Ref: AIDCF/FY21-22/22
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To,

> **Shri Anil Kumar Bhardwaj**
> **Advisor (B&CS)- II**
> Telecom Regulatory Authority of India (TRAI)
> Mahanagar Door Sanchar Bhawan,
> J.L. Nehru Marg, (Old Minto Road)
> New Delhi - 110002, India

Sub: AIDCF inputs on TRAI consultation paper on "Market Structure/Competition in Cable TV services" dated 25th October 2021

Dear Sir,

This is with reference to consultation paper on "**Market Structure/Competition in Cable TV services**" dated 25th Oct 2021 published by TRAI, wherein comments are invited from stakeholders.

In this regard, kindly find attached AIDCF inputs as attached to this letter.

We hope that our attached submission will merit your kind consideration and same will be considered while formulating the recommendations.

Thanking You

Yours Faithfully
For, **ALL INDIA DIGITAL CABLE FEDERATION**

Manoj

ALL INDIA DIGITAL CABLE FEDERATION

Manoj P. Chhangani
Secretary General- AIDCF

<u>AIDCF response to TRAI consultation paper on Market Structure/Competition in Cable TV Sector</u>

We would like to thank the Authority for providing us with the opportunity to share our comments on the Consultation Paper "CP".

Based on our experience and understanding of the functioning of the broadcasting and cable sector coupled with our understanding of competition laws, we have attempted to provide holistic suggestions on this consultation paper, which seek to protect the interest of consumers as well as service providers.

At the outset, we submit that the intrinsic objective for proposing any restriction or regulation for controlling market dominance/monopoly in the cable television industry would be to ensure protection of consumers' interest and that the consumers have an option of choosing a service provider that provides them the best services as well to ensure that there are no entry barriers for anyone to enter that particular market to provide that service. Hence, at any given point of time, competition and market dominance should be viewed from the perspective of consumer interest, availability of consumer choice and free trade in that sector.

We state that digitalization and introduction of set top boxes as a mandatory requirement starting from 2012, was a pivotal moment for the cable television services when DTH players in the TV distribution industry (*that had already started to compete with Cable TV providers even prior to the push for digitization)* emerged as increasingly strong competitors to Cable TV Operators. In a short span of about a decade, DTH services have captured close to half of the pay TV market in India.

The Authority is well aware that the broadcasting sector is catered by four permitted Distribution Platform Operators (DPOs), i.e. MSOs, DTH, HITS and IPTV. As per various FICCI reports on Broadcasting Sector, in 2014 the Cable TV subscriber were 99 million while the DTH subscribers were 37.19 million. The Authority has itself acknowledged that the market, as it currently stands today comprises of 70.99 million subscribers of DTH, 73 million subscribers of cable television operators, 2.15 million of HITS. IPTV services are also being rendered by few service-providers. Moreover, the subscriber base of Free Dish has also seen an exponential growth and presently stands as 38 million.

The OTT platforms, that are presently outside the purview of any licensing and regulatory framework, also enable the consumers to have access to video/television services and have evidently established themselves as yet another platform for distributing media content and video services including linear TV Channels. As per available information, the Subscription Video on Demand (SVoD) OTT players account for an approximate cumulative subscriber base of 66.71 million[1]. It is therefore, verily established that there exists no monopoly/market dominance as the presence of so many players in the market provides effective and alternate choices to the consumers at competitive prices/tariffs.

[1] https://www.statista.com/outlook/amo/media/tv-video/ott-video/india , published by Statista Market Forecast, last accessed on 20.11.2021 at 14:08 pm.

Pursuant to circular dated 27th January 2017, a welcome step was initiated by MIB which enabled all MSO license holders to provide Cable television services on a pan-India level as opposed to the earlier licensing framework which restricted MSOs to certain cities/districts/states. Various MSOs are now providing Cable TV services spread over wider geographies as well as on a pan-India level, thereby increasing the number of MSO players across the entire country and strengthening the level of competition even amongst the MSOs. In terms of the aforesaid, Cable TV Operators cannot anymore be considered as competing only in regional/ state specific markets in India as the business operations have evolved to pan-India levels akin to the DTH players.

Considering the present-day situation in the cable television industry, a stiff competition is already in existence to MSOs from alternate DPOs like DTH, IPTV players and HITS operators as well as the platforms of Free Dish and unlicensed/unregulated OTT platforms. Availability of content including linear channels across all the aforesaid mediums and platforms has ensured that the consumer is no longer obligated to subscribe to cable television services of MSOs only. Accordingly, the said DPOs are perfectly substitutable since the consumers are at liberty to choose not only from amongst the DPOs and platforms of Free Dish and unlicensed/unregulated OTT players, but also inter-se amongst the same platform service providers.

