same or transmits his own programming service for simultaneous reception either by multiple subscribers directly or through one or more local cable operators;"

3. In regulation 3 of the principal regulation, the sub-regulation 3.4 shall be deleted;

4. After regulation 13 of the principal regulations, the following regulation shall be inserted, namely:---

"**13A. Composition of bouquet by the broadcasters.----** (1) Every broadcaster shall, within six months of the commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Seventh Amendment) Regulations, 2014, ----

(a) ensure that bouquet of TV channels, contained in its Reference Interconnect Offer, is provided to the distributors of TV channels without any modification in its composition and such bouquet of TV channels, at the wholesale level, are not bundled with the bouquet or channels of other broadcasters:

Provided that a broadcaster may, while making a bouquet of TV channels, combine TV channels of its subsidiary company or holding company or subsidiary company of the holding company, which has obtained, in its name, the uplinking permission or downlinking permission, as may be applicable for its TV channels, from the Central Government and the broadcaster or any of such companies, authorized by them, may publish Reference Interconnect Offer for such bouquet of TV channels and sign the interconnection agreement with the distributors of TV channels;

**Explanation:** For the purpose of these regulations, the definition of 'subsidiary company' and 'holding company' shall be the same as assigned to them in the Companies Act, 2013(18 of 2013).

(b) publish its Reference Interconnect Offer to ensure compliance of the provision of clause (a);

(c) enter into new interconnection agreement; and

(d) file the Reference Interconnect Offer, referred to in clause (b) and interconnection agreement, referred to in clause (c) with the Authority.

(2) Every broadcaster, who begins its operations six months after commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Seventh Amendment) Regulations, 2014, shall ensure that the bouquet of channels, contained in its Reference Interconnect Offer, is provided to the distributors of TV channels without any modification in its composition and such bouquet of TV channels, at the wholesale level, are not bundled with the bouquet or channels of other broadcasters."

(Sudhir Gupta)
Secretary, TRAI

Note.1-----The principal regulation was published in the Gazette of India, Extraordinary, Part III, Section 4, vide notification No. 8-26/2004-B&CS dated 10th December 2004, No. 3-57/2005/B&CS dated 3rd March 2005, No. 11-13/2006-B&CS dated 24th August 2006, No. 6-4/2006-B&CS dated 4th September 2006, No. 4-54/2007-B&CS dated 3rd September 2007, 3-21/2009-B&CS dated 17th March 2009 and No. 6-7/2010-B&CS dated 30th July 2010.

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Seventh Amendment) Regulations, 2014 (1 of 2014).

**The need for amendment**

1. The value chain in the distribution of television channels comprises the broadcaster, the Distribution Platform Operator (DPO), the last mile operator and the end consumer. The business of distribution of TV channels from the broadcaster to the consumer has two levels - i) bulk or wholesale level - wherein the distributor of TV channels i.e. DPO obtains the TV channels from the broadcasters, and ii) retail level - where the DPO offers these channels to the consumers, either directly or through the last mile operator. Amongst the DPOs, the Direct to Home (DTH) operator and the Internet Protocol Television (IPTV) operator serve the consumer directly, while the Multi System Operator (MSO) and the Headend in the Sky (HITS) operator generally serve the consumer through its linked Local Cable Operator (LCO).

2. At the wholesale level, as per the regulatory framework prescribed by TRAI, broadcasters are mandated to enter into interconnection agreements with the DPOs for the carriage of their TV channels. The broadcasters are to offer their channels on a non-discriminatory basis to all the DPOs in accordance with their Reference Interconnect Offer (RIO). The interconnection agreements are to be finalised on the basis of the commercial and technical terms and conditions specified in the RIO.

3. Many broadcasters, especially the larger ones, appoint authorised distribution agencies as intermediaries. Many such agencies operate as authorised agents for more than one broadcaster. These authorised distribution agencies have come to be popularly known as 'aggregators'. These aggregators have indulged in the practice of publishing the RIOs, negotiate the rates for the bouquets/channels with DPOs and enter into interconnection agreement(s) with them.

4. As on date there are around 239 pay channels (including HD and advertisement-free channels) offered by 55 pay broadcasters. These channels are distributed by 30 broadcasters/aggregators/ agents of broadcasters. Table I below shows the number of channels being distributed to the DPOs by the top three aggregators.

**Table I: Number of TV channels distributed by leading aggregators**

| Total number of pay TV channels : 239 | | |
|---|---|---|
| | **Name of the aggregator** | **Number of channels** |
| 1 | M/s Media Pro Enterprise India Private Limited | 76 |
| 2 | M/s IndiaCast UTV Media Distribution Private Limited | 36 |
| 3 | M/s MSM Discovery Private Limited | 28 |
| | Total | 140 (58.6%) |

Thus, the distribution business of 58.6% of the total pay TV market available today is controlled by the top three aggregators. These channels include almost all the popular pay TV channels.

