Without Prejudice
(Sent through email and speed post)

Cable Operators Federation of India

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The Chairman,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
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New Delhi-110002

Kind Attn: Dr Rahul Khullar / Sh Wasi Ahmad

Sub: COFI Comments on Consultation paper on Distribution of TV Channels from Broadcasters to Platform Operators dated 06 August 2013

Sir,

We are extremely grateful to TRAI for initiating this consultation that is based on the ground level experience of malaise spread by unethical ways of 'Pay' channels by creating monopolies in content, distribution on all platforms and customer acquisition so as to earn maximum from subscription as well as advertising.

The proposed amendments will definitely steer the industry to a positive growth required since long so that all stake holders can run their business lawfully, peacefully and profitably.

This will also create a better environment to attract new investments in the industry.

However, we feel there is a lack of understanding of the way this fragmented and disorganized industry can be brought on track and developed as a national infrastructure.

Notwithstanding the above, we are totally in conformity with TRAI on the changes it has proposed regarding distribution of TV channels through authorized agencies and aggregators. However, we are of the opinion this is only the beginning of a positive phase and much more stringent actions are needed on the part of the Regulator, particularly in controlling the 'Pay' broadcasters who are the root cause of the disorganized state of the industry. **These 'Pay' Broadcasters have never been regulated till date and still manage to earn favours from the government.**

We are suggesting some more changes in the regulations to ensure that these 'Pay' Broadcasters and their distributors/ aggregators do not take law in their hands and harass the small players in order to help their principals.

The digitalization initiative is suffering seriously because of these channel aggregators who do not provide content or delay it under some pretext or the other to the independent MSOs and MSOs who are not part of their respective media groups but are providing cable TV services since more than 20 years. Not only this, they are still doing deals with MSOs on **fixed amount** based on **Minimum Guarantee** rather than number of actual STBs seeded and viewership of individual channels as per the SMS system. In the same manner, MSOs are doing **fixed deals with LCOs and LCOs with consumers** (not based on consumer choice). None of the TRAI regulations are being complied with till now, even after ten months of completion of the first phase (**Complaints from some small/ independent MSOs are attached as Annexure-1, sent separately with Part 2 of the response)**.

Most of the reports TRAI has received from the MSOs regarding CAF are fudged. In many areas of the Capital, MSOs have forced the LMOs to fill up the forms on behalf of their consumers with **one default package** comprising of all their own 'Pay' channels and submitted the same to avoid adverse action from TRAI. This can be verified from the SMS system of many MSOs by listing out how many consumers have chosen different packages and given a-la-carte choice. **Situation is same what TRAI confronted in DTH where it found that no a-la-carte service is being provided because DTH operations are also under the control of 'Pay' Broadcasters.**

Emergence and Growing Dominance of Pay Broadcasters and their Aggregators

1. Pay channels that are mostly of 'foreign' origin have always been unregulated in India and they have taken full advantage of this, entering India lured by our large population, without addressability exploiting the cable operators as well as subscribers.

2. When they grew up in numbers, major players started making large bouquets of all genres and languages, making partners with other foreign broadcasters to earn more revenue and thus started controlling the markets.

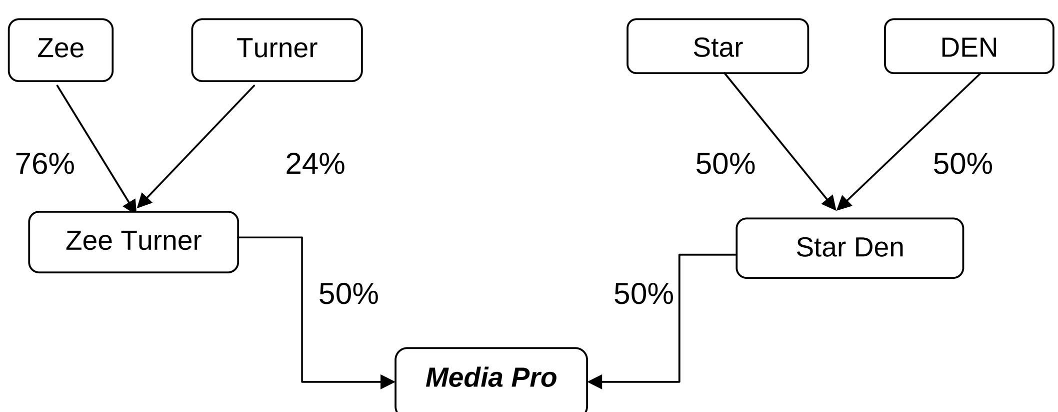
3. To avoid paying to cable operators for using their network infrastructure they started their own MSO networks so as to control distribution to consumers. **First aggregators Zee Turner (76:24) and MSM Discovery appeared in 2002** to make large bouquets of channels of different genres to exercise a greater bargaining power over the independent cable operators and MSOs. These aggregators served the following purpose:-

    a. To pressurise MSO to redistribute all/majority of the channels distributed by the content aggregator.

    b. To bring the MSO under collective pressure of high number of channels and get the MSO agree to terms dictated by the content aggregator.

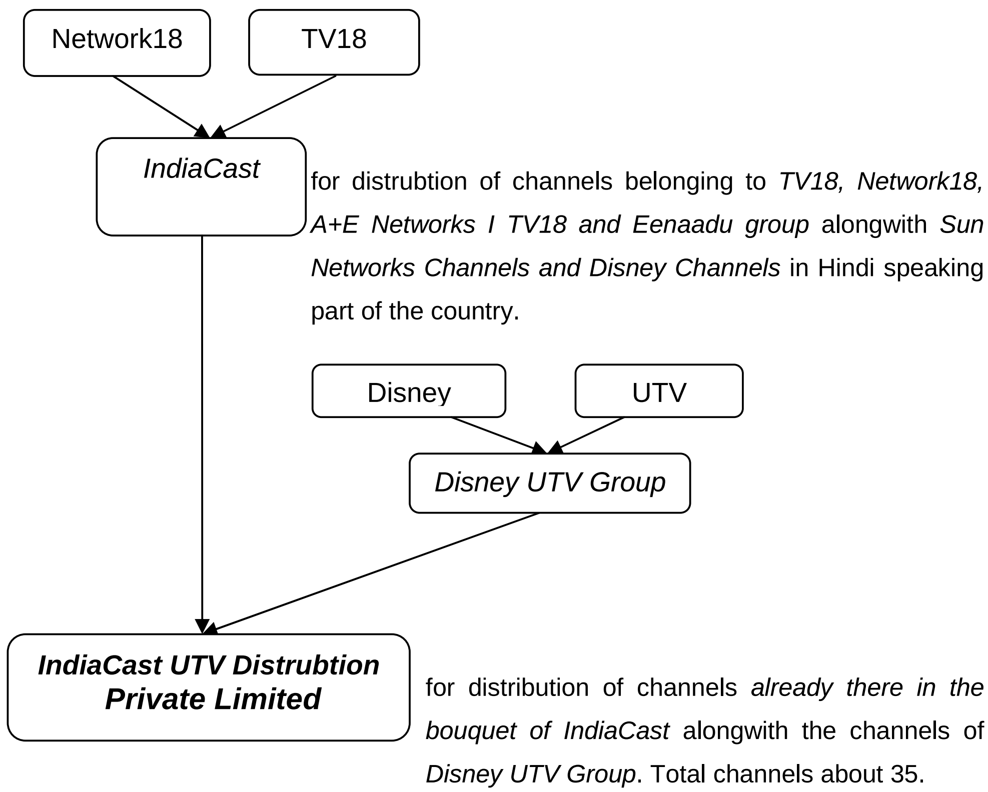
    c. Bring small and regional broadcasters in their fold to provide protection of business/ distribution market.

To illustrate the above mentioned, a diagrammatic representation is given:-



4. **These Aggregators are not independent entities. They are part and parcel of the four major Pay TV groups** having sprung up out of their distribution departments and completely under the control of the principal broadcast groups ie, Start TV, ZEE TV, Sun TV and Sony Entertainment **(A chart showing the formation of these Aggregators is attached as Annexure-2).**

To illustrate, the formation and functioning of IndiaCast UTV Distribution Private Limited, a diagrammatic representation is given below.



5. **Even the CEOs and staff of these aggregators are the same old employees of pay broadcasters** and hence attitudes and intentions displayed by each aggregator are that of their principal broadcaster group intended to create monopolies though vertically integrated distribution platforms of MSO and DTH. These JVs are marriages of convenience between two or more rivals. Smaller players in their distribution network have joined for protection and security of distribution in a competitive market.

6. There are only four aggregators who control more than 80% market. **(A list of these aggregators along with the**

broadcasters whose channels they distribute is attached as Annexure-3). Out of 850 channels there are about 184 pay channels in the country who have given their a-la-carte rates to TRAI and out of these **163 are distributed by just three leading *'aggregators'*. Two of these aggregators belong to three large media groups who enjoy unrestricted monopoly** in the market having interests in TV channels, distribution platforms of MSO and DTH, radio, news papers and online portals. These groups have foreign broadcasters as owners or partners.

7. Major Distribution Cartels in broadcasting are:

i. **Star TV Group**: Star Channels, Tata Sky DTH, DEN MSO, Hathway MSO, Media Pro content aggregator, TV Today, Asianet etc.

ii. **Zee Group**: Zee Channels, Turner channels, Dish TV, DTH, WWIL MSO, Siti Cable, Media Pro, DNA Newspaper.

iii. **Sun TV Group**: Control South Indian Market with many south Indian Regional Channels, Sumangali Cable MSO, Sun Direct DTH, Newspapers, Films etc.

8. Since implementation of CAS was deferred, they **appointed their own MSOs in big cities as their local distributors** to capture market in TAM cities and forced all other MSOs to take signal feed from them or else completely denied giving their channels so that they could have a free way to establish their monopolies in every city and exploit consumers through their own MSOs.

9. Supreme Court Judgement of 2007 on Monopoly of Distributors

In 2007 The Supreme Court came to the rescue of the cable operators and in the case of Star India Ltd Vs Sea TV network gave a ruling that no MSO could be distributor of content to its competing MSOs or cable operator. In effect it was pronounced by the Apex 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.**

Supreme Court order was not against Hathway or Star TV. **The court's focus was to curb monopolies through channel distributors and stop discrimination of independent MSOs and cable operators**. **Crux of the judgement was that no pay broadcaster should have any interest in a distribution platform**. Extract of the judgement dated 03 April 2007 is given below:

"***The object of Interconnection Regulation is to eliminate monopoly***. *If Sea T.V. respondent No.1 carries on business in competition with Moon Network Pvt. Ltd. and if it is to depend on the Feed provided by its competitor and if the quality of the signals available through that Feed is poorer than the quality of the signals available through Decoders, then the* ***Tribunal is right in holding that the above arrangement is per se discriminatory."***

"although a broadcaster is free to appoint its agent under the proviso to clause 3.3 such an agent cannot be a competitor or part of the network, particularly when under the contract between the broadcaster and the designated agent-cum-distributor exclusivity is provided for in the sense that the signals of the broadcaster shall go through the cable network owned and operated by such an agent-cum-distributor which in the present case happens to be Moon Network Pvt. Ltd."

10. To circumvent the Apex Court judgement, Pay Broadcasters made their aggregators bigger and stronger to wield more power in negotiations. Thus came Star Den in 2008 where Star TV had a 50:50 partnership with DEN MSO. As a JV of Star TV and TV 18 it acted as unofficial distributor of Star TV and TV 18 channels.

11. Just a day before the policy of mandatory approval of all combinations by Competition Commission was notified, two of the biggest rivals in the industry, Star TV and Zee Group made the biggest distribution JV with Star DEN and Zee Turner (50:50). This move was made just when the Ministry was planning to issue the mandatory digitisation amendment through an Ordinance. This JV has 79 channels out of the 183 pay channels including the prime channels and would ensure that all their distribution platforms including DEN and WWIL MSOs and Dish TV and Tata Sky DTH would get the preference in distributing all their channels making it difficult for all others to survive.

12. Media Pro enjoyed a dominated position in all markets except the Southern states where SUN TV Group was dominating with Sumangali MSO and Sun Direct DTH. The fourth national MSO Hathway had 26% stakes of Star TV till last year and already dominated in many markets due to preferential treatment from Star TV.

Competition Act Already Exists but Ineffective for Media

A very important aspect we wish to highlight is that there is a **Competition Act 2002** existing in the country that superseded the MRTP Act and it takes care of monopolies and anti competitive practices in any market including television media. Its implementation is being looked after by Competition Commission of India (CCI). There are many definitions like ‘Acquisition’, ‘Agreement’, ‘Cartel’, ‘Consumer’, ‘Relevant Market’, ‘Service’ etc. which already exist in the Competition Act and are to be determined by Competition Commission of India with reference to the relevant product market or the geographic market. However, **it has not proved effective in controlling the monopolies and market dominance by Media Pro or Sun Group because either the Commission does not understand the way media market functions or the law needs a total change to cater to the media market.**

For example **CCI gave a clean chit to Media Pro** in a complaint by an individual of market exploitation by dominant position. Not only this, after the verdict of the DG Investigation giving clean chit, the complainant never appeared again when asked for his response by the Chairman. The argument in favour of Media Pro is very elusive and the whole investigation and interpretation of the relevant market will appear cooked up to any professional in the industry. The Commission said in its order dated March 21, 2013 that the joint venture

"It can not be concluded that the joint venture is a dominant player in the relevant market of the services of aggregating and distribution of TV channels to MSOs (Multi System Operators), DTHOs (Direct To Home Operators) and IPTVOs (Internet Protocol Television Operators) in India."

"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," CCI said.

(CCI order clearing Media Pro of any domination is attached as Annexure-4).

Same is the case of a complaint by **JAK Communications MSO against SUN Direct DTH**. In this case the Commission considered DTH and Cable as two different markets with different products and hence gave a clean chit to Sun Group because it found that a DTH and a cable MSO can't be competitors. One of the members of the Commission did not agree with the verdict and gave a **dissent order which is attached as an Annexure-5** to these comments that will amply explain the ineffectiveness of CCI.

The result is that these aggregators and 'Pay' Broadcasters are still carrying on with their monopolistic ways to dominate the market. By the time government wishes to end their monopolies, enough damage would have been done to the Industry.

We once again appreciate TRAI's effort in regulating the distribution of TV channels and provide the following comments on various amendments in the Tariff Orders and Interconnect Regulations as proposed:-

Definition of a Broadcaster

"Broadcaster" means any person including an individual, group of persons, public or private body corporate, firm or any organisation or body who or which is providing broadcasting services;"

Comments

We agree with the proposed definition. Authorised agents were required only prior to 2006 before the downlinking guidelines were notified as most of the broadcasters were 'Foreign Companies' operating in India illegally without any permission. All responsibility of quality of content and service was the onus of cable operators. These agencies were dealing with both advertising as well as distribution.

Engagement of distribution agencies by the broadcasters.

If a broadcaster appoints a person as its authorised distribution agent, it shall ensure that----

(a) there is no change in the composition of its bouquet provided by the authorised distribution agent to distributors of TV channels;

(b) its authorised distribution agent does not bundle its bouquet or channels with the bouquet or channels of other broadcasters;

(c) while acting as an authorised distribution agent, such person acts for and on behalf of the broadcaster.

Comments

We agree with the proposed amendment. These agents will only facilitate the broadcasters in dealing with the distribution platforms and not get into any agreement on their own behalf. **Removing aggregator altogether will reduce cost to customer too.**

- **Broadcasters are the originator of TV content** and responsible to adhere to content regulations as part of their license condition.

- **They may do the distribution direct or may use any of the aggregators**. At present as the aggregators are being restructured too frequently, broadcasters also keep shifting from one aggregator to the other making it difficult to make long term deals and renegotiations with distribution platforms and thus cause unexpected changes in tariffs.

- Most of the time small **broadcasters latch on to the channels of large broadcasters through these Aggregators to get protection** against their anti-competitive practices. Aggregators act like Dons in such cases. This is the reason that only the big three are dominating.

Bouquets

a) **Broadcasters should not offer more than 5 channels** in a single bouquet.

b) **Basic packages are not made keeping consumers in mind**. They are being made to help channels of a particular aggregator get the maximum TRPs. In this case it is suggested that **LMOs must be consulted** by the MSO in finalizing the channels in basic package of FTA channels since they know the consumer best.

Tariff Issues

1. **There should be separate tariff order for large and small networks** so that small networks who do not have the advantage of economy of scale because of their geographic location or special conditions under which they operate, like in Army cantonments or industrial towns, can also abide by the regulations and operate freely. It will be unfair to ask all these consumers to shift to DTH.

2. **Upper limit of A-la carte rates of FTA channels should be fixed** by TRAI. Although in the basic package TRAI specifies a rate of Rs 100 for 100 channels, some MSOs are selling FTA at Rs 3 per channel and others at Rs. 5 in a-la-carte mode. The difference is formidable when many channels are involved. At present there are more than 600 pay channels.

3. It should be ensured that a-la-carte rate of a FTA channel should be less than a-la-carte rate of any 'pay channel' in that network.

4. **MRP of pay channels** for the consumers must be displayed on the broadcaster's own website and also advertised in TV/ Print medium so that a consumer knows how much he has to pay to the MSO to get a-la-carte choice.

5. Ticker ad giving MRP Rates of pay channels should be run on TV channels by the Broadcasters like they do to promote digitalisation.

6. Broadcasters should run ads with TV serial actresses to inform consumers of their channel rates and information about the packages and their cost as being done to ask consumers to fill up the CAF/ SAF forms.

7. The rates declared by Pay TV Broadcasters and revenue share of LCOs and MSOs must be worked out on the basis of this rate as a percentage prescribed by TRAI which should also be displayed by the broadcaster on his website. **Channel Aggregators/Agent/ Agency should not be there at all in the revenue share scheme.**

8. All Disputes should be settled between Broadcasters & MSOs/LCOs and not with channel Aggregator.

9. An MSO may ask a Broadcaster directly for the content if he is not satisfied with the broadcaster's authorised local agent. **TRAI should fix a time period not more than 7 days for broadcaster to respond** in such cases or else make them liable to pay a penalty as it endangers the very livelihood of the operator.

11. An LCO may also approach the broadcaster directly for demand of a Channel on the basis of consumer demand in his area if he finds that the MSO concerned is not responding. It should be the duty of the **Broadcaster to ensure the channel is provided through his distribution agent without any discrimination to all consumers as per the norms stipulated by TRAI.**

Anti Competitive MALPRACTICES will Still Exist

We are afraid that even after aggregators are regulated by the present proposed amendments, monopolistic broadcasters will find other ways to carry on their anticompetitive practices.

1. **Formation of cartels.** Inspite of restriction on agencies against making mixed bouquets from Channels of different broadcaster, the pay TV broadcasters may **create a cartel** and decide not to give content to particular MSO or independent cable operator.

2. **<u>Tying In of lower value channels</u>**. That even in the case of a reconstituted bouquet where all channels belong to only one broadcaster, the broadcaster will have the leverage to club the *'lower value channels'* belonging to itself tying in with the popular ones.

