

**COUNTER COMMENTS OF TIMES INTERNET LIMITED TO STATEMENT OF VARIOUS ENTITIES TO THE CONSULTATION PAPER ISSUED ON MEDIA OWNERSHIP BY TRAI.**

1. At the outset, it is relevant to note that most of the entities should have given their comments on the Consultation Paper as stated that as of now there is no requirement of having any cross-media ownership restrictions. It is in fact, abundantly clear from the volumes of TELEVISION channels, news papers that currently the competition in both the segments exists and “plurality of views” and news is maintained.
2. It would be also relevant to point out here that any restriction on cross-ownership of media would be violative of fundamental rights under Article 19(1)(a) and 19 (1)(g) of the Constitution of India. In the case of Sakal Newspapers, a similar restriction vis-à-vis print media was tried to be placed by limiting number of pages in the newspaper so as to limit the revenue earned by the newspaper through advertisement. This restriction was struck down by the Hon’ble Supreme Court by holding that any restriction on

the commercial aspect of media and news distributors in fact leads to a situation where the same would affect the rights to freedom of speech and expression under Article 19(1)(a) and therefore, such restriction even on the commercial side cannot be placed.

3. The comments of various entities can be divided into 4 different categories being;
  - (i) Plurality of news in online media
  - (ii) Horizontal ownership in cross-media;
  - (iii) Vertical ownership in cross-media; and
  - (iv) Control by Regulator.

While reiterating the fact that most of the entities who have sent their comments are against any restrictions to be imposed by the regulator or licensor and any regulatory control and have clearly expressed their opinion stating that these issues relate to competition and the Competition Act deals with the same.

In fact, very recently, the Competition Commission on 21.3.2013 in Case No. 31 of 2011 has pronounced its

judgment on issue of vertical integration. Copy of the said order is annexed herewith as **ANNEXURE -1**. In the said judgement it is clear that mere allegation of vertical integration is insufficient to hold the same as ANTI-COMPETITION. Moreover, the fact that there are must-provide and must-carry clauses in the TRAI Regulations, the same completely obviates any chance of abuse of dominance. In so far as plurality of views are concerned, the same is taken care of by the sheer number of players operating in the market. Any Regulation in this area will in fact result in splintering and lack of accountability. Especially in the area of media it is more advisable that there are companies who are known, who are responsible and who are accountable.

#### **PLURALITY OF NEWS IN RESPECT OF ONLINE MEDIA**

4. There has been a diversification of media across different mediums like Television, Print, radio, internet and mobile phones. The public is consuming this news / information not only in the print form, but also on television, mobile, radio, internet & social networking websites etc. In fact, the

majority of the public is moving away from traditional forms of media like newspapers that have limitations of reach and circulation towards faster, easily accessible and more impactful internet based media websites, blogs, social media etc. This has warranted media companies to diversify across different mediums and provide their contents in multiple mediums like internet, television, print etc. Nowadays, every media company, whether in print or television, is required to have a corresponding website to cater to the technologically savvy end consumer, i.e. the public. In addition, most of the governmental organizations and departments like the Finance Ministry, Planning Commission, I&B Ministry etc all have internet websites and facebook pages for giving information and allowing access for use to the public.

5. In light of the above changed scenario, a specific reference to online media is crucial to establish the existence of plurality of news. With 150 million internet users, India now has the 3<sup>rd</sup> largest internet population in the world, after USA and China. As per a report published by IAMAI in association with IMRB, as of 2013, there are almost 89

million people who are active users of the internet in India. These active users of internet are able to access content and contribute to it, specifically media content, on the internet not only through their computers / laptops, but also through their mobile devices. These contributions are by way of comments, posts, blogs, articles, photos etc.

6. It is pertinent to note that dissemination of news on the internet not only happens through independently owned websites, but also through social networking websites like facebook, twitter, linkedin etc. These websites, blogs and social media platforms are the biggest disseminators of political and public interest information from a variety of sources, including thousands of websites owned independently and by media organizations as well as independent writers like bloggers, freelancers etc. The said news being available on social platforms is shared and disseminated to an ever growing community of friends, acquaintances, strangers and support groups. As an example, it is pertinent to refer to the role of social media in disseminating news & views and providing a common platform for discussing political and social issues as evident

from the recent episodes of the “Coal gate scam”, the “Facebook user arrest in Mumbai”, case etc. In fact, the kind of public discussion and sharing of opinion that internet and social media allows is unparalleled when compared with other forms of media. In fact, the Internet and Mobile Association of India (IAMAI) in its report ‘Social Media & Lok Sabha Elections’ has predicted that social media is now sufficiently widespread to have the power to influence the outcome of the next elections to the Lok Sabha in 2014 and consequently government formation.” In the light of the same, any concern of TRAI in respect of plurality in online media is misplaced and misconceived. Hence, by its very nature, it is impossible to influence or bias public opinion by way of online media.

7. Such being the nature of the internet platform that by its very nature allows news and information to flow from varied sources, and to be further shared with people across geographical borders, plurality of news is not only maintained but is also encouraged.

## **HORIZONTAL OWNERSHIP IN CROSS-MEDIA.**

8. As already stated hereinabove and in written comments to the consultation paper therein, there should not be any pre-prescribed restriction over control and ownership of media entities.
  
9. It would be best that this issue be decided by the Competition Commission if there arises any situation of cartelization or monopoly or abuse of dominant position. As on date, the Indian media industry is hugely fragmented with thousands of newspapers, and hundreds of Television and radio channels and thus there is no media house which has complete control of all the methods of media distribution. In fact, recognizing this, recently, the I&B Ministry had temporarily capped the number of permissions for Television channels as it feared there were already too many. In fact, on the contrary, the biggest and foremost dominant player – which in fact, has a monopoly is Government owned and run – Prasar Bharti. Its radio channels (All India Radio) and terrestrial Television channels which are

both in the direct control of the Government, have a monopoly in the FM radio and terrestrial Television space, where private media companies are not even allowed to enter.

