22nd November, 2021

To,
Shri Anil Kumar Bhardwaj,
Advisor (B&CS)
Telecom Regulatory Authority of India ('TRAI')
Mahanagar Doorsanchar Bhawan,
Jawaharlal Lal Nehru Marg,
New Delhi – 110002

Email: advbcs-2@trai.gov.in; jtadv-bcs@trai.gov.in

Sub.: Consultation Paper dated 25/10/2021 on Market Structure/Competition in cable TV services

Dear Sir,

We write to you in response to the Consultation Paper promulgated by TRAI on 25/10/2021 on 'Market Structure/Competition in cable TV services' ("Consultation Paper").

At the outset, we would like to thank TRAI for providing us the opportunity to participate in this consultation process. Please find enclosed herewith our response to the issues raised by the Authority in the Consultation Paper in the interest of various stakeholders and the orderly growth of the distribution industry.

We hope that our submissions shall be considered favorably by TRAI while evaluating changes to be carried out.

Thanking you,

Yours Sincerely,
For Sony Pictures Networks India Private Limited

Sd/-

Pranali Parekh
Associate Legal

Encl: Comments on the Consultation paper.

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Go-Beyond

COMMENTS OF SONY PICTURES NETWORKS INDIA PRIVATE LIMITED ("SPNI") TO THE ISSUES RAISED IN THE CONSULTATION PAPER ON MARKET STRUCTURE/COMPETITION IN CABLE TV SERVICES

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.

SPNI response:
Yes, we think that there is sufficient competition in the Television distribution sector. Platforms like DTH, Cable, IPTV, Free Dish and OTT are available across all the States and are providing healthy competition among the broadcasting and distribution industry. Further, technology is evolving rapidly and as it does so there will be more content distribution platforms which means there will be healthy competition ultimately benefiting the end consumer

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.

Q 3. 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.

SPNI response on Q2 and Q3:
Cable TV is only one form of linear television content distribution- DTH, DD Free Dish, IPTV, HITS are the other forms of distribution. Given the multiplicity of platforms there is no need to regulate distribution services as such. However, there is a need to regulate certain unhealthy practices/issues in cable TV services due to the existence of cross holding in the sector both vertically and horizontally. This cross holding can lead to preferential treatment by DPOs to members of their own group

We are of the view that following measures can be brought in to ensure fair competition in the market:

- **No channel should be given preference by a cable operator ("Operator"), over its competitor, due to the fact that a vertically integrated group, to which such channel belongs, owns part of or controls the said cable operator, directly or indirectly.**
- **Such channels must also not be given preference of LCN or EPG by a Operator, over its competitor's channels.**
- **To ensure transparency, information regarding placement, carriage, subscription of such channels on the Operator's network and any cost or revenue accruing to such group, should be mandated to be shared with the Authority**
- **An Operator enjoying market dominance can exercise its market position for preferential treatment for channels belonging to its group, making the market uncompetitive and monopolistic within the vertical.**
- **Cross holding norms need to be introduced to ensure that any direct or indirect ownership, whatsoever, of broadcasters in cable distribution networks, including DTH, HITS, IPTV, or vice verse are subjected to scrutiny by the regulator to prevent adverse effects of market dominance and should also be brought into the public domain by way of mandatory disclosures.**

- **There are certain un-written rules prevalent amongst certain Cable DPOs wherein there is an understanding not to distribute the signals of the broadcaster's channels in a specified area. For e.g. If a housing complex has a cable network of Operator A and if any one subscriber is not satisfied with the services of Operator A, then the same subscriber is unable to opt for another Operator B as his lines are not made available in that particular locality. The only option which remains open for the said subscriber is to switch to a DTH operator.**

It is also our submission that other platforms like DTH, IPTV and HITS which uses the cable platform for distribution of its service, should also be in the ambit of the present consultation process.

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.

<u>SPNI response:</u>
There are hardly any entry regulatory barriers for DPOs unlike for broadcasters, DTH operators or even IPTV and this has led to the exponential growth of the sector. At the same time it has led to fragmentation with more than 1733 MSOs. Some regulatory norms for entry such as minimum net worth, corporate status, technical infrastructure (including fully addressable SMS), BIS standards compliance, etc. will lead to the formalisation of the sector and help it to achieve scale.

Q 5. 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.

Regulation should be "light touch" that will encourage consolidation and growth.

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>SPNI response:</u>
To deal with issue of sharing infrastructure at the LCO level to enable the Broadband services through cable television infrastructure for last mile access, the same is required to be dealt through a Consultation paper and a suitable Regulation in that regard should be enacted. Unless the LCO has the required expertise and meets the minimum operational criteria, passive infrastructure sharing can endanger the safety and security of the broadcasters' content as it could lead to misuse of the signals and miscounting of actual subscribers. An extensive consultation required. As such, presently FTTH operators are providing broadband services along with Television channels to their subscribers but do not appear to be covered under TRAI Regulations which tends to give them a competitive advantage over cable operators.

Q 7. What should be the relevant market for measuring the market power of cable services? Do provide full justification for your response.