3. Offering of bouquets of pay channels should be disallowed and it be made mandatory for the 'Pay' broadcasters to **offer pay channels only on *'a-la-carte'*** basis***.*** MRP of these channels must be advertised/ displayed for public information.

4. **<u>Local Pay channel distributor Mafia</u>.** Channel aggregators (earlier by broadcasters) may continue to appoint local distributors/ agents in states and districts who are local powerful persons with shady links with politicians, real estate companies or liquor mafia and may continue the malpractices of minimum guarantee and discriminatory distribution eliminating the smaller players by coercion.

5. In many states, over the last few years, these **local distributors have become shareholders in cable networks** using pressure tactics and black mailing, not providing the content to the MSO/ LCOs. There are many complaints against such companies but no action is taken against them because there are no regulations curbing their unethical activities in connivance with and blessings of 'Pay' Broadcasters.

6. **<u>State/ Local Distributors run Fake companies .</u>** These distributors **open different companies in their names or in the name of their relatives** to become distributors of different broadcasters so that the entire business in the state depends on them. They use **Benami companies** and even fake accounts to steal the carriage fee amounts received from the 'Pay' broadcasters for independent MSOs/ operators. If TRAI checks the list of MSOs in different states, they would know how these companies have edged out many small entrepreneurs from the business by using force.

7. Every state has 3 to 4 distributors of pay channels. Distribution is given mostly to these JV Partners/ distributors who are also MSOs.

8. **Heavy penalties and criminal proceedings should be initiated** against local statewise distribution agents if found to be indulging in

any malpractice. If many complaints are received by TRAI against a Distribution/ Aggregator, Broadcasters/ MSO concerned should be warned and such distributors should be blacklisted so that no broadcaster/ makes them their agents/distributors/JV directly or through MSO indirectly. (**Please find a list of TDSAT cases against some 'Pay' channel aggregators attached as Annexure- 6).** It may be noted that maximum cases are against Media Pro (186 in a year) and there is no case filed by either DEN or Siti Cable againt the aggregator being its preferred vertically integrated partners.

Publishing RIOs and Interconnect Agreements

Every broadcaster shall ensure that the authorized distribution agent appointed by it under sub-clause (1) shall----

> **(a) not publish Reference Interconnection Offer by itself or on the behalf of the broadcaster; and**
>
> **(b) not enter into interconnection agreement with the distributor of TV channels."**

Comments

We also agree with these amendments. To further restrict malpractices by the in distribution we suggest the following:-

1. **Broadcasters/MSOs must intimate TRAI the ' Authorised' Signatory** with his /her specimen signatures and photographs who will sign the RIO and content deals/ revenue sharing deals. Any changes in the signatories must be immediately informed to TRAI and TRAI should upload this information immediately on its website so that an MSO in any city can find out who is the authorized person.

2. **The above information should be under the ambit of RTI** (Right to information Act) so that it could be made public when required. This is to avoid instances where a junior representative of a distribution company is asked to make all deals and once he leaves the company, senior persons in the organization refuse to take any responsibility.

3. **Broadcaster/ MSOs should also publish this information** about the Authorised signatory and any changes in National/ State level newspapers, on their own websites, on the websites of IBF,NBA and MSOs websites (in Hindi/Regional language and English) as the case may be.

4. **Broadcasters/ MSOs Websites if found not updated should be punishable under CrPC** for providing false information and should lead to criminal prosecution and penalty against them.

5. **No other person/ proxy should sign the papers** and Broadcaster/MSO while submitting the RIOs and Agreements to TRAI must endorse the date when the signed copy of the same was handed over to the MSO/Operator. At present representative of Broadcaster/aggregator/MSO makes the MSO/Operator sign the RIO or Agreement and never give him a signed copy. MSO/Cable Operators are at a loss in defending their cases in TDSAT or in any other court in absence of any valid document. **Not giving a signed copy in a specified time (within 7 days) should be a cognizable offence and penalized with a fine or imprisonment or both.**

6. The above should also be applicable to link sub-distributors/MSO/JV/DTH in various districts/ cities.

7. Pay Broadcasters should not charge cost per subscriber (CPS).

8. No fixed fee for content should be charged from the MSO/ MSOIs.

9. No Minimum Guarantee deals must be made.

10. Heavy penalties/ criminal proceedings should be initiated against any erring distributor/ MSO/ Broadcaster/ JV Partner at any level.

<u>Suggestions to restrict build up of Monopolies by PAY channel Aggregators</u>

1. **<u>Cross media holdings</u> and vertically integrated operations** of a few large broadcast companies who wish to capture the whole media market through various means have received further support by the present regulations leading the industry to a situation that may become

difficult for even the government to control. We suggest aggregators should not be a separate entity in broadcasting. Let all broadcasters handle their distribution separately and individually.

2. **Cable operators** who control the last mile of 100 million households providing service to the subscribers have never been promoted and strengthened to help **consolidation through supporting regulations**. **They should also be licensed for ten years like the MSOs so that all their mergers and takeovers are in the knowledge of the government.**

3. **India is not a pay TV market as yet**. Pay channels have been forced on consumers without addressable system and operate just like free to air channels**. Hence there is no way to judge their viewership or revenue collection. TRP system does not give the right picture.** To curb the malpractices in 'Pay' Channel distribution:-

a) **FTA Package of Rs 100/- should be mandatory** for all MSOs to provide. Pay channels must not be mixed with this package and sold at a higher price. At present many vertically integrated MSOs do not provide this and club them with their pay channels to make their cheapest package. Since low cost package will have the highest number of subscribers, their pay channels will get the highest TRPs. A look at the low cost packages of MSOs that are likely to be subscribed the most in DAS areas substantiates this. (**Lowest packages of some national MSOs attached as Annexure- 7)**

b) This is the reason that some channels have seen a sudden fall in TRPs where as some not so popular Channels have gained in TRPs. **This is also the major reason for the recent standoff between broadcasters and advertisers over TAM ratings.**

c) **Permit only Digital FTA networks**. MSOs if they desire should be permitted to have only FTA channels in their network. **Carrying pay channels should not be made mandatory. Condition of licensing will have to be changed to provide this so that NOC from a broadcaster is not made a compulsory condition to get DAS licence. This will allow many small operators to operate only FTA networks where there is not much demand of 'pay' channels or the economic condition of subscribers is such that pay channels are unaffordable to them like in small cities of Phase III & IV.**

d) **<u>Cable Operators' Business must be protected from Coercive Methods of Pay Broadcasters and Aggregators/ their local distributors cum MSOs</u>**

Business of registered cable operators is not protected. In the DAS regime, LMO depends totally on the mercy of the MSO or distributors who even sign on their behalf on documents taking advantage **of their low education and lack of legal knowledge.** They are made fools giving verbal assurances and then their networks are usurped. They cannot even afford to go to courts against this powerful **distribution mafia.**

4. **<u>No Law Regulating the existing Registered Channels</u>** – At present, there are no laws for TV channels. Only policy guidelines exist for downlinking and uplinking of satellite channels with effect from 2006. These guidelines, although provide the basic policy, do not stand the test of the law in the courts. Even TRAI the regulator cannot take any action on them as happened in the case of implementing 10+2 Ad cap. They simply go to the courts and get a relief on any policy that is not in their favour.

   a) **Broadcast Bill** that was to regulate the broadcasters must be passed as soon as possible. It is pending since 1997.

   b) **<u>Registration of Pay Channels.</u>** There should be **separate registration** procedure for pay channels. They **should pay more to the government for registration** than the FTA channels as they are earning both from subscriptions and advertisements. Channels may be divided in FTA Channels, PAY Channels and Premium Channels and they may be charged differently for registration.

   c) **<u>There should be a limit laid down to own TV channels by any one company.</u>** Not more than 10 channels may be owned by a group and not more than two channel in each genre or language may be the limit.

   d) Presently restriction of 12 minutes per clock hour on advertisements is same for FTA and pay channels. **This is unjustified**. **This restriction is right for FTA channels but for pay channels it should not be more than 6 minutes** as TRAI has left them free to charge whatever they wish and they get a huge subscription from consumers. Apart from making a difference in the two types of channels, conversion from one to the other will also benefit the subscribers. If subscriber opts for FTA channel he pays less and if he subscribes a pay channel, he can freely watch the channel with less of advertisements.

e) They **must declare whether they are ordinary pay channel** (allowed with 6 minutes of ads but an MRP fixed by the regulator like in CAS, Rs 5/-) or ads free channel or a premium channel with no restriction on pricing.

f) **No of channels per b**roa**dcaster should be restricted/ fixed** otherwise large broadcasters tend to launch channels of each genre and language and distribute them through their supporting or owned MSOs/ DTH/HITS depriving smaller broadcasters to reach the masses.

5. **Broadcasters violating guidelines should be severly punished-** All laws, penalties, punishments are meant for cable operators, who are very small stakeholders in the value chain. There are no punishments or penalties for broadcasters, who are big, powerful, have high contacts and violate all content/advertisement codes and other guidelines.

6. **Gagging of Media.** Through IBF or NBA, Broadcasters block any news that does not suit them or highlight the news that helps them to down size a person or a business house or politician. This results in the gagging of not only television media but also print media because most of the big newspaper companies are also into television and distribution. Such misuse of media power to should not be tolerated. Media should respect everyone's right to speech.

7. **No Regulations for TV Content/ Broadcasters**- During the discussion on the third Amendment Bill for cable television in the Parliament, every MP brought out the need to regulate the content of TV channels but there is no initiative by the government in this regards. They have been only asked to self regulate because whenever the government tried to regulate them, they protested vehemently through various lobbies like FICCI, CII, ASSOCHAM, IBF, NBA and News Broadcaster Editors' Association.

a) **Control the distribution of foreign content stringentlyRegistration of Foreign Channels** – These channels come to India to exploit our vast population. They sell to our people, the same content that they make and broadcast in their country, thus making double profits. Government must make these channels pay more for registration.

b) **Indian Content on Foreign Channels MUST** – Like it is done in many European and other countries, there are restrictions on foreign channels that they must generate a percentage of their content (50% is typical) locally, it does not happen in India. We should also give downlinking permission to foreign channels, only after they agree to create 50% of their content within India.

c) **Foreign Pay Channel Registration as Free to Air** - Most of the revenue generated by these foreign channels is sent out of India to their country of origin. Where as they benefit tremendously from our large population, Country does not benefit from them. In view of this, they should be registered only as free-to-air channels, at least for the first five years or till they generate 50% content in India. This will make our own content production industry also flourish.

d) **Foreign Pay Channel Pricing** – Foreign based pay channels should be permitted to become 'Pay' channels only after they have generated 50% content within India, at half the rate what is fixed for our Indian channels that generate 100% content in India.

8. **Registration of HD / 3D Pay Channels**

Registration of Pay/ Premium channels/ HD Channels/ 3D TV etc should be done at a much higher registration fee than ordinary channels. Registration charges may be linked with the cost of the pay channels per subscriber or as per different subscription slabs eg. Free to Air, Rs 1-5, Rs 6-10, Rs 11 upwards etc.

Additional Comments

Apart from the above, we have the following additional points to make that affect the industry adversely. We have been bringing forth these points time and again but for some reasons the government has ignored the same resulting in a chaotic situation in the industry.

Regulations not implemented Priority wise

Government is not taking up the regulations in a systematic manner according to priority of tasks. **Regulations are being introduced arbitrarily and in a knee jerk reaction**. That is why we don't get any benefit from them and have not progressed in the digital era. Since this industry is the most disorganized service industry, regulations should have been preceded by sufficient planning and preparation considering the present state of the industry. Now we are putting the cart before the horse.

For example, Ministry has given nationwide MSO licences to some vertical monopoly players, framed all regulations and deadlines to facilitate them and allowed them to access increased foreign investments to further grow their monopolies but **now after these entities have reached a dominant position in some relevant markets, we are trying to restrict cross media ownership, control their monopolistic practices and exploitation of the consumers**. Even in its recommendations for hiking the FDI limits, TRAI has remarked that it wants to bring FDI in broadcasting to bring the sector at par with Telecom Sector knowing fully well that only two or three of these media conglomerate will be benefitted by this who already enjoy a dominating position in the relevant markets.

Broadcasting Sector can not be considered at par with Telecom Sector at this stage.

It is well known that Telecom sector has been organized from its inception. Both the sectors can never be placed at the same level. Government did everything to help the telecom industry to create the basic infrastructure where as Broadcast sector has not even come out of its fragmented and disorganized state. From our point of view the priorities in the broadcast business should be:-

1) **Consolidate the cable TV industry**- Not by coercion but by restructuring to adopt a viable and profitable business plan for all stake holders so that last mile owners are not eliminated by bad regulations.

2) **Strengthen the networks** including last mile infrastructure using broadband technology.

3) **License the MSOs according to their size.** National MSOs may be charged a license fee of Rs 10 crores as paid by the DTH operators who operate nationwide. State MSOs may pay Rs 1 Crore and independent MSO in a city Rs 1 Lakh. It is unfair to charge all MSOs the same licence fee.

4) **Control the 'Pay' Broadcasters** who have been instrumental in creating a panic situation in the industry using their monopolistic and unethical ways and making the services unaffordable.

5) **Curb the growing vertical monopolies** and anticompetitive practices of two or three large media groups so that small broadcasters as well as distribution platforms can survive to consolidate.

6) **Provide an administrative, legal, regulatory and financial environment** to attract long term investments.

7) **Provide financial support** through subsidies and duties, tax incentives to make the process less painful. **Telecom sector was given 15 years of tax Holiday at start-up and again, number of incentives are being recommended for these companies to build broadband infrastructure.**

8) **Most important is that any change at the macro level must not drastically disturb the existing consumer service** environment for the existing 100 million cable subscribers because thousands of small scale players who own the last mile and earn their livelihood, cannot afford to lose a single connection by the way of black outs or poaching by DTH operators.

Till the broadcast sector suffers from a weak infrastructure which is too fragmented, no reform will pass to the consumers. TRAI has overlooked this point while making the DAS regulations in which its emphasis has been to retransmit maximum number of 'Pay' Channels.

TRAI always took the shelter of what the Ministry has given in its reference for the regulations. We feel the regulator being a

technical expert should use its power to regulate keeping priorities of tasks in mind or at least suggest the Ministry to do things in a sequence rather than in a haphazard manner. TRAI must ask for more powers to prosecute stake holders of any status if found violating its regulations.

At present regulations are being introduced randomly, not to benefit the public but to help some vested interests on the whims of the ministry. This will never bring long term benefits.

Recent report by Business Standard news paper on the '**Top Media Companies'** of India has revealed that there are three media companies who are in the billionaire club and will control the country's 156 million media market. (**Please see the report as attached Annexure-8). However, we feel that the government desires an inclusive growth.**

Negative impact of improper and impractical regulations

a) **Unrealistic deadlines** have caused more than USD 400 million of foreign exchange to go out of country at a time when we are facing the worst economic crisis.

b) **Mandatory total digitization** is not the answer in a country like India which lacks tremendously in resources. What is the use of mandating a technology that cannot be afforded by majority of the population.

c) **MSO of 'pay' broadcaster Groups have created monopolies** in majority of the TAM cities giving unfair treatment to small broadcasters, Independent MSOs and LMOs.

d) **Helped DTH companies of large media groups to poach on subscribers of small cable operators** harming their business during the transition period when they needed maximum support from the government.

e) In Phase I&II 25 millon subscribers have already come under DAS paying at least Rs 100 more than what they paid earlier. **Rs 2500 million additional revenue collected every month is being**

shared by the' Pay' broadcasters, their three aggregators and National MSOs (Three belong to pay broadcasters).

f) Increased FDI limits before implementing '**cross media restrictions**' and '**restrictions on monopolies in media**' will enable the already dominating foreign players and some national players to bring in more foreign investments, mostly from their own subsidiaries, and increase their dominance which is not in the interest of Indian consumers and small players.

We hope TRAI will take note of this and ensure that all stake holders are given an equal opportunity to grow.

Yours Faithfully,

(Roop Sharma)
President
Cable Operators Federation of India

Attached: Twelve Annexures

Gmail by Google

Roop Sharma <roopsharma21@gmail.com>

Fwd: statement against cable operator

Eastern CableOperator <ecowaonline@gmail.com> 29 August 2013 15:44
To: santoshshettyj@gmail.com, kuldeeppuri10@gmail.com, roopsharma21@gmail.com

---------- Forwarded message ----------
From: **Eastern CableOperator** <ecowaonline@gmail.com>
Date: Thu, Aug 29, 2013 at 3:41 PM
Subject: Fwd: statement against cable operator
To: devendra.naik@denonline.in, dinesh.singh@denonline.in, sandeeps@densatellite.com, prakashdsouza28@hotmail.com, ravirsg@hotmail.com, rgavi@gmail.com, mcof247@gmail.com

Dear all
The statement given by Mr.S.N.Sharma of D.E.N networks in all leading newspapers across the country against the L.M.O'S (Last Mile Owners-cable operators) is highly condemned and our sentiments are hurt by the personal remarks made on cable operators fraternity and taking it further we also oppose the move of direct billing to cable consumers, which you are forcibly trying to dictate terms on L.M.O's.

We as a cable organization would like to convey you in a strong words that any further escalation in these type of unethical and irresponsible statement which are not only misguiding cable consumers and creating a unstable situation in cable business and further this will also effect you in your ground distribution of network , don't forget your network is built on cable operators foundation (L.M.O).

We want you to make a public apology for the same and take back the statement by your officials. We hope for the quick response.

Please refer to attachment

Regards
EASTERN CABLE OPERATORS WELFARE ASSOCIATION (chembur).

newspaper stment.PDF
988K

Gmail by Google

k k Sharma <kksharma123@gmail.com>

Mediapro Complaint.UP. Lakhimpur Khiri. Ajay Gupta.18.8.13.

