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This submission is in two parts.

The first part (Part 1), while responding to Q.no 1, also provides a context to the entire submission and explains key concepts and terms used in responses to specific questions which have been addressed in the next section.

The second part (Part 2), responds to select questions (Q. No. 3, 4, 11, 12, 14, 19) posed in the Consultation Paper.

Part 1: Platform Services & Policy Challenges

According to the TRAI Consultation Paper (CP) released on 23 June 2014, there is a need to regulate the business of ‘ground based’ services, namely those provided by MSOs in DAS areas, by LCOs in analogue active areas, Value Added Service (VAS) provided by DTH and Digi-MSOs. All such programming has been referred to collectively as ‘Platform Services’ by TRAI. These services span a width of genres, similar to those already shown on broadcast channels, such as comedy, religious shows, general entertainment, live festivals etc; these can either be received in a linear fashion by the viewer or in the form of interactive services.

Question 1. Do you agree with the following definition for Platform Services (PS)? If not, please suggest an alternative definition:

“Platform services (PS) are programs transmitted by Distribution Platform Operators (DPOs) exclusively to their own subscribers and does not include Doordarshan channels and TV channels permitted under downlinking guidelines.”

While this definition is broad enough to include a wide range of services, both content and non-content, such as gaming, offered by various distribution platforms, it is limiting as it does not acknowledge the nuances of the market’s ecology.

The current cable distribution market is far from uniform in the manner in which it is addressed in the definition. There are variations in terms of the nature of the services offered and the viewers of these services. Different parts of the country are in different stages of transition to Digital Addressable System (DAS) from analogue cable systems. There are 42 cities

which have been fully digitized, according to government claims, while the remaining is likely to become fully digital by this year end.

Therefore in the present context, while the LCOs in the analogue market continue to run their own channels or platform services, those in the digitalized markets can no longer do so. In the DAS environment, only the MSOs can provide these services. This situation will continue for the next six months at least, since the deadline for the entire country to shift to digital distribution is December, 2014. The key questions in the CP are addressed only to the DAS market while ignoring the analogue active areas. Any regulatory framework employed must take cognizance of the interim nature of the digitalization drive.

The definition aims to bring under the same umbrella of rules, a diverse set of varied/unequal players who have different core competencies irrespective of targeted relevant geographic market thrust of PS. This is explained further below.

Local and Hyper-local

There has been no effort in the CP to define what constitutes 'local' and 'hyper-local' which gives traction to the logical fallacy of using a uniform regulatory framework for PS provided by different DPOs. This is highlighted by the absence of a definition in any of the laws and policy discussions connected to the television distribution market, of the terms 'local' and 'hyperlocal', as well as the total lack of factoring these concepts into the consultation paper's intended framework, despite its key influence and role with regard to PSs and their effects.

The idea of a hyper-local, local and national market stems from the key concepts spoken of in s. 19 (6) (b), (f) and (g) of the Competition Act, 2002 where a relevant geographic market is defined by factors such as local specification requirements, language, consumer preferences, that shall all have to be taken into account while determining the relevant geographic market. For the scope of this response, 'hyper-local' is taken to be a neighbourhood/locality, whereas local may be a large part of the town/village/city or several neighbourhoods within it.

With the notable exception of FM channels not being available on any MSO's service, the different types of services that an MSO and DTH operator can provide are the same. The difference here is that, in case of an MSO the content is tweaked on a macro-region basis---i.e. a channel by Den Network Ltd., such as Ragini, which plays Haryanvi songs, is not played by Den Network in its services in the four South Indian states. Such a tweaking of a content feed

is not reflected in the value added services of DTH operators. All categories of services in the case of DTH are of a pan-Indian nature, with the same packages available to viewers which the latter can select according to their choice. FM channels are available in languages derived from varied regions and are available to listen to in a package form irrespective of what region the viewer is located in.

Pricing

Further, the Platform Services need to be regulated differently also because of the difference in their revenue models. Platform services can be either be paid or free, depending on the DPO, and nature of content/programming. In the case of DTH and Digital MSOs, their Value added Service tend to be paid-for, though, as mentioned before, very few Digital MSOs provide Value Added Services. On the other hand the services offered by the other Digital MSOs and the LCOs in the analogue market, are largely free. It is important to identify this distinction in the definition of the Platform Services rather than trying to bracket them all together.