10. In a market like India, there are about 841 Television channels and a large number of news papers i.e. 14508 across the country. It is, therefore, evident that there is sufficient competition in the sector which itself shows plurality of views. It is also relevant to point out here Indian media market is also pre-dominantly honest by linguistic factor and thus, none of the media houses have any control over Indian Media Market. Plurality is, in fact, ensured by not tinkering with the current system wherein there is no restriction on expression of any views. Under the garb of attaining plurality, content ought not to be regulated. It is further pertinent to state that cross media curbs are imposed in countries where there are only a handful of papers or news channels, unlike in India where there are about 841 Television channels and more than 14508 newspapers.

11. It would not be out of place herein to once again refer to the order of the Competition Commission dated 21.3.2013 in case No. 31 of 2011 wherein there are many other facts considered by the Competition Commission of India other than the one mentioned in the Consultation Paper and it would be appropriate that the expert body created under the Act of Parliament be permitted to function in an independent manner. Any regulation made by TRAI on this issue would be an intrusion to the jurisdiction of the Competition Commission.

**VERTICAL OWNERSHIP IN CROSS-MEDIA.**

12. This issue again is a competition related issue and would at best, fall within the jurisdiction of the Competition Commission of India. It is in fact the Competition Commission of India vide its order dated 21.3.2013 in case No. 31 of 2011 has already decided one of such complaints filed before it relating to vertical monopoly and market control by certain entities. It would be therefore, best that such issues be late put decided

by the Competition Commission of India which is a specialized body under the Act of Parliament.

### **CONTROL BY REGULATOR**

13. At present, it will be completely inappropriate to say that there is no control over media or there are no regulations or guidelines binding on media entities. It would be relevant to note that the licensor-Government of India already has uplinking and downlinking guidelines to regulate the Television channels. Similar guidelines are there for DTH operators and Multi System Operators in Digital Addressable Platform. Further, there are guidelines and restriction put in licenses issued by Government of India to various private FM broadcasters and one of the biggest restrictions on Private FM broadcasters is that they cannot produce news in any manner whatsoever. Further, the Press Council of India is already regulating print media regarding the news papers and there are other self-regulatory bodies like NBSA and BCCC which are self regulatory bodies for contents of Television channels. Thus, as on date, it is

not necessary or requirement of any further control by the Regulator on media entities especially in the light of the fact that the Competition Commission of India can step in at any point of time if there is a situation of a creation of monopoly.

**COMPETITION COMMISSION OF INDIA**

**Case No. 31/2011**

Dated: -21.03.2013

**Information filed by:-**

Shri Yogesh Ganeshlaji Somani

R/o Marwari Gali, District –Jalna (Maharashtra)

Through --- None

-- Informant

**Against:-**

1. Zee Turner Ltd.,

Plot No. 9, Film City, Sector- 16A, Noida,

Through --- None

2. Star Den Media Services Pvt. Ltd

7th Floor, Bule Wave, Link Road, Andheri (W), Mumbai

Through --- None

-- Opposite Parties

**Order under Section 26(6) of the Competition Act, 2002**

In the present matter, the information was filed on 17.06.2011 under Section 19 (1) (a) of the Competition Act, 2002 (hereinafter referred to as “the Act”) by Shri Yogesh Ganeshlaji Somani (hereinafter referred to as “Informant”) against Zee Turner Ltd (hereinafter referred to as “Opposite Party No. 1”) and Star Den Media Services Pvt.

Ltd. (hereinafter referred to as "Opposite Party No. 2") alleging that the proposed joint venture ("JV") of Opposite Parties No. 1 & 2 in the sale and distribution of channels will strengthen their position by adversely affecting the competition in the relevant market. The Commission vide its order dated 27.09.2011 under section 26(1) of the Act directed the Director General (DG) to conduct an investigation into the matter and submit his investigation report.

2. The brief facts and allegations in the matter, as stated by the Informant, are as under;-

2.1 The Informant is a subscriber of satellite television channels who receives various channels from the local cable operator of his area. The Opposite Parties No. 1 & 2 are the companies registered under the provisions of the Companies Act, 1956. Opposite Party No. 1 is a joint venture between Zee Entertainment Enterprises Ltd and Turner International India Pvt. Ltd. and is an exclusive agent of various broadcasters or channel owners whose channels it is authorised to sell to various distributors of channels like Multi-system operators (MSO), Direct to Home Operators (DTHO) and the Internet Protocol Television Operators (IPTVO). Similar functions are performed by Opposite Party No. 2 also. Further, Opposite Party No. 2 is also a 50-50% JV of STAR and DEN. Opposite Party No. 1 is also a 74:26% JV of Zee and Turner.

2.2 The Informant had come to know from the newspapers and other news items that Opposite Parties No. 1 & 2 were forming a 50:50 joint venture company, namely, Media Pro Enterprise India Pvt. Ltd. (JV) to combine distribution of their respective channel bouquets following which JV would jointly aggregate and distribute channels licensed to Opposite Parties No. 1 & 2 and collect the subscription revenue of the combined entity.

- 2.3 The Informant has brought out that the relevant market for the purposes of the instant case is whole of India as both Opposite Parties No. 1 & 2 are leaders in distribution of channels in India. Opposite Party No. 1 & 2 offer channels in more than 17 genres including general entertainment, news, kids and reality shows etc. It has been alleged by Informant that both Opposite Parties are being market leaders and also being pioneers in India have better bargaining power due to acceptability of content by viewers across India.
- 2.4 The Informant has furnished the list of channels offered by Opposite Parties No. 1 and 2 to say that while 34 channels were offered by Opposite Party No. 1, 29 channels were offered by Opposite Party No. 2. Thus, in total 63 channels were offered by both the Opposite Parties in different languages and genres.
- 2.5 As per the Informant, the news article published in the Financial Express, New Delhi Edition dated 26.05.2011 had brought out that channel distribution industries was worth Rs.2500 crore of which share of Opposite Party No.1 was about Rs. 800 crore and share of Opposite Party No. 2 was about Rs. 1000 crore which is 70% of the market in total. The Informant has alleged that the creation of JV between Opposite Parties No. 1 & 2 would strengthen their position by adversely affecting the competition in the market. The proposed JV would force the small players to shut down or to join hands with each other. The JV in the market would not only adversely affect the competition among the broadcasters/channel owners but also would adversely affect the interests of distributors like MSO, DTH operators and IPTV operators which in turn would adversely affect the interests of end subscribers/consumers.