5. The bouquets being offered by the aggregators comprise popular channels of the multiple broadcasters they represent. Thus, for purely business considerations, DPOs have no option but to subscribe to these bouquets. It is alleged that, exploiting this fact, the aggregators further start to piggy-back more channels on these bouquets especially the ones that have very less standalone market value. The aggregators being in a dominant position use their negotiating powers to 'push' such bouquets to the DPOs. In such a scenario, at the retail end, the DPOs have no option but to somehow push these channels (though not necessarily in the form of the bouquets that they purchase from the aggregators) to the consumers so as to recover costs. Thus, in the process, the public, in general, ends up paying for 'unwanted' channels and this, in effect, restricts consumer choice. Moreover, since the aggregators distribute a large number of popular channels of different broadcasters, they are in a position to, in effect coerce DPOs and sell the channels at terms favourable to them.

6. Recently it also came to the notice of the Authority that an aggregator M/s Media Pro was offering channels of a broadcaster, the New Delhi Television Ltd., as a part of certain bouquets only to platform operators of cable TV sector and not to the DTH operators. The DTH platform was directly dealt with by the said broadcaster. In effect, the situation was one where different distribution platforms were being treated differently. On enquiry, the aggregator claimed that since the

broadcaster has bestowed the right only to distribute the channels to platform operators of cable TV sector it is in full compliance with the provisions of the regulations. However, as per the existing regulatory framework, the broadcaster is mandated to offer the same bouquet to all the distribution platforms. With this kind of arrangement with its aggregator, the broadcaster was, in effect, circumventing the regulations through an aggregator by creating a situation where the different DPOs (platforms) could be treated differently. It is a well established principle in law that what cannot be achieved directly, cannot be achieved indirectly. And, that is precisely what the broadcaster was able to do using the device of the aggregator.

7. The market distortions arising out of the current role assumed by the aggregators were amply reflected during the implementation of digital addressable cable TV systems (DAS), Phase I and Phase II. Several MSOs have complained that they were forced to accept unreasonable terms and conditions to obtain signals of the broadcasters through some of the major aggregators, that too at the fag end of the implementation deadline. According to the non-vertically integrated MSOs as well as smaller MSOs, they always get a raw deal. This impacted the smooth implementation of DAS. In the Open House Discussions (OHDs) held in various parts of the country on 'Issues related to Media Ownership", concerns have been vehemently voiced by various MSOs and LCOs regarding the monopolistic practices of the major aggregators. While the issue was being examined at the Authority, the Ministry of Information and Broadcasting (MIB) also, echoed the complaints from MSOs in this regard, through its reference to TRAI vide D.O. No. 16/1/2013-BP&L dated 23rd May 2013, requesting the Authority for reviewing the regulatory framework on this aspect.

8. The regulatory framework has been reviewed to bring clarity in the roles and responsibilities of the broadcasters and their authorised agents. Accordingly, a Consultation Paper, in the form of draft amendments to the existing interconnection regulations, tariff orders and the register for interconnect regulations, were uploaded on the website of TRAI, seeking comments/views of stakeholders. In response, 102 comments were received from the stakeholders. An OHD was also held in Delhi on 12th September 2013, wherein 170 stakeholders participated in the discussions. Further, in response to the opportunity given by the Authority during the OHD, 26 further comments were received from stakeholders. Taking into account the views/comments of the stakeholders and after detailed analysis of the issues involved, amendments to the following regulations and tariff orders are being notified simultaneously:

i. The Telecommunication (Broadcasting and Cable Services) Interconnection (Seventh Amendment) Regulations, 2014 (1 of 2014),

ii. The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Third Amendment) Regulations, 2014 (2 of 2014)

iii. The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Tenth Amendment) Order, 2014 (1 of 2014),

iv. The Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (Third Amendment) Order, 2014 (2 of 2014) and,

v. The Register of Interconnect Agreements (Broadcasting and Cable Services) (Fifth Amendment) Regulations, 2014 (3 of 2014).

9. The amendments incorporate the following changes to the existing regulatory framework. The framework defines a broadcaster as an entity having the necessary Government permissions in its name. Further, that only the broadcaster can and should publish the RIOs and enter into interconnection agreements with DPOs. However, in case a broadcaster, in discharge of its regulatory obligations, is using the services of an agent, such agent can only act in the name of and on behalf of the broadcaster. Further the broadcaster shall ensure that such agent, while providing channels /bouquets to the DPOs, does not alter the bouquets as offered in the RIO of the broadcaster. In case an agent acts as an authorised agent of multiple broadcasters, the individual broadcasters shall ensure that such agent does not bundle its channels or bouquets with that of other broadcasters. However, broadcaster companies belonging to the same group can bundle their channels.

