Fwd: Asianet Digital Network Pvt. Ltd. - Comments on the Consultation Paper on Market Structure/Competition in cable TV services

From : Sapna Sharma <jtadv-bcs@trai.gov.in> Tue, Dec 07, 2021 02:40 PM

Subject : Fwd: Asianet Digital Network Pvt. Ltd. - Comments on the Consultation Paper on Market Structure/Competition in cable TV services

1 attachment

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Sent: Tuesday, December 7, 2021 1:02:19 PM
Subject: Asianet Digital Network Pvt. Ltd. - Comments on the Consultation Paper on Market Structure/Competition in cable TV services

7th December, 2021

Shri Anil Kumar Bharadwaj,
Advisor (B&CS)-II,
Telecom Regulatory Authority of India.

Subject: Comments on the Consultation Paper on "Market Structure/ Competition in cable TV sector" dated 25.10.2021("CP").

Dear Sir,

At the outset, we, Asianet Digital Network private Limited ("**Asianet**"), would like to thank the Authority for the timely release of the consultation paper on the captioned subject to ensure that there is a healthy competition in cable TV sector and market power is not concentrated in the hands of a few players leading to collapse of Market structure.

The market structure becomes weak when:

a) a) A few players leave the industry as it becomes unviable and the larger ones capture the market vacated by others.

With 2017 regulations forcing reduction in NCF and allowing increase in the pay channel costs, several MSOs have stopped business or lost subscriber base to other MSOs or DTH as the industry is unviable and there are clear signs of it. The number of active MSOs in Kerala has been dwindling fast with more LCOs pushed to align with large MSO.

b) There is a non level playing field / discrimination between MSOs leading to market distortion:**:** While the Authority has been trying to ensure level playing field through non discrimination and transparency for the past two decades, on ground certain broadcasters continue to discriminate as no punitive action is taken against the violators.

Asianet has fought many battles from 2003 till 2019 in TDSAT *[BP 39 (c) of 2004, BP 137 (C) of 2006, 153 (c) of 2009, BP 95 of 2017, 173 of 2018 – all against Star India Pvt Ltd*]and upto Supreme Court *[CA 2600 of 2006 and SLP 9625 OF 2006 and 4765 of 2010 against Star India Pvt Ltd]* for a basic right of an MSO – Transparency and Non discrimination. Discrimination has been a menace in the industry eliminating competition and creating monopolies in certain markets like Kerala.

Violation of 2017 Regulations: Contrary to the observations of the authority in Paras 2.15, 2.25, 3.1, 3.11 of this consultation paper, we regret to state that the discrimination by certain broadcaster(s) continues even under the current regulations which is leading to a huge disparity in terms of discounts offered and thus leading to erosion of subscriber base for certain MSOs like us and increase in subscriber base of certain MSOs as subscribers and LCOs migrate to avail lower prices offerd by the MSO who gets higher paybacks from certain broadcaster.

We attach our detailed responses to the issues raised in the consultation paper herewith.

Yours Sincerely,

For Asianet Digital Network Pvt Ltd

Arun Raj
Authorised Signatory

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Regards

Sapna Sharma
Joint Advisor (Broadcasting and Cable Services)
Telecom Regulatory Authority of India
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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.

Ans: There are 1700 MSOs and 4 DTH operators in the country which can be called a healthy competition for subscribers to choose from. Post NTO, several MSOs have lost huge subscriber base in favour of DTH operators and a other few MSOs have gained subscriber base. One of the main reasons for this distortion is the discrimination between MSOs by the certain broadcasters in certain markets to strengthen their preferred MSOs and weaken other MSOs under the name of promotional budget which continue to distort the market.

This is a two decade old menace proscribed by regulations and various judgements but flouted by certain broadcasters in certain markets.