RoopSharma <roopsharma21@gmail.com> Wed, Sep 4, 2013 at 11:36 AM
To: KK SHARMA <kksharma123@gmail.com>, Cablequest <cablequest@gmail.com>, Varun Vs281980 <vs281980@gmail.com>, RSharma <roopsharma21@gmail.com>, "Rs.dnite" <rs.dnite@gmail.com>, CQ mediaservices <cqmediaservices@gmail.com>

Begin forwarded message:

From: Devesh Gupta <deveshg.gupta@gmail.com>
Date: 18 August 2013 15:40:58 IST
To: Roop Sharma <roopsharma21@gmail.com>
Subject: Ajay Gupta

सेवा में,

श्रीमान हिम्मत सिन्धू जी,
मीडिया प्रो0 इन्डिया प्रा0 लि0,
नोयडा।

महोदय,

प्रार्थिनी ने मीडिया प्रो0 का माह दिसम्बर 2011 में एग्रीमेन्ट कराया था, प्रार्थिनी का एग्रीमेन्ट मार्च 2012 को समाप्त हो गया प्रार्थिनी ने बरेली डिस्ट्रीब्यूटर श्री मुकेश जी से सम्पर्क किया तो उन्होनें लखीमपुर मेरे घर आकर कहा कि मुझे अपने नेटवर्क में पार्टनर बना लो तो मैं डेन कम्पनी से एग्रीमेन्ट करा दूँगा। प्रार्थिनी ने इन्कार कर दिया, तो उन्होनें हमारे कहने के बावजूद हमारा एग्रीमेन्ट 15 महीनों तक नहीं किया बल्कि माह जून में मेरे द्वारा 90000/– महीने का पेमेन्ट प्रति माह देने के बावजूद हमारे चैनल बन्द करा दिये, जबकि मेरा एग्रीमेन्ट 90000/– रूपये का सर्विस टैक्स सहित हुआ था। इतना ही नहीं श्री मुकेश ने एक आशिफ नि0 सीतापुर की आई0डी0 के नाम से बादल नेटवर्क में साइलेंट पार्टनर बनकर मीडिया प्रो के डिब्बे लखीमपुर में इशू करा दिये हैं, जबकि आसिफ के नाम से कोई मनोरंजन कर अधिकारी के यहां से लाइसेंस अभी तक नहीं बना है।

श्रीमान जी बरेली के डिस्ट्रीब्यूटर हमेशा ही हमको परेशान करते रहते हैं। कृपया इनके खिलाफ जांच कराकर आवश्यक कार्यवाही करने की कृपा करें तथा प्रार्थिनी का मीडिया प्रो का एग्रीमेन्ट कर न्याय दिलाने की कृपा करें। आपके अधिकारी आशुतोष जी भी यहां से जांच करके चले गये हैं यहां हमारे नेटवर्क के अलावा कोई नेटवर्क नहीं चल रहा है।

दिनांकः– 18-08-2013

प्रार्थिनी
(वन्दना गुप्ता)
प्रोपराइटर

मो0–कपूरथला
लखीमपुर–खीरी (उ0प्र0)

सेवा में,

श्रीमान गुरूजीत कपूर जी,
मीडिया प्रो0 इन्डिया प्रो0 लि0,
नोयडा।

महोदय,

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दिनांकः– 18-08-2013

प्रार्थिनी

(वन्दना गुप्ता)
प्रोपराइटर
मो0–कपूरथला
लखीमपुर–खीरी (उ0प्र0)

सेवा में,

श्रीमान प्रशान्त सिंघल जी,
मीडिया प्रो0 इन्डिया प्रा0 लि0,
नोयडा।

महोदय,

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दिनांकः– 18-08-2013

प्रार्थिनी

(वन्दना गुप्ता)
प्रोपराइटर
मो0–कपूरथला
लखीमपुर–खीरी (उ0प्र0)

k k Sharma <kksharma123@gmail.com>

Fwd: Media pro , not Signing Agreement DEAL, Asking 20% unreasonable Hike.

RoopSharma <roopsharma21@gmail.com> Wed, Sep 4, 2013 at 11:25 AM
To: Cablequest <cablequest@gmail.com>, Varun Vs281980 <vs281980@gmail.com>, KK SHARMA <kksharma123@gmail.com>

Begin forwarded message:

From: vijesh shetty <starcable@gmail.com>
Date: 19 December 2012 21:31:05 IST
To: Roop <roopsharma21@gmail.com>
Subject: Re: Media pro , not Signing Agreement DEAL, Asking 20% unreasonable Hike.

Dear Roop Sharma Ji

This is in Continuation of my earlier Email Regarding the Media Pro Menance.

As such now with last 3 months of agressive behaviour with repeated vieled threats of deactivating the signals they have now taken to the final step of Putting a "Disconnection Notice " Advertisement on a Local Language Newspaper and Further sent a letter dated way back on 10-12-12 as a Postal letter Notice and that made avaialble today via post..

What I found in their letter is that they Never Bother to talk about facts but rather make ambigous accusation .They further say to the extent that , that we till date "never have bothered to have discussions with them till now " and been "Procastinating " This is also riduculous for we must have had not less than 20 meetings with all People concerened and more than 100 phone calls made between us !!

I have included My reply to their Letter which I am Attaching the copy of my Reply for your Kind Referance.

I have already sent the copy of my reply to TRAI ,CCI and TDSAT .

Thank you

With Greatest Regards

Vijesh b Shetty

On Wed, Sep 26, 2012 at 5:37 PM, Roop <roopsharma21@gmail.com> wrote:

> Smt Ambika Soni
> I&B minister.

Shastri Bhawan.

Madam,
I am forwarding you the copy of complaint sent to me by Mr VijeshShetty of Karnataka . He is having the same problem which, whole India cable operators are facing. He is also victim of VERTICAL MONOPOLY . MediaPro has around 70 PAY channels in their bouquet.
I request you do something in this regard urgently, to help cable operators to go Digital early.
Mrs RoopSharma.

Cc. Uday Verma Secy I&B.
.SupriyaSahu. JS.
Rejimon
YogenderpalSingh

From: vijesh shetty <starcable@gmail.com>
Date: 26 September 2012 5:05:00 PM GMT+05:30
To: Roop Sharma <roopsharma21@gmail.com

Dear Roop Sharma ji

Greeting from me ..Hope Everything is fine.

This Email is regarding my Problems with the Media pro People. I had extensive talks wth them but they dont seems to understand or DOnt want to understand the Realities.
So yesterday they gave me a Ultimatum to sign up with a Flat 20% hike which they claim is ther Rightful demand but They never can Substanciate this demand on the Question
on WHY SHOULD ANYONE PAY 20% Hike without any Sensible reason ?..!

So madam I have finnally written my grieviences to the Media pro people.. i am also sending as attachment a copy of the letter. I also send the Copes by Registered post to
TDSAT ,TRAI and CCI. Please do advise me on further actions..

Thanking you

Your Faithfully

Vijesh

Media pro2_12192012.rtf
45K

KARKALA CABLE TV

Sapthagiri Complex ,Market Road ,KARKALA -574104

From Date: 19-12-12

Vijesh B shetty
MP:PSMSID:57372
KARKALA CABLE TV
KARKALA

To

Media Pro Enterprise private Limited
Bangalore.

Copy to: (1) Mr Sadanand Shetty Nithyanand Eneterprises ; (2) TDSAT , New Delhi 3) CCI New Delhi.

Referance: Your Letter dated 10-12-12 ,

Dear Sir ,

This is reference to the Renewal of the Subscription Agreement which unfortunately according to your good self has expired due to the efflux of time on 31st March 2012.

We note that your Letter mentions that despite "Repeated requests" that we are "Procrastinating Negotiations "is totally untrue. The Fact is that we were in Negotiations with Media Pro Representatives Since February 2012 , ie; on 16/02/12, 23/06/12, 11/09/2012 and more recently on 26/09/2012 which had been in written correspondence on regarding to the matter of the Yearly Contract Renewal clearly explaining our stand and for which we neither got a reply .

Your Letter also mentions that we are Providing Signals of Media Pro Channels "Unauthorizedly " to a " Undisclosed Number of Subscribers" ! . This Very insinuation is far from truth. You should be aware that in this Non-CAS areas where Analog CATV exists we dont have the means or the Technology to see that which Customer sees which Channel at a particular time of the day , and also the Absence of TAM Data in the Non-TAM Town as ours it is Next to Impossible to know the Viewership of your Media Pro Content . In this situation we Declare the Average Subscribers who we in our knowledge May Watch the Media pro Channels without any prejudice .

Please Note that This Averaging Figure (connectivity) is the Basis of the "Reference Interconnect Agreement " (RIA) which we have been Executing since last few years ie; Previously with Erstwhile STAR DEN and now the Media Pro.

I would like to Point out that when the STAR DEN was negotiating the RIA they werent apprensive about the RIA and we never had to Put forward our case so strongly. Every year since last 10 years you can see that we never had a dis Agrement among us. But it seems that Since the Formation of Media Pro Company we are been Indirectly Harassed for Unimaginable Hikes of subscribers base along with veiled threats of losing business if the large number of channels that are under the Media Pro Distribution arm are switched off. This I believe is very bad business practice.

Anyone with a right bent of mind will clearly agree since 2008 ,the Flagship channels of Media Pro ie ;Star Plus and ZeeTV ,Star Movies ,NGC ,have lost much ground to the Emerging GEC Channels like Colors , Sony Ent, Discovery ,Animal Planet , PIX ,Movies Now , etc etc and even the other Popular content Viewership is shared by other Equally good or better Content provided by Competitions Broadcasters.

Even then Since 2008 , even with the Onslaught of DTH we have Continuously Provided Support and Growth to your Channels at steady loss of Revenue for us which is now reaching a stage where if we dont safe guard our interests Bankruptcy will be the Only option for us . This very Point I have Time and again explained to your officials but it seems your Present Company Fails to understand.

So I really want to inform you is that Instead of Beating around the Bush , make false accusations and demand unimaginable hikes to the tune of 30~40% , please do behave more responsibly and agree to the terms which I have already informed your representatives i.e. between 5~10% which i feel is the Maximum which we can think of giving without me going Bankrupt . This fact I have already told your Company Officials that for me to Stay Financially viable it is next to impossible for me to agree to your companies Unrealistic terms and demands.

Hope this will provide answer to your letter.

Thank you

For karkala Cable TV

Vijesh b shetty

Gmail by Google

Roop Sharma <roopsharma21@gmail.com>

Reply to your mail dated 27.7.2013:- deliberately and intentionally and in clear violation of TRAI & MIB guideline not supplying the IRD Boxes to us

Neeraj Singh <sthakurneeraj@gmail.com> 15 August 2013 21:41

To: gurjeev.kapoor@mediapro.net.in, himmat.sandhu@mediapro.net.in, prashant.singhal@mediapro.net.in, vikas.jaitly@mediapro.net.in

Cc: ap@trai.gov.in, akachhap@yahoo.com, arun.kapoor@mediapro.net.in, cp@trai.gov.in, das.mib@gmail.com, goenkap@zeenetwork.com, kachhap@nic.in, ks.rejimon@nic.in, manishtewari@hotmail.com, mib.inb@nic.in, roopsharma21@gmail.com, shyamala.v@mediapro.net.in, sppscp@trai.gov.in, secretary@trai.gov.in, secretarymib@yahoo.com, traicable@yahoo.co.in, uday.shankar@startv.in

WITHOUT PREJUDICE

Dear Mr. Gurjeev Kapoor, Mr. Himmat Singh Sandhu, Mr. Prashant and Mr. Vikas Jaitly,

Sub:- Your e-mail dated 27.7.2013.

Our reply to your e-mail of 27.7.2013 is as under:-

1. First and foremost we would like to convey to you in no uncertain terms that it is Media Pro Enterprises India Pvt. Ltd. (herein after referred to as Media Pro) who is trying to twist facts and put across our numerous communications in a manner which is absolutely false, out of context, with an intent to put forth your view point in a manner which is totally untruthful, malafide and which questions your bonafide at the outset itself.

2. Secondly, we totally deny your statement in your e-mail of 27.7.2013 wherein you have stated that you have always been willing to negotiate and execute a fair and reasonable agreement with us as per the provisions of the TRAI Regulations and other applicable Laws. Further, you have also stated that you have been absolutely transparent and have never tried to create any arbitrary conditions nor you have violated any laid down norms including the Regulations and Guidelines of TRAI and MIB. You are also trying to mislead by stating that your organization firmly believes in adhering to the applicable laws of the land and deal with all your customers in a most transparent and non-discriminatory manner. In addition to the above you have also alleged that we have not fulfilled our obligations and are deliberately and intentionally making false, self-serving and untenable allegations against your company and its concerned officers with a sole intent of not only to mislead the Regulator and the MIB but also to malign the clear image of your Company.

We vehemently deny your above rotary which is devoid of any merit, is absolutely false, total self-serving your personal interest as all concerned including the Regulator are aware about your pecuniary interest in DEN NETWORK which is operating as a monopoly in the City of Bareilly and therefore it is well known fact and an issue which is known to all concern that you are making all efforts that our request for availing the signals in the city of Bareilly are thwarted without bothering to comply with the laid down Regulations stipulated by TRAI and MIB. You have thrown the Rule book to the winds and are conducting your business in the manner which is dictatorial, discriminatory and with an intent to not to comply with any of the laws of the land. We would like to reiterate the contents of our letter dated 25.2.2013 and more specifically to drawn your kind attention to the numerous communications addressed to you and our multiple visits to your office on the following dates to meet your officials:-

(1) 3.4.2013, (2) 5.4.2013, (3) 8.4.2013, (4) 21.06.2013, (5) 4.07.2013, (6) 11.07.2013 (7) 16/7.2013, (8) 17.7.2013 and (9)18.7.2013

Also in terms of Para 1 of our letter dated 24.07.2013, we have submitted all the necessary documents/information on 25.2.2013 itself comprising of:-

i) Copy of valid postal Registration Certificate;

ii) Copy of the DM Permission

iii) Copy of the Entertainment Tax Registration

iv) Copy of the proposed Subscriber Line Report

v) Copy of the Networking Diagram in the MAP of Bareilly City

vi) Copies of the Speed Post and Gate passes

vii) Copy of valid Registration certificate dated

18.4.2013 valid for the period 2013-14. (Renewed).

Also your attention is drawn to para 3 of our letter dated 24.7.2013 wherein we had visited your Company office on 16,7,2013 to deposit Rs. 58,10,000/- being the amount towards the subscription charges for 3 months as per intimation received from Mr. Gurjeev Kapoor (COO) and Mr. Himmat Sandhu (National Sales Head). Inspite having being complied with all the conditions as enumerated under the TRAI Regulations you have deliberately and intentionally failed to provide us the IRD Boxes for the city of Bareilly in terms of our request dated 25.2.2013. This is nothing but total anarchy having scant respect for the Law of the Land. Your unilateral action of not providing us the IRD Boxes amounts to non compliance of laid down Regulation of TRAI and MIB making you liable for strict penal action from the concerned authorities which we will be taking up with them separately.

3. Thirdly, we do not agree with your contention that we have not submitted true and correct Subscriber line report (SLR) contacting information/details/documents pertaining to the Local Cable Operators and their respective subscribers along with our direct subscriber, permission/certificate issued by the Entertainment Tax Department and the specific area of operation proposed to be catered by us in the

City of Bareilly.

All the above information had been provided by us in our letter dated 25.2.2013 as well as in our subsequent letter dated 24.7.2013. Hence there is no question of non-compliance and non-adherence on our part and on the contrary we are in total compliance with TRAI Interconnection regulation.

Further, you have alleged that we have submitted revised proposed SLR which clearly demonstrates the inconsistency and discrepancy in the details/information furnished by us for availing the IRD Boxes of your channels. This is absolutely incorrect and is an attempt to again delay the process of issuing us the IRD Boxes of your channels and thereby denying us our legal rights as enumerated under the Interconnection Regulations notified by TRAI.

In addition to the above, you have also alleged that there has been continued inconsistency and discrepancies on our part resulting into delay in the entire process of issuing IRD Boxes. Further, it has also been alleged by you that the same has led to confusion and therefore the information dn documents have not been validated by you even as on date. This is nothing but a clear admission on your part that you have not processed our request by raising irrelevant, irrational and concocted issues to suit your malafide intention and hence you have chosen not to validate our information/documents submitted to you. It is crystal clear that IRD Boxes have not been issued to us by citing reasons on one pretext or another.

4. Further, as per your request made in your mail dated 27.7.2013, we are once again providing you the following documents comprising of

i) Renewal Certificated issued by the Entertainment Tax Department for the period 2013-14. (marked as Annexure- 1).

ii) Further, in terms of your query made in para 2 of the mail dated 27.7.2013 with regard to SLR, we would like to inform you that we have been forced to agree to pay a monthly subscription fee of Rs, 19 Lakhs per month in respect of 5 proposed operators having a total declared connectivity of approximately 555 subscribers only. Your assertion that we are paying Rs. 19 Lakhs for 555 subscribers is an absurd statement. Hypothetically, even if, we subscriber to all the 10 bouquets in analogue transmission, the total payout would not be more than Rs. 6,73,425.90/- (Cost of 10 Bouquets- Rs. 1213.38 X 555 subscribers). In actual reality we would never subscribe 10 Bouquets for all the subscribers, normally the choice of the subscribers would be limited to fewer numbers of channels comprising of limited bouquets only.

Your demand of asking us to pay Rs. 19 lakhs per month is completely on wrong premise that presently the revenue collected from the city of Bareilly from the sole monopoly operator DEN Network is Rs. 38 lakhs per months who is having link operators numbering approximately 150 Cable Operators affiliated to DEN NETORK having subscribers totaling to approximately 25000 subscribers, whereas our subscriber base at the time of commencing business in the city of Bareilly would be 555 subscribers. Although, we will be more than keen to pay for increase in number of subscribers which would we would be serving in times to come.

It is a matter of concern that you are demanding from us Rs. 19 lakhs at this nascent stage of our business in the City of Bareilly. Your demand is nothing but an attempt to charge an exorbitant entry fee for allowing us to enter into a market in which your joint venture partner DEN NETWORK is operating as a monopoly operator. This is nothing but arm twisting tactics for extorting unreasonable subscription charges from a new comer like us intending to operate as an MSO in the city of Bareilly.

Even after stating the above we have agreed to pay Rs. 19 lakhs as monthly subscription fee for the city of Bareilly by keeping our options open to expend our subscriber base and area of operation in the city of Bareilly.

5. Furthermore, it is pertinent to point out and to take on record that your authorized representative, Mr. Ashutosh Pokharial had visited our office on 3.08.2013 to verify the existence of our Head End and proposed LCOs which are operational in the city of Bareilly. During his visit to our Head End and proposed LCOs, he had video graphed the location and the equipment installed at our Head End and was completely satisfied on all grounds that our Head End was in existence as well as completely operational. During the said visit Mr. Pokharial had also verified the addresses and location of proposed LCOs. As a matter of record, both Mr. Pokharial as well as we are in the possession of the said video recording carried out in the presence of the authorized representatives of both the parties.

In the backdrop of the above and the factual position explained herein above, there is no doubt nor any mis-giving that you have deliberately and intentionally tried to create a paper trail by communicating to us time and again issues which were factually incorrect, out of context and raising non-existent issues solely with an objective to project yourself to be in the right. But as a matter of fact we have complied with all the requisite requirements for availing the IRDs for your channels in the city of Bareilly. Please be informed that any further delay on your part to issue IRD Boxes would make you liable for strict Civil/Criminal action as per the applicable laws.

Lastly, we once again call upon you to intimate us the date and time to meet you at your office to execute the fresh subscription agreement for the city of Bareilly as we are in complete compliance with interconnect Regulations referred by you in the mail dated 27.07.2013.

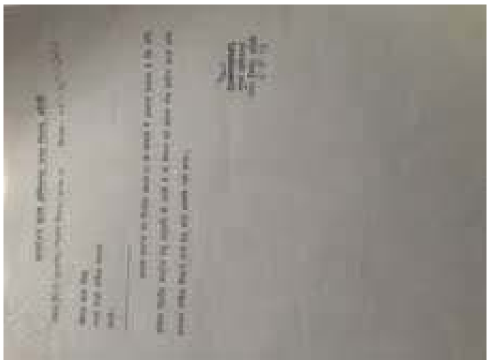
Thanks & Regards

Yours Sincerely
For Bareilly City Cable Network
Neeraj Pal Singh
Proprietor

ENCL. As above.