Part 2: Response to Questions raised in CP

Question 2: Kindly provide comments on the following aspects related to programs to be not permitted on PS channels:

Question 2.1.1: Any news and/or current affairs programs

The current CP states three reasons which have been discussed below for not allowing news and current affairs on platform services.

The first reason as stated is that such content is already available through registered TV channels. However, it is important to note that the national and international channels which are registered as news and current affairs channels fail to provide news of a local nature to the local population.

Secondly, the CP state that the need to access local and current information makes cable network similar to a FM radio on which news and current affairs is currently not allowed. However, in order to cater to the need of local news, it refers to the guidelines for expansion of FM radio to define what would constitute as non news. The guidelines do not allow for discussion on content which is political in nature which can be a significant hindrance to discussion of political issues which are locally relevant and important. However, with respect to radio, this

matter is currently sub-judice on the basis that it is a violation of Fundamental Rights.¹ Therefore the proposal for restriction of news and current affairs in the context of local distributors will also have to be re-looked in this perspective.

Thirdly, since the FDI on news and current affairs channels is capped at 26% whereas the cap is at 74% for distributors, it would be useful to distinguish between platform services which provide news and which do not to circumvent this anomaly. This may also call for separate kind of registrations for the two whereby the distributors which are allowed news content cannot have FDI above 26%. Additionally, more stringent disclosure norms should be made necessary for distributors providing news on platform services.

With the demise of local city-based cable networks, an inextricable part of the analog cable distribution landscape², there is a need for infusing local content addressing the specific needs of each segment of viewers. Such an arrangement has the potential of becoming a two-way affair with 'national' TV networks also borrowing content from PS.

Question 2.2.3: PS channels can transmit/include: Coverage of local cultural events and festivals, traffic, weather, educational/ academic programs (such as coaching classes), information regarding examinations, results, admissions, career counselling, availability of employment opportunities, job placement.

While coverage of these issues is useful, it should be noted that in the case of Platform Services which are run by large MSOs, the content will not necessarily be locally relevant. For instance, while an LCO may be capable of providing ad content re local hospital services, tuitions etc, there isn't any scope for an MSO to run advertisements that are useful to any one particular neighbourhood. Given its scope of operation, its advertisements shall be a lot more broad-based in nature. Albeit, still defined by a restricted (much larger) geographical boundary (such as that of a town or a city). It is important to note that an MSO tweaks its platform service feed to the extent that it can. Meaning, an MSO would provide a Punjabi channel to its audience in Delhi since it has a sizeable population of Punjabis

There has to be a mechanism to ensure that the content is hyper-local, which will help to increase the diversity of local content on Television. This can partly be achieved by allowing the

¹ Himanshu Dhawan, 'Ban on radio news against law', Times of India, 15 December, 2013, accessed 28 July, 2014, <http://timesofindia.indiatimes.com/india/Ban-on-radio-news-against-law/articleshow/27383095.cms>

² Naregal, Veena. "Cable Communication In Mumbai: Integrating Corporate Interests With Local and Media Networks", *Contemporary South Asia* 9:3 (2000) : 289 - 314.

Local Cable Operator to choose the PS to be transmitted/ relayed in the contiguous area they cater to. This will allow the PS to retain their local flavor which is often lost when MSOs alone can run PS channels.

Question 3. What should be the periodicity of review to ensure that the PS is not trespassing into the domain of regular TV broadcasters?

The frequency of review will depend on how regulators define 'content for PS' and 'broadcast content'. While broadcasters have full rights within the parameters laid down by the Cable Television Networks (Amendment) Act 1995 to beam content, PS operators have no rules guiding their selection of content. If PS operators are mandated to only carry content deemed local as the Consultation Paper seems to suggest, then it is important to define what constitutes local. Is 'Local' simply the content that is not carried by the mainstream broadcasters? Do all news content carried by the broadcasters automatically constitute 'broadcaster's content? For example, the Prime Minister's visit to an area/district/town/city is an important news element both for broadcasters and PS operators. Who decides whether the rape of two girls in Badaun (Uttar Pradesh) is news fit for Platform Service operators or for broadcast networks? Allied to this is the second related issue. Does TRAI or the government have the infrastructure to monitor nearly 6000 MSOs spread across the country³? The issue of 'periodicity of review' is inextricably linked to the administrative wherewithal of government.