2.6 The Informant has further stated that the said JV would be much stronger intermediary in the market which would be able to kill the competition as after subscribing channels out of 63 channels offered by the JV, the MSOs, LCOs, DTHOs & IPTVOs would not be having enough financial capacity to subscribe channels of other broadcasters. The Informant has also stated that due to the monopoly of the JV in the satellite TV market, channels like Colors & Sony (not distributed by OP 1 and OP 2) would not be able to fully exploit the market and lag behind the channels of Opposite Party No. 1 and 2 irrespective of being popular among the end subscribers.

2.7 The Informant has submitted that Star Network, through its Dubai Subsidiary namely Network Digital Distribution Services, already had 20% shareholding in Tata Sky Ltd., a DTH operating in India. Zee Group had 64.78% shareholding interest in Dish TV India Ltd (DTHO) and it also had 63.26% shareholding interest in Wire and Wireless India Ltd (MSO). The Informant has further stated that considering vested interest of Opposite Parties in the JV, it was most likely that distributors namely Dish TV India Ltd. (DTHO), Tata Sky Ltd. (DTHO) and Wire & Wireless India Ltd (MSO) and their related LCOs would be getting preferential rates for the channels of JV and packaging treatment in comparison to other distributors in the market. In turn, these DTHOs/MSOs who got cheaper and preferential deals would deliberately offer the unmatched rates to the LCOs/end subscribers and would drive away the competition.

2.8 According to the Informant, players in the market would suffer due to undue advantage available to the JV and the consumers' interest would also suffer as the consumers would be deprived of the prices available in the market and also would not be able to get competitive rates for the channels subscribed by them.

3. The Commission considered the present matter in its meetings held on 28.06.2011, 08.07.2011, 10.08.2011, 25.08.2011 and 27.09.2011. The Commission, after considering the information and the material available on record, found that there existed a prima facie case in the matter and therefore, directed the DG under section 26(1) of the Act to conduct an investigation into the matter and submit an investigation report. Accordingly, on completion of the investigation, the Office of the DG submitted its investigations report dated 15.10.2012 to the Commission. The findings and analysis in the DG report, in brief, are as under:-

3.1 For the purpose of the investigation, information from the OPs and 3<sup>rd</sup> party stakeholders i.e. broadcasters, MSOs DTH Operators were collected, statements of the representatives of the OPs and the 3<sup>rd</sup> parties were recorded, and the regulatory framework of TV Industry and TRAI was also analysed by the DG.

3.2 For the purpose of delineating the relevant market, DG has assessed the broadcasting industry and reported that the supply chain of the Indian broadcasting industry is comprised of broadcasters, content aggregators and service providers. DG has reported that the cable TV segment in India, although fragmented, has shown tremendous growth. In the last few years, the number of satellite television channels has increased from 136 channels in year 2005 to more than 800 channels today. The large distribution sector now comprises of 6000 Multi System Operators (MSOs), around 60,000 Local Cable Operators (LCOs), 7 DTH/ satellite TV operators and several IPTV service providers. Television is the largest medium for media delivery in India in terms of revenue, representing around 45 percent of the total media industry.

3.3 DG has also examined the structure of the cable Industry in India, structure of the Analogue / Digital Cable Distribution, structure of the Direct to Home (DTH) and

structure of IPTV. DG has further highlighted in his report, the major broadcasting and distribution technologies (Broadcasters, Content Aggregator, DTH Operator, Internet Protocol Television (IPTV), Multi System Operator (MSO), Local Cable Operator (LCO) and Terrestrial) present in India. DG has further reported that as per the uplinking/downlinking guidelines framed by the Central Government, channels are registered in two categories - News & current affairs; and Non-news and current affairs (General entertainment--GEC).

3.4 As per DG report, the broadcasting business in India is primarily driven by two sources of revenue – advertising and subscription. There are two main types of broadcasting business models: Free to Air (FTA) channels and Pay television channels. In India television channels are distributed either through a digital addressable analogue or non-addressable system/platforms.

3.5 DG has also reported about the concept of carriage and placement fee in the cable TV distribution industry. As per the DG report traditionally, cable services comprised signals being carried in analog mode, thereby significantly restricting the carrying capacity of such networks to carry only a maximum of 70-80 channels. Over 70% of cable and satellite homes are serviced by analog cable networks. This has led to a demand-supply mismatch and “auctioning” of frequencies by MSOs to channels who are willing to pay more to be carried in such cable networks. Therefore, MSOs have devised carriage fees as essentially a strategy, where such ‘scarce’ frequency for carrying the channel is sold at a premium by the MSO/LCO to the broadcaster/intermediary. Further, MSOs also charge placement fees from the broadcasters/distribution alliances for placing their channels in a particular frequency. It may be noted that MSO’s earn more from placement fees rather than subscription revenue. This enables the MSOs to exercise greater bargaining power over the broadcasters/broadcasting alliances,

which have no option but to pay such carriage fees in order to gain access to important subscription markets.

3.6 Keeping in view the aforesaid factual position of the TV industry, DG has reported that the services and activities of the Opposite Parties through their JV or other aggregator are a specialized area of service which involves important responsibilities of 'content aggregator' in the broadcasting industry. To this effect the aggregator bundles a number of channels licensed to it by broadcaster and sells them to MSOs, DTHOs, and IPTVOs on behalf of the broadcaster. It distributes channels in two ways: - either on a-la-carte basis where a channel is sold individually or in the form of a bouquet where two or more channels are bundled. There are also many broadcasters who do not engage any aggregator for distribution of their channels and directly deal with the distribution platforms. Out of about 800 channels only about 175 channels are distributed through aggregators. Thus, as per the DG report, the services of aggregators are generally used by those broadcasters who have many channels for distribution.

3.7 As per DG report, an aggregator is engaged in activities of aggregation and distribution of any television channel via liner and / or non-liner means, arranging carriage, band placements, setting up of set top boxes, etc. within India and to collect subscription revenue for the broadcasters either in form of bouquet of channels or individual via all modes of distribution including but not limited to cable, digital or analog, direct-to-home (DTH), head end in the sky (HITS), MMDS, SMATV, internet protocol television (IPTV), terrestrial satellite or any other emerging mode. Thus, as per the DG report, from the supply side, the aggregators can only substitute distribution of channel from cable to DTH and thus, the services of television channels through cable or DTH by the broadcaster is substitutable with the services of aggregators.

