

**Counter Comments by DEN Networks Ltd. on the
TRAI Consultation Paper on Monopoly/Market dominance in Cable TV
services, June 2013**

Q1. Do you agree that there is a need to address the issue of monopoly/market dominance in cable TV distribution? In case the answer is in the negative, please elaborate with justification as to how the ill effects of monopoly/market dominance can be addressed?

Ans. Any regulation brought about to address market dominance should seek to ensure **there is fair play and a level playing field** for firms operating in that industry so that the **interests of consumers are always protected**.

The reality in the cable TV industry is that cable TV MSOs and DTH platforms compete to serve the same consumer. From a consumer's point of view, digital cable TV and DTH services are synonymous. By the TRAI's own estimates, cable TV today serves 60% of all pay TV subscribers whereas DTH serves 35%. The share of DTH has progressively increased since the services were launched at the expense of cable TV MSOs and LCOs who have lost subscribers.

This clearly establishes that even if an MSO holds a high market share among cable TV subscribers, the presence of DTH provides ample competition ensuring that consumers always have choice. There is nothing preventing a cable TV subscriber from disconnecting their cable TV service and switching to one of seven different DTH platforms available across India.

In addition to this, the existing regulatory and judicial framework (through the CCI) offers strong recourse against any anti-competitive practices by any particular player. Action against certain MSOs has already been taken and penalties levied. The presence of such strong regulatory institutions will always ensure that instances of malpractices can be effectively checked and remedied.

As established above, the current operating environment negates the need for any new regulation or the intervention of the TRAI for checking monopolies or market dominance in the cable TV distribution sector.

Q2. Do you agree that the State should be the relevant market for measuring market power in the cable TV sector? If the answer is in the negative, please suggest what should be the relevant market for measuring market power? Please elaborate your response with justifications.

Ans: The foremost endeavour of regulating market dominance and anti-competitive practices should be that of protecting the interests of consumers.

The cable TV industry in India is currently undergoing a massive transformation with the implementation of DAS. This move from analogue to digital is resulting in an evolution across the television value chain which will be playing out over the next couple of years. The existing legal and regulatory framework does not prevent any MSO or LCO from entering any geographical area of operation if they have a DAS license from the TRAI.

Among competing services, DTH has already created significant inroads into cable TV markets. In addition to this, new technology and the emergence of new 'screens' (e.g. mobiles, smart phones, tablets, etc.) which deliver content and entertainment to consumers is creating fragmentation among audiences. IPTV and 3G/4G could potentially create further disruption over the next few years.

In this context, the market share of any cable TV MSO should be calculated after factoring in the presence and market shares of competing services such as DTH, IPTV and any emerging platform which vies for the same subscribers. Viewing cable TV homes or subscribers or STBs seeded in isolation to calculate an MSO's market power is fallacious and takes a very narrow and misleading view of market dominance.

Q 3. To curb market dominance and monopolistic trends, should restrictions in the relevant cable TV market be:

(i) Based on area of operation?

(ii) Based on market share?

(iii) Any other?

Please elaborate your response with justifications.

Ans. As detailed in answers to previous questions, taking a view on market dominance of cable TV MSOs based on their share of STBs seeded is fallacious. The presence of DTH and other competing services will always offer stiff competition to cable TV MSOs for adding and retaining subscribers.

The international examples detailed in Appendix 1 of the captioned Recommendation Paper clearly bring out the fact that none of the developed markets quoted including the US, UK, Canada or Korea take such a narrow view of market share.

In fact, the competitive intensity in India is even greater on account of the presence of seven DTH service providers that are competing for subscribers with any MSO, much higher than in the developed markets quoted where typically one MSO competes with one or two DTH platforms and one or two IPTV platforms. Also, as

already stated nothing prevents an LCO or MSO with the requisite license from starting operations in any area.

Taking the above into consideration, we reiterate that curbing market dominance in the cable TV sector through any new regulation is unnecessary and does not benefit the consumer in any way. The existing regulations and institutions are sufficient to deal with any instance of unfair trade practices through market dominance in the cable TV industry.