We further state that presently there is ample competition amongst all the aforesaid players in the broadcasting sector and any kind of monopoly is not prevailing or subsisting in the cable television industry. Monopoly refers to a market where there is a single/dominant seller for a product and there is no close substitute of the commodity that is offered by the this sole /dominant supplier to the buyers. It has been clearly established in the foregoing paragraph that the services offered by the DPOs are perfect substitutes in the market and all such DPOs are already offering various competitive subscription schemes to the subscribers due to fierce competition in the market. Moreover, the extant regulations (as amended from time to time) that are governing the broadcasting and cable sector in terms of the Cable Television Act, 1995, the Cable Television Network Rules, Interconnection Regulations, Tariff Order, Quality of Service Regulations, etc. have ensured that the interests of the consumers are always protected, tariffs are regulated, quality of service is maintained and hence, it is expected that all DPOs that are conducting business in this sector , strictly do so, in conformity with the provisions of the applicable regulatory framework. The DPOs are therefore, heavily regulated and are being micro managed in terms of the regulatory framework and under no circumstance, such DPOs can exploit the consumers by exorbitant prices and/or restricting their choice. Hence, it is impossible for any DPO to kill competition and use its dominance for unjust enrichments, in any manner or form, under the present regulatory framework.

It is imperative to note in this context that even the cable television distribution segment in India is characterized by robust competition amongst multiple MSOs as well as thousands of LCOs. There were 1733 registered MSOs as on the 1st September, 2021 and an estimated 1,55,303 LCOs as on the 1st of March 2021, in India. MSOs and LCOs have a co-dependent relationship, with LCOs offering the last-mile services such as access, billing and collections, while MSOs offer scale functions such as technology and infrastructure.

The consultation paper itself has noted that there are MSOs operating at both the national and regional levels. The Cable Television Networks (Regulation) Act, 1995 as amended from time to time (*hereinafter referred to as the "Cable TV Act"*) and the Cable Television Networks Rules, 1994 as amended from time to time (*hereinafter referred to as the "Cable TV Rules"*) does not restrict the number of MSOs/LCOs operating in any particular area, evidencing that there are no regulatory or entry barriers. The sector is, therefore, extremely competitive with players trying to increase their subscriber base by way of price competitiveness, provisioning of a greater number of channels and increasing the quality of broadcast. Any proposal to introduce unjustifiable restrictions on MSOs in absence of any iota of evidence of proving monopoly/market dominance will tantamount to infringing the fundamental right under Article 19(1)(g) of the Constitution.

It is pertinent to mention here that the Authority in its recommendation on Entry level Net worth requirement of Multisystem Operators in Cable TV distribution published in July 2019 has inter-alia stated that "…*MSOs are granted registration as per their application on non-exclusive basis. They are further allowed to operate in any part of the country irrespective of their registration for specified DAS notified area. Thus, the sector is by design already a multi-operator and competitive sector with presence of other MSOs as well as DTH players."*

The authority has further stated that "*The 'New Regulatory Framework' has not only addressed many of the market asymmetries prevailing earlier in the sector but also introduced provisions that enable smaller MSOs. A detailed white paper has been published and issued by TRAI that highlights the benefits of new framework for small MSOs. The new framework provides an enabling environment for aspiring LCOs to move further in their business and become an MSO either on their own or by forming LCO groups (in form of Cooperative or joint associations). The new framework, in this regard fulfils the policy objectives of the government of India to promote entrepreneurship and enable small business*."

The Authority has further stated that "…it is explicit that the DAS implementation has enabled a new system, whereby the emphasis has shifted from area of operation to the actual number of subscriptions. It is on record that in its recommendations on 'Restructuring of Cable TV Services' in July 2008 the authority had recommended area wise registrations for MSO. However, at that time the context was different. The sector was evolving from an unorganized, informal structure and was primarily analog transmission with no addressability. Since the implementation of DAS, the context and the structure of Cable TV distribution has undergone a change and the sector has evolved to a formalized structure. Therefore, the said recommendations do not hold merit now, in view of the changed market and distribution structure."

Authority itself has rightly pointed out that since the implementation of DAS, the context and the structure of Cable TV distribution has undergone a change and the sector has evolved to a formalized structure and there is enough competition in the market, therefore in our view, the earlier recommendation on the "Market Structure/ Competition in cable TV sector" does not hold merit now, in view of the changed market and distribution structure.