3.8 DG has further reported that in the television industry channels can be classified according to genres such as: English New, Hindi News, General Entertainment Channel & Sports etc. and accordingly such channels may be somewhat substitutable within a genre but not between genres for example; a sport channel that broadcast cricket match cannot be substituted for by a Hindi new channel. However, the consumer can switch from different mode of transmission i.e. from cable to DTH. Thus, cable TV and DTH is interchangeable/ substitutable from the consumer side. For the operators of both the distribution platforms, be it MSO or DTH the agreement has to be entered with the aggregator or the broadcaster of channels and there is no other substitute of the service of distribution of channels for them.

3.9 In the light of the above, DG has delineated the relevant market as the market of aggregating and distribution of TV Channels to MSOs, DTHOs and IPTVOs in India.

3.10 As per DG report, on 26.05.2011, Opposite Party No. 1 and Opposite Party No. 2 announced a 50-50 joint venture to form Media Pro Enterprises that would jointly aggregate channels and services of both companies in India from 01.07.2011. In the proposed JV, Opposite Party No. 1 and 2 were to have 50:50% shareholdings.

3.11 DG has reported that it was claimed by the OPs before him that the proposed JV would increase efficiency in production, supply, distribution, storage and acquisition of control of goods or provision of services. DG has further reported that on perusal of JV agreement no provision regarding determination of purchase or sale prices, or limiting or controlling production, supply, market,

technical development, investment or provision of services in the market have been noticed.

3.12 Thus, as per DG report, on the basis of the objective clause of the JV, it is clear that the obvious purpose behind this JV is to create efficiencies by optimum utilization of resources and cost reduction; promote digitization and addressability; and curb piracy of channel signals.

3.13 As per DG report, in the relevant market there are about 24 aggregators who distribute the channels on various distribution platforms on behalf of broadcasters. Prior to formation of Media Pro Enterprise India Private Limited there were four main sizeable Aggregators, namely, Zee Turner Limited (“Zee Turner”) [33 channels – 19 All India Channel and 14 Regional Channels], Star Den Media Service Private Limited (“Star Den”) [26 channels and 5 Regional Channels], MSM Discovery Private Limited (“MSMD”) [18 Pay channels 17 All India Channels and 1 Regional Channel] and Sun 18 [35 pay channels – 14 All India Channels and 21 Regional Channels].

3.14 After the formation of JV, it has 60 channels for distribution, Sun 18 has 33, MSM Discovery has 19, Usha Ushodaya Enterprises Pvt. Ltd., has 12, Raj TV has 6 and others have 2 to 5 channels for distribution. On the basis of the aforesaid data, DG has reported that after the JV agreement, it has less than 40% of the market share in terms of the number of channels distributed by the aggregators in the market. If we also take into account all the channels distributed by individual broadcasters then the share of JV would be about 10% only. However, considering the popularity of the channels under the belt of JV, its share on analogue cable distribution network is much more than 10% and varies between 20 to 40% depending on the preference of the viewers. Therefore, DG is of the

view that the agreement between two players who control less than 40% market cannot result in fixing of price in the market or control the supply, unless all the players or at least all the major players simultaneously join their hands together with such intent in the market.

3.15 DG has further reported in the broadcasting and distribution of TV channels in India, each stakeholder like broadcasters aggregators, MSOs, LCOs, DTHOs and IPTVOs has a major role to play in the industry and exerts significant countervailing power on the others in the value chain. It needs to be noted that it is not the JV that controls or determines the choice of television channels where the distribution of television channels takes place on a non-addressable system, it is the MSO that decides the channels that would finally be made available to the subscriber, whereas on an addressable system, DTHOs and IPTVs, it is the end consumer who decides the channels it wants to view.

3.16 DG has further reported that TRAI has issued various Rules and Regulations to monitor and regulate the Cable TV broadcasting industry and in its Telecommunication (B&C) Service Inter Connection Regulation 2004, in Clause 3.2, 3.3, 3.4 and 3.5, specific directives have been issued with regard to distribution of channels on Non-discriminatory terms; Pricing of channels and limiting downstream investments. The broadcasters are under obligation to file Reference Inter Connect Offer (RIO) under Clause 13.2 of TRAI Regulation, the charges from the Broadcaster or the Content Aggregator are governed by the Reference Interconnect regulations of the TRAI. The rates charged by the Broadcaster or the Content Aggregator are same for all the service providers under the RIO regime. The Interconnect Regulations of the TRAI mandates that all broadcasters/ aggregators are required to provide TV signals to MSOs/LCOs/DTH service providers on request on non-discriminatory terms. All

broadcasters/aggregators to whom a request is made for TV signals by a distributor are required to negotiate with such distributor within a 60 day period. In the event of disconnection of signals, a broadcaster/aggregator is required to provide 3 weeks prior notice to the distributors providing reasons as to why the channels are being disconnected. Further, broadcasters are also not allowed to enter into an agreement with any distributor, including exclusive contracts in manner so as to preclude other distributors from obtaining access to TV signals of their channels. As per the Interconnect Regulations, any person may approach the broadcaster directly to obtain channels if an agent or any other intermediary of a broadcaster or MSO does not respond to a request for provision of TV signals.

3.17 As per DG report, formation of joint ventures and alliances is a common trend as observed by the TRAI in the Consultation Paper on Tariff Issues along with the underlying reason(s). The relevant question to be examined in this regard is whether, the formation of the JV has resulted in the parties to the JV being in the position to gain substantial market power to control the supply in the market or not. Due to the various regulations framed by the TRAI, it does not appear that after the creation of JV, the supply in the market has been affected at all.

