CONSULTATION PAPER
ON
MONOPOLY/MARKET DOMINANCE IN CABLE TV SERVICES
Dated June 03, 2013

We take this opportunity to thank the Hon'ble Authority for taking up the above issue for consultation. We are of the view that any entity doing business in India should enjoy equal rights and privileges as much as its peers, without any restrictions and curbs on ownership and/ or market concentration. However, we say the above with the *caveat* that the plurality of mediums, choice to consumer and ample competition at the last mile should always remain paramount.

The cable TV distribution ecosystem includes the distribution intermediaries, viz. Multi System Operator ("MSO") and Local Cable Operator ("LCO"). The MSOs primarily downlink the content that comes in the form of linear satellite channels and transmits these channels using their own or LCOs analogue or digital cable distribution platforms to the end users/ subscribers. Throughout India, total cable & satellite homes serviced are 77 million, which constitutes 50% of all TV viewing homes in the country. The distribution intermediaries or the platform owners are important as they bridge the gap between channels and the viewers. Generally, intermediaries have an interest in delivering what their users demand — a wide range of 'relevant' content.

In India, 90% of the cable homes have only one cable operator providing cable services in their area. This establishes that the cable operators have a virtual monopoly at the last mile, which they have enjoyed for more than 20 years. In addition to this, they also enjoy complete regulatory forbearance in channel packaging and pricing. Quite often, this monopoly is exploited by the LCO and/or the MSOs by providing poor services to consumers by not providing the channels asked for by a consumer, coupled with poor quality of transmission services, significantly divergent from the quality at which the channel is downlinked by the content provider, that creates a very wrong perception about the channel and its quality itself in the minds of the viewers, i.e. consumers. Furthermore, MSOs exploit this position by demanding completely unreasonable carriage monies from the broadcasters, estimated to be to the tune of Rs 2000 Crore plus in FY 2013.

While, media plurality is the corner stone of democracy, many MSOs and LCOs are known to indulge in blocking certain news and current affairs channels, averse to their political affiliates especially, during election period. Many MSOs and LCOS continue to often align with a particular broadcaster or a bouquet, for varied reasons, to give their channels favorable treatment and adopt such practices to limit the competition coming from their associate broadcaster's competitors.

The above are examples of monopolistic, arbitrary and anti-consumer practices that result in restricting media diversity and plurality. To guarantee that all cable subscribers continue to have access to a wide and diverse range of news & entertainment, it will be important to ensure that, these players take a neutral position and do not discriminate between channels.

The present issue envisaged in the present Consultation Paper on 'Monopoly/Market Dominance in Cable TV Services' ("CP"), therefore, has a significant and demonstrable bearing on the cable TV distribution in India and as elucidated above, the real challenge is the abuse of 'last mile distribution ownership' and the need for neutral treatment of TV channels by distributors for the sake of a healthy and competitive industry.

<u>TTN's issue wise for submissions:</u>

A. <u>Market Structure and dominance issues</u>

Q 1. 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?

TTN:

We agree with the Authority's viewpoint as detailed in the CP on the issue of dominance of cable operators and market concentration at the last mile of cable distribution. We are of the view that following measures can be brought in to address the above issues:

*1. **<u>Check on Vertical Integration:</u>***

Vertical Integration is an essential aspect for optimum utilization of resources and is also prevalent in the cable and satellite space wherein certain broadcasters have significant holdings either directly or indirectly, in the downstream distribution entities be it aggregators, DTH, MSOs, etc.

For Vertical Integration not to be misused and serve as a detriment to the growth of this industry, the existing regulations of "must carry" as stipulated under Regulation 3(10) of The Telecommunication (Broadcasting And Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 dated 30th April, 2012, have to be effectively implemented and enforced by the Authority.

These regulations have to be strongly imposed across cable platforms as the LCO and MSO control the last mile cable delivery of channels. Specifically during elections, it has been observed that certain MSOs/ LCOs under political influence or for lure of money blackout certain news channels which are potential threats to a political party. Countries like Georgia have mandated the 'must carry' of news channels during elections across platforms.

Further, the need of the hour is to bring in strictly and strongly enforceable fair practices, transparency and non-discrimination between entities in a vertically integrated media segment, the absence of which will give rise to malpractices and discrimination by dominant entities viz-a-viz other constituents within the segment. For example if a vertically integrated broadcaster's channel is available/placed on its downstream distribution system, be it DTH or an MSO or on any other platform, the competitor broadcaster's channel should also have the right/option to be on such distribution system on at-least the same terms and conditions, if not preferable, as are applicable to the vertically integrated broadcaster.