The Authority's kind attention is also drawn to the established regulatory framework in terms of the Competition Act, 2002 that has set up a nodal and regulatory body in the name of 'Competition Commission of India' (CCI) to investigate into any and all forms of anti-competitive agreements/ abuse of dominant position and the CCI also has powers to impose heavy penalties and direct entities to discontinue their operations and/or any instance of abuse of dominant positions. The Competition Act is a comprehensive legislation that deals with anti-competitive practices and lays down stringent policies for violation of the same. Importantly, the provisions of the Competition Act clearly state that it will override all other provisions contained in any law and that its provisions are in addition to and not in derogation of any other law. Thus, any restrictions that are proposed to be introduced to regulate anti-competitive activities in the broadcasting and cable sector would result in a conflicting jurisprudence or positions being developed. The CCI also has wide powers to not only regulate traditional mergers and acquisition activities, but also the acquisition of control, shares, voting rights or assets or any other instance of indirect control. Therefore, any parallel legislation imposing any form of restrictions/ market cap on MSOs/ LCOs (*especially when the same is not called for in view of existence of perfect competition)* will only act as an impediment for growth and add up to the confusion, expose the stakeholders concerned, to unnecessary litigations and judicial interventions.

In light of the above, we would like to state that the issue of market dominance by MSO does not really exist as there is not only competition within MSOs, but also with other players in the market like DTH, HITS, IPTV, Free Dish and OTT platforms. The services offered by the MSOs are completely substitutable by all the aforesaid players and effectively renders a perfectly competitive market.

Accordingly, the current consultation paper should be closed and earlier recommendations should be withdrawn.

In view of this backdrop and without prejudice to the aforesaid submissions, we would like to submit our comments on the issues for consultation in the present CP. We stand ready to be involved in further consultations, industry dialogues that may be undertaken by the Authority before finalizing any view on these issues.

ISSUES FOR CONSULTATION

Q1: **Given that there are multiple options for consumers for availing television services, do you think that there is sufficient competition in the television distribution sector? Elaborate your answer with reasoning/analysis/justification**.

AND

Q2**: Considering the current regulatory framework and the market structure, do you think there is a need to regulate the issue of monopoly/oligopoly/market dominance in the Cable TV Services? Do provide reasoning/justification, including data substantiating your response.**

AND

Q3. Keeping in view the market structure of television broadcast sector, suggest proactive measures that may address impending issues related to monopoly/market dominance in cable TV sector? Provide reasoning/details, including data (if any) to justify your comments.

AIDCF Response: Reiterating our comments in our introductory remarks and placing reliance on the same, we state that the Authority has itself acknowledged in the CP that the market, as it currently stands today comprises of 70.99 million subscribers of DTH, 73.00 million subscribers of Multi-System Operators (MSOs) and 2.15 million of HITS. Apart from this, IPTV services are also being rendered by few service-providers. Moreover, the subscriber base of Free Dish has also seen an exponential growth and presently stands as 38.00 million.

Particulars[2]	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
TV Homes	169	175	181	183	183	197	212	184.14
Cable TV Homes	99	101	102	92	98.50	103	103	73
DTH Homes	37.19	41.15	58.53	63.61	67.53	72.44	70.26	70.99
% of Cable TV Homes to Total TV Homes	58.58	57.71	56.35	50.27	53.83	52.28	48.58	39.64
% of DTH Homes to Total TV Homes	22.01	23.51	32.34	34.76	36.90	36.77	33.14	38.55

Refer above table, it is evidently clear as to how the Cable TV market has shrunk from 58.58% in 2013-14 to 39.64% in 2020-21, while DTH has grown from 22.01% to 38.55 % and Free Dish has captured a substantial market share of 20.64% in the same period.

The OTT platforms, that are presently outside the purview of any licensing and regulatory framework, have also evolved as another competitive platform that enables the consumers to have access to video/television services and presently the Subscription Video on Demand (SVoD) OTT players caters to 66.71 million subscribers.[3] It is therefore, verily established that there exists no monopoly/market dominance as the presence of so many players in the market provides effective and alternate choices to the consumers at competitive prices/tariffs.

We reiterate that presently there is ample competition amongst all the aforesaid players in the broadcasting sector and any kind of monopoly is not prevailing or subsisting in the cable television industry that requires redressal. It has been clearly established in our introductory remarks that the services offered by the DPOs are perfectly substitutable in the market and all such DPOs are already offering various competitive subscription schemes to the subscribers due to fierce competition in the market.