2 attachments

IMG_1493.jpg
2026K



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DEN UCN NETWORK INDIA PRIVATE LIMITED

Door No. 4/107. B. Ramesh Bhat Building, Near Vaikunta Baliga Law College, Kunjibettu, Udupi- 576102. Ph.: 0820- 2531582

Ref.: Date :

Date: 12/08/2013
Place: Udupi

Ref No. : IBM/TRAI-RTI/PB/TDSAT/4001/DEN UCN2013

Smt/Sri. Roop Sharma
Cable Operators Federation of India
13/97, Near Rajouri Apartment
Subhash Nagar,New Delhi-110027
Ph:011-251 31843,251 40097.

Respected Sir,

Sub: Harassment, blackmail and unhealthy hike on subscription fees by M/S. Media Pro Enterprise India Pvt. Ltd., and other Satellite pay channels.

Season's Greetings.

At the very outset we would like to thank you for the advice and supports you have rendered to our organization from past and solicit the same in the future too.
Sir, this is our request letter to you on behalf of all directors of DEN UCN Network India Pvt. Ltd. (DEN UCN) Udupi.

This is to appraise you and seek your advice to settle disputes regarding the frequent problems faced by us due to the harassment, raising the invoice with hike on fee without intimation, blackmail by way of switching off the signal and unhealthy hike on subscription fees without an time framed agreement nor an proper document - by our principals M/S. Media Pro Enterprise India Pvt. Ltd., and other Satellite pay channels.

ABOUT US

Sir, Our firm, M/S. Universal Cable Network (UCN), is the leading cable operator of Udupi (Karnataka) established in the year 1994. We are situated at Ramesh Bhat Compound, near Vaikunta Baliga College, Kunjibetu, Udupi – 576 102.

As already mentioned, UCN is the leading cable operator based at Udupi district of Coastal Karnataka. We run the largest cable TV Network of the district covering the entire 150 Kms stretch from Bhatkal to Panambur. With 124 links between Suratkal and Bhatkal (in the year 2000-2009), we are a leading multi-system operator (MSO). We also have our own control room through, which we give access to paid channels to other operators too. Excluding our access to Satellite channels, we also provide connectivity to a few local channels.

The Company UCN is managed by Ms. Jayalaxmi G Amin and due to the digitization and adapting to fast growing digital media network, in September 2009, we formed a joint venture company (JVC) called DEN UCN Network India Pvt. Ltd. (DEN UCN JV).

In this Joint Venture Company, namely DEN UCN Network India Pvt. Ltd., DEN Networks Limited based at Mumbai, have a 51 percent share and the balance 49 percent share belongs to us, i.e. Universal Communication Network, Udupi.

DEN UCN JV is managed by Joint Managing Directors, Mr. Sathyajeeth and Mr. K. N. Ramachandra along with seven other Directors. At present DEN UCN provides 88 analog channels and 170 digital channels inclusive of local channels. DEN UCN is the largest MSO of Coastal Karnataka and at present our network covers 165 kms stretch from Byndoor to Panambur and our network (DEN-UCN) provides 180 and above links between Suratkal and Baindoor.

HARRASSMENT BY OUR PRINCIPALS M/S. MEDIA PRO ENTERPRISE INDIA PVT. LTD., 7th floor, Blue wave, behind Kubera Chamber, Off Link Road, Andheri (west), Mumbai – 400 053

From past 4 years, since 2010 we are facing severe harassment from M/S. Media Pro Enterprise India Pvt. Ltd. (ZEE & STAR Packages), by way of unhealthy hike on subscription fees. In this regard we have been frequently facing problems in our relationship. This is in turn affecting our cable subscribers/public and to our business as we are the service providers. We seek your learned advice on the correct manner in which we may deal with the issue as we are unaware of the mandatory relations governing the same.

In the year 2011, Our Clients ZEE TURNER and STAR DEN, these two groups merged and formed a new company called M/S. Media Pro Enterprise India Pvt. Ltd.

Effective from 01/7/2011 to 31/3/2012, DEN UCN Network India Pvt. Ltd., is required to pay the subscription fees of Rs.7,38,199/- (Seven lakh thirty eight thousand one hundred ninety nine only) per month. The net subscription fees including taxes amount has been paid to Media Pro Enterprise India Pvt. Ltd.

We have been paying the subscription fees regularly, in due course they have demanded with a revised hike of Subscription fees to Rs.8, 28,640/- per month including tax which is a 10% hike, with the effect from 1st July 2011 to 31st March 2012. They have neither intimated us nor have official discussions been made nor has a revised service contract agreement been made.

Since then they have been exerting pressure on us to settle the dues which they demanded, In fact we have called for a meeting regarding above matter but they have never pursued the same.

Again from 1st April 2012 to 31st March 2013 they have demanded with 11% hike on billing amount of Rs. 8,28,640/- and claimed for the amount of Rs. 9,19,794/- per month including tax.

Sir, We requested them saying that from past 2010 there has no service contract agreement between MEDIA PRO and DEN UCN JV, so we requested them to come forward for a official meeting and do the agreement immediately. But the entire MEDIA PRO team is not at all responding to our queries. They are least bothered to solve the problems which have arisen between us.

Finally, Even though at repeated meetings, our board of directors had approved for a final settlement amount with effective from 1st July 2011 to 31st December 2012, DEN UCN Network India Pvt. Ltd., is ready to pay and settle the total subscription fees of Rs.17, 71,656/- (Seventeen lakh seventy one thousand six hundred fifty six only) as a final settlement to Media Pro Enterprise India Pvt. Ltd.

But then our client Media Pro have been claiming the total balance amount up to December 2012 is of Rs. 28,43,530 (Twenty Eight Lakh Forty Three Thousand Five hundred and Thirty Only) The claiming amount is of totally confusing with improper replies from Media Pro.

This has put us in a helpless situation; neither can we convince the viewers to forego the channel nor can we ask them to pay more for the channel. This issue led to a lot of misperception and distraction between us and the cable operators and many confrontations took place.

Since several years we have maintained a healthy relationship with all Channels. In the month of January 2013, MEDIA PRO has started threatening us saying they know how to recover the balance and had behaved rudely with us. They have warned that if DEN UCN JV doesn't settle the total outstanding amount as per their demand, they will be deactivating their signal.

In the month of march 2013, at last after the repeated discussions had with MEDIA PRO's regional head Mr. Narasimhan and his representatives Mr. Ganesh Krishnamoorthy and Mr. Sadanand Shetty, they came forward for an final settlement which mutually agreed by both and signed for an new service contract agreement. As per the agreement, DEN UCN Network India Pvt. Ltd., is required to settle the total hike amount of Rs.28,11,558.97 the net lump sum amount inclusive of all taxes, for M/S Media Pro Enterprise India Pvt. Ltd. (the agreement stands (FY- 2010-2011, 2011-2012, 2012-2013)

As per the agreement, DEN UCN is cleared the hike amount of Rs. 24,00,000/- to Media Pro as and said that the balance will be cleared on succeeding days.

From March 2013, the new agreement from Media Pro says that DEN UCN is required to pay the monthly subscription fees of Rs. 9, 19,800/- including tax for MEDIA PRO. It was undoubtedly agreed from the both. During March 2013 agreement, DEN UCN is clearly said that there is no more chance for a hike or revision in the monthly subscription fee for the coming financial year i.e. from 01st April 2013 to 31st march 2014.

We requested Media pro to do the new agreement immediately with effect from 1st April 2013 to 31st march 2014. But then they orally said that we will not do hike because new rate has not come from the management. As soon as new rate comes they said they will update the same and get back. There has no official document from their side nor has a revised service contract agreement been made.

Recently all of a sudden their officials called us and demanded for a 25% hike on monthly subscription fees. We were really shocked hearing such outrageous demand. We are frustrated with the same as without our consent, MEDIA PRO has been repeatedly calling and harassing for the hike. Whereas we have been promptly making the payment of Rs.9, 19,800/- including tax every month till date, which was agreed upon between DEN UCN JV and MEDIA PRO.

For the above issue we have repeatedly called and requested to rectify as per the previous discussions had with them, called for further discussions and requested to make new service contract agreement. But the Media Pro representative keeps giving various excuses for which DEN UCN JV is not responsible. They are not ready to send an official letter to us for the present status.

Since several years we have maintained a healthy relationship with cable operators and subscribers by giving signals of MEDIA PRO. But they have been asking hike since March 2013. They have been irritating us by calling and asking for a hike in fee.

Now after a long period of struggle we regret to inform you that they have once again warned and threatened us by saying if Den Ucn JV doesn't agree to pay the hike amount as per Media Pro demand, they will be deactivating their signal, thereby dishonoring the terms of our service contract agreement and cheating us and our subscribers from viewing their channels.

MNC's (Paid Satellite Channels) thinks that all the cable operators are same when it comes to swindling the subscription fees from even every nook and corner. In these regions (interior places), cable operators have only 100, 250, 350, 450 or at the most 1000 connections and most of them are very poor. On the other hand in the big cities, each operator has 3000 or more connections. But pay channels don't switch off the channel because it will affect their advertising TRP. So they are helpless there.

Now a day the management/owners of almost all channels and related parent companies are not stable. They keep on selling ownership to MNC's or each other. This inflicts heavy damages on the MSO's. Due to the frequent change in ownership and management, no fixed agreement between channels and MSO's is viable.

DEN UCN JV is having 180 links i.e. 180 cable operators, in the sense so many families plus large number of employees, laborers and their families depend on us. We are also answerable to the customers and subscribers. Our total collections comes to about Rs.40 lakhs from the cable operators, which includes subscription fees to be paid to all pay channels, maintenance, salary and wages, taxes etc.

By facing all these problems, yet we are forced to cope with them as we need to provide all channels to viewers. Using this weakness, the paid channels keep mounting pressure on us to increase the subscription fees. The monthly fees are already very high and it is neither fair nor practical for us to keep squeezing more fee from viewers.

Most of the pay channels switch off on similar grounds. Big channels blackmail us to buy their second or third packages which have no demand. If we turned down their request, they will retaliate by switched off their connection. Hence we were forced to agree to their terms. Even after we agree to pay more, they switch off in between.

All these instances make it virtually impossible for us to survive in the cable TV industry. The arbitrary pressure tactics of the TV channels deny us a stable platform and level playing field. On the other hand, their parallel dealings affect our relationship with the other operators who depend on our control room.

All these above issues are very silly, annoying and disturbing.

From the past 15 years we have been suffering the repeated pressure from pay channels. We have been investing a huge amount on cables and laying, pole maintenance, underground cabling, technical equipment at control room and for digitization. All our directors have several financial troubles and lots of commitments in their own fields. As such we are in great distress and unable to cope with the mindless harassments of the pay channels.

Under the circumstances, we feel helpless in dealing with the issue as we are unaware of the rules and regulations and validity of their actions.

Hence we request you, too kindly enlighten us regarding our position and how we can get justice.

We request you to understand our situation and provide us with your knowledgeable advice.

We urge you to kindly do needful and oblige.

Sincerely,

Joint Managing Directors
DEN UCN NETWORK INDIA PRIVATE LIMITED
Email: ucnudupi@yahoo.com Ph: 0820-253 1582.

Mumbai -

To
Honorable minister,
Smt Ambika soni,
5th floor,
C wing,
Information and broadcasting,
New Delhi.
15th September 2012

Subject: **Unjustice done by DEN cable network on local cable tv operators in Kurla, Mumbai.**

Respected Madam,

I am Mr Ashfaque yakub shaikh am a Cable Operators at Kurla (West) area, and member of the said association, namely,

THE UNITED CABLE OPERATORS ASSOCIATION, KURLA (W).

All the member of Cable association are having cable business from last many years in the area of Kurla (West), Mumbai and from last many years they have been taking their Cable TV Signals feed from various M.S.O.s and from last 3 years the M.S.O. M/s. Den Satellite Network Pvt. Ltd (from year September 09 to till 18th August 2012). This is Non CAS Area. Since the M/s. Den Satellite Network Pvt. Ltd. have not executed any Franchisee agreement with any other members / cable operators,so the cable operators have formed their association of the Cable Operators to be known as United (Association of Cable Operators) for protecting their interest and for welfare of their members i.e. L.C.O.s . The cable operators have executed a Special Power of Attorney dated : 3.09.2012 in the name of the General Secretary of Association Mr. Shafique Rehman Butt. my submissions are as follows:

1. That **M/s. Den Satellite Network Pvt. Ltd.** is a Multi System Operator and doing business of providing Cable Television Services in Mumbai. **M/s. Media Pro**

Enterprises India Pvt. Ltd. having its office at, 7th floor, Blue Waves, Off. Link Road, Andheri (West), Mumbai – 400 053, It is a company registered under The Companies Act 1956 and is a Joint Venture between Zee Turner Ltd. and Star Den Media Services Pvt. Ltd. It distributes the channels of Star India Pvt. Ltd and the channels of Zee Turner Ltd. The companies Zee Turner Ltd. and Star Den Media Services Pvt. Ltd were having business relationship with the Local Cable Operators i.e. the members of the said association and others. **M/s. Media Pro Enterprises India Pvt. Ltd.** is an exclusive distributor of Zee Turner and Star Den Channels. Media Pro has issued the aforesaid notice at the instance of Den Satellite and its contents are illegal, improper and void as regards to me and that therefore the entire contents of the same are denied in toto.

2. It is submitted that I am being in said business as operators and are part and parcels of said United Cable Operators Association Kurla West, an association of licensed cable operators, who were running their Cable business in Kurla West area. The said Association was previously transmitting WWIL Network of whom Satellite Communication Pvt. Ltd was a partner. Thereafter Satellite Communication Pvt. Ltd. entered into an agreement with DEN STAR NETWORK.

3. At present we have entered into an agreement for transmitting cable signal feed from IMCL and said IMCL company had already intimated to Media Pro on 1st Sept., 2012 communicating that 17 cable operators have obtained signals from their company, the names of those members of the said Association have also been mentioned in the said letter. The reason which has been put forward to Media Pro that the M/s. Den Satellite Network Pvt. Ltd partner of **Media Pro Enterprise India pvt.Ltd. is neither issuing the receipts for the subscriptions/fees received from the cable** operators to whom they have provided the Signal feed, much less have entered into any franchisee agreement with them for transmitting the signals etc. so as to give a legal entity to us under the cover of the said company. It has put the members of the Association in dilemma and hence, the we approached Indusind

Media and communications Ltd for providing the Signals which have been provided to them.

4. It is state that the M/s. Den Satellite Network Pvt. Ltd., through their Directors namely Mr. Ravi Singh, Mr. Rajiv Gavi, and through their employees Mr. Dinesh Singh, Mr. Sameer Parekh and Tribhuwan Tiwari were threatened the L.C.O.s that Install their STBs as early as possible otherwise they will going to appoint their Agent and /or Dummy Cable Operators in the network of the said Local Cable Operators, if we do not purchase their STBs, as the Cable Business is going to be digitalized and they themselves wants to promote and expand the Cable Television Business of M/s. Den Satellite Network Ltd. Hence they are not interested in executing any agreement with the said Local Cable Operators. All these has transpired from last week of July' 2012 to First week of August' 2012

5. Further it is submitted that the DEN Satellite Network pvt Ltd. was collecting the subscription fees from the us(LCOs) every month in cash or cheques , however the DEN Satellite Network pvt Ltd. were not issuing any receipt or any vouchers to the LCOs, who were paid their subscription fees in cash, LCOs did not complained about it due to their good relationship till July 2012 with the DEN Satellite Network pvt Ltd. and their representatives. **Some of the Cable operators were giving the subscription fees by cheque. The LCOs who were paying by cash insisting that their subscription fees should be taken by cheque but the DEN Satellite Network pvt Ltd.** indirectly threatened the said LCOs that they would increased their amount of subscription fees Thus Continuity of paying in cash without obtaining any receipt is continued.

6. It is states that Shafique Butt met Mr. Mehmood Ahmed the Distributor of Indus Ind Media & Communication Ltd (IMCL), and requested to help them for obtaining signals through IMCL The said IMCL distributor Mr. Mehmood assured that he will try his level best by approaching higher authorities for transmitting the signal from IMCL to them. On 18th August 2012 the distributor was

entered into an M.O.U. dt. 18th August 2012 with the Shafique Butt, Which is self explanatory.

7. It is states and submits that on 19th August 2012 M/s. Den Satellite Network Ltd. at the instance of its directors Ravi Singh and Rajiv Gavi and its employee Dinesh Singh had sent their employees /miscreants i.e. Sameer Parekh and Tribhuvan Tiwari at the primary connection of the petitioners i.e. Shatrunjay Giritraj Building and Anand C.H.S. , Tanaji Chowk, New Mill Road, Kurla (W). They were disconnected and damaged the Cable TV wires and CATV instruments of the LCOs to harass them and stopped their Cable Network Business completely without giving any prior notice or intimation, therefore the LCO left with no option and being the question of their livelihood, they approached the distributor Mr. Mehmood immediately for help and cable signal of IMCL. Due to all this illegal acts of M/s. Den Satellite Network Ltd., the complaints were filed before the concern police authorities as well as Addl. Collector Mumbai Suburb. The Kurla Police has given instruction / direction to the petitioners and respondent no.1 that to approach TDSAT Forum for settling the dispute. The Copies of the complaints dated 21st August 2012 before the Police Commissioner of Mumbai

8. now since they are losing their monopoly M/s. Den Satellite Network Ltd. and Media Pro.they by hook or crook they want money from the members of the above association and for that purpose they are every now and then filing false complaints, submissions, petitions against the LCOs mentioned above.

9. In view of the problem created by Media Pro as stated above, our association approached TDSAT New Delhi with their grievance, however, that subject matter was exclusively under the jurisdiction of TRAI New Delhi. The Petition of the above association was disposed of with a liberty to take appropriate legal steps in the matter. Subsequently, the Media Pro and DEN Satellite Network pvt Ltd. went with a grievance against us, that too against individual operator of the Association wherein they

have moved an application for interim relief, which is not granted till today.

10. It is further states and submit that there is no agreement between us (Local Cable Operators) and DEN Satellite Network pvt. Ltd. and there is no invoices have been issued either by the DEN Satellite Network pvt Ltd. to the said LCOs. The DEN Satellite only with malafide intension to promote their own cable business by placing their own agent / dummy cable operators in the area of operation of Local Cable Operators i.e. Kurla Station Road, Match Factory Lane, Sri Krishna Chowk, Thakur Dham Taximen's Colony, Shanti Nagar, Buddha Colony, Municipal Corporation L' ward, Kurla Market, Shivaji Chowk, Kurla Pipe Road, Brahmin Wadi, L.I.G. and M.I.G. Colony, V.B. Nagar Kurla, thus the DEN Satellite Network pvt Ltd. wants to take away livelihood of the LCOs and put them on road. In view of digitalization of Cable Tv Services MSO like Den Satellite Network Pvt. Ltd. can do this by not giving proper quality of service so that their subscribers should automatically leave them and approached the MSO directly. The LCOs also came to know that the complaints received from the subscribers for bad quality of signals from the DEN Satellite Network pvt Ltd. and they have also approached directly to the subscriber of Kurla West area offering them to take signal directly from them in Rs. 50/- per Month with Free Set Top Box.