10. A time frame of six months has been prescribed for the broadcasters to amend their RIOs, enter into new interconnection agreements and file the amended RIOs and the interconnection agreements with the Authority. While amending their RIOs, certain bouquets may require reconfiguration to align them with the amended regulatory framework. The method for working out the rate of such reconfigured bouquets has also been illustrated.

**Stakeholder comments**

11. The response of the stakeholders can be broadly divided into two categories. One group, represented by leading/big broadcasters and aggregators, is against the proposed amendment whereas the other group, represented by DPOs, their

associations and small broadcasters, has supported the provisions of the proposed amendment and requested for its urgent implementation.

12. The broadcasters/aggregators have opposed the amendments on the ground that they are in violation of Article 19(1)(g) of the Constitution and on the ground of jurisdiction of TRAI in the said matter. They have stated that it is a competition issue and the Competition Commission of India (CCI) has sole jurisdiction over it. Apart from this, they have also stated that aggregators play a vital role in the distribution of TV channels and provide a balanced platform, especially to smaller broadcasters, for negotiations with the DPOs, who, according to the aggregators/ broadcasters, have substantial negotiating power. This group of stakeholders have also stated that the practice of broadcasters to utilize distribution agencies/aggregators is a normal business practice as is prevalent in the other sectors like banking, telecom, insurance etc. and cannot be considered anti-competitive.

13. However, in contrast, and in a directly opposite stance, the small broadcasters, DPOs and cable operator associations, have stated that the proposed amendments would provide a level-playing-field and eliminate the monopolistic practices arising from the role that the aggregator has assumed viz. as surrogates for multiple major broadcasters. In support of the argument, one of the cable operator associations has stated that 186 cases were filed by MSOs and LCOs against Media Pro in TDSAT in the year 2012 which provides sufficient indication of the level of discontent amongst the DPOs vis-a-vis the aggregators. It has further stated that the maximum number of cases are against Media Pro and, unsurprisingly, there is no case filed by either DEN or Siti Cable against the aggregator, precisely because they are Media Pro's vertically integrated partners. It has also been opined by this set of stakeholders that removing the aggregator will reduce costs to consumers.

**Analysis**

14. Taking into account the views/comments of the stakeholders and after detailed analysis of the issues involved, this amendment to the interconnection regulation applicable for non-addressable, DTH and other addressable systems, excluding DAS, is being notified. The succeeding paragraphs explain the objects and reasons of the provisions of this amendment order along with the analysis of the issues raised.

*Issue of jurisdiction*

15. One of the objectives laid out in the preamble of the TRAI Act is to protect the interests of the service providers and consumers of the sector as well as to promote and ensure its orderly growth. TRAI has the powers to frame 'ex-ante' rules/regulations to ensure that the objectives of the TRAI Act are met. In fact in a recent Judgment dated 6th December 2013, in the Civil Appeal No. 5253 of 2010 (Bharat Sanchar Nigam Ltd. Vs TRAI and Ors) the Hon'ble Supreme Court has made following observations:

> *"….. under sub section 1 of Section 36 of TRAI Act, the Authority can make regulations to carry out the purposes of the Act specified in various provisions…"*
>
> *"……we hold that the power vested in the Authority under section 36(1) to make regulations is wide and pervasive. The exercise of this power is only subject to the provisions of the Act and the Rules framed under section 35 thereof. There is no other limitation on the excise of power by the Authority under section 36(1). It is not controlled or limited by section 36(2) or sections 11, 12 and 13. "*

Thus, it is well within the jurisdiction of TRAI to issue regulations and amendments thereto on the subject matter.

*Right to do business-Violation of 19(1)(g)*

16. Another issue is whether these amendments are violative of Art. 19(1)(g) of the Constitution of India? As discussed earlier, the aggregators are not independent entities; rather, they are authorised agents of the leading broadcasters whose channels they distribute. Further, through the aggregators, the broadcasters are able to realise dominant positions as described above. The aggregators make their own bouquets which are a mix of channels of various broadcasters including certain non-popular ones. The DPOs who take up these bouquets are then compelled to offer them to the consumers to recover costs. This activity of the aggregators is beyond the scope of their agency; it involves an act which the broadcaster is not authorised to do under the existing regulations. It is thus not in public interest and the protection of the right to do business cannot be claimed for this.