Question 4- Should it be mandatory for all DPOs to be registered as companies under the Companies Act? If not how to ensure legal status for all DPOs.

There is a case for having uniform registration of all DPOs under the Cable Television Networks Regulations Act which is essential if they have to be brought under an overarching regulatory framework. However, in the current framework, the DTH operators are not registered under the aforementioned Act. Therefore, the definition of cable operations should be expanded to include all forms of distributors which would also make them liable to adhere to the Program and Advertising Code enshrined in the Act.

³ Telecom Regulatory Authority of India *Consultation Paper On: Monopoly/Market Dominance in Cable TV Services* (New Delhi, 2013).

Question 11: Should there be a limit on the number of PS channels which can be operated by a DPO? If yes, then what should be the limit?

The number of PS channels would be determined by the revenue from carriage fees for the DPOs. The fact is that providing PS channels would mean loss of carriage fees for the DPO which would otherwise be gained by relaying regular/broadcast channels. Thus, a regulatory restriction on the number of PS channels is not required as the forces of the market would help check their numbers. Instead, the regulation should be a provision in which LCOs can pick and choose the Platform Services of the MSOs that s/he would want to relay according to the demand of viewers in their areas. This would also partly address the issue of large MSOs not being able to cater to a hyper local audience.

Question 12. Do you have any comments on the following obligations/restrictions on DPOs:

Question 12.2: Prohibition from interconnecting with other distribution networks for re-transmission of PS i.e. cannot share or allow the re-transmission of the PS channel to another DPO.

It is important to note that since only the MSOs would be able to run PS channels in the DAS environment, there needs to be a limit on the number of LCOs that the MSO can distribute a PS channel to. This is because the content of a PS channel can remain locally relevant only when it reaches the viewers of that “local” area through their local cable operators. This is particularly relevant in the context of large MSOs who serve numerous/large geographical territories within a city. To reiterate example made under response to Q no. 2.2.3, an LCO is capable of running advertisements that are hyper-locally relevant and information-worthy to its subscriber universe in its area of operation. However in the case of an MSO, other than being able to tweak its PS feed on macro factors such as language (see: Haryanvi song channel ‘Ragini’ being relayed in none of the four South Indian states by Den Network Ltd.), it is unable to cater to the requirements of the smaller subsets of subscriber in its area of operation.

Other than the above mentioned point of dilution of hyper-local relevance being directly proportionate to the number of LCOs an MSO can distribute its PS content and services to, a second concern is also to do with the curtailment of the viewer’s choice in case of an MSO having control over a large number of LCOs in the area.

To elaborate, in the case of *Shri Yogesh Ganeshlaji Somani v. Zee Turner and Star Den Media Ltd*⁴ it was demonstrated by the complainant that in instances of joint ventures between aggregators whose end product results in a large channel package (as was the case with the joint venture of Star Den and Zee Turner). This leaves little scope for an LCO taking this channel package to negotiate to also include other popular channels that are not a part of this existing JV's channel package. This is due to the large sum already invested in the latter.

This may lead to a situation wherein the viewer's choice is considerably restricted. This argument was made by the complainant with specific reference to broadcast channels and not PSs. Also, the complaint made here was rejected by the Competition Commission on the grounds that the services of an MSO and an aggregator, that is a distributor and an aggregator may not be viewed as interchangeable.

The rational conclusion that may however be derived from the reasoning employed by the complainant in this case, may be extrapolated to the case of PSs though. Where an MSO having control of a large/unrestricted number of LCOs can plausibly lead to a case of viewers having very little choice of what PSs they would best like to view

Question 14: Should DPO be permitted to re-transmit already permitted and operational FM radio channels under suitable arrangement with FM operator? If yes, then should there be any restrictions including on the number of FM radio channels that may be re-transmitted by a DPO?

The transmission of FM radio channels by DPOs is useful since it provides a diversity of services being provided to the viewers. Thus, DPO should be allowed to re transmit the existing FM radio channels under appropriate interconnection agreements. FM radio channels must be permitted to be relayed by DPOs under contractual agreements that use fair and non-discriminatory terms across all the different service providers (DPOs) it maintains such a relationship with.