In Kerala, where we (Asianet Digital Network Pvt Ltd –ADNPL) predominantly operate have found the following drastic changes in the market structure:

a) On the MSO front, while there were several MSOs operating in the state, a large broadcaster has been giving high payback upto 50% discount over and above 20% distribution fee to their preferred MSO,. It is seen this broadcaster is giving upto 50% of the MRP as discount in addition to the 20% distribution fee while other MSOs get only 15% discount, Obviously, with such a huge disparity of 3 times higher discount, the market is highly distorted leading to several MSOs shutting operations or losing LCOs to this MSO.

b) This is evident from the fact that one MSO has grown in subscriber base from 21.3 lacs on 1st April 2019 (TRAI report to MIB in July 2019 regarding Networth requirements for MSOs) to 30.23 Lacs on 31/12/2020 (as per TRAI performance indicator reports).

   More than 95% of the revenue from LCOs is content cost and if the content cost is distorted by broadcaster(s), the market distortions take place. Price discrimination continues to be a menace, contrary to the observations made in paras 2.15, 2,25, 3.1 and 3.11.

This menace of price discrimination by broadcasters to MSOs will only end when the Authority ensures that every other MSO / DPO gets the same maximum discount given by the broadcaster to any MSO in the state.

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.

Ans: If the MSOs are growing because of price discrimination, such practices need to be curbed by the Authority and such broadcaster should be taken to task. We think that there is a need to regulate or to curb the menace of price discrimination by certain broadcasters which is leading to market dominance in the industry as more than 95% of the revenue from LCO is pay channel cost in Kerala

In Kerala, certain large Broadcasters are favouring specific MSO by giving 3 times more discount (50%) compared to other MSOs (15%).

Unless the Authority ensures non discrimination, the increase in number of operators or removal of entry barriers alone will not help.

It is humbly requested that the Authority ensures that the broadcaster passes the same discount to other MSOs with retrospective effect in the state rather than letting the broadcaster go scotfree.

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.

Ans:

Based on our experience in Kerala, for the past 20 years, certain broadcaster has been discriminating between MSOs – despite regulations and several petitions (involving TRAI as a respondent) and orders issued by TDSAT and Supreme court.

The broadcaster repeats this every year because there was no punitive action under analog regime nor digital regime. It is humbly requested that the Authority take stringent action against violators with huge penalties– especially on habitual defaulters so that the regulations and Supreme Court orders are taken seriously.

The Authority is requested to enforce regulations regarding non discrimination by broadcasters.

When an MSO gets 50% discount vs 15% discount given to other MSOs, the latter can not compete.

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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.

Ans: There are no barriers for entry as the license fee is nominal. However, to capture subscribers the MSO needs to invest in Headend as well as CPEs. The LCOs and Subscribers want free STBs. But <u>certain MSOs are being forced to exit the business because of price discrimination by broadcasters and Authority should enforce regulations to provide level playing field</u>

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.

Ans: At present in the industry the LCOs switch over to the other competitor MSOs without settling the dues or returning the STBs thus creating a huge loss to the preceding MSO.

Supported by discriminatory deals with broadcasters, certain poaching MSOs offer attractive deals to LCOs to switch signals leaving the preceding MSOs at huge loss in terms of subscribers, uncollected dues and STBs.

The authority should consider and to make stringent regulations for

i) payment of the due subscription charges
ii) Return of STBs by LCOs to the previous MSO before switching to another MSO
iii) And a proper mechanism of 30 day termination notice
iv) Unless and until the amount and the STB are returned to the erstwhile MSO, The LCO should not allowed to get signals or to operate the business
v) Taking written approval from subscriber for changing the signals.

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.

It is true that LCOs due to their lastmile connectivity dominate the local market by deciding the upstream service provider for Cable Tv signals as well as broadband service. As a first step to avoid monopoly by LCOs, the steps suggested in question 5 can help in reining the LCOs.

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

Considering India's language clusters, the table 3.1 categorises the relevant market in an apt manner at state level.

The subscriber base is already reported to broadcasters state wise and this data helps in knowing the statewise market dominance of MSOs.

While the relevant market can also be district level, at this point in time, it is important to focus on curbing the state level distortion by ensuring non discrimination by broadcasters which is much simple for the Regulator to focus.