3.18 DG has also reported that the investigation has indicated that the formation of the JV does not create a foreclosure effect on the Distributors of television channels given that the regulatory regime would force the JV to supply channels and consequently, JV will not be able to deny its channel signals to any Distributor of television channels as per TRAI mandate. Further, the Distributors have sufficient countervailing power to match any bargaining power exerted by the JV by charging carriage and placement fees. As per DG report, the data collected during the course of investigation shows that there is no supply constraint created

by the JV in the relevant market. The number of Bouquets for distribution by the JV in the relevant market has increased to 16, which was only 9 (6 of Opposite Party No. 1 and 3 of Opposite Party No 2) before the formation of JV. Thus, the creation of JV has resulted in the better product mix to allow better choice of combination of channels for the subscribers. Further, the MSOs are also free to subscribe channels on a-la- carte basis as earlier on the same prices. It shows that the JV has not resulted in any anti-competitive restraint either at horizontal level or at vertical level in the relevant market.

3.19 On the basis of said discussion, DG has reported that in view of the market conditions and TRAI Regulations, there is no scope for the aggregators or broadcasters in the market to indulge in the anti-competitive conduct of controlling the supply of their channels to MSOs or other distribution platforms. The analysis of the conduct of pre and post JV formation has not revealed any evidence to show that, it has indulged in violation of the provisions of section 3(3) (h) of the Act. Further, the Regulations and Tariff orders of TRAI, do not leave any possibility for any of the stakeholder including the OPs to deviate from the price range determined by TRAI and charge unfair prices in the market from consumers. On the basis of the comparison of the pricing of channels post and pre formation of JV, DG has reported that they have remained at pre JV level even after one year of the JV agreement. Hence by entering into JV agreement the OPs have not been able to fix or influence the price of their channels in violation of section 3(3) (a) of the Act.

3.20 As per DG report, the OPs have paid higher amount on account of the placement and carriage fee during the F.Y 2011-12 to the MSOs. The placement fee accruing to MSOs has not been impacted due to Mediapro's greater bargaining power vis-à-vis MSOs. On the industry level also, the placement &

carriage fee has been found to be increased about 20% in 2011-12, which indicates the countervailing power of the distributors (MSOs). During, the course of investigation, no empirical data/ evidence has been provided by the MSOs to show that there has been any impact of JV on the ability of MSOs/DTH to demand placement & carriage fee from the broadcasters. Thus, the DG reported that the allegation of Informant that the market power of JV will affect the ability of MSOs in bargaining has not been found to be true on this issue.

3.21 The investigation has therefore concluded that in view of the present regulatory framework, the formation of the JV has neither created any entry barriers for new broadcasters nor resulted in affecting the competition for existing broadcasters. There is significant competition in the market with more channels competing for the same set of eye-balls; MSOs are free to carry only selected channels of JV. Thus, the investigation has found that the agreement between Opposite Party No. 1 and Opposite Party No. 2 to form a JV has not resulted in violation of section 3(3) of the Act to determine the purchase or sales price or to limit or control the supply of services in the market.

3.22 DG has further reported that at present there are more than 800 channels which have been granted permission by the government (reportedly more than 500 channels are active in India) of which JV is distributing only 63 channels. The presence of a number of significant players in this business offering a large number of channels, including for each of the genres, competing for viewership and prime time slots existence of regulatory oversight and overall growth in the last few years in the number of channels and option available to the viewers, make this industry highly competitive. DG has also reported that in view of the market dynamics and TRAI regulations, there is no entry barrier posed by the JV

agreement in the market. Further, the DG has not found any evidence that any stakeholder in the industry has closed down their business due to the impact of the JV. As per TRAI regulations, there is no hindrance to the entry into the market. Therefore, on the basis of said discussion, DG has concluded that the formation of JV has not resulted in any appreciable adverse effect on competition in India what so ever at horizontal level or at vertical level.

3.23 DG has further reported that at present, on the basis of the information provided by the Opposite Party No. 1, JV distributes 61 numbers of channels which constitute 7.58% of the total TV channels. Similarly, on the basis of the TRAI report, there are 173 pay channels and the JV distributes only 55 number of pay channels which constitute 32% of the pay channels in the country. The investigation has shown that though the JV has apparently become a market leader in the relevant market, yet their position and strength cannot influence the other players in the relevant market as JV cannot work in isolation ignoring the available rules and regulations which mandates broadcasters/content aggregators to provides channels on non-discriminatory basis to the MSOs and DTHOs/IPTVOs.

3.24 As per DG report, the MSOs subscribe maximum number of channels of the JV either through bouquets or a-la-carte rate but they broadcast/show only those channels which are popular and having high demand in their area of operation through the analogue system. The capacity of analogue cable network is only about 90 channels; the broadcasters have to compete to distribute their channels on analogue network, especially those channels which are not very popular. This was precisely the objective of the entry of aggregators in the distribution as the demand and supply factor was heavily tilted in favour of the MSOs leading to

unreasonable demand of carriage and placement fee. The aggregators have brought efficiency in the market as confirmed by various broadcasters during the course of investigation. The investigation has revealed that the share of JV on analogue network is presently between 20 to 35% depending on the preference of the consumers. Across the country the share of JV varies on the basis of factors like consumer's choice, network availability as well as on discretion of MSOs. Thus, the data gathered during the course of investigation does not indicate that the JV has become a dominant player on analogue network. Further, with the compulsory digitization of cable network this inefficiency in the market will be completely removed.

3.25 As per DG report, JV is having popular Hindi GEC Channels led among the genres with a 27.4% share of viewership, Regional channels have a viewership share of 33.4%, Hindi Movie comes next with a genres share of 11.9% while the kids genres remain stable at 6.3%.

3.26 DG has also reported that the analysis of factors mentioned under section 19(4) shows that the JV has advantage over other aggregators by commanding about 30% of the total space on analogue cable network and also in terms of popular channels it has maximum market share. So far as the issue of affecting the relevant market in its favour is concerned, it is reported by DG that in the analogue market MSOs/LCOs exercises greater bargaining power at the retail level. The attention may be drawn towards a report of Media Partners Asia (MPA), which analyses the data for the year 2010 and as per the report, the revenue share of the broadcasters in the cable and satellite is in the range of 11% to 12%. This represents the relative strength of the MSOs/LCOs as compared to the broadcasters/content aggregators. Moreover, MSOs/LCOs exert

their bargaining powers by charging carriage fee from broadcasters/content aggregators.

