

## Comments on “Distribution of TV Channels from Broadcasters to Platform operator” Consultation Paper No. : 8 /2013

1. Many broadcasters have formed distribution agencies distributing the popular channels resulting in the fact that almost more than 70% of the pay tv market being controlled by just 4 distribution agencies also known as aggregators. This has resulted in the aggregators getting exceptional bargaining powers.

It is also observed that the aggregators also have national MSOs as partners due to which the partner National MSO gets biased treatment as compared to a competing MSOs. It is also observed that the biased attitude has gone to the extent of the aggregator denying content to the competing MSO on some pretext or the other or asking for astronomical amounts resulting in no business sense for the competing MSO. These distribution agencies also have many not so popular channels under their distribution and these channels are pushed to the MSOs even if the MSO may not require them.

This has been evident in many cases filed in the various courts. The striking example is that of The Hon’ble Supreme Court judgement dated 3.4.2007 in *Star India Pvt. Ltd. v/s Sea T.V. Network Ltd. & Another*. It was pronounced by the Supreme Court that no ‘*competing player in the supply chain including an MSO/LCO*’, should have any interest in the ‘*authorised distribution agent*’ of the broadcaster.

This also results in the abuse of the dominant position as per Section 4 of the Competition Act, 2002.

The section is reproduced as below: **“4. Abuse of dominant position.- (1)No enterprise or group shall abuse its dominant position.**

**(2) There shall be an abuse of dominant position under sub-section (1), if an enterprise or a group.—**

**(a) directly or indirectly, imposes unfair or discriminatory—**

**(i) condition in purchase or sale of goods or service; or**

*(ii) price in purchase or sale (including predatory price) of goods or service.*

.....

*(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or*

.....

*Explanation.—For the purposes of this section, the expression—*

*(a) "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—*

*(i) operate independently of competitive forces prevailing in the relevant market; or*

*(ii) affect its competitors or consumers or the relevant market in its favour.*

.....”

**Just to explain an example :** The local MSOs have signed deals which are minimum guarantee deals based on the number of STBs also called as CPS (Cost per Subscriber) deals. This results in the MSO paying charges per subscriber which are almost twice the rate settled. e.g. the negotiated cost per subscriber (CPS) is **X** and the MSO is having say 10000 subscribers the deal are signed for a slab of say 20000. The effect is that the MSO lands up paying a CPS of **2X** on day 1 which goes on reducing till the number of Subscriber is 20000 resulting the outflow being always greater than **X** times the number of subscribers the local MSO has. The national MSOs have fixed fee deals with the aggregators based on the analog deals and also get good amount of carriage fees.

As per the observation in DAS so far it is quite obvious that the aggregators along with the large national MSOs are out to push the local MSOs out of business.

**A Broadcaster can be allowed to have distribution agencies but the distribution**

**agency should be allowed to represent only one broadcaster and the distribution agency should not have any interest with any of the players in the supply chain be it the DTH or MSO or IPTV or LCO or any other player in the supply chain or service provider.**

**There should be a cap on the maximum number of channels a broadcaster is allowed to provide otherwise a similar situation might arise after a few years.**

**Rules should be framed in such a manner so that the smaller MSOs are able to compete with the larger national MSOs. Pay channel rate should be equal for all platforms be it DTH or IPTV or Cable irrespective of the size of the player providing the services on any platform.**

2. Today the subscribers are asking how to exercise their option to choose the channels and pay for only those channels which they want to watch as publicised by the broadcasters on their channels while promoting DAS.

However when the subscribers tries to opt for channels of his choice cost becomes more than the price of the packages being offered by the MSOs. The number of pay channels are also more in the packages being offered which means that the subscriber should not opt for channels on a-la-carte bases along with the basic pack.

If the channels are provided on a-la-carte basis to all the platforms be it MSO/DTH/IPTV or any other platform then the cost to the service provider will be the same and there will be healthy competition. The price of the channel to the subscriber (End User) should be known to the subscriber and there should be revenue share between the broadcaster and the service provider.

Once the revenue share between the Broadcaster and Service provider is fixed the revenue share between the MSO and LCO should also be fixed by TRAI.

**To summarize Pnt 2 :**

**The Broadcasters should offer the Pay Channels on a-la-carte basis only and the price of each channel to the subscriber should be announced by the Broadcaster.**

**The price of the channel to the subscriber should be same irrespective of the platform and there should be revenue share between the Broadcaster and the Service provider irrespective of the platform on which the service is being provided to the subscriber.**