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To,

Telecom Regulatory Authority of India

Mahanagar Doorsanchar Bhawan (next to Zakir Hussain College)

Jawaharlal Nehru Marg (Old Minto Road)

New Delhi: 110 002

Kind Attn: Mr. Wasi Ahmad

Subject: Comments on Consultation Paper on Distribution of TV Channels from Broadcasters to Platform Operators (“The Paper or CP”)

Dear Sir,

This is in response to the Consultation Paper on Distribution of TV Channels from Broadcasters to Platform Operators (“Operators”). I write to you as a long standing investor in India as well as a concerned and affected citizen of the country.

At the outset I would like to congratulate TRAI for coming out with this elaborate CP to address the unfair business practices and issues arising out of the present role assumed by authorized distribution agencies (“Aggregators”) of the Broadcasters. The CP is well timed as the industry is progressing to digital TV systems. The primary considerations for any proposed change in regulation should be the protection of consumer interest, establishment of a level playing field and promotion of fair market practices that benefit all stakeholders. Hence, it is absolutely vital that the proposed amendments in the CP be brought into effect immediately.

Before I delve into the response to the CP, it is important to understand the emergence and role of the Aggregators to set context for the issues at hand today.

Emergence and Role of Aggregators

Aggregators came into existence in an analog TV (pre-digital) world, due to two primary reasons: 1) Limited pipe capacity in the analog system led to Niche channels joining / tying up with Popular channels in order to obtain distribution. In an analog world, where there was little to no addressability, Broadcasters were dependant on TAM ratings for generating ad revenue. Thus tying up with popular channels for distribution was critical for Niche channels to generate high ratings and consequently ad revenues. 2) Additionally, the large number of Operators made it inefficient for individual Broadcasters to negotiate deals with each Operator. This led to the existence of Aggregators.

An aggregator is a distribution agent who distributes channels for one or more broadcasters to Operators. While Aggregators were established to create better efficiencies in the distribution system, over time, it has resulted in Aggregators exhibiting certain business practices which are detrimental to the business of Operators and more importantly, the interest of the Consumer. In addition, the concept of Content Aggregators, as we understand it in the broadcasting business

in India, does not exist in any major international market as deals are negotiated bilaterally between the Broadcaster and Operator.

Today, there exist 233 pay channels (including HD) being offered by 59 pay Broadcasters. These are distributed by 30 Broadcasters / Aggregators / Agents of Broadcasters. Out of these 30, there are 4 main Aggregators: Media Pro Enterprise India Private Limited (75 Channels), IndiaCast UTV Media Distribution Private Limited (35 Channels), M/s Sun Distribution Services Private Limited (30 Channels) and MSM Discovery Private Limited (30 Channels). Essentially, 73% of the pay channels being offered by pay Broadcasters is distributed by these 4 Aggregators.

Analysis of Recommendations of the CP

I wholeheartedly agree with and support the analysis and recommendations of the TRAI for the following reasons:

1) Relevance of an Aggregator in its Current Avatar in a Digital TV ecosystem

Today, as penetration of Digital TV increases, one has to question the role as well as relevance of an Aggregator. As mentioned above, Aggregators came into being due to lack of addressability in an analog world and due to limited pipe capacity. However, digitization and the prevalence of DTH, these issues no longer address as shown below:

- a) Digitization has led to the capacity of the pipe increasing thereby removing the need for Niche channels to enter into bouquets in order to be distributed by an Operator
- b) Regulation exists that all channels (Popular or Niche) are on "Must Carry" basis, therefore further assuaging the fear of channels not finding a place on an Operator Platform
- c) With increasing penetration of DTH and Digital Cable all subscribers are accounted for via the active STBs. The SMS system of Operators has the ability to provide Broadcasters information about channel uptake by subscribers

2) Business Practices / Monopolistic Impact

As highlighted by the TRAI in the CP, 73% of pay channels being offered by Broadcasters are distributed by 4 Aggregators. These Aggregators and their respective holdings are below:

- a) *Media Pro*: 50:50 JV of Star Den and Zee Turner formed in July 2011. ~75 Channels
 - a. *Star Den*: Came into existence in May 2008 as a 50:50 JV between Star India and Den MSO as an exclusive JV for distribution of all channels of Star India
 - b. *Zee Turner*: Came into existence in Dec 2002 to distribute channels of Zee Group and Turner
- b) *IndiaCast UTV*: JV between TV18 and Viacom18. Came into existence in June 2012 to distribute channels of TV18 and Viacom 18 across India as well as channels of Sun Network and Disney Channels in the Hindi Speaking Markets (~35 Channels)
- c) *MSM Discovery*: JV between MSM (Subsidiary of Sony Pictures) and Discovery Communications. Distributes channels of Sony and Discovery Communications including channels such as AXN, MAX, Pix, SET, Discovery, Animal Planet etc. (~30 Channels)

d) *Sun Distribution Services*: Distribution arm of Sun TV Network (~30 Channels)

Due to the high market concentration the top four Aggregators wield substantial negotiating power, which often leads to an abuse of this market position. Instances of this abuse of market position are well known and documented. In addition, the ownership of these Aggregators by certain large Broadcasters presents a major conflict of interest and suggests that these Broadcasters are highly interested in being beneficiaries of this market power.