3.27 As per the DG report, the allegation of the Informant that the competitors will be forced to shut down or will have to join-hands with the JV giving them greater monopoly in the market is also not substantiated as the TRAI Rules & Regulations mandate broadcasters / content aggregators to provide all the channel signals to every MSOs/ DTHOs under must provide obligation who asked for them. Conversely, there is no mandate on the MSOs to carry all channels sought for by them. Therefore, the apprehension of the Informant that the new JV Company will reduce the bargaining power of MSOs for negotiation of carriage and placement fee is not correct as the new JV has nothing to do with the carriage and placement fee and the same is still being carried out by the Opposite Party No. 1 and 2 as usual. Further, it is observed that there is no change in the market situation prior to the JV and after the JV with regard to purchase/sale price of the product, provisions of providing services, limit or control production & supply, since the aforesaid propositions are being well regulated by the TRAI through their various orders/notifications.

3.28 In view of the above discussion DG has reported that the allegation of the Informant that JV will become dominant in the relevant market on the basis of their market share is not substantiated. Investigation has found that in a market condition where the JV has neither the power to determine the price of its product nor has the capacity to refuse to supply or impose any condition in violation of TRAI regulations, its position cannot be termed to be a dominant enterprise within the meaning of section 4 of the Act.

3.29 On the issue of giving/granting preferential treatment to their subsidiaries by Opposite Party No.1 and2, DG has reported that in terms of Clause 3.2 of TRAI Regulation all the broadcasters have to deal on non-discrimination basis and to file RIO in terms of Regulation 13.2. Any person aggrieved on account of discrimination by the broadcaster or its agent can get its grievances redressed by approaching appropriate forum i.e. TDSAT for redressal of his grievances. Thus, the allegation of Informant of granting preferential treatment to its group of companies thereby forcing the small players to shut down their business or join hands with them does not hold good as there is an obligation on the part of JV to must provide all the channels to MSOs/ DTHOs, however, there is no must carry obligation for downstream players.

3.30 On the allegation of providing/giving less carriage fee to MSOs and DTHOs, DG has reported that the data gathered during the course of investigation has indicated that the figures of Carriage and placement fee paid during 2008-09 were to the extent of Rs.950- 1000 crore in the industry as a whole. In other words, the carriage fee constitutes about 25% of the total subscription revenue earned by the broadcasters at wholesale level. The entire concept of placement & carriage fee is originated from the inefficiencies in the distribution market. The concept of aggregators is precisely to deal with such inefficiencies in the market. The aggregators are meant to negotiate on behalf of the broadcasters with various distribution platform stakeholders which are more than 6000 at present. The aggregators thus facilitate the distribution of different channels through single negotiation with each operator. This helps in increasing the efficiency in the distribution market. It may be pointed out that the TRAI has not laid down any rule either on the method or price of carriage & placement fee. MSOs being dominant in their respective territory charge such fee as per their power and

dependency of the broadcaster. There is no fixed or logical pricing pattern or industry norms found in determination of placement & carriage fee. Factors like cost or demand and supply have also not been found operating while determining these charges. With the advent of placement & carriage charges the model of revenue for MSOs has shifted from customer's subscription to placement & carriage fee. This has also reportedly resulted in inefficiencies like under reporting of subscription base. In the last few years market has also witnessed consolidation in the business of MSOs. Earlier there was hardly any major difference between LCOs and MSOs, now with the entry of big players like Hathway, Digicable, WWIL, Siticable etc. the business of cable distribution has become more organized leading to increase in their market power in the distribution network. The investigation has revealed that if a new channel wants to launch on the distribution network of analogue cable network, the demand by MSOs may be any amount for carriage and placement fee depending on the MSOs.

3.31 Thus, in view of the above and on the basis of information gathered during the course of Investigation and also after analysis of the facts and circumstances of the case, DG has reported that the O.P.s have not been found to be violating the provisions of section 4 of the Act. The entire case was based on the apprehension of the informant and no evidence or material has been found during the course of investigation to prove the allegations levelled in the information. The investigation has shown that though by forming the JV, Opposite Party No-1 and 2 have become a market leader with a combined market share of about 30% in terms of revenue as well as the number of channels, potentially competing in the market, yet the OPs cannot be held to be a dominant enterprise on account of its inability to act independently of the competitors or consumers.

The legal provisions in the market do not allow any player to affect the relevant market in any manner. Further, the analysis of the conduct of JV has also not indicated anti-competitive activities in violation of the provisions of the Act. The investigation has not resulted in detection of any evidence to show that the OPs have infringed the provisions of Section 3(3) and/or Section 4 of the Competition Act as alleged by the Informant.

4. The Commission considered the investigation report submitted by the DG in its ordinary meeting held on 25.10.2012 and decided to send the copy of the investigation report to the Informant for filing his reply/objections to the DG report. The Commission also directed the Informant to appear before the Commission on 27.11.2012, if he so desired. On 27.11.2012, the Commission considered the matter again and found that the Informant neither filed his reply/objection to DG report nor appeared before the Commission. However, the Informant vide its application dated 14.01.2013 submitted that he did not want to proceed in the matter due to some personal reasons and therefore, he wanted to withdraw the information. The Commission considered the withdrawal application of the Informant in its meeting held on 20.02.2013 and decided to reject the same as there is no provision of withdrawal of information in the Act.
  
5. The Commission has carefully gone through the information, the report of the DG, the documents and evidence relied upon by the DG and the other relevant material available on record and is of the view that the following issue is for consideration before the Commission:-

Whether the Opposite Parties have contravened the provisions of Section 3 or Section 4 of the Act?