17. These amendments do not restrict a broadcaster from appointing an authorised agent or intermediary to facilitate in carrying forward its businesses. If authorised by a broadcaster, they have the freedom to carry out the assigned jobs. However, the same is to be done on behalf of and in the name of the concerned broadcaster.

In no business, can any authorised agent or intermediary go beyond the scope of the business of its principal. The present amendment prescribes certain responsibilities for the broadcasters in order to ensure that their authorised distribution agencies (aggregators) do not indulge in certain activities beyond the scope of the business of their principals (broadcasters). Further, the amendments seek to ensure that the broadcaster publishes its RIO and maintains its sanctity. This is in conformity with various provisions of existing interconnection regulations. Therefore, the current amendment to the interconnection regulations does not impinge upon the fundamental rights of the broadcasters and their authorised agents or intermediaries as granted to them under Art. 19(1)(g) of the Constitution.

*Principal and Agent*

18. It is well accepted that an agent always acts on behalf and in the name of its principal and the scope of action/activities of the agent cannot exceed that of the principal.

19. For example in the telecom sector, an agent does everything only on behalf of and in the name of the service provider (the principal) e.g. the consumer application form is prescribed only by the service provider and filled up by the consumer thereby entering into an agreement directly with the service provider. The agent, who could also be a local corner store or a *paan wallah,* merely facilitates the process. However, in the case of aggregators operating in the broadcasting sector, it is the aggregators who are combining the offerings of different principals (broadcasters) and are directly entering into agreements in their name with the DPOs. Invariably, the aggregators are going beyond the scope of business of their principals. Thus, the analogy between agents of other sectors like telecom, insurance etc. and aggregators in the broadcasting sector does not hold any ground. In fact, this amendment aligns them, in principle, with authorised agents in other sectors.

*Amendment to the Definitions of broadcaster/MSO/Authorised agent or intermediary*

20. In the cited amendments, the definition of a broadcaster has been amended and an authorised agent or intermediary has been separately defined. A broadcaster of a TV channel, prior to commencing its services, has to obtain certain clearances and permissions following an elaborate process. This procedure and process involves

registration of its channel by the broadcaster with the MIB under the elaborate Uplinking/Downlinking Guidelines. These Guidelines, apart from others, require security clearance of the channel as well as clearance of the key executives managing the business affairs of a broadcaster. The broadcaster is also required to coordinate with the Department of Space (DoS) for getting the required satellite bandwidth and related permission to use it. Hence, the broadcaster has a separate and distinct identity and this should be maintained. The aggregator, on the other hand, requires no such clearances or permission and so cannot proxy as a broadcaster. Therefore, there is a need to bring clarity to the entire regulatory framework.

21. The definition of the broadcaster has been amended to clarify, and place beyond all doubt, the exclusive role of the broadcaster in publishing the RIOs and entering into the interconnect agreements with the DPOs, as prescribed in the interconnection regulations. The definition of authorised agent or intermediary has been separately framed to clarify their facilitative role in the business of TV channel distribution both for the broadcasters and MSOs. The definition of MSOs has also been accordingly amended.

    With these amendments the sub-clause 3.4 of the principal regulation, which has become redundant, has been deleted.

*Market power of Major aggregators*

22. The popularity ratings of the channels in the form of Gross Rating Points (GRP) as provided by TAM India reveals that that the three major aggregators exercise control over the distribution of most of the popular channels. The GRP data for the years 2012 and 2013 have been analysed. A comparison of number of popular channels controlled by these aggregators reveals that between 2012 and 2013, the number of popular channels distributed/controlled by them is increasing. From the analysis it emerges that in the year 2013, out of the 10 most popular channels of various broadcasters, these three aggregators controlled distribution of around 9 channels (90%). Similar analysis, for the 5, 20, and 50 most popular channels, for the years 2012 and 2013 has been carried out and is tabulated below:

**Table II: Number of channels distributed by top three aggregators, as per GRP ratings**
**(**Source: TAM India**)**

| S.No | Name of Aggregator | Among Top 5 | | Among Top 10 | | Among Top 20 | | Among Top 50 | |
|---|---|---|---|---|---|---|---|---|---|
| | | **2012** | **2013** | **2012** | **2013** | **2012** | **2013** | **2012** | **2013** |
| 1 | M/s Media Pro Enterprise India Private Limited | 2 | 2 | 5 | 5 | 10 | 10 | 20 | 21 |
| 2 | M/s MSM Discovery Private Limited | 1 | 2 | 3 | 3 | 3 | 3 | 5 | 6 |
| 3 | M/s IndiaCast UTV Media Distribution Private Limited | 1 | 1 | 1 | 1 | 2 | 4 | 11 | 11 |
| | **Total** | **4** | **5** | **9** | **9** | **15** | **17** | **36** | **38** |

The above analysis corroborates the claims of the independent DPOs that they cannot afford to ignore these aggregators while finalising their business plans and they are obliged to strike deals with these aggregators to have a viable business proposition.