The Authority would also acknowledge that the extant regulations (as amended from time to time) that are governing the broadcasting sector in terms of the Cable Television Act, 1995, the Cable Television Network Rules, Interconnection Regulations, Tariff Order, Quality of Service Regulations, etc. have thoroughly ensured that the interests of the consumers are always protected, tariffs are regulated, quality of service is maintained and all DPOs that are conducting business in this sector, strictly do so, in conformity with the provisions of the applicable regulatory framework. The DPOs are therefore, heavily and substantially regulated in terms of the regulatory framework and under no circumstances, can such DPOs exploit consumers by imposing exorbitant prices

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[2] Details for FY 2013-14 to FY 2019-20 are taken from the TRAI's Annual Report for respective financial year "https://www.trai.gov.in/about-us/annual-reports", while details for FY 20-21 are as per the details given in the consultation paper

[3] https://www.statista.com/outlook/amo/media/tv-video/ott-video/india , published by Statista Market Forecast, last accessed on 20.11.2021 at 14:08 pm.

and/or restricting their choice. Hence, there does not stand any requirement of imposing any form of restrictions in terms of market capping or any associated regulatory mandate, on account of existence of a perfectly competitive market with substitutable services of the players amongst one another.

We further state that the cable television distribution segment in India has always been characterized by robust competition even amongst multiple MSOs as well as thousands of LCOs. With the introduction of phase-wise digitalization, such competition amongst the MSOs, inter-se, have continued to subsist and in all probabilities, is likely to see a substantial increase with the passage of time. The Authority has itself acknowledged that presently, there are 1733 registered MSOs as on the 1st September, 2021 and an estimated 1,55,303 LCOs as on the 1st of March 2021, in India.

In light of the foregoing, we state that in the sheer presence of a perfectly competitive market wherein the services of DPOs are perfectly substitutable not only from amongst the DPOs and platforms of Free Dish and unlicensed OTT players, but also inter-se within the same platform and service providers, any restrictive treatment in terms of market capping/ regulations is uncalled for and will be in utter defiance of the spirit of a competitive market and interests of the stakeholders, including liberty of the consumers to avail services of their desired service-provider.

Q4. **Do you think that there are entry barriers in the Indian cable television sector? If yes, please provide the list and suggest suitable measures to address these? Do provide full justification for your response.**

AIDCF Response: We state that there does not exist any form of entry barrier in the Indian cable television sector. Any entity that is desirous of functioning as multi-system operator can do so with complete ease by obtaining a permission/ license from the Ministry of Information and Broadcasting under Rule 11 of the Cable Television Network Rules, 1994. Similarly, any LCO can become operational by obtaining a postal registration in terms of Rule 5 of the Cable Television Network Rules, 1994. As has already been established in our introductory remark, MSOs and LCOs share a co-dependent relationship, hence any MSO that initiates its retransmission services, is at liberty to enter into a business relationship with any existing LCO operational in the area concerned and utilize the last mile infrastructure of such LCO for delivery of MSO's services at the premises of the subscribers. Similarly, such MSO is also at liberty to execute a business relationship with any new LCO (*which is yet to become operational*) that can, after obtaining the requisite postal registration, lay its infrastructure and the same can be utilized for retransmission and delivery of MSO's signals at the subscriber's premises. Therefore, there does not exist any entry barrier for the MSOs/ LCOs towards provisioning their services, neither in terms of the regulatory framework nor in terms of the functioning or operative structure.

Q5. **Do you think that there is a need to regulate LCOs to protect the interest of consumers and ensure growth/competition in the cable TV sector? If yes, then kindly suggest suitable regulatory/policy measures. Support your comments with reasoning/ justification.**

AIDCF Response: We do not see any need to regulate the LCOs in light of competition/ market structure. We have already established in our introductory remark that a perfectly competitive market is in existence even amongst the LCOs, inter-se. However, on account of existence of varied set of rules for obtaining postal registration across various districts and states in the country, the process of obtaining registration becomes cumbersome for the LCOs who intend to operationalize their business. Hence, with a view to streamline, bring complete uniformity in the registration process of such LCOs across the entire country and to ensure that such LCOs have ease in provisioning their services, we suggest that a central registering authority with centralized web portal be notified under the CTN Act for hassle-free registration of such LCOs. It is suggested that such LCOs may be permitted to register themselves with MIB using an automated platform with Aadhar verification and an undertaking be obtained from the LCO to comply with all relevant provisions of the CTN Act. Besides the aforesaid, it is also urged that the Authority should ensure that the LCOs ensure strict compliance with the applicable regulatory framework as well as the subsisting agreements that are executed by them for retransmission of signals in terms of the Interconnection Regulations.