Vertical Integration, if not brought under the ambit of transparency and fair play with clear guidelines to ensure non-discrimination to direct competitors, will hurt the interests of the entire segment. We give below some recommendations that can be considered while framing suitable guidelines to address this issue:

i. *No channel should be given preference by a specific cable system, DTH, IPTV, HITS or 4 G Platform, over its competitor, due to the fact that a vertically integrated group, to which the channel belongs, owns part of or all of the cable system, directly or indirectly.*

ii. *Such channels must also not be given preference of 'LCN, EPG or 'Barker' visibility by a specific Cable, DTH, IPTV, HITS or 4G Platform, over its competitor. No Distribution Bouquet of one or more of such channels should be given preference of ''carriage, subscription or placement' on a specific Cable, DTH, IPTV, HITS or 4G Platform, over the competitor channels.*

iii. *To ensure transparency, information regarding placement, carriage, subscription of such channels and any specific cost or revenue accruing to such group, should be shared with the Authority, which may intervene if a competitor claims specific preference due to the reasons above.*

iv. *An MSO enjoying market dominance can exercise its market position to push for its channels, making the market uncompetitive and monopolistic within the vertical. Further, such integration can be more significantly detriment when a dominant vertically integrated media entity is also politically aligned.*

v. *In order to ensure a level playing field for all participants in a given media sector it is imperative that specific and strict measures are put into place, in the absence of which vertically integrated groups/ entities could dominate the market and render it uncompetitive, thus leaving the industry in bad health. The Government should allow vertical integration but ensure that stringent rules and regulations are effectively put in place to safeguard and ensure the above mentioned guidelines for fair play amongst players and there exists no opportunity for vertically integrated groups to treat other constituents in an unfair manner using the advantage they hold in the segment.*

It is therefore our submission that there should be stringent restrictions on 'Vertical Integration' between broadcasters and cable TV distributors. Any direct or indirect ownership, whatsoever, of broadcasters in cable distributor network, or vice versa should be scrutinized by the regulator for misuse of market dominance and should also be brought in the public domain by way of mandatory disclosures.

2. ***Check on a MSO controlling the other MSOs:***

There should be express provisions barring a MSO to exercise its control over the operations of another MSO in the same relevant market. Whilst taking learning from the Competition Commission of India's (CCI) observation pertaining to abuse of its dominant position by an MSO in the State of Punjab and directions against three MSOs operating in Punjab for cartelization and disrupting the transmission of news channels, the Authority should prescribe strict measures against 'Horizontal Integration' between MSOs in the same relevant market.

3. ***'Three MSO/ LCO Rule':***

At any given time there must be minimum three MSOs operating in any relevant market and same number of last mile operators operating in sub-area of the relevant market, this would ensure that there is no last mile monopoly and subscriber would have choice of service providers. Further, atleast 70% of a relevant market should be concurrently catered to by all three last mile operators to edge any possibility of dominance and concentration in the sub-areas in a relevant market with mutual understanding amongst the MSOs operating in that market. We further recommend that the Authority also consider the possibility of the homes having a choice of more than one MSO service in the same area. As MSO in any local area uses the services of multiple LCOs to serve homes in that area, this option in the hands of the consumer to have more than one MSO service will ensure that there is no dominance of a single MSO in any local area and also ensure a fair market for all constituents to operate, thereby serving the consumer in the best and effective manner. Further, an MSO and its downstream LCO network that brings a channel to *consumers must not co-share the signals with another MSO/LCO downstream combination in the same area. With the implementation of DAS, we believe the issue of multiple feeds of the same channel/broadcaster being used by certain LCOs that gives rise to piracy of signals in that area would be addressed and taken care of.*

4. ***Mandatory Service of non-meterd cities:***

All leading MSOs focus their operations to TRP or the ''Metered' cities for audience measurement'. While the identity of these metered homes is kept highly confidential by the measurement agency, however the LCOs/ MSOs create a false 'myth' of metered homes serviced by them and thus charge significant carriage. This is a bad practice and should be discouraged. Any complaint against such MSO and LCO for propagating claims, irrespective of their merit, should be dealt with severity. Further, the TRP or the 'Metered' cities are financially more lucrative, whereas the rural, semi-urban areas and non-TRP cities, being commercially less lucrative, are left to small part-time MSOs only. This results in sub-standard services and unregulated & monopolistic practices by MSOs operating in non-TRP cities areas. To bring the non-TRP towns in parity with TRP towns, atleast on the service levels, it should be mandatory for the MSOs to serve rural, semi-urban areas and non-TRP cities to be eligible for Metros and TRP cities.

5. ***Include Other Platforms:***
Platform like HITS which uses the cable platform as its last mile *for distribution of its service should also be in the ambit of the present consultation process. Further, the present consultation process should also include 4G LTE, a content and TV channel distribution platform that till date remains a sole player platform and thus vulnerable to monopolistic practices.*

B. Measuring Market Power

Q 2. 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.