*Bouquets/channels of a broadcaster not to be bundled with any other broadcaster's offerings*

23. One of the major reasons for bringing in these amendments is that aggregators, who are authorised agents of more than one broadcaster, bundle popular channels of the multiple broadcasters they represent. Table III below presents an analysis of some of the large bouquets offered by the three largest aggregators.

**Table III: Analysis of bouquets offered by Aggregators**

| **S.No** | **Name of the Bouquet** | **Name of the aggregator** | **No. of channels in the bouquet** | **No. of Broadcasters whose channels have been aggregated in the bouquet** |
|---|---|---|---|---|
| 1 | MP7 | Media Pro Enterprise India Pvt Ltd | 20 | 6 |
| 2 | MP9 | Media Pro Enterprise India Pvt Ltd | 20 | 6 |
| 3 | Bouquet 5 | MSM Discovery Private Limited | 15 | 3 |
| 4 | Bouquet 2 | IndiaCast UTV Media Distribution Pvt Ltd | 13 | 6 |
| 5 | Bouquet 3 | IndiaCast UTV Media Distribution Pvt Ltd | 13 | 9 |

This shows that aggregators are offering bouquets comprising as many as 20 channels of 6 broadcasters. Another bouquet, consisting of 13 channels, has channels drawn from 9 broadcasters.

24. As discussed earlier, aggregators tend to piggy-back less popular channels in such bouquets to prop them up viz. to help provide market access which otherwise may be elusive for such less popular channels. In case such channels belong to the broadcasters who own the aggregator, the broadcasters benefit in terms of both better advertisement and subscription revenues. In cases where such piggy-backed channels belong to the broadcaster who do not have stakes in the aggregator, the aggregator benefits in terms of better commission. In other words, the broadcaster(s) who own the aggregator gets benefits for its own channels as well as for channels of other broadcasters. Further, in both cases, the benefits accrue to aggregators at the cost of "unwanted" channels being pushed to DPOs and ultimately to the consumers. As a result, both the DPOs and the consumers end up paying the inbuilt costs of such "unwanted" channels. This, in effect, also restricts consumer choice. This, is detrimental to public interest at large as well as to one of the prime objectives of the digitisation viz. empowering the consumer to effectively exercise choice of channels/services.

25. It has also been noted that even though the largest bouquets offered by the aggregators in their RIOs are in the range of 13 to 20 channels, the agreements entered into are for a package of channels consisting of almost all the channels they are authorised to distribute. For example M/s Media Pro has mostly entered into agreements with MSOs for around 65 channels out of the 76 pay channels it distributes. These MSOs include both smaller independent MSOs as well as MSOs operating at national level. Similarly, M/s IndiaCast and M/s MSM Discovery have mostly entered into agreements for around 30 (out of 36 channels being distributed by it) and 20 channels (out of 28 channels being distributed by it) respectively. This substantiates the allegation of the DPOs that the large aggregators are virtually compelling them to enter into agreements to subscribe to almost all of their channels. The agreements entered into with the aggregators in the first phase of DAS implementation validate this fact, namely that aggregators push all-channel bouquets to the DPOs.

26. The issues discussed in the preceding paragraphs prompted a study of the ownership structure of the major aggregators. The details of the ownership structure of these aggregators are available at Annexure I. The study reveals that these aggregators are not independent entities; they are extensions of the major

broadcasters they represent. In the case of M/s Media Pro, a DPO also has direct stakes, apart from three broadcasters. Further, if the ownership structure of the broadcasters having stakes in M/s Media Pro is analysed, it emerges that, directly or indirectly, two leading DTH operators and two MSOs operating at national level are vertically integrated with these broadcasters. It seems quite clear that the objective of creation of such aggregator entities is not merely facilitation of the channel distribution work but to serve some other extraneous considerations. In effect, the broadcasters, through these aggregators, are able to exercise market power (dominance) in the market to further their commercial interests. Such cartels become even more dangerous in cases where these aggregators are also integrated with major DPOs.