⁴ Case No. 31 (2011). www.cci.gov.in/May2011/.../312011.pdf (accessed 28th July, 2014)

Second, it should be ensured that the FM radio channel transmission on DPOs must maintain uniformity in pricing across all DPOs, if it is to be made a paid service. This is important to avoid the already extant problem of differently priced PSs that make it unviable to be controlled by an umbrella regulatory framework. It should be ensured that in order to cater to the demand based nature of the PS, DPOs (LCOs in particular, given the least bargaining power they possess when it comes to choosing a PS) should be allowed to pick and choose local FM channels rather than relay all channels⁵.

Finally, it should be mandatory to transmit local Community Radio stations, if they exist in the area of operation of the DPO, since it would enhance the diversity of local content. In an email received by the author on 23rd July, 2014, Ram Bhatt, Vice President of Community Radio Forum stated that, *“CRS is part of the bouquet that forms public interest programming. The existing must-carry clause for TV distribution must be interpreted more liberally - to not just include the public service broadcasters but also public interest broadcasters - namely CR stations in their area.”*

Question 19. Stakeholders may also provide their comments on any other issue relevant to the present consultation including any changes required in the existing regulatory framework.

1. There should be strict regulations preventing political parties/politicians from entering DPO ownership. But this is unlikely to be easy for the TRAI/government for the simple reason that in a number of ‘relevant markets’ regional/national, political leaders/parties have already cornered the local cable market. This has serious implications for the viewer’s inalienable right of choice and diversity. What will be the implication of this domination on the content generated by the Platform Services? It will not be out of place to suggest that TRAI revisits this issue in its entirety since appropriation of MSO’s by political leaders/parties will definitely colour the content purveyed by the Platform Services operators. This shall not be easy since a number of politicians/political parties own MSOs/LCOs and other DPOs⁶. The danger

⁵ Currently there exist several different packages of FM radio and ‘audio channels’ across different DTH platforms. For instance, DD Dish carries all the AIR radio channels, Sun DTH has its own FM radio channels, Airtel DTH has 10 audio channels etc.

⁶ Interview with Dr Padmaja Shaw, Professor, Department of Communication and Journalism, Osmania University, Hyderabad, April 2012. cited in *Mapping Digital Media – India; A Country Study*, The Open Society Foundation, London, 2010-13.

of PS's becoming mouthpieces of political parties, as has happened in broadcasting, is too obvious to ignore.

2. The cable operators are currently required to adhere to Programming and Advertising code as provided in the Cable Television and Networks Regulations Act, 1995⁷, provisions such as the one given in Rule 7 (3) of the code has to be enforced more effectively:

“No advertisement shall be permitted where the objects whereof are wholly or mainly of a religious or political nature; advertisements must not be directed towards any religious or political end”.⁸

3. While it has been shown that it is important to factor in the relevant geographic market in a regulatory framework, current market changes must also be taken into account. Such as that of major broadcaster STAR's plans to present service of localized channel feeds to advertisers and agencies, that claim to test advertisements that are targeted at viewers at the level of a city or even neighbourhood, must be taken into account.⁹

The announcement comes as welcome news for broadcaster business models where advertisement revenue often faces a huge loss due to skewed audience targeting¹⁰, however, it may not necessarily work as a suitable alternative to information related to local small time enterprises that were received by viewers when (and in some parts of India till date) LCOs were permitted to run such hyper-local advertisement content at nominal rates charged by the cable operator.

It must be seen that the local value of content and advertisements run by LCOs went way beyond what is being proposed by STAR in this case, where content in addition to targeted advertisements were/are played by LCOs which cover an area's local festival rituals, notifications relating to civic issues or that of local governance. A large part of this knowledge re what the cable operator's subscriber base would prefer to or need to have information of was/is derived from the last mile operator's interaction with the community he had cable connections in. A targeted ad strategy by a broadcaster not clued into the dynamics of last mile connectivity, will not be a suitable replacement for the former.

7. Unstarred Q.no 2166, Thirteenth Lok Sabha, 2000

8 Programming and Advertising Code Prescribed Under the Cable Television Network Rules (1994), http://www.cablequest.org/pdfs/i_b/PROGRAMME-ADVT-CODE.pdf (accessed 27th July, 2014)

9 Pinto, Viveat “Localised ads market gets its shooting STAR,” *Business Standard*, 23rd July, 2014

10 Ibid. footnote number 10

To conclude, Platform Services are useful to increase the diversity of locally relevant content and services available to the viewers. However, it is important to highlight that the hyper-local content can be promoted only if a mechanism can be drawn out whereby the Local Cable Operator has an option to run a PS service.

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