The ownership of Aggregators by Broadcasters and the near monopoly on distribution of pay channels has given rise to several business practices that are detrimental to the business interests of other stakeholders in the pay TV value chain such as Operators and more importantly hurt the consumer, namely:

a) Bundling

- a. Bundling of channels by Aggregators forces Operators to pay a disproportionate share of content cost (i.e. more than the fair value for channels in a bundle)
- b. Bundling while could help a Niche channel gain distribution, also puts them at a disadvantage as the Popular channels in a bundle tend to take the lion's share of subscription revenue due to its clout
- c. Bundling of channels is also detrimental to the Consumer Interest as any choice imposed on the Distribution Platform in turn restricts the freedom of choice of the Consumer.
- d. Also, as highlighted by the CP, there have been cases in which Aggregators have not complied with existing regulations by providing channels of a Broadcaster as part of a bouquet only to Cable Operators or only as part of a particular bouquet. Thus this limits the consumers options and / or forces him or her to make a change to get those channels

b) Pricing Practices

Because of the near monopoly held on distribution, there has been an abuse of market position by Aggregators, especially when it comes to pricing of content:

a. Minimum Guarantee / Fixed Fee Deals

Aggregators negotiate on fixed fee and minimum guarantee deals with Operators which does not take into account Consumer Choice and the Uptake of Channels. Operators are forced to pay a fixed fee irrespective of take up of channels leading to high pricing of bouquets to the end Consumer

b. Arbitrary Price Increases

Aggregators often use their clout because of the Popular Channels bundled in a bouquet to arbitrarily increase prices of such bouquets which are not justified by the uptake of the Channels in the bouquet

In a digital world we should move towards a more transparent Charge per Subscriber ("CPS") regime, where the subscription revenue to the Broadcaster is based on channel uptake. Due to transparency, the Broadcaster can get all the requisite channel uptake information required to negotiate CPS deals with Operators.

c) Crossholding / Ownership

As shown above, certain Broadcasters have ownership in the major Aggregators. Given that the role of an Aggregator was intended as that of a Service Provider, one has to question the need that these Broadcasters feel to have ownership of Aggregators. This leads to a misalignment of interest and potential abuse of market power whereby popular channels from large Broadcasters (who typically have ownership in these Aggregators) can appropriate more than their fair share in bouquets mostly at the expense of niche channels. Additionally, bouquets combining popular channels of more than one Broadcaster who have ownership in the Aggregator can and does lead to cartel like behavior when it comes to pricing policies

Recommendations and Conclusion:

In an increasingly digital TV ecosystem, where complete addressability and transparency exists Aggregators in their current avatar do not have a role to play. Their existence puts Operators and Consumers at a disadvantage. My recommendations in this regard are as follows:

a) Definition and Role of Broadcasters and Aggregator

- Broadcaster and Aggregator definitions and roles should be clearly defined and separated wherein Broadcasters should include those who have been issued a “License” by the Government
- The role of the Aggregator should be only that of a service provider
- Additionally, Aggregators should have exposure only to a ‘sole Broadcaster’ to avoid abuse of market practices. In this regard ‘sole Broadcaster’ should be identified by its license to tackle issues arising due to multiple entity / parent-subsidary relationships at Broadcaster level.

b) Rules governing formation of bouquets and offerings of the Aggregator

- While Aggregators may assist Broadcasters in signing deals with Operators, all such deals must be on an individual basis with a single Broadcaster and not on behalf of a group of Broadcasters. Interconnect Agreements and bouquet pricing should be negotiated by Broadcaster with Operator directly
- Moreover, with the role of Aggregator defined as a service provider, the Aggregator should not have the ability to change the composition of a bouquet provided by a Broadcaster or bundle channels of more than one Broadcaster
- In order to avoid the Broadcaster or the Operator being at an advantage during negotiation, a bouquet offered by a Broadcaster / Aggregator should not have more than [2] channels of the same genre

c) Pricing of Channels

- We should move towards a more transparent CPS regime, where the subscription revenue to the Broadcaster is based on channel uptake not on the entire subscriber base. Due to transparency in the digital world, the Broadcaster can get all the requisite channel uptake information required to negotiate CPS deals with Operators

- RIO and Rate Cards should be set and displayed on the Broadcasters own websites and not set and negotiated by the Aggregator

d) Mergers and Acquisitions (“M&A”)

- M&A between Aggregators should not be allowed
- While M&A activity amongst Broadcasters to be continued to be governed by the Competition Commission of India (CCI), TRAI should provide some regulatory oversight to the process

In conclusion, I am in agreement with the proposed amendments to the regulation. I feel that a greater oversight into the activities of the Aggregator is required and the proposed amendments along with the recommendations above will help create a more transparent and efficient broadcasting and pay television ecosystem.