11. It is further states that the Media Pro has issued a notice dated 28th August 2012 , to all the petitioners alleging that they are illegally and unauthorizely retransmitting their channel, It is surprising to note in this notice no where they had stated that from which MSO the said 17 LCOs has been taking signal, It is not the case that the LCOs are new LCOs in Kurla West area, It is very obvious that inspite of knowing their own joint venture company Den Satellite Network Pvt. Ltd., who was providing the signals to the petitioners hence not been stated in the said notice this is clearly indicates that both the respondents in collision of their dummy cable operators are wiping out the business of the LCOs, which is nothing but violation of the Cable Tv Regulation Act .

12. Our accosiation informed the IMCL that they have received Legal notices from Den Satellite, then IMCL also informed that they have also received notices from Media Pro dt. 24thAugust 2012, which was received on 28th August 2012, The IMCL has replied to the Media Pro confirming of having providing signal to the LCOs on emergency basis as the problem appears to the distributor of IMCL in very urgent circumstances and situation. The IMCL has also to prove its genuineness has forwarded the amount of Rs. 6 Lacs by way of D.D. towards the advance payment for their additional connectivity for the signal provided to the LCOs by IMCL.

13. It is further state and submits that the Media is having direct/indirect interest/business with Den Satellite and they are dominant market players in this cable business they promote their own preferred MSOs wherein they have their own stack which is against Fair competition of Business. The Den Satellite is approaching various authorities and harassing the LCOs on the other hand Media Pro is also threatening to initiated Civil as well as Criminal proceedings and also issuing the notice to LCOs and IMCL and calling upon them to discontinue of providing their signal i.e. Zee and Star packages as their signals are in demands in the subscribers .

14. In this view of the matter, it is threatened by the said DEN Satellite Pvt. Ltd. as well as Media Pro Company that they will file false criminal cases against my clients in Kurla vicinity and other places where we are operating in the said business. In this behalf, we the united cable operators association submitts that TRAI, TDSAT, the Competition Commission , The Addl. Collector Mumbai Suburb and D.C.P. (Enforcement) Mumbai Police are the Competent Authorities to resolve any such dispute between such parties. There are so many guidelines and circulars under the Cable Television Networks (Regulation) Act,1995 and related laws are issued by the Government on 13th April, 2005. However, only with a view to pressurize the Cable Operators and the members of the Association, the Media pro and DEN Satellite are threatening us for involving us in false criminal cases under various Criminal Acts and Copyright Act.

15. In this behalf, it is the submission from our side that we have not violated any provision under the Copyright Act nor any other in the Criminal Acts.

16. Further we assure that we are licensed cable operators obtained Collectors as well as Postal Departments License to carry on the business an in view of the letter referred to above, and are now the members and operators of IMCL and not the Media pro or DEN Satellite Companies, having no locus to involve them in any violation of any provision of any Copyright Act or any other Criminal Cases.
17. It is submitted that Section 52 of the Copyright Act gives shield of protection to us, as we are Bonafide Purchaser and may be protected under the provision of Fair dealing. The act of my clients is covered within the meaning of fair dealing. Since no receipts were issued by either DEN Satellite nor by Media pro to us, it was very much within their entitlement to join IMCL who had issued the aforesaid letter to Media Pro.
18. The act of the said DEN Satellite and the Media Pro is an offence within the provisions of MRTU and PULP Act. They are trying to create monopoly over the transmitting/ providing signal feeds etc. which have been provided to my clients by the IMCL. Those companies were threatened LCOs by appointing Dummy Operators / agents in their network, However they were providing them STBs free of cost and Monthly subscription @ Rs. 50/-.
19. It has also come in our notice that said DEN Satellite and Media Pro Companies have filed several false complaints with Mumbai Police and Courts and other competent authorities against us with false grievances and false allegations, which on one hand is a legal threatening to us, u/sec 60 of Copyright Act 1957 and also bad under the provisions of MRTU and PULP Act.
20. Lastly it is submitted that the matter is subjudiced before the TDSAT New Delhi which is a Competent Forum regarding the dispute and there is no interim relief in favour of the DEN Satellite or Media Pro Companies against us up till now.so as to take any action under any law against them
21. This is for your information because the said DEN Satellite Pvt Ltd. And M/s. Media Pro Enterprises India Pvt. Ltd. are coming with false allegations against us before TDSAT, In that event we will defend our Suit, Hence it is my humble request to your honour that please personally look into this matter and direct the concern authority for inquiry and thorough Investigation may be done to curb down the said illegalities and irregularities at the

instance of the said MSO DEN Satellite Pvt Ltd. and Channel Broadcasters M/s. Media Pro Enterprises India Pvt. Ltd., so that the bread and butter and livelihood of the poor Local Cable Operators may be protected and there would be no unnecessary hardship to us.

Thanking you
Ashfaque yakub sheikh
Proprietor
Channel 3 world vision Kurla (west)
Mumbai

Cc 1 Mr Uday.k.varma
Secretary I & B

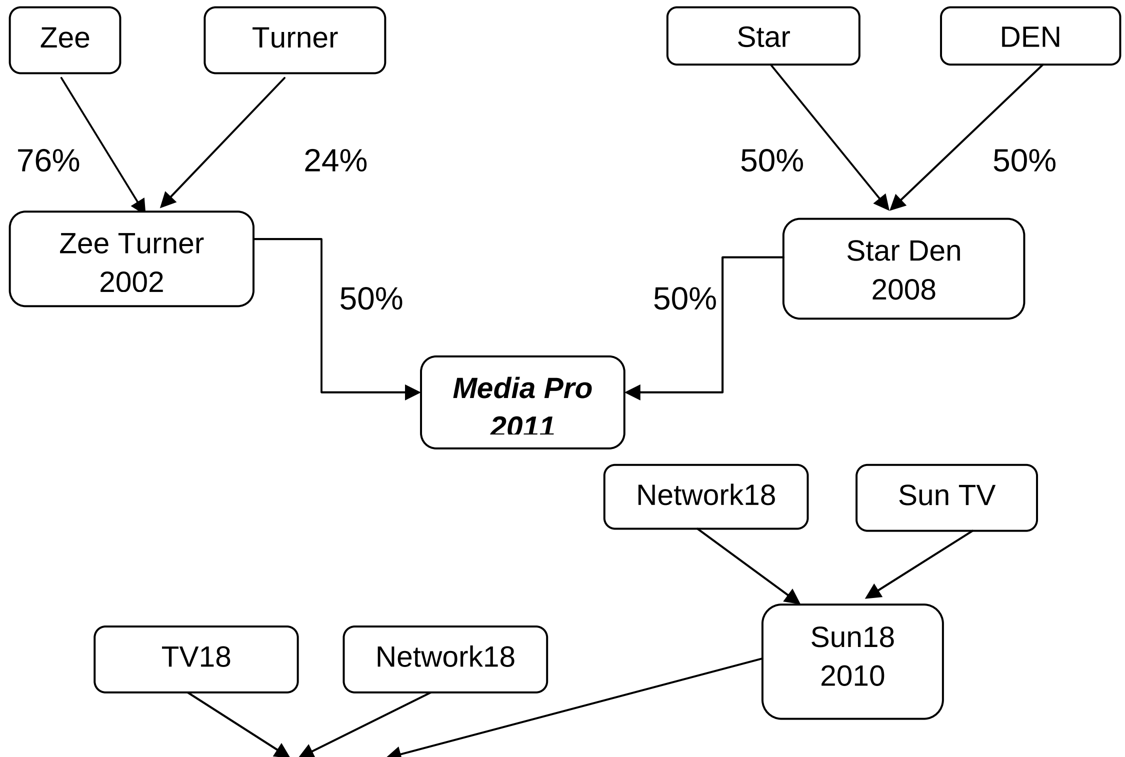
2 Supriya sahu
Joint secretary I & B

3 Yoginder pal
Advisor digitalisation

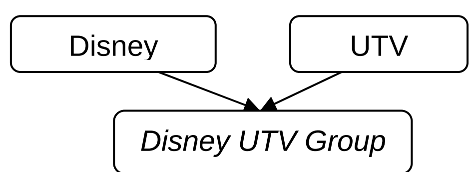
4 K.S. Rejimon
Dy. Sec. I & B

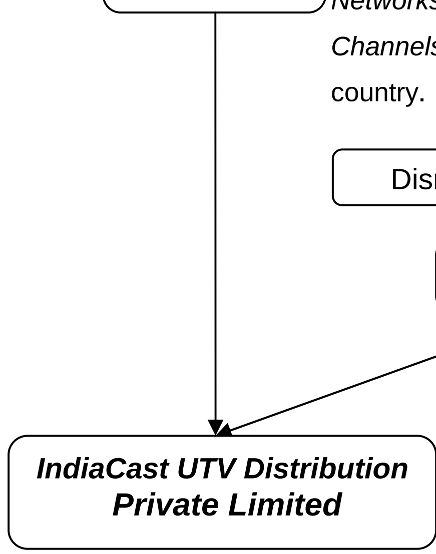
5 Smt Roopsharma
President,All india cable operator association

Channel Aggregators promoted by 'Pay' Channels

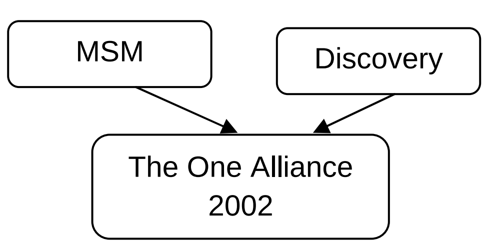


for distrubtion of channels belonging to *TV18, Network18, A+E Networks I TV18 and Eenaadu group* alongwith *Sun Networks Channels and Disney Channels* in Hindi speaking part of the country.





for distribution of channels *already there in the bouquet of IndiaCast* alongwith the channels of *Disney UTV Group*. Total channels about 35.



Annexure- 3
(Refer to COFI Comments on
Channel Distribution / Aggregators
dt 03 Aug 2013)

Broadcaster Groups in the form of Aggregators

Aggregator	Broadcasters	No. of Channels	Popular Channels in North India	
Media Pro	(a) Zee Entertainment Enterprises LTD (b) Zee News LTD (c) Turner International India Pvt. Ltd. (d) Zee Akaash News Pvt Ltd. (e) S.B. Multimedia Pvt. Ltd. (f) Media Content and Communications Services India Pvt. Ltd. (g) Star International Networks Pvt Ltd. (h) Vijay Television Pvt. Ltd. (i) Star Entertainment Media Pvt. Ltd. (j) Star India Pvt. Ltd. (k) New Delhi Television Ltd. (l) NDTV Lifestyle Ltd. (m)Fox Channels India Pvt. Ltd. (n) NGC Network India Pvt. Ltd. (o) MGM Programming Services India Pvt. Ltd.	**79**	Zee TV Zee Cinema Cartoon Network Zee Marathi Zee News Zee Café Zee Studios Zee Bangla Zee Punjabi Zee Trendz Zee Business Zee Classic Zee Action Zee Premier Zee Telugu Zee Kannada ETC Punjabi ETC Zing Zee Jagran Zee Smile 24 Ghante 24 Taas Zee Talkies Zee 24 Ghantalu Zee Salaam The MGM Zee Bangla	

			Cinema Zee Khana Khazana Zee Q Star Plus Star Gold Star Movies Star World Channel V Star Jalsha Star Utsav Star Vijay ABP Ananda ESPN Star Sports Star Cricket Fox Sports News FX FOX CRIME Star Pravah Star Movies Action HBO POGO CNN NGC NGC HD Nat Geo Wild Nat Geo Adventure Nat GEO Music NDTV 24X7 NDTV Profit NDTV Good Times NDTV India Ten Sports Ten Cricket Ten Action Vijay TV Life Ok	

			Life Ok HD BABY TV Asianet Asianet Plus Movies OK Suvarna Asianet Plus	
IndiaCast	(a) Viacom 18 Media Pvt. Ltd. (b) IBN 18 Broadcast Ltd. (c) The Walt Disney Company India Pvt. Ltd (d) Television Eighteen India Ltd. (e) AETN 18 Media Pvt. Ltd. (f) United Home Entertainment Pvt. Ltd. (g) Sun TV Network Ltd. (h) Ushodaya Enterprises Pvt.	**56**	Disney Disney XD Disney Junior IBN 7 Colors MTV Vh1 CNBC TV 18 CNN-IBN CNBC Awaaz SUN TV Gemini TV Udaya TV K TV Gemini Comedy Udaya Movies Sun Music Gemini Music Sun News Gemini News Udaya News Gemini Movies Chintu TV Udaya Comedy Kushi TV Chutti TV Udaya Music Adithya TV Surya TV Kiran TV Gemini Life SUN TV RI	

			SUN Life ETV ETV 2 ETV Bangla ETV Marathi ETV Kannada ETV Gujarathi ETV Oriya ETV UP ETV Bihar ETV Urdu ETV Rajasthan ETV MP Nick Nick Junior Sonic Hungama UTV STARS UTV MOVIES UTV ACTION UTV WORLD Homeshope 18 Historu TV HD Colors HD	
MSM Discovery	(a) Multi Screen Media Pvt. Ltd. (b) Bangla Entertainment Pvt. Ltd. (c) Discovery Communication India Pvt. Ltd. (d) TV Today Network Ltd. (e) Neo Sports Broadcast Pvt. Ltd. (f) Times Global Broadcasting Company Ltd. (g) Zoom Entertainment Network Ltd.	**28**	Discovery Animal Planet AXN Animax TLC SAB TV SET PIX Channel 8 (Sony AATH) Discovery Scienc Discovery Turbo Discovery Channel – Tamil	

				MIX Discovery Kid Sony SIX Sony Set Max AXN Aaj Tak Headlines Today Tez Dilli Aaj Tak Neo Sports ET NOW Times Now Zoom NEO Prime	

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 unmatchable 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 3rd party stakeholders i.e. broadcasters, MSOs DTH Operators were collected, statements of the representatives of the OPs and the 3rd 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 fee 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 from 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 is 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 3rd 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-al-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 and3.2 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

COMPETITION COMMISSION OF INDIA

Case No. 8/2009

ORDER UNDER SECTION 27 OF THE COMPETITION ACT

Date of Order: 30.08.2011

M/s JAK Communications Pvt. Ltd.

402, CTH Road, Avadi, Chennai-54 ------------------------- **Information Provider (I.P)**

M/s Sun Direct TV (P) Ltd. 4/1017,

3rd Cross Road, Nehru Nagar,

Kottivakkam, Chennai – 41 ------------------------- **Opposite Party (O.P)**

As per R. Prasad (Dissenting)

1. **Brief facts and allegations:-**

1.1 The present information has been filed by M/s JAK Communications Pvt. Ltd alleging contravention of various provisions of the Competition Act, 2002 by M/s Sun Direct TV (P) Ltd, the opposite party.

1.2 The I.P is a Multi System Operator. Multi System Operator (MSO) is a part of cable TV industry and its main function is to collect various signals of satellite TV channels, aggregate them and transmit the bundled signals to homes either directly or through Local Cable Operators (LCO).

1.3 The informant receives satellite TV Channels of various broadcasters which include both pay channels and free to Air Channels. Pay Channels are available in encrypted form and are made available only after paying the subscription charges to the respective broadcasters whereas free to Air Channel are available freely in the air and anybody with a C-band antenna can tune to receive the same.

1.4 The Opposite Party (O.P) is in the business of Direct to Home (DTH) operations. A Direct to Home (DTH) operator receive the signals of various satellite TV

Channels, aggregate them and distribute the same to subscribers via satellite. Both the I.P and the O.P are the distributor of TV Signals. While the I.P is distributing the TV Signals through cable medium, the O.P is distributing the TV signals via satellite medium.

1.5 O.P is offering about 130 channels in their basic package, e.g. "**Freedom Package Tamil**" for which it is charging Rs. 99/- per month. According to the I.P TRAI issued a circular dated 18/4/2008 based on TDSAT Judgement (Telecom Dispute Settlement & Appellate Tribunal) whereby rates for the DTH operators for the paid channels is 50% of the rates at which these channels are offered for Non CAS Cable distribution (Non- addressable platform). Thus, as per the above notification of TRAI, the total value of "**Freedom Package Tamil**" offered by the OP, the basic price of these pay channels to DTH operators comes out to Rs.156.55. The I.P , therefore has alleged that the O.P has subsidized DTH Services by offering it at Rs.99 to the consumers, which is a predatory pricing and is contrary to the provisions of Competition Act, 2002.

1.6 It has also been alleged by the I.P that the offer made by the SUN Direct DTH in its brochure and other advertisements that the Sun Direct has offered to provide DTH services to the subscribers for Rs.440 per month with a monthly subscription charges for Rs.99 amounts to anti-competitive agreement and all in the nature of monopolizing the trade by abusing dominant position by providing the subsidy to consumer to eliminate its competitors.

1.7 M/S SUN TV network limited is enjoying the dominant position in one relevant market namely broadcasting to enter in to other relevant market namely DTH through their Group company, violating thereby the provisions of section 4(2) (e) of the Act.

2. Relief Sought:

2.1 The I.P. therefore, has requested the Commission to direct the O.P, its associates, officers or employers as the case may be who are involved in the aforesaid Anti Competitive agreements with the consumer and also indulge in abuse of dominant position to discontinue and not to re-enter such agreement and such abuse of dominant position hereinafter.

2.2 May impose such penalty against the O.P as this Hon'ble Commission may deem fit and proper in the facts and circumstances of case.

2.3 Pass such and further order as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

3. Order under section 26(1) of the Act

3.1 The above allegations were examined by the Commission on various dates and after considering the information filed by the I.P and all the relevant material available on record including the additional information, oral and written submissions, made by the I.P, the Commission formed an opinion that there exists a prima facie case and directed the Director General to cause an investigation into the matter under Section 26(1) of the Act.

4. Findings of the DG (Investigation)

4.1 Accordingly, the DG has carried out the Investigation in the above case and submitted a detailed report to the Commission on 5th April, 2011. As per the DG, the investigation has gathered facts and information from the I.P, opposite party, third parties, and TRAI and other relevant information available in public domain, to ascertain and verify the allegations made out in this case. The investigation considered the evidences on record to appreciate the competition issues involved in this case. Statement of CEO of Sun Direct TV Pvt. Ltd was also been recorded and considered in the investigation report. The investigation has thus mainly focused on following key questions:

(i) Whether Sun Direct TV was dominant undertakings in the relevant product and geographical market as per Explanation (a) to Section 4 read with Section 19(4) of the Act;

(ii) Whether there was any conduct of abuse of dominant position in terms of provisions of Section 4 of the Act.

(iii) Whether there was any anti competitive agreement between Sun Direct TV and its customers which causes AAEC in violation to Section 3(4) of the Act.