Q6. **What should be the norms of sharing infrastructure at the level of LCO to enable broadband services through the cable television infrastructure for last mile access? Is there a possibility that LCO may gain undue market control over broadband and other services within its area of operation? If yes, suggest suitable measures to prevent such market control. Provide detailed comments and justify your answer.**

<u>AIDCF Response:</u> We state that the Authority would acknowledge and agree that the cable television operators have technical expertise and knowhow of ensuring seamless delivery of cable television services. However, whether the infrastructure has formidable capacity to deliver broadband services requires thorough analysis and determination of the following aspects:

a. Which part of the cable television network and in what manner is the infrastructure proposed to be utilised for delivery of broadband services;
b. If there are any additional network equipment or hardware elements that the cable television operators are required to deploy in addition to the fiber cable for enabling their cable television infrastructure to deliver broadband services and if yes what are such additional requirements;
c. If there is any additional technical expertise; or investment requirement that requires to be obtained/made for enabling the subsisting infrastructure to deliver broadband services, *et cetera.*

We further state that as the Authority would be aware, most MSOs barring the National MSOs that are engaged in the provisioning of broadband services through LCOs infrastructure, are doing so using outdated technologies, which proves ineffective in the delivery of high-speed broadband services. Therefore, the provisioning of high-speed broadband services using the fiber network of LCOs would require an upgradation of LCO's network to the latest available technology, that calls for huge investments and support from the government. We therefore urge the Authority to grant 'infrastructure status' to Broadcasting & Cable industry and thereby allowing the MSOs and the LCOs to access the following benefits:

a. Capital borrowing should become cheaper for upgrading technologies and optical fiber network.
b. Considerable reductions in interest rates shall be allowed for long term borrowings.

c. Ease in getting higher external borrowing
d. Special financial assistances from external agencies like India Infrastructure Finance Co, IDFC etc. to be extended to broadcasting sector.
e. Tax holiday as per 80-1A of Income Tax act.
f. Exemption from paying custom duties on Optical Line Terminal (OLTs), Optical Network Units (ONUs), Network Operations Centre (NOC) infrastructure, that are used for providing broadband services,
g. Providing impetus to indigenous manufacturing of OLTs, ONUs and NOC related infrastructure ensuring that the indigenous products are available at comparable prices.

Q7. **What should be the relevant market for measuring the market power of cable services? Do provide full justification for your response**.

AND

Q8**. Can a state or city or sub-city be identified as relevant geographic market for cable television services? What should be the factors in consideration while defining relevant geographic market for cable television services? Do provide full justification for your response**.

AIDCF Response: 'Relevant market' in general parlance means the relevant product market or the relevant geographic market or with reference to both areas. The relevant product market would include all prevalent technologies/platforms, i.e., cable television, DTH, HITS, IPTV, Free Dish, OTT players and the relevant geographic market will include the entire country as all the aforesaid platforms are provisioning their services across the entire country, on a pan-India basis. Therefore, the relevant market for all players should be 'pan India' and shall include subscribers of all technologies/platforms, across the country.

We are of the strong view that there should be no segregation of criteria for market concentration amongst the players.

Q9. **Do you think that MSOs and its Joint Ventures (JV) should be treated as a single entity, while considering their strength in the relevant market? If yes, what should be the thresholds to define a MSO and its JV as a single entity? Do provide full justification for your response.**

AIDCF Response: We are of the view that each licensed entity, irrespective of being a joint venture or subsidiary of any other company, should be considered as a separate entity. The subscriber base to ascertain the relevant market should also be independent and separate for each such licensed entity.

Q10**. Which method is best suited for measuring the level of competition or market concentration of MSOs or LCOs in a relevant market?**
a) Provide your suggestions with justification.
b) Do you think that HHI is appropriate to measure market concentration of MSOs in the relevant market? Do provide full justification for your response.
c) If yes, then in your opinion should MSO and its JVs may be considered as a single entity for calculating their HHI? Do provide supporting data with proper justification for your response.

AND

Q11. In case you are of the opinion that HHI may be used to measure market concentration of MSOs in the relevant market, then is there a need to revise threshold HHI value of 2500 as previously recommended? If yes, what should be the threshold value of market share beyond which a MSO and its group companies should not be allowed to build market share on their own? Do provide full justification for your response.