Q 8. 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.

SPNI response to Q7 and Q8:

Content is genre and language specific and not governed by territorial restrictions. A "state" or a "district" or "taluk" or "city/town" is merely a geographic descriptor. It has no significance from a "market" perspective. The "State" should not be the relevant market for measuring market power of the cable TV sector for the reasons that are mentioned, herein under:

- **For measuring market power, taking State as a market will not give correct measure of the Operator's market power since the result can be deceptive. For eg. a MSO operating in Delhi can very easily cater to the nearby cities of Gurgaon (Delhi), Faridabad (Haryana) and Noida (Uttar Pradesh). It may seem that the MSO's has its presence in small parts of three different states, but actually it is a significant market power holding 4 large towns with dense population, thus creating a power region for itself.**

- **All areas in the State do not hold the same commercial and financial value. For e.g. city of Mumbai would be far ahead of district Sangli, though both lie in the State of Maharashtra. And certain pockets in Mumbai would have a much higher concentration of high net worth individuals (HNIs) as compared to other parts of the city. The perceived market value of an MSO in the more affluent parts of the city would be far higher than an MSO in other parts**

- **Metro cities are more lucrative markets for business than non-metro cities. In metro city, the Operator has multiple revenue sources viz. subscription revenue, carriage fees, ad-sales revenue (in case where the Operator has its local channels) with added advantage of high consumer paying capacity, better technology etc. whereas in non-metro areas, Operator has to depend mainly on subscription revenue from the consumer.**

- **There is no obligation upon the Operator to restrict their cable operations to one State only. Major Operators do have their operations in more than one State.**

Another aspect which might require consideration is that in India it is language which determines the Geographical market. When it comes to television channels, normally we look or define a certain market based on their State language. But in this modern era, considering entire State as a relevant market for one channel based on the language of that particular State does not give us a 100% true picture. For e.g. considering Mumbai market relevant only for GECs and Marathi channels is doing injustice to southern language channels like Tamil, Kannada, Telugu, Malayalam, or even channels from the North East, etc. There are considerable populations of people in many Northern Metros who hail from the South and the North East and similarly many Hindi speaking subscribers are in Southern cities as well. So, the balancing has to be done with consideration or designating such cities as All India relevant or relevant for certain languages as well. This will give a true picture of the market power.

In view of the above, State should not be the relevant market for measuring market power and the market power should be measured by market share of the concerned Operator in terms of its absolute subscriber base vis a vis the genre and language.

Q 9. 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.

Q 15. 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.

<u>SPNI response to Q9 and Q15:</u>

For all practical purposes, the MSOs and their JVs are to be considered as a single entity only as they share common infrastructures like CAS/ SMS etc. In such cases, MSO and JVs are equally responsible in their Regulation related obligations as they both have their own Certification from the MIB. But as far as their relevant market strengths are concerned, the question of single entity or not does not arise. For e.g. If a MSO, who operates across India from a Northern part of the country and has JV in Tamil Nadu. While considering this MSO's strength in any relevant market, the threshold will be as defined by the reach of the MSO and its JVs in that market. So there need not be separate thresholds to define a MSO and its JVs as single entity.

Further, to determine the market share the active subs of MSO's JV should also be considered as the JV is also a part of that MSO.

Q 10. 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.

<u>SPNI response:</u>

The degree of concentration matters as a higher concentration measure is a proxy for lack of competitiveness in that market. Many industries use Herfindahl-Hirschman index (HHI) as the standard index due to its convexity property (it increases if there are higher concentration levels within limited number of Operators). HHI is also certainly better than Concentration Ratios (CR4 or CR8) as Concentration Ratios do not distinguish between markets where there are only 4-5 operators vis-à-vis markets where there is a long tail of operators with small market shares.

For example, CR4 (concentration ratio of top 4 operators) for a market where the operator shares are (35%, 20%, 15%,15%, 15%) is same as that for a market where the operator shares are (25%,20%,20%,20%,5%, 5%, 5%). However, the second market is more competitive as it has more operators and is less monopolistic in nature.

HHI index solves for this by squaring the market share of each operator

	Op 1	*Op 2*	*Op 3*	*Op 4*	*Op 5*	*Op 6*	*Op 7*	*HHI*
Mkt 1	**35**	**20**	**15**	**15**	**15**			**2300**
Mkt 2	**25**	**20**	**20**	**20**	**5**	**5**	**5**	**1900**

Mkt 2 in the above example has HHI as 1900 which means it is more competitive than Mkt 1 where it has only 5 players and hence a higher HHI (2300)

However, a higher HHI is not always bad for the market and hence there lies a disadvantage in HHI.

For example:

Market M1 has 4 operators whose share is as follows:

Op 1 – 60%, Op 2 – 25%, OP 3 – 10%, Op 4 – 5%

The HHI for the same is 4350. In this market, Op1 has a monopolistic share and the next bigger operator (OP 2 at 25%) is too small to challenge Op 1.