4.2 The investigation report, therefore, in the light of the aforesaid information has first of all delineated the relevant product and geographical market in this case so as to determine the dominant position of Sun Direct TV. After carrying out relevant inquiries and various factors of product differentiation as per Section 19(7), the investigation has reached to a finding that the relevant product/service market was "DTH transmission" and the relevant geographical market was whole of India as per definition 2(t) and 2(s) of the Competition Act, respectively.

4.3 The investigation also conducted inquiries to ascertain the position of dominance by Sun Direct TV in terms of its market size and structure and its share. The investigation after considering all the relevant factors, did not find the opposite party in the dominant position as per Explanation (a) to Section 4 read with Section 19(4) of the Act. Therefore, based on the information and evidence available on record, no case of abuse of dominance was found to be made out against Sun Direct TV in violation to Section 4 of the Act.

4.4 The investigation has also examined the conduct and practices of Sun Direct TV in the relevant market to ascertain any violation of Section 3 of the Act. Inquiries were conducted by the concerned officer on each of the allegations made by the I.P, and the findings are summarized as under:

(a) The investigation did not find any merit that Sun Direct TV was giving set top boxes free of cost to its customers and thereby bearing a subsidy burden of over Rs. 2200/- per subscriber. Inquiries have revealed that the set top boxes were given as a part of the subscription package and therefore it remained the property of Sun Direct TV. Further, such provision of DTH boxes to its customers was also followed by all other DTH operators in India as per chart given in the report. The rates charged by Sun DTH were effectively comparable to others.

(b) The inquiries also did not find any substance and merit on the allegation of resorting to predatory pricing by providing package of Tamil channels at subsidized rate even below the rates prescribed by TRAI. The investigation found that the cost of Sun Direct TV for the Tamil freedom package was Rs. 32.14/- which was offered to subscribers at the rate of Rs. 99/- per month and hence no case of predatory pricing was make out against the opposite party.

(c) Lastly, the allegation of Sun Direct TV providing connection at Rs. 440/- with monthly subscription charges of Rs. 99/- to its customers as anti competitive and to monopolize its business was also enquired. The so called agreement between Sun Direct TV and customers was a case of vertical agreement, and inquiries did not show any existence of any AAEC as outlined in Section 19(3) of the Act.

(d) Thus to sum up, the investigation did not find any infraction of Section 3 or Section 4 by the opposite party, after analysis and consideration of the conduct of Sun Direct TV and prevailing practice in the relevant market as per evidence placed on record.

5. FINDINGS

5.1 I have carefully considered the facts of the case, the allegations made by the I.P and the report submitted by the DG, the gist of which has already been stated above. DG did not carry out proper investigation but then the Commission decided that no further investigation was required. In order to examine whether it is a case of abuse of dominance, it is pertinent to decide what relevant market is in this case and whether Sun Direct is holding a dominant position in that relevant market.

6. What is Relevant Market in this case?

6.1 The DG has delineated the relevant market in this case as whole of India considering the fact that DTH services market and cable TV market cannot be regarded as interchangeable or substitutable by the consumer by reason of characteristics of the product, pricing and intended use based on various parameters such as distribution of TV channels, quality of signals, reliability of transmission, availability of add-on facilities and interactivity, viewing experience, technology, scalability and availability of various options in the pricing of product and the seamless availability of signals for DTH services throughout India and pan India presences of all the DTH operators.

6.2 Whereas, according to stock analysts, the south Indian market comprises Tamil, Telugu, Kannada and Malayalam and this region has its own characteristics distinct from other regions/parts of India considering language as the main factor with negligible demand for Hindi Bouquet there. The DG has not considered the aspect of peculiar features of South Indian TV market. The other DTH service providers e.g. Dish TV and even SUN Direct categorize the packages available on their website in two categories – South India and Rest of India. As per the provisions of section 19 (5), (6) and (7) of the Act, while determining relevant geographical market and product market, it is important to give due regard to the local specification requirement; language; consumer preferences, etc. which DG has not considered at all in the present case. Secondly, the DG itself has stated in its report that "all the DTH operators have subscribers in each and every state of India but have comparative advantage over the others in a particular state depending upon the time of initiation of service and the efforts made for the same. So, going by the DG's own analogy the relevant market in this case should have been restricted to the Southern India only. Accordingly, I hold that the relevant market in the present case is **DTH services in the south India** comprising the four states mentioned above and not the whole of India as determined by the DG.

7. **Whether SUN Direct is holding a dominant position in the relevant market?**

7.1 The DG in his report has concluded that none of the DTH service provider can be said to be dominant either on the basis of number of subscribers or on the basis of available resources at their disposal in the relevant market. All the DTH service providers have the backing of very big industrial houses and based on financial strength and integration aspects none of them can be said to be dominant vis-à-vis others. Even by the number of consumers Dish TV has the largest consumer base at 9.4 million subscribers in India followed by Tata Sky which is providing its services to 6.5 million consumers. Sun Direct TV with a subscriber base of 6.1 million is the third largest DTH service provider in India. The remaining three DTH services operators viz. Airtel Digital, Reliance Big TV and Videocon d2h are relatively new in the DTH operation and also catching up fast with their subscriber base swelling to 4.9 million, 3.6 million and 2.2 million respectively. Therefore, it is not established that Sun Direct TV is a dominant player in the relevant market of DTH services within the geographical boundaries of India.

7.2 I do not subscribe to the view of DG as stated above because the CEO of Sun Direct himself stated that it has 65% market share in the DTH market in the Southern States. – (Source Business Today dated 21 July, 2010) Secondly, it is also found from the Stock Analysts reports available on the internet that the market share of Sun TV in the four Southern States it operates is: Tamil Nadu (70%), Kerala (34%), Karnataka (42%) and Andhra Pradesh (40%).

Exhibit 1- South India Advertisement Market Share

	South India				
	Tamil	Telugu	Kannada	Malayalam	Total South
Ad Market size CY09 (Rs bn)	9	7	3	3.5	22.5
Ad Market size CY10 (Rs bn)	10	7	5	5	27
YoY growth (%)	11%	0%	67%	43%	20%
No. of Channels (approx.)	38	36	21	25	120
Sun TV Channels	6	6	6	2	20
Viewer ship share of top 3 players	88%	78%	77%	94%	
Viewer ship share of Sun TV channels	70%	40%	42%	34%	

Source: Company, FICCI-KPMG 2011, PINC Research

7.3 Further, the same stock analyst reports that Sun TV being one of the largest Indian broadcasters has benefited from increasing penetration of digital distribution. Moreover, its favorable position in South India provides it an additional advantage and more than 60% of its DTH revenue is from Sun Direct (a promoter group company), a major player in the South Indian market. Its subscriber base has grown from 1.1mn in FY08 to 6.7mn in Q3FY11, a whopping increase of more than 5x in a 30.6mn subscriber market. Given the tremendous opportunity of further penetration of DTH services in the current markets of Sun TV, we expect this segment to grow at 32% CAGR during FY10-13E and contribute 18% to the overall top line in FY13E. Thus, we find that even from revenue point of view, the Sun Direct DTH is a dominant player in the relevant market, being the major contributor of revenue.

7.4 Coming to the subscribers base in Tamil Nadu, the DG, has not given any figure of the subscribers base in South India in respect of Sun Direct DTH. However, from the above Stock Analyst Report, it is found that the subscriber base of Sun Direct DTH is increasing five times and is having a subscriber base of 6.7 million in whole of India. So, if 60% of revenue is coming from Sun Direct DTH to Sun TV, it can be concluded that Sun Direct is a dominant player in the relevant market.

8. **Abuse of dominance by Sun Direct DTH**

Once it is established that Sun Direct DTH is a dominant player in the relevant market, it is to be examined now whether it has abused its dominant position. Coming to the allegations of abuse of dominance the I.P has made the allegations against the Sun Direct DTH **"That the Sun Direct DTH is providing "Freedom Package Tamil" consisting of 130 channels at Rs. 99/- the actual cost of which is Rs. 156.55 per month and thus, subsidizing the services to reduce competition or eliminate competitors."**

8.1 According to I.P, the cost of the Freedom Tamil Package works out at Rs. 156.55/- per month which was calculated as per TRAI order dated 18th April, 2008. According to The TRAI order which is based on TDSAT Judgement, the rates for the DTH operators for the paid channels is 50% of the rates at which these channels are offered to Non CAS Cable distribution (Non- addressable platform) i.e the cable operators without STB. For example, if a broadcaster is offering its pay channel to cable TV operator at Rs. 10, it cannot charge more than Rs. 5 from the DTH operators for the same channel. Thus, the I.P has calculated the cost of the pay channles contained in the "**Freedom Package Tamil**" numbering 31 at Rs. 156.55/- .

8.2 The OP, however, has worked out the actual cost of this package at Rs.32 considering 22 channels are the pay channels. Thus, the number of pay channels in this package worked out by OP is different from what has been worked out by the I.P. The DG, on the other hand has relied upon the cost taken by the OP and not by the I.P on the ground that the cost worked out by OP is in line with the bouquet prices of various channels available on the TRAI website for the non-CAS areas as on 25.8.2009 by applying a factor of 0.5 as suggested by TRAI through its press release dated 18.4.2008. The DG further adds "it would not be out of place to mention that the DTH services market is following the footsteps of mobile telephony market so far as the competition is concerned. With the new and new DTH service provider entering into fray, the rates of packages offered to the consumers are declining routinely. This is possible because of the addressability of the system which ensures complete transparency in terms of number of subscribers and the services offered. As against this, the cable transmission system is completely opaque and does not guarantee data integrity. The TRAI circular dated 18.04.2008 takes this factor into consideration and therefore does not grant any concession to the cable operators in non-CAS areas when it follows the TD SAT judgments dated 14.07.2006 and 31.03.2007 which stated that the rates for DTH operators to be 50% of the rates at which various bouquets / channels are offered by broadcasters for non-CAS cable distribution (non-addressable platforms).

8.3 It is therefore clear that the allegations of the I.P are based on a-la-carte pricing rather than bouquets based pricing on the basis of which Sun Direct TV is procuring the broadcasting rights for various channels covered under Tamil Freedom Package. The cost in bouquets based pricing for the DTH service providers comes out to be much less than a-la-carte based pricing. Investigation therefore does not see any merit in the allegation."

8.4 I have carefully considered the cost worked out by the I.P as well as the OP and found that while I.P has worked out the cost on the basis of "a-la-carte" based pricing, the OP worked out the same on "bouquet" based pricing. So, the reason for the difference in cost is explained. However, the OP is not able to explain why it has considered only 22 channels instead of 31 channels as worked out by the I.P, for arriving at the cost. The DG has also not explained this difference. If we consider these 9 channels and consider their cost then certainly it would be more than Rs.99 and in that case the allegation that the Sun Direct DTH is making available the Tamil Freedom Package at Rs.99 to its subsribers instead of Rs.156.55 or any price lower than the actual cost, there would not be any doubt of a case of predatory pricing.

9. **<u>Offering of CPE (consumer premises equipment) free of cost to the subscribers. This would cover the allegations that SUN Direct is subsidizing its customers by bearing a subsidy burden of over Rs. 2200/–</u>**

9.1 The I.P in his information has attached an advertisement published in Business Standard which says that "Get Sun Direct DTH for just Rs. 440 and get 4 months subscription with 'Dish and Set-top Box Free'. Further, in the foot note of the same advertisement it is written that 'the installation/ activation charges Rs. 1250- extra'. The I.P, therefore, has alleged that the offer of Dish and Set-top Box free of cost made by the O.P is in contravention of the provisions of Competition Act as it is a straight away bearing a subsidy burden of over 2,200 per subscriber. Explaining it further, the I.P has submitted that since the Direct to

Home (DTH) platform is directly fed from the satellite, it needs an antenna and a set top box along with a viewing card as main ingredients to constitute a system so that the TV Signals can be provided to the consumers through Television sets. Apart from this the wires and fixtures also add cost to the hardware set. The O.P is using an advance technology called "MPEG-4" wherein the cost of set top boxes are more that of conventional "MPEG-2' technology. From the reporting of press it is understood that set top box above would cost Rs. 2160 to Rs. 2,280/- per piece.

9.2 In order to substantiate its claim, the I.P has also enclosed the copies of the Brochure of the O.P and interview of its' CEO dt. 15.12/08 wherein the CEO of the O.P in its exclusive interview to www.Indiantelevision.com posted on its site on 15 December, 2008 admitted that the O.P is providing subsidy the consumer as high Rs. 4.50 Billion just to capture the market, and for that the O.P CEO in its exclusive interview has justified that grant of the subsidy is necessary to build up a roots in the market. Basically from their plan and language used the CEO in interview to www.Indiatelevision.com, it appears that the O.P by using its dominant position in the Television Market is giving high subsidy to the consumer thereby reduced its price of DTH services by the name of Sun Direct below the cost which is actually incurred by it only to eliminate its competitors thus using its dominant position to monopolize the television market. This is evident from the fact that the cost spent to acquire one customer is Rs. 4,500/- as per his own admission.

9.3 On the other hand the O.P has submitted that it is procuring one set of CPE which includes STB, Antina, Smart Card, no noise booster, connectors, cables, clips with tie and the dish approximately Rs. 4,000. The CPE is given to the customers for sole purpose of receipt of the signals of Sun Direct. The CPE is not sold to the customer and hence no charges are sought for the same. The CPE remains the property of the Sun Direct and is returnable to it after discontinuation of services. This is evident from the subscriber agreement entered into by Sun

Direct with its subscribers. The CEO of the O.P in his statement before the DG has also reiterated that CPE is given free of cost to the consumers who avail the service of Sun Direct TV and are asked to return the same on discontinuation of service.

9.4 In order to ascertain the facts of reducing the prices of CPE below the cost, the DG asked the O.P to provide details of monthly charges on various bouquets of channels offered by it to its consumers and also the details of capital cost of set top boxes incurred by it in procuring the same and the amount charged for its customers for these boxes. The DG called for the similar information from the other DTH Service Operators and compared the element of subsidy in the offers given by all the service providers. The DG has prepared a table of comparable rates as on 31.11.2010 wherein the cost of different equipments have been compared in respect of other service providers and has come to the conclusion that all DTH Service providers are more or less charging the same amount of money on monthly basis from their customers and therefore, there is no merit in the allegation of the I.P that Sun Direct TV has reduced the prices of its DTH service to eliminate competitors. The DG has also concluded that it was clear from the subscriber agreement that the ownership of the CPE vests with Sun Direct TV and is given to the customer only to enable them to receive the signals of Sun Direct TV. Thus, the allegation that Sun Direct is subsidizing the cost of hardware does not hold good in the absence of transfer of the rights in the hands of the customers.

9.5 I have carefully considered the allegations made by the I.P, the response of the O.P and the findings of the DG on the issue of offering the hardwares (CPE) at subsidized price in order to eliminate the competitors and found that though all the DTH service providers are following the same practices of giving the hardwares at subsidized price but since Sun Direct is holding a dominant position in the relevant market as defined in preceding paragraphs, the practice adopted by the O.P is in the nature of predatory pricing because it is abusing its dominant position in the relevant market to eliminate the other competitors by way of providing the hardwares at subsidized rates. Since the Sun Direct is a dominant player in the relevant market, the other competitors may be following the same practices adopted by the market leader to remain in the market.

10. **Allegation pertaining to section 4(2)(e)**

10.1 It has been alleged by the I.P that the Sun Direct DTH is a group company of Sun Group which is the most dominant broadcaster in South India and with this dominant position in the broadcasting market, it has entered into the DTH market for the distribution of TV channel signals in various states of South India by the name of the O.P i.e. the Sun Direct, therefore, it is using its dominant position in one relevant market of broadcasting to enter into or protect, other relevant market of DTH service provider thereby contravening the provisions of Section 4(2)(e) of the Competition Act.

10.2 In order to substantiate its contention, the I.P has described the entire group activities of the Sun Group of Companies. Sun TV Network Ltd. is the main flag bearer company of the entire Sun Group of Companies which was promoted by Mr. Kalanithi Maran and Mrs. Kaveri Kalanithi who enjoy the majority share in the said company. These very promoters have also promoted the following enterprises in the horizontal integration of media industries.

(a) SUN TV NETWORK LIMITED is the flagship enterprise with over 20 TV channels in four south India languages namely Tamil, Telugu, Kannada and Malayalam plays a most dominant player in TV broadcasting industry.

(b) KAL Publications Pvt. Ltd is the company promoted and owned by the said promoters and in the business of publishing daily, eveninger and magazines, inter alia in print media industry. The said KAL Publication Pvt. Ltd., is owning the Tamil daily newspaper "Dinakaran" claiming to be with a circulation of 1.1 million prints, a leading tamil eveninger and 4 magazines in tamil. The publications of

KAL Publications Pvt. Ltd. enjoy a dominant position in print media industry in the state of Tamil Nadu.

(c) Kal Radios Pvt. Ltd., is the company promoted and owned by the said promoters and owns 45 FM radio channels in the country which runs the FM radio channels in the brand of "SURYAN FM" and "RED FM" and the said FM stations enjoys a dominant position in transmission of FM radio.

(d) SUN Pictures is the enterprise promoted and owned by the same group and in the business of production and distribution of films and the same is holding a dominant position in its respective field of operation.

10.3 In addition to the said enterprises as above which dominate the media industry in horizontal integration the said group has also promoted the following enterprises in the vertical integration of the broadcasting industry.

(a) Kal Comm Pvt. Ltd. is the company promoted an owned by the said promoters and in the business of distribution of TV Signals which in turn has two divisions namely

(i) Channel Plus which takes care of distribution of TV signals of all Pay Channels of the SUN TV Network private limited, inter alia selling TV signals to the general public through distribution medium like cable, DTH, I.PTV and etc.

(ii) S.C.V which acts as a Multi System Operator and controls about 50% of market in the state of Tamil nadu by giving its signals to cable operators.

(b) SUN Direct TV Pvt. Ltd. is the present O.P in the complaint/information which is again promoted by the same group of persons the majority of shares are held by them and the management of the enterprise is also controlled by them. SUN Direct Pvt. Ltd. is in the business of distribution of TV signals in DTH medium.

10.4 That it is further relevant to mention here that the said group in its website www.sunnetwork.in proclaimed themselves as India's largest media conglomerate and give the list of media units owned by them. (Copy of the information is already enclosed by the I.P as Annexure P-7 along with its additional information) which is self explanatory and speaks about the dominant position enjoyed by the SUN group, it is piece of confession about there dominant position in the market. It is also relevant to mention here that in broader view the market is the media market and to define as a relevant market the same shall be the distribution of TV channels as the industry market and DTH market as product market. The geographical market is the south India comprising of four states namely Tamil Nadu, Andhra Pradesh, Karnataka, Kerala including to union territories in the zone. The above named referred markets may be taken into consideration for deciding the dominant position of O.P enterprise, it is also pertinent to mention here that the SUN Group is the most dominant broadcaster in South India and with this dominant holding dominant position in the broadcasting market, it has entered into the DTH market for distribution of TV channel signals in various states of South India by the name of O.P, which falls within the vertical integration of the broadcasting field thereby to dominate itself in the DTH market in the geographical area of South India by eliminating its competitors by reducing the price of its product. Whereas section 4 (2) (e) of the Competition Act 2002 which reads as **"uses its dominant position in one relevant market to enter into or protect, other relevant market."**

10.5 In the present case it is the dominant position enjoyed by the flagship company M/S SUN TV network limited is one relevant market namely broadcasting to enter in to other relevant market namely DTH through their Group company the O.P herein.