While we are not against market dominance by any MSO by efficient business practices, Authority need to curb the broadcasters supporting some MSOs at the cost of other MSOs.

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.

Ans: As suggested in Q7, the relevant geographic market can be at state level and the focus should be to curb the dominance of MSO based on discriminatory deals of broadcaster to enhance market dominance by a particular MSO in the state.Relevant market at District level can be at a later stage after ensuring the maret distrortions at state level are curbed by ensuring non discrimination by broadcasters.

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.

Ans:

Yes. Any JV or subsidiary where MSO has more than 50% equity directly or indirectly can be treated as a single entity.

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. A simple parameter of market share in terms of subscriber base of each MSO is sufficient to understand market concentration. It may be noted that the parameter should be subscriber base rather than revenues as in Cable Industry there are primary point MSOs and Secondary point MSOs and the ARPUs are different. In addition, the revenue numbers are not reported accurately by a few players.

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.

   HHI is well accepted index in market concentration and because of the squaring of the market share the distortions are amplified.

   Again, as suggested above, the concentration should be calculated based on market share based on subscriber numbers and not the revenues.

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.

Yes. JV or subsidiary with more than 50% equity should treated as a single entity

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.

As mentioned earlier, it is important to have a healthy competition in the industry and non discrimination by a broadcaster in a relevant market is important which certain broadcasters are violating blatantly for the past 20 years with least regard to the regulations and judgements of TDSAT and Hon'ble Supreme court. The Authority is requested to take punitive actions against direct and indirect discriminatory practices of broadcaster and enforce the regulations to remove these market distortions created by broadcaster. We agree with the norm of HHI of 2500 for a particular operator in a state, as recommended earlier by the Authority.

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.

At this stage, instead of being inundated with huge data at district level, it is better to achieve the objective at state level first before focusing on district / city level.

Immediate results can be achieved by ensuring broadcasters do not discriminate between MSOs – which menace has been continuing for two decades and no punitive actions are taken against broadcaster for discrimination directly or indirectly.

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

Instead of trying to reduce the HHI after it exceeds the threshold limits, it is recommended to prevent market concentration by curbing discriminatory practices by broadcasters which lead to higher market concentration.

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.

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.

The active base of the JVs and the subsidiaries should be considered to arrive at the market concentration.

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.

Ans: As technology is embraced faster, it is requested that Authority brings OTT under the ambit of regulation and provide a level playing field. In the current scenario, several Telcos are bundling the streaming channels (availed based on fixed fee from broadcaster) with telecom service leading to non level playing field.

17. 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.

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.

Ans:

To curb anti competition / monopolistic practices while Competition Act 2002 is in force, Section 14 of TRAI Act allows parallel jurisdiction of Competition Commission of India to investigate from the competition point of view which will help curb anti competitive activities of the players.

Strengthening the powers of CCI under this section will help in dealing with violators of Competition Act 2002, with a firm hand.

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.

More than M&A, the discrimination by broadcasters is the major cause for concern for several MSOs.

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.

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

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

Ans:

TRAI should implement the recommendations across all the MSOs (irrespective of the status of MSO) in the country. There should not be any discrimination in recommendations across the MSOs in the country.

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.

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.

Ans : The disclosure and monitoring requirements mentioned in the 2013 recommendations are in place and the authority needs to monitor the same on timely basis and act accordingly to foster competition and growth of other small MSOs.

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.

Ans: Yes there is a need to recommend cross holding restrictions amongst various categories of DPOs/ Service providers.

As observed in the Consultation paper, the subscriber base of DTH operators has almost doubled from 37 Million to 70 Million between 2014 and 2021. It is also to be noted that some DTH players with vertical intergration or backed by the broadcaster group are growing in size as they have adapted predatory pricing for NCF at as low as Rs 50p.m. – only to push their own channels to consumers at a overall price discount to subscribers. This is an indirect way of discriminating between DPOs as the ultimate beneficiary of the broadcasting entity and DPO entity is the same which needs to be curbed.

Any Other Issues

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