Q 4. In case your response to Q3 is (i), please comment as to how the area of a relevant market ought to be divided amongst MSOs for providing cable TV service. Please elaborate your response with justifications.

Ans. Not applicable

Q 5. In case your response to Q3 is (ii), please comment as to what should be the threshold value of market share beyond which an MSO is not allowed to build market share on its own? How could this be achieved in markets where an MSO already possesses market share beyond the threshold value? Please elaborate your response with justifications.

Ans. Not applicable

Q 6. In case your response to Q3 is (ii), please comment on the suitability of the rules defined in para 2.26 for imposing restrictions on M&A. Do you agree with the threshold values of HHI and increase in HHI (X, Y and Delta) indicated in this para. If the answer is in the negative, what threshold values for HHI and delta could be prescribed for defining restrictions? Please elaborate your response with justifications.

Ans. No. As detailed in answers to Q1 & Q2, the definition of market for determination of market dominance is erroneous. As a result, any mathematical derivation based on such assumptions would be misleading.

Q 7. Should 'control' of an entity over other MSOs/LCOs be decided as per the conditions mentioned in para 2.29? In case the answer is in the negative, what measures should be used to define control? Please elaborate your response with justifications.

Q 8. Please comment on the suitability of the rules defined in para 2.31 for imposing restrictions on control. Do you agree with the threshold values of HHI and increase in HHI (X, Y and Delta) indicated in this para. If the answer is in the negative, what threshold values for HHI and delta could be prescribed for defining restrictions? Please elaborate your response with justifications.

Please refer to the answer for Q6.

Q 9. In case your response to Q3 is (iii), you may support your view with a fully developed methodology indicating a measure arrived at to determine market power and proposed restrictions to prevent monopoly/ market dominance in the relevant market.

Ans. The Indian cable television market is undergoing a transformation driven by the implementation of digital addressable systems (DAS). The market is currently in a phase where it is evolving norms and practices that have been in force for the last two decades and adapting to the realities of digitisation with addressability. Various models are being explored by different players.

The regulatory environment during such a transition should allow different models to emerge before devising a methodology for determination of market power and dominance. A comprehensive review of the market should be done in a couple of years' time by when the digitisation process would have concluded and the market matured.

Q 10. In case rules defined in para 2.31 are laid down, how much time should be given to existing entities in the cable TV sector (which are in breach of these rules as on date), for complying with the prescribed rules by diluting their control? Please elaborate your response with justifications.

Ans. Rules defined in para 2.31 are based on erroneous determination of market power and dominance. As stated in the answer to Q9, the TRAI should evaluate the market after two years and then take appropriate steps if necessary.

Q 11. Whether the parameters listed in para 2.33 are adequate with respect to mandatory disclosures for effective monitoring and compliance of restrictions on market dominance in Cable TV sector? What additional variables could be relevant? Please elaborate your response with justifications.

AND

Q 12. What should be the periodicity of such disclosures?

AND

Q 13. Which of the disclosures made by the Cable TV entities should be made available in the public domain? Please elaborate your response with justifications.

Ans. The existing laws and regulations governing cable television distribution require comprehensive and adequate disclosures to government and regulatory authorities. The grant of DAS licenses is dependent on such disclosures. If there are any

inconsistencies or violations of the conditions for grant of operating licenses to MSOs, the TRAI has the right to suspend or cancel their license. Hence, no new disclosures or defining or increasing the periodicity of disclosures is necessary.

Q 14. What according to you are the amendments, if any, to be made in the statutory rules/ executive orders for implementing the restrictions suggested by you to curb market dominance in Cable TV sector?

Ans. No amendments to the statutes, laws or regulations is warranted at this stage. As already stated in the answer to Q9, a review of the market should be done after the conclusion of the implementation of DAS across India.

Q 15. Stakeholders may also provide their comments on any other issue relevant to the present consultation.