TTN:

The State should NOT be the relevant market for measuring market power in the cable TV sector for the reasons that are mentioned, herein under:

i. *State as a relevant market for measuring market power for a MSO will a.) not give correct measure of the MSO's market power and b.) give result that can be deceptive. For eg. a MSO operating in Delhi can very easily cater to the cities of Gurgaon & Faridabad (Haryana) and Noida & Ghaziabad (Uttar Pradesh). It may seem that the MSO's has his presence in very small parts of three different states, but actually it is a significant market power holding 5 TRP towns, thus creating a power region for itself. Such MSO can exploit its dominant position by leveraging it for its other non-significant markets.*

ii. *All areas in State don't hold the same commercial & financial value for the MSOs. For e.g. in terms of infrastructure, revenue streams & consumer paying capacity, City of Mumbai would be far ahead of District Latur, though both lie in the state of Maharashtra. The Metro cities, followed by 1Mn+ towns and state capitals, are very lucrative markets for business and thus, most sought after by the MSOs. In these areas, The MSOs enjoy multiple revenue sources viz. subscription, carriage, ad-sales with added advantage of better infrastructure, high consumer paying capacity, trained technicians, easier access to information and technology, etc. Whereas in the other areas, MSOs remain dependents mainly on subscription from the consumer.*

iii. *There is no obligation upon the MSOs to restrict their cable operations to one State only. The present day technology enables the cable signals to go across States and far-flung areas, with ease, hence once established in its home State, every MSO aspires to ventures out its cable network to the adjacent areas.*

iv. *It is seen that the MSOs target a region and not State for its cable operations. All major regional MSOs have their operations atleast two or more than two states.*

In view of the above, State should not be the relevant market for measuring market power. We recommend that the market power should be measured by market share of a cable operator in cities and towns classified on the basis of their commercial value. Based upon the commercial value of the relevant markets, in the descending order, broad categories of cities and towns can be classified as under:

a) *Metros- Delhi, Mumbai, Kolkata & Chennai;*
b) *1 million plus towns & State Capitals [other than Metro cities];*
c) *District headquarters;*
d) *Semi Urban Areas;*
e) *Rural Areas; and*
f) *Far Flung & Remotely Accessed Areas.*

C. Restrictions

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.

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.

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.

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.

TTN:

We suggest that to curb market dominance and concentration in in the relevant cable TV market, the restrictions should be at two levels, firstly on 'Based on Area of Operation' and secondly, 'Based on Market share' of entities operating in such area of operation.

There are certain markets which are financially and commercially more lucrative for the MSOs than other areas, these are mostly TRP or 'metered' cities. Resultantly, these cities have particularly higher levels of market concentration. An effective measure against such high levels of concentration is by bringing in restriction 'Based on Area of Operation'. This can be done by making compulsory service of non-TRP/ Metered cities & areas as an eligibility condition for MSOs to service the TRP or the 'Metered' cities. For eg. for a MSO to operate in a Metro City (viz. Delhi, Mumbai, Kolkata and

Chennai) or a State Capital, it has to compulsorily serve atleast 25 District Headquarters, 100 Semi Urban Areas and 500 rural areas.

Further, within a relevant market there should also be restriction 'based on market Share' prescribing that a MSO or LCO should not be the only service provider in the sub-areas. The above norm can be easily achieved, without depriving cable services to the subscribers, as other MSOs will also have to compulsorily serve that relevant market.

In regard to the suitability of the rules defined in para 2.26 for imposing M&A restrictions 'based on Market share', the threshold mentioned therein, should be subject to the real tests based on actual figures from the markets. However, despite of defined thresholds, each reported case of abuse of market should be open to regulatory scrutiny and market restrictions.

The Authority has suggested for 'HHI' as a measuring index. The 'HHI' is widely used market concentration measuring index, it is even referred by CCI. However, there are a few challenges associated with HHI. Firstly, it may be difficult to appropriately define market share of different service providers till such time there is complete digitization with addressability at the last mile, across the country. Secondly, at first glance, a market with several service providers of equal share may not seem concentrated, even if the sub-areas in that market are highly concentrated. Thirdly, the HHI index would be failure where there is last mile monopoly, owing to mutual understanding amongst the cable intermediaries. Fourthly, geographic considerations need to be taken into account. Lastly, on a national level, service providers may have equal market share, but in local markets these providers could have monopoly share and be unfairly charging high prices. Despite these challenges, we don't immediately write-off HHI, however its effectiveness can only be established from accuracy in its results in the course of time.

Finally, we recommend that the restrictions should be defined 'Based on Area of Operation' and secondly, 'Based on Market share' of entities operating in such area of operation to curb market dominance and monopolistic trends.