27. The channels being distributed by the three major aggregators have been analysed with respect to the ownership of the channels, the number of channels of different broadcasters, and the number distributed by these three major aggregators. The results are tabulated in Table IV below:

**Table IV: Analysis of channels distributed by leading aggregators**

| | Name of the aggregator | Number of channels | No. of broadcasters whose channels are aggregated | No. of channels of the broadcaster groups owning the aggregator |
|---|---|---|---|---|
| 1 | M/s Media Pro Enterprise India Private Limited | 76 | 15 | • 35 - Zee group<br>• 29 - Star group<br>• 5 - Turner International |
| 2 | M/s IndiaCast UTV Media Distribution Private Limited | 36 | 8 | • 15 - Network 18 group<br>• 9 - UTV group |
| 3 | M/s MSM Discovery Private Limited | 28 | 12 | • 11 - MSM group<br>• 8 - Discovery |

It is quite clear from the above table, that the majority of the channels distributed by the aggregators belong to the broadcaster groups who own/control the aggregator (90.7%- Media Pro, 58%- IndiaCast and 57%- MSMD).

28. Further, if we look into the interconnection agreements entered into by these aggregators, two distinct trends are visible: (i) agreements with the DPOs who are vertically integrated with the aggregators and (ii) agreements with the DPOs who are independent with respect to the aggregators. The rates being charged from vertically integrated DPOs is considerably lower as compared to those charged from other DPOs. The rates being charged from non-vertically integrated DPOs are, in some cases, higher by 62% as compared to the vertically integrated DPOs. And, this is so even though the non-vertically integrated DPO has a higher subscriber base which commercially offers a better business proposition as compared to the vertically integrated DPO. The situation becomes even worse in the case of relatively smaller non- vertically integrated DPOs in which case the rates charged are higher by about 85% as compared to the vertically integrated DPOs. This analysis is based on the data contained in the interconnection agreements and the subscriber base submitted by the respective DPOs to the Authority for a particular city covered under first phase of DAS implementation. The absolute figures of the interconnection agreements and other details, being commercially sensitive in nature, though available with the Authority, are not being revealed.

29. Regarding the bundling of channels/bouquets of different broadcasters, the broadcaster-wise break-up of the top 5 and top 10 most popular channels distributed by the aggregators has been analysed and presented in Table V below:

**Table V: Number of most popular channels (as per GRP), distributed by top three aggregators with the broadcaster wise break-up (**Source: TAM India**)**

| S.No | Name of Aggregator | Among Top 5 | | Among Top 10 | |
|---|---|---|---|---|---|
| | | **2012** | **2013** | **2012** | **2013** |
| 1 | M/s Media Pro Enterprise India Private Limited | 2 (1-Star, 1-Zee) | 2 (1-Star, 1 Zee) | 5 (3-Star, 2-Zee) | 5 (3-Star, 2-Zee) |
| 2 | M/s MSM Discovery Private Limited | 1 MSM(Sony) | 2 MSM(Sony) | 3 MSM(Sony) | 3 MSM(Sony) |
| 3 | M/s IndiaCast UTV Media Distribution Private Limited | 1 (Viacom 18) | 1 (Viacom18) | 1 (Viacom18) | 1 (Viacom18) |
| | **Total** | **4** | **5** | **9** | **9** |

30. Presently, almost all the top 5 or 10 channels are distributed by 3 aggregators, around 50% by the leading aggregator Media Pro. With the restriction on bundling of channels/bouquets of different broadcasters, it can be seen that the top 5 and the top 10 most popular channels will get distributed amongst different

broadcasters. This will not only ensure a better spread of popular channels in different bouquets available to the DPOs but would also reduce the number of less popular channels pushed on to such bouquets. Therefore, DPOs would be in a better position to negotiate and enter into interconnect agreements with broadcasters. Further, even in case a DPO fails to arrive at an agreement with a particular broadcaster the opportunity of finalising agreements with other popular broadcasters is not lost. Thus, DPOs would be placed in a much better position to carry out their businesses. In order to give effect to this, suitable provision has been incorporated in sub-regulation 13A(1)(a).

*Bouquets /Channels to be provided to DPOs as per RIO*

31. A provision has been incorporated through this amendment which mandates a broadcaster to ensure that there is no change in the composition of the bouquet provided to distributors of TV channels from the composition of the bouquet published in its RIO.

32. In order to ensure a level-playing field and orderly growth of the sector, the interconnect regulations aim at making available the content to DPOs in a transparent and non-discriminatory manner. For this, it is important that the offerings of the broadcasters are available in the public domain. This is why broadcasters have been mandated to publish an RIO prescribing the technical and commercial terms for making available their TV channels to the DPOs. Therefore, in case, a broadcaster appoints an authorised agent or intermediary for distribution of its channels, it is important that the bouquets of the broadcasters, as offered in their respective RIOs, are <u>not</u> altered by such agent or intermediary while making available the channels to the DPOs. To ensure this, sub-regulation 13A(1)(a) has been incorporated through this amendment to the interconnection regulations.