AIDCF Response: Placing reliance on the introductory remarks, we reiterate that there is no instance of monopoly that is prevalent in the broadcasting sector amongst the DPOs. We do not advocate the use of HHI or any such market concentration measures, for ascertaining market dominance on account of a couple of concerns that need to be addressed. The Authority has established that HHI index is determined by summing the squares of individual market shares of all market participants. As has already been established that the distribution services in the present times, is being catered not only by the MSOs and LCOs but also by DTH, HITS, IPTV, Free Dish as well as OTT platforms which have become formidable players and are providing huge competition to the MSOs. The MSOs and the LCOs, therefore, cannot be singled out for ascertaining dominance in any geographical market as the same would stand arbitrary against the interests of the MSOs and LCOs. Hence, market dominance can only be truly ascertained by taking into account the market shares of all the players, i.e., MSOs and LCOs but also by DTH, HITS, IPTV, Free Dish as well as OTT platforms.

The Authority would acknowledge that 'individual market shares' stands of pivotal importance for the use of HHI or any market concentration tool for determining market dominance. Hence, before recognizing any tool for the purpose of determining market concentration/dominance; the Authority should strengthen the mechanism for ascertaining the relevant market shares of each of the aforesaid entities. For the purpose of the same, each of the aforesaid entities should be mandated to submit data with respect of their relevant shares both at pan-India level and state level, to the Authority, on a monthly basis. All such data should be duly audited and verified by an independent panel of auditors empanelled and engaged by the Authority. This becomes relevant because unless correct and duly verified data is obtained by the Authority for the purpose of computation of market shares basis any market concentration tool, the same will fail to provide and establish an accurate extract leading to a sheer failure in analysing the prevalent instances of dominance, if any.

Q12. Do you think that there should be assessment of competition at LCOs level on district/ town basis? If yes, what should be threshold HHI in your opinion for such assessment. Justify your answer with detailed comments and examples.

AIDCF Response: Please refer to response to Q.5 wherein, we have clearly stated that we do not see any need to regulate the LCOs in light of competition/ market structure. We have already established in our introductory remark that a perfectly competitive market is in existence even amongst the LCOs, inter-se. We reiterate that there has been an exponential rise in the number of LCOs from 60,000 to 1,55,503 since 2012 that evidently establishes the existence of enough competition at LCOs level.

Q13: In cases where a MSO controls more than the prescribed threshold, what measures/ methodology should be adopted to regulate so as to bring the market share/HHI below the

threshold level? Specify modalities for implementation and effects of such process. Do provide full justification of your response.

AND

Q17. If HHI is used for measuring the level of competition, do you agree with the restrictions prescribed in TRAI's previous recommendations? If no, do provide alternative restrictions for addressing monopoly/ market dominance in a relevant market. Do provide full justification for your response.

AIDCF Response: The sustenance of a perfectly competitive market coupled with a heavily backed regulatory framework renders the existence of monopoly/ dominance of any MSO in the market as impossible. We have already established in our introductory remarks that the services of all the DPOs are perfectly substitutable since the consumers are at liberty to choose not only from amongst the DPOs and platforms of Free Dish and unlicensed OTT players, but also inter-se amongst the same platform service providers. Therefore, in such instance, wherein there is nil probability of the existence of any dominant player, we do not advocate imposition of any restrictions on the MSOs for capping of market structure/ shares as the same will have an adversarial impact on the interests of the MSOs as well as the end consumers.

Q14. Do you think that DTH services are not perfect substitute of cable television services? If yes, how the relevant market of DTH service providers differs with that of Multi System Operators or other television distribution platform owners? Support your response with justification including data/details.

AIDCF Response: In addition to our introductory comment and our response to Questions 1 to 3, we would like to state that with the completion of digitization, there is hardly any difference between quality of content and number of channels offered by both Cable TV and DTH.

Certain factors that illustrate how the gap between Cable TV and DTH was bridged are as follows:

1. **Quality of Content**: Both Cable TV and DTH offer HD and SD channels.

2. **Similar Pricing:** The initial cost of subscribing to DTH or Cable TV is similar. The monthly costs incurred by a subscriber would also be similar for both Cable TV and DTH services.

3. **Regulatory level playing field:** TRAI's new tariff regime is common for both DTH and Cable TV and this has further reduced differences between DTH and Cable TV by bringing about a regulatory level playing field.

The above scenario also applies on all the recognized DPOs and the services rendered by all the DPOs are completely substitutable.