6. For the proper disposal of the aforesaid issue, it is required to briefly discuss the supply chain and regulatory framework of the cable TV broadcasting industry in India. The supply chain for broadcasting of television channels through analog cable network comprises the following: - (i) companies operating the television channels (broadcasters); (ii) Aggregators; (iii) Multi System Operators (MSO); and (iv) Local Cable Operators (LCO). The broadcaster owns the contents that are transmitted to the end consumers. The broadcaster may either produce its own content or source content from 3<sup>rd</sup> party. The broadcaster uplinks the content signals to the satellites which are in turn downlinked by the distributors. The broadcaster may transmit its content either directly or through an aggregator. An aggregator is a distribution agent who undertakes the distribution of television channels for one or more broadcasters. Aggregator also does bundling of television channels of different broadcasters and negotiates on their behalf with the distributors viz MSOs/DTHOs/IPTVOs regarding subscription revenues. The sale of television channels to the distributors by the broadcasters or the aggregators may be on a-la-carte basis (one channel sold as a single unit) or as a bouquet (two or more channels bundled and sold as a single unit). The MSOs downlink the content signals of the broadcaster and further distribute the same to LCOs for retail distribution to the end consumer. Recently, measures have been taken by the Government of India towards digitization of the cable television system to have an addressable system that enables identification of subscriber base. These measures are primarily with a view to overcome the limitations of analog cable systems including the lack of clarity on the subscriber base and the limitations on transmitting more number of channels to the end consumers. In this system also, the distribution of TV channels to end consumer is done through MSOs and LCOs.
7. Similar to analogue cable distribution system, in DTH distribution system and IPTV distribution system, the broadcasters/aggregators sell their television channels to the

DTHOs and IPTVOs for onward transmission to the end consumer. It is observed that DTH distribution system has gained significance in recent times. However, IPTV distribution system's subscriber base is comparatively insignificant.

8. It is noted that the broadcasting sector in India is regulated by the TRAI, which has framed various regulations which, inter-alia, make it obligatory for a broadcaster to provide signals of its television channels on a non-discriminatory basis to every DTHO/MSO/IPTVO and not to enter into exclusive agreements with any distributor that prevents others from obtaining such television channels for distribution. Further, the regulations and tariff orders issued by TRAI, from time to time, stipulate that broadcasters/aggregators cannot deviate from the pricing methodology mentioned in those regulations/tariff orders. The relevant rules and regulations framed by the TRAI, in its Telecommunication (B&C) service inter connection Regulation 2004, are as under:-

*3.2 Every broadcaster shall provide on request signals of its TV channels on non-- discriminatory terms to all distributors of TV channels, which may include, but be not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator; multi system operators shall also on request re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators. Provided that this provision shall not apply in the case of a distributor of TV channels having defaulted in payment.*

*Provided further that any imposition of terms which are unreasonable shall be deemed to constitute a denial of request.*

*3.3 A broadcaster or his/her authorized distribution agency would be free to provide signals of TV channels either directly or through a particular designated agent or any other intermediary. A broadcaster shall not be held to be in violation of clauses 3.1 and 3.2 if it is ensured that the signals*

*are provided through a particular designated agent or any other intermediary and not directly. Similarly a multi system operator shall not be held to be in violation of clause 3.1.and 3.2 if it is ensured that signals are provided through a particular designated agent or any other intermediary and not directly.*

*Provided that where the signals are provided through an agent or intermediary the broadcaster/multi system operator should ensure that the agent/intermediary acts in a manner that is (a) consistent with the obligations placed under this regulation and (b) not prejudicial to competition.*

*3.4 Any agent or any other intermediary of a broadcaster/multi system operator must respond to the request for providing signals of TV channel(s )in a reasonable time period but not exceeding thirty days of the request. If the request is denied, the applicant shall be free to approach the broadcaster/multi system operator to obtain signals directly for such channel(s).*

*3.5 The volume related scheme to establish price differentials based on number of subscribers shall not amount to discrimination if there is a standard scheme equally applicable to all similarly based distributors of TV channel(s).*

*Explanation.-'Similarly based distributor of TV channels' means distributors of TV channels operating under similar conditions. The analysis of whether distributors of TV channels are similarly based includes consideration of, but is not limited to, such factors as whether distributors of TV channels operate within a geographical region and neighbourhood, have roughly the same number of subscribers, purchase a similar service, use the same distribution technology. ")*

*3.6 "Any person aggrieved of discrimination shall report to the concerned broadcaster or multi system operator, as the case may be. If the*

*broadcaster or multi system operator does not respond in a satisfactory manner in a reasonable time period, but not exceeding thirty days, the aggrieved party can approach the appropriate forum. "*

9. The plain reading of the aforesaid regulations suggests that broadcasters are under an obligation to provide non-discriminatory access of their content to all distributors of TV channels and cannot refuse to deal with a distributor on unreasonable or discriminatory grounds such as discriminatory pricing etc. Therefore, in view of the present TRAI regulations, there is almost no scope for the aggregators / broadcasters to indulge into the restrictive activities of controlling the supply of their channels to MSOs or other distribution platforms. Further, the DG has reported that the number of bouquets for distribution by the JV has increased from 9 to 16 thus, it cannot be said that the end consumers or the MSOs/DTHOs/IPTVOs are given less choice in choosing the channels. During the course of the investigation, DG has not come across any evidence which hints towards the control on the supply of channels by the JV in the market.
10. It is also noted that TRAI has also issued various tariff orders from time to time and as per these tariff orders the broadcasters/aggregators are effectively prohibited from charging any price either from MSOs or DTH operators, which exceed the prescribed ceiling prices. Further, the investigation has also revealed that so far as the prices of channels are concerned, they have remained at pre JV level even after one year of JV agreement. Therefore, the Commission notes that there is no evidence which establishes that the OPs through their JV have influenced or fixed the prices of their channels in violation of section 3 (3) (a) of the Act.
11. It is further noted that due to the TRAI's Inter Connect Regulation clause 3.6, the broadcasters or the aggregators have to supply the channels on a non-discriminatory basis to all the distributors and in case of any discrimination the concerned aggrieved

party may approach to the TDSAT. Further, as per the said regulations, every broadcaster is required to file with TRAI its Reference Interconnect Offer (RIO) and interconnect agreement with MSOs / LCOs and the same are reviewed by the TRAI. Due to the said regulations, the distribution of the channels and their pricing by the broadcasters/aggregators is totally regulated. Therefore, the Commission notes that the apprehension of the Informant, regarding the preferential treatment to their own MSOs and LCOs by the Opposite Parties is not genuine.