10.6 When the DG report was examined nowhere it is found that the DG has investigated this aspect. In the absence of any finding of the DG on this issue I will have to rely on the information provided by the I.P and the information available in public domain. In order to decide whether there is a violation of section 4(2)(e), it is necessary to define and distinguish the two relevant markets. It is also necessary to prove that the O.P is dominant in one relevant market and now trying to enter or protect the other relevant market. For this the I.P has given a detailed picture of how this group being dominant in one relevant market i.e. the broadcasting market is trying to enter or protect the other market of DTH service providers. So this is a larger business plan / strategy to integrate the two markets and dominate that market by the same group company. It has already been proved that SUN TV Network company is already dominant in the broadcasting market in south India by way of its size, resources and market share and also the economic power and commercial advantage it enjoys over its competitors and now because of these advantages it has entered into the market of DTH service providers and trying to dominate and protect the DTH service market. In the instant case it is found on the basis of the facts and figures provided by the I.Ps that because of its size, resources, market share, economic power, relative advantage etc., Sun TV Network is having dominance in the South Indian broadcasting market and because of its dominance in one relevant market i.e. the market of broadcasting, it is now trying to protect its DTH service market. Thus, it is a clear cut violation of Section 4(2)(e) of the Competition Act.

11. **<u>Anticompetitive agreement between SUN TV and the subscribers 3(4)</u>**

11.1 It has been alleged by the I.P that the offer made by the SUN Direct DTH in its brochure and other advertisements that the Sun Direct has offered to provide DTH services to the subscribers for Rs. 440 per month with a monthly subscription charges for Rs. 99 amounts to anti-competitive agreement and is all in the nature of monopolizing the trade by abusing the dominant position by providing the subsidy to the consumers to eliminate its competitors.

11.2 DG in its report has come to a finding that the agreement between the Sun Direct TV and its Subscriber is not an anti-competitive agreement in terms of Section 3(4) of the Act as this agreement does not cause any appreciable adverse effect on competition in India on the ground that this agreement is neither creating any barriers to the new entrants in the market nor is it driving the existing competitors out of the market. According to the DG, in fact, after the entry of Sun Direct TV in the DTH Services three new entrants viz., Airtel TV, Reliance Big TV, and

Videocon d2h have already entered into the trade and have also seen where subscribers' number is soaring. There is no foreclosure of the competition in the market for other DTH operators. The DG has gone to the extent that there are visible benefits to the consumers in terms of pricing and services. In the last four years the prices of new connections have come down to a third and the availability of choices has increased many folds. There is marked improvement in the provision of DTH services and the service providers are improving upon the technology.

11.3 All the consumers are free to select the DTH operators providing services and selection of SUN DTH by the consumers in no way hampers the competition process as this is a selection by consumer based on his criteria of preferences. This agreement in no way appears to block entry of new service providers or drive existing competitors out of the market. Consumer is free to go out of the deal any time and opt for other operator. Therefore, there is no contravention of the section 3(4) of the Competition Act, 2002.

12. I, therefore, am of the considered opinion that this is a fit case where following directions under Section 27 of the Act need to be issued:

12.1 M/s Sun Direct Pvt. Ltd. is directed to immediately stop from charging subsidized prices from the customers for DTH services (Hardware & DTH Transmission services).

12.2 A penalty of 5% of the average of the turnover for the last three preceding financial years is imposed upon M/s Sun Direct Pvt. Ltd. for deliberately charging such predatory prices to foreclose the competition and driving the competitors out of the market.

Certified True Copy

01/09/2011

S.P. GAHLAUT
Assistant Director
Competition Commission of India
New Delhi

CASE AGAINST MEDIAPRO 2012

S. No.	Petition No. Year 2012	Cases Against Mediapro PG (1)	V/s	Against Mediapro
1	1	Chattisgarh	V/s	Mediapro
2	16	Nandgaon	V/s	Mediapro
3	24	Raghovendra	V/s	Mediapro
4	44	Khatri	V/s	Mediapro
5	77	Parmeshwari	V/s	Mediapro
6	78	Venkat	V/s	Mediapro
7	79	Akshya	V/s	Mediapro
8	80	Srinivaga	V/s	Mediapro
9	81	Jagityal	V/s	Mediapro
10	82	Hari Sai	V/s	Mediapro
11	96	IMCL	V/s	Mediapro
12	119	Kal Cable	V/s	Mediapro
13	120	-do -	V/s	Mediapro
14	121	-do -	V/s	Mediapro
15	122	-do -	V/s	Mediapro
16	123	-do -	V/s	Mediapro
17	124	-do -	V/s	Mediapro
18	125	-do -	V/s	Mediapro
19	126	-do -	V/s	Mediapro
20	127	-do -	V/s	Mediapro
21	128	-do -	V/s	Mediapro
22	129	-do -	V/s	Mediapro
23	135	VIJ Media	V/s	Mediapro
24	141	Digi Cable Communication Mediapro & SD, ZFEL, ZNL	V/s	Mediapro
25	146	Venkateshwara	V/s	Mediapro
26	147	Sree Digital	V/s	Mediapro
27	148	Exalte Digital	V/s	Mediapro
28	149	HCV	V/s	Mediapro
29	245	All in All	V/s	Mediapro
30	275	SSD Cable	V/s	Mediapro
31	277	Gujrat TeleLinks	V/s	Mediapro
32	280	Home Broadband	V/s	Mediapro
33	287	Gujrat Telelinks	V/s	Mediapro
34	317	Saraswati	V/s	Mediapro
35	318	IMCL	V/s	Mediapro
36	322	IMCL	V/s	Mediapro
37	325	Ani Communication	V/s	Mediapro
38	330	Bitto Cable	V/s	Mediapro

39	337	M.P.	V/s	Mediapro
40	340	M.P.	V/s	Mediapro
41	345	Ana Cable	V/s	Mediapro
42	351	Digi	V/s	Mediapro
43	352	-do -	V/s	Mediapro
44	353	-do -	V/s	Mediapro
45	354	-do -	V/s	Mediapro
46	355	-do -	V/s	Mediapro
47	356	-do -	V/s	Mediapro
48	357	Gujarat Telelink	V/s	Mediapro
49	383	Darsh Digital	V/s	Mediapro
50	384	-do -	V/s	Mediapro
51	385	-do -	V/s	Mediapro
52	392	IMLL	V/s	Mediapro
53	393	-do -	V/s	Mediapro
54	394	-do -	V/s	Mediapro
55	395	-do -	V/s	Mediapro
56	396	Pan Resorts	V/s	Mediapro
57	397	Chitradurga	V/s	Mediapro
58	398	Cable First	V/s	Mediapro
59	399	-do -	V/s	Mediapro
60	400	-do -	V/s	Mediapro
61	401	Digi	V/s	Mediapro
62	402	-do -	V/s	Mediapro
63	403	-do -	V/s	Mediapro
64	404	-do -	V/s	Mediapro
65	405	-do -	V/s	Mediapro
66	406	-do -	V/s	Mediapro
67	407	-do -	V/s	Mediapro
68	408	-do -	V/s	Mediapro
69	409	-do -	V/s	Mediapro
70	410	-do -	V/s	Mediapro
71	411	-do -	V/s	Mediapro
72	412	-do -	V/s	Mediapro
73	413	-do -	V/s	Mediapro
74	414	-do -	V/s	Mediapro
75	415	-do -	V/s	Mediapro
76	416	-do -	V/s	Mediapro
77	417	-do -	V/s	Mediapro
78	418	-do -	V/s	Mediapro
79	420	Manthan	V/s	Mediapro
80	463	Darsh	V/s	Mediapro
81	467	Manthan	V/s	Mediapro

82	468	Manthan	V/s	Mediapro
83	469	Manthan	V/s	Mediapro
84	470	Manthan	V/s	Mediapro
85	471	Manthan	V/s	Mediapro
86	472	Manthan	V/s	Mediapro
87	473	Manthan	V/s	Mediapro
88	474	Manthan	V/s	Mediapro
89	475	Manthan	V/s	Mediapro
90	476	Manthan	V/s	Mediapro
91	476	Manthan	V/s	Mediapro
92	477	Manthan	V/s	Mediapro
93	478	Manthan	V/s	Mediapro
94	479	Manthan	V/s	Mediapro
95	480	Manthan	V/s	Mediapro
96	481	Manthan	V/s	Mediapro
97	489	Ortel Communication	V/s	Mediapro
98	490	-do -	V/s	Mediapro
99	514	Raju Communication	V/s	Mediapro
100	515	Digi ACN	V/s	Mediapro
101	557	Digi Cable Communication	V/s	Mediapro
102	560	Surya Palace Hotel	V/s	Mediapro
103	594	M.P. V. Akash Cable	V/s	Mediapro
104	595	Akash Cable	V/s	Mediapro
105	596	Akash Cable	V/s	Mediapro
106	567	Akash Cable	V/s	Mediapro
107	598	Polimer Cable	V/s	Mediapro
108	599	Polimer Cable	V/s	Mediapro
109	600	Polimer Cable	V/s	Mediapro
110	601	Polimer Cable	V/s	Mediapro
111	602	Polimer Cable	V/s	Mediapro
112	603	Polimer Cable	V/s	Mediapro
113	604	Polimer Cable	V/s	Mediapro
114	605	City Television	V/s	Mediapro
115	606	City Television	V/s	Mediapro
116	607	City Television	V/s	Mediapro
117	608	CTN Gorur	V/s	Mediapro
118	609	CTN Katagiri	V/s	Mediapro
119	610	CTN Ludar	V/s	Mediapro
120	611	Akash Cable	V/s	Mediapro
121	615	SCOD 18	V/s	Mediapro
122	616	Sat Guru	V/s	Mediapro
123	652	Digi Guru	V/s	Mediapro
124	665	Varadaraj Cable	V/s	Mediapro

125	667	United Cable	V/s	Mediapro
126	676	IMCL	V/s	Mediapro
127	679	XNI Communication	V/s	Mediapro
128	681	Satellite Channel	V/s	Mediapro
129	682	Star Broad Band	V/s	Mediapro
130	721	Home Cable	V/s	Mediapro
131	723	Raja Rajeshwari	V/s	Mediapro
132	727	IMCL	V/s	Mediapro
133	738	Hotel & Restaurant	V/s	Mediapro
134	739	Sanghi Media	V/s	Mediapro
135	749	Bhima Ridhi	V/s	Mediapro
136	750	Bhima Ridhi	V/s	Mediapro
137	755	Manoranjan Cable	V/s	Mediapro
138	756	India Sateliate System	V/s	Mediapro
139	757	Allien Braodbcasting	V/s	Mediapro
140	758	Cable Vision	V/s	Mediapro
141	759	Sri Rajan	V/s	Mediapro
142	760	Zaheer Cable	V/s	Mediapro
143	761	Star Cable TV	V/s	Mediapro
144	762	Sky Cable Network	V/s	Mediapro
145	763	Sri Vanketeshwara	V/s	Mediapro
146	764	PRT Satellite News	V/s	Mediapro
147	765	Video Cable	V/s	Mediapro
148	766	Cuddalore Sat Systam	V/s	Mediapro
149	767	Chakra Channels	V/s	Mediapro
150	768	Jai Mathadi Cable	V/s	Mediapro
151	769	M. Sky Land	V/s	Mediapro
152	770	Dish Hobby Cable	V/s	Mediapro
153	771	World Network	V/s	Mediapro
154	772	Chinndyalti	V/s	Mediapro
155	773	Sanu	V/s	Mediapro
156	774	Nee Makkal N/w	V/s	Mediapro
157	775	Sat Communication	V/s	Mediapro
158	776	Pawar Cable N/w	V/s	Mediapro
159	777	Jayan	V/s	Mediapro
160	778	Sky Link	V/s	Mediapro
161	779	Mastech	V/s	Mediapro
162	780	Nithaya	V/s	Mediapro
163	781	Achi Pra	V/s	Mediapro
164	782	Metro TV	V/s	Mediapro
165	783	Panruti	V/s	Mediapro
166	784	Jay TV	V/s	Mediapro
167	785	Murga N/w	V/s	Mediapro

168	786	Raghvinder	V/s	Mediapro
169	787	Ortel Cable	V/s	Mediapro
170	788	Metro TV	V/s	Mediapro
171	789	SMV Cable	V/s	Mediapro
172	791	Sharon Cable	V/s	Mediapro
173	792	Sri Viryathi	V/s	Mediapro
174	793	B.C.N. Cable	V/s	Mediapro
175	794	Maa TV	V/s	Mediapro
176	797	Communication	V/s	Mediapro
177	835	Global Cable N/w	V/s	Mediapro
178	837	Silverline	V/s	Mediapro
179	838	Vishal Cable	V/s	Mediapro
180	839	Digi	V/s	Mediapro
181	844	Mahaakal Cable	V/s	Mediapro
182	874	Hubli Communication	V/s	Mediapro
183	928	Nagendra	V/s	Mediapro
184	933	DKNR	V/s	Mediapro
185	948	Cable TV	V/s	Mediapro
186	958	PUR	V/s	Mediapro

CASE AGAINST STAR DEN 2010

S.No.	Petition No. Year 2010	Cases Against Star Den PG (1)	V/s	Case Against
1	2 (c)	Kailash	V/s	Star Den
2	3 (c)	Bridgeview	V/s	Star Den
3	10 (c)	Kailash	V/s	Star Den
4	25 (c)	IMCL	V/s	Star Den
5	26 (c)	Hathway	V/s	Star Den
6	33 (c)	Sangani	V/s	Star Den
7	34 (c)	Shri Ram Video Cable	V/s	Star Den
8	35 (c)	Mathabhanga Satellite	V/s	Star Den
9	40	MCL V- Star Den	V/s	Star Den
10	69	Nidhi Enterprises	V/s	Star Den
11	80	Grand Bhatia	V/s	Star Den
12	110	Paras Cable	V/s	Star Den
13	127	Jak	V/s	Star Den
14	144	Parashar Network	V/s	Star Den
15	162	Shiva Vision	V/s	Star Den
16	178	WWIL	V/s	Star Den
17	180	Manthan	V/s	Star Den
18	184	Durga City	V/s	Star Den
19	188	Nirman	V/s	Star Den
20	212	R.K. Cable	V/s	Star Den
21	212	TV 18	V/s	Star Den
22	248	SD-V-70-18	V/s	Star Den
23	257	Anil Kumar	V/s	Star Den
24	261	Mahavir Toun	V/s	Star Den
25	275	DK NR	V/s	Star Den
26	326	Krishna	V/s	Star Den
27	328	Aman Cable	V/s	Star Den
28	329	Pearls Cable	V/s	Star Den
29	330	J.J.	V/s	Star Den
30	331	Digi	V/s	Star Den
31	333	Digi SSC	V/s	Star Den
32	334	Digi SSC	V/s	Star Den
33	335	Digi SSC	V/s	Star Den
34	351	Neelkanth	V/s	Star Den
35	379	Silvenia	V/s	Star Den
36	405	God Father	V/s	Star Den
37	411	CBS City	V/s	Star Den

CASE AGAINST ZEE TURNER 2010

S. No.	Petition No. Year 2010	Cases Against Zee Turner PG (1)	V/s	Against Zee Turner
1	7 (c)	SR Cable	V/s	Zee Turner
2	70 (c)	Ravi Teja Communication	V/s	Zee Turner
3	97	Harika	V/s	Zee Turner
4	104	Shree Devi Master Media	V/s	Zee Turner
5	109	Digi Cable Communication	V/s	Zee Turner
6	117	Digi Cable	V/s	Zee Turner
7	118	Central India (Raj)	V/s	Zee Turner
8	119	Digi Cable (Jaunpur)	V/s	Zee Turner
9	120	Digi Cable (Mumbai)	V/s	Zee Turner
10	121	Digi Cable (Agra)	V/s	Zee Turner
11	122	Digi SSC (Muradabad)	V/s	Zee Turner
12	123	Digi Cable (A.P.)	V/s	Zee Turner
13	127	Central India (Jabalpur)	V/s	Zee Turner
14	125	Central India (Bilaspur)	V/s	Zee Turner
15	176	Utsav	V/s	Zee Turner
16	166	Asia Net Satellite	V/s	Zee Turner
17	167	Mahalaxmi Cable	V/s	Zee Turner
18	170	Teleview Communication	V/s	Zee Turner
19	183	Durga	V/s	Zee Turner
20	194	Concord Society	V/s	Zee Turner
21	214	R.K.	V/s	Zee Turner
22	217	Sangani	V/s	Zee Turner
23	273	D.K.N.R.	V/s	Zee Turner
24	317	Vear Cable	V/s	Zee Turner
25	339	Sri Sai	V/s	Zee Turner
26	342	Sristi Cable	V/s	Zee Turner
27	346	Neelkanth	V/s	Zee Turner
28	358	Maha Laxmi	V/s	Zee Turner
29	397	Eswara	V/s	Zee Turner
30	407	Z TV Prasar Bhari	V/s	Zee Turner
31	417	Ortel	V/s	Zee Turner
32	418	-do -	V/s	Zee Turner
33	419	-do -	V/s	Zee Turner
34	425	-do -	V/s	Zee Turner
35	426	-do -	V/s	Zee Turner
36	428	-do -	V/s	Zee Turner

DEN NETWORK LTD		
S No	**PACKAGES**	**CHANNELS WITH MEDIAPRO**
1	DEN INTRO PACK @ Rs 180	STAR PLUS, LIFE OK, CHANNEL V, , ZEE TV, ZEE SMILE, STAR GOLD, MOVIES OK, ZEE CINEMA, ZEE CLASSIC, ZING, ETC. ZEE NEWS,ZEE BUSINESS,STAR CRICKET, STAR SPORTS,CARTOON NETWORK, POGO, ZEE JAGRAN, ZEE SALA, STAR JALSHA, ZEE BANGLA,ABP ANANDA, ZEE KANNADA, ASIANET, STAR PRAVAH, ZEE 24 TAAS, ZEE PUNJABI, STAR VIJAY, ZEE TELUGU, ETV 2
2	DEN PLATINUM PACK @ Rs 270	STAR PLUS, CHANNEL V,LIFE OK,STAR GOLD, MOVIES OK, ZEE CINEMA, ZEE ACTION, ZEE CLASSIC, ZEE PREMIERE, ZING, ETC, ZEE NEWS,ZEE BUSINESS,STAR CRICKET, STAR SPORTS, STAR SPORTS 2, ESPN,CARTOON NETWORK, POGO,STAR WORLD, ZEE CAFÉ, FX, FOX CRIME,VH1, NDTV PROFIT, NATIONAL GEOGRAPHIC, NGC ADVENTURE, NGC WILD,FOX TRAVELLER, NDTV GOOD TIMES,ZEE TRENDZ, ZEE JAGRAN, ZEE SALAAM, STAR JALSHA, ZEE