Q15. Is there a need to change the criterion of market share in terms of number of active subscribers for determination of market dominance? Should the active subscriber base of JVs may also be considered while determining the market dominance of a MSOs. Do elaborate on the method of measurement. Provide full justification for your response.

AIDCF Response: Please refer to our response to Question Number 9.

Q16. How the new technological developments and alternate services like video streaming services should be accounted for, while determining market dominance? Justify your response with data/ detailed comments.

AIDCF Response: The unlicensed video and audio streaming services as well as the OTT platforms should be definitely accounted for the purpose of determination of market dominance. We have already established in our introductory comments that the OTT platforms, that are presently outside the purview of any licensing and regulatory framework, enable the consumers to have access to video/television services and have evidently established themselves as yet another platform for distributing media content and video services. In furtherance to the same we seek to place reliance on the data published by Statista Market Forecast, which is a part of the public domain and is available at *https://www.statista.com/outlook/amo/media/tv-video/ott-vide* the Subscription Video on Demand (SVoD) OTT players cater to a subscriber base of 66.71 million[4]. Information available in the public domain (*excerpt from the Ormax OTT Audience Report 2021*) establishes that Indian OTT audience universe is currently at 353.2 million which establishes that ~25% of the population of India is exposed to OTT. The report also reveals that there are currently 96 million active paid OTT subscriptions in India, across 40.7 million paying (SVOD) audiences, i.e., an average of 2.4 subscriptions per paying audience member.[5]

Therefore, taking into consideration the substantial growth in the number of OTT subscriptions across the entire country, it is undeniable that OTT services have huge potential to acquire market dominance and the relevant geographic market will include the entire country for such players as akin to the other DPOs and Free Dish Platforms, they are also provisioning their services across the entire country, on a pan-India basis.

Q18. M&A in the cable TV sector may lead to adoption of monopolistic practices by MSOs. Suggest the measures for curbing the monopolistic activities in the market. Explicitly indicate measures that should be taken for controlling any monopolistic tendency caused by a merger or acquisition. Do provide proper reasoning/justification backed with data.

AND

Q19. Ease of doing business should not be adversely affected by measures/ regulations to check merger and acquisitions. What compliance mechanism or regulations should be brought on Mergers and Acquisition to ensure that competition is not affected adversely, while ensuring no adverse impact on Ease of Doing Business? Do justify your answer with complete details.

AIDCF Response: The Authority's kind attention is drawn to the established regulatory framework in terms of the Competition Act, 2002 that has set up a nodal and regulatory body in the name of 'Competition Commission of India' (CCI) to investigate into any and all forms of anti-competitive agreements/ abuse of dominant position and the CCI also has powers to impose heavy penalties and direct entities to discontinue their operations and/or any instance of abuse of dominant positions. The Competition Act is a comprehensive legislation that deals with anti-competitive practices and lays down stringent policies for violation of the same. Importantly, the

[4] https://www.statista.com/outlook/amo/media/tv-video/ott-video/india , published by Statista Market Forecast, last accessed on 20.11.2021 at 14:08 pm.

[5] https://www.exchange4media.com/digital-news/india-has-353-million-ott-users-96-million-active-paid-subscriptions-ormax-report-115325.html, analysis of the data of *the 'Ormax OTT Audience Report 2021'*, last accessed on 20.11.2021 at 14:13 pm.

provisions of the Competition Act clearly state that it will override all other provisions contained in any law and that its provisions are in addition to and not in derogation of any other law. Thus, any restrictions that are proposed to be introduced to regulate anti-competitive activities in the cable industry may result in a conflicting jurisprudence or positions being developed. The CCI also has wide powers to not only regulate traditional mergers and acquisition activities, but also the acquisition of control, shares, voting rights or assets or any other instance of indirect control. Therefore, CCI exists as the apex body to monitor and regulate any instance of abuse of market-power and anti-competitive arrangements. The activities that are proposed to be regulated are already covered under the Competition Act, hence, any parallel legislation imposing any form of restrictions/ market cap on MSOs/ LCOs (*especially when the same is not called for in view of existence of perfect competition)* will only act as an impediment for growth and add up to the confusion, expose the stakeholders concerned, to unnecessary litigations and judicial interventions.

Q20. Do you agree with the definition of 'control' as provided in the 2013 recommendations? If not, then suggest an alternative definition of 'control' with suitable reasoning/justification.

AND

Q21. Do you think that there should be different definition of 'control' for different kinds of MSOs? Do explain with proper justification.