D. <u>Control</u>

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.

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.

TTN:

The CP refers to the definition of 'control' as in Competition Act, 2002 ("Act"). The Act provides that any intervention by the commission can only be triggered upon acquisition of shares between two enterprises or group. Whereas under the SEBI Takeover Regulations, the acquisition of voting rights is crucial from the perspective of the Takeover Regulations, while it is not so in competition law. The Authority should not limit the definition of 'control' by adopting simpliciter from the Act but rather expanding its scope by regulatory harmonization of the concept across the Competition Act & SEBI Takeover Regulations.

Further, we are agreeable to the idea of imposing restrictions on the basis of the threshold values of HHI, however we feel that these values should time tested and the Authority or any competent authority also should take up the cases of M&A and/ or exercise of control resulting in potential of abuse of market for regulatory scrutiny and restrictions, as and when reported.

E. Time for compliance

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.

TTN:

A time period of three months can be prescribed 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.

F. Monitoring and Disclosure

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.

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

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.

TTN:

The parameters listed in para 2.33 of the CP are adequate with respect to mandatory disclosures for effective monitoring and compliance of restrictions on market dominance in Cable TV sector. However, these parameters should be reviewed, from time to time, for introducing additional parameters.

These disclosures should be made at the end of each quarter and/ or whenever there is change affecting these variables. Each disclosure from the MSO should be signed and attested by an officer of the MSO, of a rank not less than Head of Organization/ Chief Financial Officer, responsible for the MSO's operations, who shall certify that all information in such disclosure is true and correct. The MSO should also promptly submit any further information as sought by the Authority or any other competent authority, from time to time and the same should not be unreasonably withheld.

The Authority may choose to keep the disclosures made by the Cable TV entities out of the public domain, however information on such disclosures can be furnished, on receipt of complaint against exercise of control resulting in abuse of market, to its complainant.

Need for Monitoring & Enforcement:

Effective implementation of regulations at the ground level has been a continuous concern since the inception of the regulatory framework for cable services in the country. Despite of express provisions like mandatory invoicing, no service to unregistered cable operators, complete and accurate declaration of subscribers & submission of monthly subscriber report and Quality of Service Regulations (QoS) for the consumers for both analogue and DAS cable, these regulatory provisions have been flouted with impunity by the cable intermediaries.

Further, with the increasing number of MSOs and LCOs in the country, the need is felt for presence of specialized and dedicated local enforcement units on the ground at the State level to ensure that MSO and local cable operators adhere to the license conditions and regulatory obligations, especially QoS and anti-monopolistic practices.

With the onset of DAS, there have been wide spread instances of setting-up of illegal/ clandestine analogue cable network, especially in low income and thickly populated territories in the DAS notified areas, which is not only violation of the legal and statutory provisions but also huge loss to the Government owing to unaccounted collection of monies and tax evasions, thereto.

To address such issues, the Authority should recommend to the Government for setting-up of cells/ units at the State levels on the lines of Telecom Enforcement, Resource and Monitoring (TERM) Cells, as in Telecom and Mobile services, to monitor the effective implementation of regulations and license conditions at the ground level. Till the time such enforcement cells/ units are not fully operational, TERM should be given the additional responsibility for effective implementation of regulations and monitoring of cable services at the State levels.

G. Amendments in Statutory rules/ executive orders

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?

TTN:

As mentioned in the CP, the exact changes for implementing the restrictions would depend upon the nature of restrictions to be imposed. Since our recommendation also suggest changes in the license policy for the MSOs, such restrictions can be implemented by way of insertion in the Cable Act.

Other Issues

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

TTN:

- *Must Carry during the elections:*

  There is demand for stringent and effective implementation of "Must Carry" obligations upon the MSOs, especially during the elections. We can bring in changes in the present regulations for "Must carry" rules on the lines of Georgian broadcasting market[1]. Where reforms have been introduced by way of amendments to the Election Code, as well as to other legislative acts, to make it mandatory for the cable network operators to re-transmit, without discrimination, TV signals of Public Broadcaster, community broadcasters

[1] http://www.civil.ge/eng/article.php?id=24940

and satellite channels during elections to ensure media pluralism and accessibility to alternative sources of information for the subscribers of cable network operators.

- *Rationalize carriage fee:*

  We recommend that reasonable, non-discriminatory & rational carriage fee is allowed to be charged by a MSO in its Reference Interconnect Offer (RIO). As it was originally envisaged, especially for the DAS effective areas, there should be uniform carriage, which can on the higher be at Re 1/ Home/ annum/ channel for the next 2 years to help in the Analogue to DAS transition. The carriage fee should be payable by all channels including Doordarshan channels. The intervention by the Authority shall help to clear out unreasonable and arbitrary pricing of carriage fee.