If Op 2 and Op 3 merge, then their combined share is 35% and is now significant to challenge Op 1. Hence the market becomes more competitive. However, if Op 2 and Op 3 merge the HHI of the market increases thereby suggesting that the market is more monopolistic

	Op 1	*Op 2*	*Op 3*	*Op 4*	*HHI*
Mkt 1	**60**	**25**	**10**	**5**	**4350**
Mkt 1 (post Op 2 and Op 3 merge)	**60**	**35**	**5**		**4850**

This can be solved by using another index which is known as Competitive Balance (CB)

Competitive Balance (CB) is measured as square of market share of the most dominant operator divided by HHI

This measure does have the convexity property of HHI wherein if the CB increases the concentration or the monopolistic nature of the market increases. However, this measure also considers the fact that a merger not involving the market dominant operator is better for the competitiveness of the market.

In the above example: Mkt 1 had a HHI of 4350 and has a CB of 8276

	Op 1	*Op 2*	*Op 3*	*Op 4*	*HHI*	*CB*
Mkt 1	**60**	**25**	**10**	**5**	**4350**	**8276**

Let us take 2 scenarios in this market

a) **if Op 2 and Op 3 merge thereby making it more challenging for Op 1 which is the most dominant player**
b) **If Op1 and OP 4 merge thereby making the most dominant player more powerful**

	Op 1	*Op 2*	*Op 3*	*Op 4*	*HHI*	*CB*
Mkt 1	**60**	**25**	**10**	**5**	**4350**	**8276**
Mkt 1 post Op 2 and Op 3 merge	**60**	**35**	**5**		**4850**	**7423**
Mkt 1 post Op 1 and Op 4 merge	**65**	**25**	**10**		**4950**	**8535**

We see that in both the scenarios, the HHI increases whereas in scenario 1, the CB decreases stating that the market has become less concentrated and more competitive. In scenario 2, CB increases further showing that the market has become more monopolistic.

Q 11. 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.

SPNI response:
Be in HHI or CB, the measure alone cannot justify the competitive intensity of a market. The implications of an increase in concentration in the market is always ambiguous. An increase could happen if weaker operators close thus increasing the share of other dominant operators. Moreover, it could also reflect that more efficient operators have performed better in a perfectly competitive market thus bringing them higher market share. So, we need to evaluate the competitive intensity of a market by looking at other factors as well.

Some other factors we can check are the ground prices (common perception is that if an operator has dominant market power, then he is likely to increase the prices at a higher rate), profits of the operators, Churn (number of operators that have entered or exited the market in a given time frame)

Q 12. 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.

SPNI response:
The threshold HHI of 2500 is fine. However, with constant threat from OTT and FTA platforms, there is likelihood of concentration in the market going forward. In such cases, the threshold of 2500 should be increased further. However, as stated above, the HHI or CB measure alone should not be the deciding factor. We should also look at other factors to decide if the dominant players are using any unfair means to hinder a perfect competitive scenario.

Q 13: 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

SPNI response:
The issue should not be determined only by market share. It is the adverse effect on competition, if any, that should invite regulatory intervention. The size of an MSO by itself ought not to be a concern if the MSO's actions do not have an adverse effect on competition in the relevant markets

Q 14. 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.

SPNI does not have any comments on this question.

Q 16. 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.

<u>SPNI response:</u>
Market dominance is a specialist field which should be left to expert statutory bodies (like the CCI) to determine. TRAI should leave it to CCI to decide if market dominance exists and whether there is an adverse effect on competition

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.

Please see our response to the previous question

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.

<u>SPNI response:</u>
As we have stated above, adverse effects of competition, monopolies, monopolistic practices are better left to CCI, a body that has been established by Parliament for precisely this purpose.

Q 19. 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.

<u>SPNI response:</u>
SPNI believes a "light touch" and predictable regulatory environment with minimal regulatory intervention would best encourage competition and the growth of the industry.

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.

<u>SPNI response:</u>
"Control" is well defined in legislations like the Companies Act. Competition Act, the SEBI Act. We believe there is no need to reinvent the wheel and the most suitable of these definitions can be incorporated by reference.

Q 21. Do you think that there should be different definition of 'control' for different kinds of MSOs? Do explain with proper justification.

Please see our answer to the previous question

Q 22. Should TRAI restrict the ambit of its recommendations only on certain kinds of MSOs? Do provide full justification for your answer.

<u>**SPNI response:**</u>

MSOs are only one part of the Distribution eco-system and without looking at the sector as a whole, it will not serve any purpose.

Q 23. 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.

Please refer to our earlier responses on competition

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.

Please refer to our earlier responses on competition

Q 25. Is there a need to recommend cross-holding restrictions amongst various categories of DPOs/ service providers? Do give detailed justification supporting the comments.

<u>**SPNI response:**</u>

Please refer to our earlier response to this question in which we stated the potential negative effect of allowing cross holding whether vertical or horizontal. It is our understanding that even in advanced economies there exist restrictions on cross holding in media and entertainment given the sensitive nature of this sector. We believe this answers the question

Any Other Issues

Q 26. Stakeholders may also provide their comments on any other issue relevant to the present consultation.