<u>AIDCF Response</u>: In order to facilitate ease of doing business and to avoid unnecessary confusion, there should be uniformity in the regulatory regimes. Therefore, corporate compliances and sectorial compliances should be in sync with each other as conflicting provisions would expose to unwanted and unnecessary litigations and jurisdictions. Hence, the definition of 'control' as prescribed under The Companies Act, 2013 shall be applicable, for all purposes.

Q22. Should TRAI restrict the ambit of its recommendations only on certain kinds of MSOs? Do provide full justification for your answer.

<u>AIDCF Response</u>: Please refer to our responses to the previous questions. We are of the strong view that the services of MSOs, DTH, IPTV, HITS, Free Dish and unlicensed OTT platforms are perfectly substitutable amongst one another. Moreover, on account of presence of large number of MSOs as well as the LCOs who are spread across wide geographies and across the country, the services of such MSOs and LCOs are also substitutable within their own platforms. Hence, there is no requirement to introduce any form of restrictions regarding market capping on the MSOs and we reiterate that any proposal to introduce unjustifiable restrictions on MSOs in absence of any iota of evidence of proving monopoly/market dominance will tantamount to infringing the fundamental right under Article 19(1)(g) of the Constitution.

Q23. Do you agree with the disclosure and monitoring requirements mentioned in the 2013 recommendations to monitor the TV distribution market effectively from the perspective of monopoly/market dominance? If no, provide alternative disclosure and monitoring requirements. Do provide full justification for your response.

AIDCF Response: The Authority in the CP has prescribed in its 2013 recommendations, that *the following information shall be provided by the MSOs to MIB and TRAI on annual/ quarterly basis:*

I] ***On Annual Basis:***

a. *Share-holding pattern including foreign investment/ joint venture details as per instructions issued from time to time. Changes, if any, in the share-holding pattern during the reporting period, shall be reported within 30 days of such changes;*
b. *Copy of shareholders agreements, loan agreements, contracts and/or understandings (once and subsequently for the changes);*
c. *The details of MSO(s)/LCOs who are part of the 'group';*
d. *Interests of the entity(ies) which controls the 'group' of MSOs/ LCOs in the relevant market;*
e. *Details of Chairman, Directors in the Board, CEO and CFO;*
f. *State-wise geographical area coverage details.*

II. ***On Quarterly Basis:***

g. *State-wise number of active subscribers will be provided by the MSOs to MIB and TRAI on quarterly basis.*

With regard to the MSOs listed on Stock Exchanges, annual information with regard to points (a), (d) & (e) are available on the website of the Stock Exchanges as well as on the Website of the Company and is in public domain.

However, with regard to annual disclosures sought in point (b) & (c), i.e., *loan agreements, contracts and/or understandings; the details of LCOs who are part of the 'group'*; are confidential business specific details, and partial/complete disclosure of any such information could have an adverse impact on the business. Additionally, details with respect to point (f) i.e. *'State-wise geographical area coverage'* would be very elaborate and cumbersome.

We further state that most of the aforesaid information is already part of the Monthly Performance Monitoring Report (M-PMR) and the Quarterly Performance Monitoring Report (Q-PMR) that are submitted by the DPOs to the Authority on monthly and quarterly basis respectively. We are of the view, that all players in the Television Distribution Market should be mandated to share the aforesaid information, without any exception so that the Authority has an overall and accurate insight into the television distribution market.

Q24. Elaborate on how abuse of dominant position and monopoly power in the relevant market can manifest itself in cable TV services. Suggest monitoring and remedial action to preserve and promote competition. Do provide full justification for your response.

AIDCF Response: Please refer our introductory remarks and our response to Question 1 where we have verily established that there cannot be any instance of prevalence of 'abuse of dominance' in the distribution of cable television services on account of presence of wide number of players, the services catered being perfectly substitutable and on account of DPOs being heavily regulated in terms of stringent regulatory framework.

Q25. Is there a need to recommend cross-holding restrictions amongst various categories of DPOs/ service providers? Do give detailed justification supporting the comments.

<u>AIDCF Response</u>: The cross-holding restrictions are already in place in terms of the licensing framework of DTH and HITS operators. As detailed earlier, there is no evidence of monopoly/market dominance by any of the DPO, irrespective of 'vertical integration', 'horizontal integration' or otherwise. Therefore, there is no need or justification for any further limitations/ restrictions in terms of cross holding restrictions amongst the players in the broadcasting and cable television distribution sector.

Q26. Stakeholders may also provide their comments on any other issue relevant to the present consultation.
No Comment.

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