*Broadcasters of a group to be allowed to bundle their channels*

33. An issue that was not part of the original Consultation Paper but was raised during the consultation process pertained to permitting channels of group broadcast companies to be offered as part of a common bouquet. In this regard, they have requested that channels, belonging to the same 'Group' (Parent/Promoter/Owner/ Management), though licensed under different entities, subsidiaries, associated companies, should be allowed to be bundled in a

bouquet and distributed. They have advanced the argument that broadcasters have established different companies/ventures at different points in time and have also acquired or sold channels and, as a consequence, a large broadcaster may have channels in the name of separate legal entities.

34. The Authority is of the view that forming of bouquets, through bundling of channels of a broadcaster company with that of its, subsidiary companies, holding company, and subsidiary companies of the holding company, may be permitted as essentially they have a single point of control in all respects and represent the same beneficial interest group. However, such companies should have, in their name, the Uplinking permission or Downlinking permission, as applicable, for their channels, from the Central Government. Moreover, for such bouquets, any one of such companies, authorised by them jointly, shall publish the RIO, enter into interconnection agreements and file details of interconnection agreements with the Authority and carry out any other obligation prescribed in the regulatory framework. Further, bouquets or channels offered by such companies, either individually or as a group, shall be considered to be offerings of a common entity and will have to comply with the regulatory framework, such as 'twin conditions' etc., prescribed by TRAI. Accordingly, a suitable proviso to sub-regulation 13A(1)(a) has been added to achieve this objective.

35. In summary, the above discussed amendments clearly bring out the distinct roles and responsibilities of a broadcaster and its authorised agent. This is expected to address the market distortions caused because of the present role assumed by the aggregators in the distribution of TV channels to various DPOs. They will also contribute to the orderly growth and overall development of the sector.

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## Ownership structure of major aggregators

1. Media pro Enterprise India Pvt. Ltd: It is wholly (directly or indirectly) controlled by three broadcasters, two leading DTH operators and two MSOs operating at national level. The details of its shareholding is depicted below:

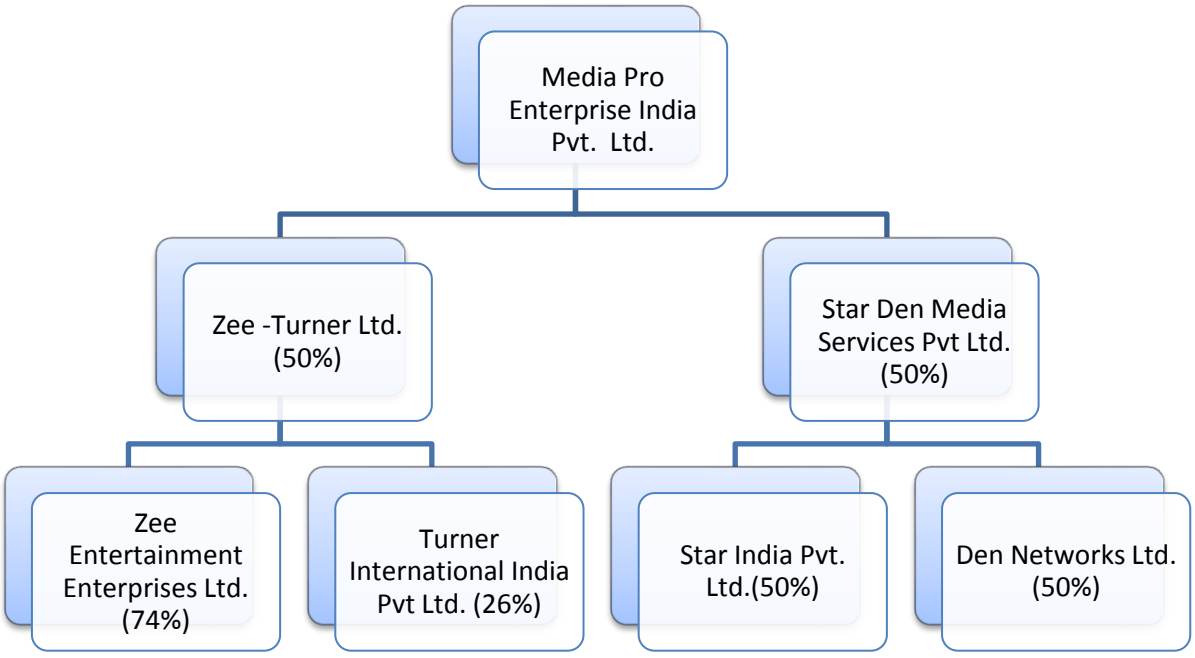


**Fig. 1: Ownership structure of M/s Media pro Enterprise India Pvt.**

2. MSM Discovery Pvt. Ltd.: It is wholly controlled by two broadcasters. The details of its shareholding is depicted below:

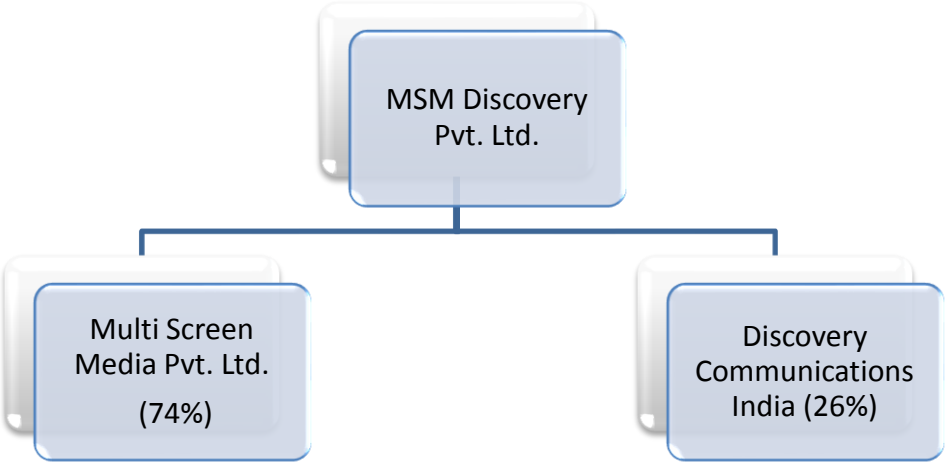


**Fig. 2: Ownership structure of M/s MSM Discovery Pvt. Ltd.**

3. IndiaCast UTV Media Distribution Pvt. Ltd.: It is wholly (directly or indirectly)controlled by three broadcasters. The details of its shareholding is depicted below:

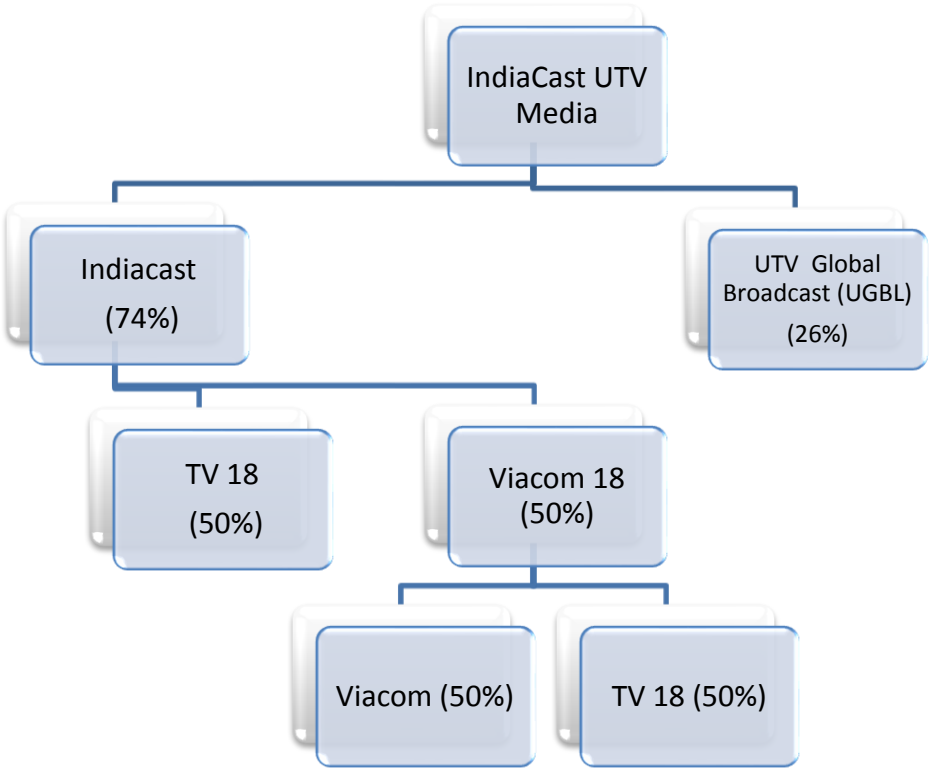


**Fig. 3: Ownership structure of M/s IndiaCast UTV Media Distribution Pvt. Ltd.**