12. The Commission also observed that the Informant had also apprehended that the carriage and placement fees of the MSOs will be reduced by the JV due to its increased bargaining power. On the said issue DG has reported that the OPs have paid higher amount on account of the placement and carriage fee during the F.Y. 2011-12. The placement fee accruing to MSOs has not been impacted due to JV's greater bargaining power vis-à-vis MSOs. On the industry level also the placement and carriage fee has been found to have been increased about 20% in 2011-12, which indicates the countervailing power of the distributors (MSOs). The investigation by the DG has also not revealed any evidence which suggests that any MSO or DTHO has shut down its business due to the greater bargaining power of the JV. There is also no evidence which suggests that entry of any MSO or DTHO has been restricted due to the greater bargaining power of the JV. Therefore, in view of the above facts and circumstances, the Commission finds that the allegations of the Informant that the market power of the JV will affect the ability of the MSOs in bargaining are not substantiated.

13. The Commission also notes that the JV cannot create any entry barriers for the new entrants in the market nor it can foreclose the competition by creating hindrance for new players to enter in the market due to the present market dynamics and TRAI regulations.

14. In view of the aforesaid discussion, the Commission is of the view that there is no evidence on record which can substantiate the allegations of the Informant that the Opposite Parties have violated provisions of section 3(3) (a) or 3(3) (b) of the Act in forming a JV which distribute their channels to the MSOs, DTHOs and IPTVOs.
15. The Commission also observes that for the examination of the allegations under Section 4 of the Act, DG has delineated the relevant market as the market of the services of aggregating and distribution of TV channels to MSOs, DTHOs and IPTVOs in India. The supply chain for broadcasting of television has already been discussed in para 6 above. On the basis of the features and technology used in the supply chain of broadcasting of TV channels, the Commission is of the view that in terms of factors mentioned under section 2(t) and 19(7) of the Act, the services of aggregating and distributing TV channels is a unique kind of service which at present cannot be substituted by any other kind of service hence, the Commission agrees with the relevant product market as defined by the DG. The Commission is also in agreement with the relevant geographical market delineation as "India" by the DG because the services of aggregation and distribution of channels are not specified for some particular geographical region and the licenses of uplinking and downlinking is also given for India by Ministry of Information and Broadcasting. Therefore, boundaries of India are considered to be the relevant geographical market for the purposes of this case.
16. The Commission has observed that as per the DG report, the Hindi TV channels control 50% of the total market of the TV channels available in India whereas English TV channels, Bengali, Telugu, Tamil, Marathi, Malayalam, Kannada and others have 10%, 4%, 8%, 10%, 5%, 2%, 4% and 7% market share respectively. As per the latest information available on the website of the Ministry of Information and Broadcasting,

the total numbers of permitted private satellite TV channels in India as on 20.12.2012 are 848. As per the information available in the website of TRAI, as on 06.03.2012, there are 184 pay TV channels in existence. As per the DG report, the JV distributes only 55 number of pay channels which constitute 32 % of the pay channels in India. DG has also reported that the JV formed by the Opposite Parties has 60 channels for distribution as an aggregator which is followed by other aggregators such as 33 channels of SUN 18 Media, 19 channels of MSM Discovery, 12 channels of Usha Ushodaya Enterprises Pvt. Ltd., 6 channels of Raj TV, 5 channels of Prime Connect, 5 channels of Abs Media, 4 channels of Mahuaa Media, 4 channels of Tej Television, 4 channels of Maa TV, 3 channels of Turner International India Pvt. Ltd., 3 channels of Udisha and 2 channels of 9XMedia Pvt. Ltd..On the basis of said data, it is noted that as an aggregator the JV formed by the Opposite Parties has largest number of channels in its kitty but when compared to the total number of channels available in the country its market share is approximately 10% only.

17. It has also been observed from the DG report that out of the total number of channels distributed by some major MSOs across the country, the share of JV on analog network is presently 20% to 35% depending on the preference of the consumers in their respective geographical areas. It is also pertinent to mention here that the analog cable network can carry only 80 to 90 channels therefore; the broadcasters have to compete with each other for distributing channels on the analog network, this led to demand of more carriage fee and placement fee by the MSOs which results into exercise of more bargaining power by the MSOs. Across the country, the share of JV varies on the basis of factors like consumer's choice, network availability as well as discretion of MSOs.

18. The Commission further observes from the DG report that JV is having popular Hindi GEC Channels led among the genres with a 27.4% share of viewership, regional channels have a viewership share of 33.4%, Hindi Movie comes next with a genres share of 11.9% while the kids genres remain stable at 6.3%.The Commission also notes that there are already about 24 distribution alliances and broadcasters manage distribution in house, which are operating at the level at which JV operates. While testing the market position of the JV on the factors mentioned under section 19 (4) of the Act, the Commission notes that there is no evidence in the DG report to substantiate that the JV has affected the operations of other broadcasters or aggregators in any way or they were forced to close down their business. The DG has also not reported that due to formation of the JV, the entry of any new broadcasters, aggregators, MSOs, DTHOs and IPTVOs was restricted or hindered in any manner. Due to the present regulatory framework, it is mandatory upon a broadcaster/ content aggregator to provide its channels to all MSOs and other distribution platforms (including DTH) on a non-discriminatory basis and the broadcaster/ aggregator cannot enter into exclusive agreements with any distributor that prevents others from obtaining such television channels for distribution. There is no “Must Carry” obligation for MSOs and other distribution platforms rather MSOs are free to decide number of channels and contents which they wish to carry for onward transmission to end consumers.

19. In view of the aforesaid discussion, it cannot be concluded that the JV formed by the Opposite Parties is a dominant player in the relevant market of the services of aggregating and distribution of TV channels to, MSOs, DTHOs and IPTVOs in India.

20. Accordingly, the Commission notes that since, the JV formed by the Opposite Parties is not dominant in terms of section 19(4) of the Act in the relevant market; it cannot abuse its position.
21. In view of the above discussion, the Commission observes that the Opposite Parties have not contravened either the provisions of Section 3(3) or Section 4 of the Act. The Commission also notes that the Informant has also not placed any evidence or data which can contradict the findings of the DG report. Therefore, given the facts and circumstances of the case, the Commission is of the view that the proceedings in the instant case should be closed under section 26(6) of the Act as the Commission agrees with the recommendation of the DG in his report. Accordingly, the matter is hereby closed.
22. Secretary is directed to inform the Informant accordingly.

Sd/-  
Member (G)

Sd/-  
Member (GG)

Sd/-  
Member (AG)

Sd/-  
Member (T)

Sd/-  
Member (D)

Sd/-  
Chairperson