		BANGLA, ZEE BANGLA CINEMA, ZEE 24GHANTA, ABP ANANDA, ZEE KANNADA,STAR PRAVAH, ZEE 24 TAAS, ZEE TALKIES ZEE PUNJABI, STAR VIJAY, ZEE TELUGU, ETV TELUGU, ETV 2

HATHWAY DATACOM LTD		
S No	**PACKAGES**	**CHANNELS WITH MEDIAPRO**
1	BASIC SERVICE TIER (BST) Rs. 100/- p.m. + taxes	Star Utsav, ,Asianet Suvarna (GEC)
2	BASIC PAY TIER (BPT) Rs. 160/- p.m. + taxes	Star Plus, Life OK, Channel V, Zee TV,Star Utsav,Star Gold, Movies OK,Zee Cinema,Zee News,NDTV India,Pogo,NGC, Fox Traveller, NDTV Good Times, Zee Salaam,Star Vijaya,Asianet Suvarna (GEC),
3	MEDIUM PAY TIER (MPT) Rs. 220/- p.m. + taxes	Star Gold, Movies OK, Zee Cinema, Zee Action, Zee Classic,Zee News,NDTV India, Star World, FX, Fox Crime, Zee Café, Star Movies, HBO, Fox Action Movies, WB, Zee Studio, Movies Now, NDTV 24 x 7, NDTV Profit, CNN,Cartoon Network, Pogo,Star Sports, Star Cricket,NGC, Nat Geo Wild, Fox Traveller,NDTV

		Good Times,Zing, 9X, VH1,Zee Salaam, Star Jalsa,Zee Bangla,Asianet,
4	PREMIUM PAY TIER (PPT) Rs. 275/- p.m. + taxes	Star Plus, Life OK, Channel V, Zee TV, Zee Smile, Bindass, 9X,Star Utsav, Star Gold, Movies OK, Zee Cinema, Zee Action, Zee Classic, Zee Premier,Zee News,Star World, FX, Fox Crime, Zee Café, Star Movies, HBO, Fox Action Movies, WB, Zee Studio, MGM, NDTV 24 x 7, NDTV Profit, CNN,Cartoon Network, Pogo, Star Sports, Star Cricket, ESPN,NGC,Animal Planet, Nat Geo Wild, Nat Geo Adventure,Fox Traveller, Zee Trendz, NDTV Good Times,Zing, 9X, VH1, Zee Jagran,Zee Salaam, Star Vijaya,Asianet,Asianet Suvarna

WWIL		
S No	**PACKAGES**	**CHANNELS WITH MEDIAPRO**
1	Janta Pack (BST) ` 100 p.m. (Taxes Extra)	Zee Smile, Zee News, Zing, ETC,Zee Trendz, Zee Jagran, Zee Salaam, 24 Ghanta, Zee 24 Taas, Zee Punjabi,
2	Popular ` 170 p.m. (Taxes Extra)	Zee Tv, Star Plus,Life OK, Zee Smile, Channel V,Zee Cinema, Star Gold, Movies OK, Zee Action, Zee Premier, Zee Classic, Zee News, Zee 24 Ghante, NDTV India, NDTV 24x7, CNN,Zing, ETC, Cartoon Network, Pogo, Zee Trendz, Fox Traveller, NDTV Good Times, National Geographic, History TV18, Nat Geo Wild,Ten Sports, Ten Cricket, Ten Action, Zee Jagran, Zee Salaam,Zee Punjabi,
3	Grand Pack ` 222 p.m. (Taxes Extra)	Zee Tv, Star Plus, Life OK, Zee Smile, Channel V,Zee Café, Star World, AXN, Fox Crime, FX, Zee Cinema, Star Gold, Movies OK, Zee Action, Zee Premier, Zee Classic, Zee Studio, Star Movies, HBO, Fox Action,Zee News,

		Zee 24 Ghante, NDTV India, NDTV 24x7, CNN, Zing, ETC, Zoom, VH1, Nat Geo Music, Cartoon Network,Nick, Pogo,Zee Trendz, Fox Traveller, NDTV Good Times, National Geographic, History TV18, Nat Geo Wild, Nat Geo Adventure,Star Cricket, Ten Sports, Ten Cricket, Ten Action, Zee Jagran, Zee Salaam, Zee Marathi, Zee Talkies, Zee 24 Taas,Zee Punjabi,
4	Premium Pack ` 267 p.m. (Taxes Extra)	Zee Tv, Star Plus, Colors, Life OK, Zee Smile, Channel V, Zee Café, Star World, AXN, Fox Crime, FX, Zee Cinema, Star Gold, Movies OK, Zee Action, Zee Premier, Zee Classic,Zee Cinema, Star Gold, Movies OK, Zee Action, Zee Premier, Zee

		Classic, Zee News, Zee 24 Ghante, NDTV India, NDTV 24x7,CNN, Zee Business,Zing, ETC, 9X, VH1, Nat Geo Music, WB,Cartoon Network,Pogo,Baby TV, Zee Trendz, Fox Traveller, NDTV Good Times,National Geographic, History TV18, Nat Geo Wild, Nat Geo Adventure, Star Cricket, Star Sports, ESPN, Ten Sports, Ten Cricket, Ten Action,Zee Jagran, Zee Salaam, Zee Marathi, Zee Talkies, Zee 24 Taas, Zee Punjabi, Zee Kannada, Asianet, Zee Telugu, Zee Bangla, 24 Ghanta, Star Jalsha,

Post – OHD comments

Without Prejudice
(Sent through email and speed post)

Cable Operators Federation of India

13/97, Subhash Nagar, New Delhi-110027, Ph. 011-25139967, 9810269272

19 Sep 2013

Ref/COFI/TRAI/13/2013

The Chairman,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg
New Delhi-110002

Kind Attn: Dr Rahul Khullar/ Sh Wasi Ahmad

Sub: COFI Additional Comments on Consultation paper on Distribution of TV Channels from Broadcasters to Platform Operators dated 06 August 2013

Sir,

Reference TRAI Open House Discussion on 12 Sep 2013 held in New Delhi on the above subject.

We have the following additional comments to make on the subject please.

A mere perusal of all the comments given by the Pay Channel Broadcaster / Aggregators it appears in order to continue with misuse of their dominant position and using arbitrary methods to decide and then continue to collect by unfair means, unreasonable prices from the millions of C&S Consumers where they are deliberately trying to misrepresent and mislead the Regulator " TRAI " by taking refuge of making frivolous accusations to a point where they are themselves making contradictory comments and those are mostly in context to the Analogue mode of Cable TV distribution Where now we are standing at a juncture where 42 cities have already been successfully digitized after the DAS been implemented for past almost 1 year now.

<u>Distribution Business Depends on Timely Provision of Popular Content.</u> Cable TV is a service that depends solely on content that the distribution networks transmit, irrespective of the technology used. There are analogue cable, digital QAM cable, IP, HITS, DTH, mobile TV and streaming video to deliver TV channels. No operator wants to invest unless he is assured of content that would give him revenue and make his business model viable.

Hits Operators and independent MSOs have lost crores of investments in the business in trying to get content from these aggregators. Many have lost their business to these large players due to the discriminatory tactics of the aggregators owned by the 'Pay' Broadcasters.

<u>Government's License Policy to sign 'Pay' content first makes Aggregators Dominant.</u> It is sad that government license policy requires MSOs to sign the content agreements first and then get the license. Content agreements are not signed because aggregators first ask operators to invest crores in the infrastructure and then ask for the content. Thus everything from license to providing a Cable TV/DTH/HITS service depends on aggregators who control the price and method of distribution of all popular channels.

Not only the above, after the service starts all LCOs become dependent on the MSO partners of these aggregator companies for their monthly revenue and even future existence.

<u>Differentiate 'PAY' Channels from FTA channels.</u> It is the **'PAY' Channel Broadcasters who have created the unbalance in the industry through various means including Bouquets, Aggregators, High cost of a-la-carte etc.** It is very important for the Regulator to differentiate the 'PAY' channels from FTA channels. It is the first time that people will experience addressability and they must be given ample time to adjust with the new system. This also **requires to change the definition of a 'Pay' Channel** that for some reasons has been adopted in the DAS law, probably on the instance of the 'Pay' Broadcaster Lobby. In stead of-

"Pay channel means a channel for which subscription fee is to be paid to the broadcaster by the MSO operator and due authorization needs to be taken from the broadcaster for its re-transmission on cable."

It should be-

"Pay channel means a channel for which a pre-declared subscription fee is to be paid to the broadcaster by the Subscriber and due authorization needs to be taken from the MSO for its reception on cable signing a consumer authorisation form (CAF)."

Broadcasters' definition also to be changed. TRAI must change the **definition of a 'Broadcaster' to exclude any 'Authorised Agent' as there is no scope for an Agent in the DAS scheme. Inclusion of agents reeks of corruption** like in many other industries where 'Agents' have resulted into big scams involving crores of rupees like in Defence procurements, Heavy equipment procurements etc.

Monopolies Causing Heavy Damage to the Structure of the Industry. In such an unstable and monopolistic environment how can any government policy succeed? The disturbance caused in the industry by the aggregators will lead to mass unrest and disruption of services, not only amongst the small MSOs, LCOs and broadcasters but also the consumers who are yet to face the hazards of the monopolistic regime for times to come without anyone gaining anything from government policies.

Damage done to the industry by the aggregators sabotaging the government's ambitious scheme of digitising the Cable TV industry can be best judged from the very recent order of **Honourable TDSAT in the case of NSTPL (JAIN HITS) Vs Union of India and others** in which the company in line with Mrs Ambika Soni's dream of HITS technology helping thousands of small, self employed Cable Operators to adopt digital technology and continue to earn their livelihood, decided to provide HITS service having received their license in 2003. Company applied for content with Media Pro in March 2012 but could not get the content till date. It is only now that TDSAT has ordered MediaPro to provide its content and also pay a penalty of Rs 50000/-. **(TDSAT Judgement in Case No 166 (c) of 2013 is attached as Annexure-1)**

Media Pro used all delay tactics legal and otherwise to deprive Jain HITS of the content in Phase I and Phase II of digitisation so that this company was unable to get any business and as known to all, the market has been captured by the National MSOs owned by the companies who also own Media Pro.

This also proves the point made by TRAI Chairman during the open house discussion on 12 Sep 2013 that as long as these agents/ aggregators are owned by large pay TV broadcasters themselves, cable TV market will remain disturbed and no progress will be made except the industry moving into the hands of their supported MSOs and DTH companies.

<u>**Independent & small Broadcasters also Suffer.**</u> There are many news channels, religious channels and regional channels who are successfully distributing their content on their own, all over India.

Some Independent broadcasters are unable to distribute the channels despite digitisation due to monopolistic practices of the Aggregators and their ally MSOs and DTH operators because these aggregators run their own channels in bouquets in these MSO/ DTH networks. These MSOs and DTH operators ask for heavy carriage fee from the small independent broadcasters making it difficult for them to reach the viewers.

It is the **ABP News**, a news broadcaster who is part of the aggregation camp, **took courage to speak in favour of TRAI's proposed regulations** which reflects that all is not hunky-dory inside the aggregator house.

Even **during the Open House Rajdeep Sardesai of IBN18 network pointed that his channel, inspite of being very popular was not carried in Nashik.** However he avoided to say that it was one of the vertically integrated MSO who refused to carry his channel because his channel was the part of another aggregator's bouquet.

<u>**Regulator must Protect the interests of small businesses.**</u> It is important for the Regulator to understand that the basic structure of the industry rests on thousands of small entrepreneurs, both broadcasters as well as cable operators who own the last mile. **It is in the interest of the Nation and the public at large that the regulator must protect the rights of these small business entrepreneurs like FCC did in the USA from where most of these large broadcast groups have come to dominate the Indian Market.** We give an extract from the US Regulator FCC website below:-

"The FCC aims to craft rules and guidelines that enable small businesses and the spirit of entrepreneurship to blossom. Much of the FCC's mission directly impacts the small business community. Many of the recommendations in the National Broadband Plan were designed to help small businesses and entrepreneurs use new communications technologies.

The FCC's Office of Communications Business Opportunities acts as principal advisor to the Chairman and the Commissioners on issues, rulemakings, and policies affecting small, women-and minority-owned communications businesses.

The FCC has also entered into a strategic partnership with SCORE, a non-profit small business consultation group, and the Small Business Administration to provide direct, hands-on instruction on leveraging broadband's power for small businesses."

Our own policy of **Universal Licensing** separated from Spectrum may encourage thousands of cable operators to offer broadband services to help the Indian economy to grow. But this can be done only if **TRAI helps to frame such regulations that help the small businesses to participate fully and without any apprehensions in the digitisation scheme rather than the big players who only want to exploit Indian consumers.**

Frame Separate Regulations for Small Businesses.

- **Tariff.** Like in the USA, **TRAI can even frame separate Tariff Regulations and interconnect regulations based on laid down criteria.** US Regulator FCC does not regulate the tariff of a small cable operator but have regulations for large networks. Please find below an extract from FCC website on the subject;-

"How Cable TV Rates Are Regulated

Your LFA -- the city, county or other governmental organization authorized by your state to regulate cable television service -- may regulate the rates your cable company charges for the basic service tier. The basic service tier must include most local broadcast stations, as well as the public, educational and governmental channels required by the franchise agreement between the LFA and your cable company. ***If the FCC finds that a local cable company is subject to "effective competition" (as defined by Federal law), the LFA may not regulate the rates it charges for the basic service tier. The rates***

charged by certain small cable companies are not subject to regulation - they are determined by the companies.

Your LFA also enforces FCC regulations that determine whether a cable operator's basic service tier rates are reasonable, as well as reviews rate justification forms filed by cable operators. Contact your cable operator and/or LFA if you have any questions about basic service tier rates."

- **Licensing Fee.** **Different Licensing Conditions for Small Businesses.** There should also be different licensing conditions including fees for small businesses. It is **unfair to charge Rs 10 crores as license fee from DTH operators and only Rs One Lakh from a national MSO**. It is also **unfair to charge Rs one lakh from a small independent MSO** covering only a part of a city.

  Similarly, **it is unfair to charge an international Broadcaster the same amount as License Fee as from a small regional broadcaster**.

- **Advertising Duration.** Also there should be **different Advertising duration caps for FTA channels and 'Pay' Channels** because pay channels have many avenues to earn revenue. Pay channels earn from subscriptions, advertising and commercial subscriptions making three fold earnings from the same content than the FTA channels. Licensing a large number of FTA channels helps the industry control costs to subscribers which is very essential for a country like India where large number of subscribers are 'Poor'.

TDSAT Judgement in ASC Enterprise Vs MTV dated 10 Feb 2006. - Aggregators cannot Bundle Channels from all broadcasters.

This has been amply clarified by Honourable TDSAT in the case of ASC Enterprise Vs MTV (**TDSAT Judgement dt 10 Feb 2006 in Case No MA 225 of 2005 attached as Annexure-2**).

The Court noted in Para 22 that -

"22. We have gone through the pleadings and carefully considered the arguments. While it may be true that the bundling of channels has not been addressed in the Regulations, if we read the language of Clause 3.2 a duty has been cast on every broadcaster to provide signals on request, on non-discriminatory basis to all distributors of TV channels and clearly Petitioner No.1 as Direct to Home Operator comes in the category of distributor. Under Clause 3.3 a broadcaster like

Respondent No.1 can provide the signals through a particular designated agent or intermediary. ***However a responsibility is cast on the broadcaster that when signals are provided through a agent or intermediary, the broadcaster is to ensure that the agent/intermediary acts in a manner consistent with the obligations placed under the regulations and it should not be prejudicial to competition and a time limit has been provided for the agent to respond to the request of the distributor."***

Further the Court noted that-

"For the reasons stated above we are of the opinion that an agent or a distributor of multi-broadcasters ***cannot compel the receiver of signals to compulsorily receive a multi-broadcaster bouquet****. If a receiver of signals demands a bouquet of any single broadcaster of which the supplier of bouquet is an agent or distributor, he shall give such bouquet of a single broadcaster, if so desired by the receiver of the signals."*

Many such judgements are already existing that restrict the role of the aggregator as an agent. In fact TRAI is revisiting its own regulation again through the present proposed regulation.

New Regulations must be adopted within three months- No Extensions. We also request that not more than three months (90 days) time should be given to the aggregators as proposed by you to adopt the new regulations of 'bouquet forming' because already they have enjoyed a free hand for more than one and a half year of digitisation and many years in analogue regime. **They have destroyed many businesses of small MSOs forcing them to join their own MSO networks after depriving them of content.**

Also we wish to emphasise that it is because of the **lenient attitude of the government towards the broadcasters** that they dare to misuse their position and create monopolies. Government must protect the business of small broadcasters and independent MSOs against any predatory tactics so that they are also given an opportunity to survive.

Ban Exclusive Distribution Agents like MediaPro, Indiacast, One Alliance and others. Regulations should also ban employment of exclusive distributor /agent of a broadcaster for the whole country.

This has also been laid down by the TRAI in its Interconnect Regulations of 2004 as noted by TDSAT in the judgement dated 10 Feb 2006 in the case of ASC Enterprise Vs MTV referring to the Supreme Court ruling in the case of Sea TV Vs Star India as given below:-

"……………………..Clause 3.1 of the Regulation reads thus:-

No broadcaster of TV channels shall engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts with any distributor of TV channels that prevents any other distributor of TV channels from obtaining such TV channels for distribution (emphasis supplied".

This clause makes it mandatory for the broadcaster not to engage in any practice or activity of entering into any understanding or arrangement including exclusive contract with any distributor of the channels. This clause also prevents the broadcaster from engaging in any manner that prevents any other distributor of the TV channels from obtaining such TV channels for distribution. The language of this clause is quite clear and mandatory. Keeping in mind the fact that the definition of distributor includes an MSO it is not open to a Broadcaster to appoint any distributor or MSO, an exclusive agent and if done it would run counter to the prohibition of exclusivity contemplated in clause 3.1 of the Regulation…………………"

If an agent is exclusive then there is no difference between the distribution department of a broadcaster that used to distribute content exclusively before aggregators were formed. The only difference is that this aggregator/ agent is also the exclusive agent of many such broadcasters and makes his own bouquets mixing all channels in order to exercise more control and bargaining power on the Service providers, raise the prices to earn its own revenue using discriminatory practices. This has been emphasised by TDSAT in the NSTPL case as follows:-

"The respondent is in arrangement with primary broadcasters of around 70 TV programmes to represent them collectively (and/or separately) and to enter into agreements on their behalf with other "Service providers", broadcasters, MSOs, LCOs. Mr. Srinivasan, learned counsel for the petitioner aptly described the respondent as "the commercial limb" of the broadcasters."

*"**It is easy to imagine that being represented in a collective, the broadcasters get bargaining power far greater than they would have otherwise wielded on their own**."*

TDSAT has even referred to the TRAI's explanatory memorandum to the draft of the Register of Interconnect Agreements(Broadcast and Cable

Services) (Fifth Amendment) Regulations, 2013 as a good description of the 'Content Aggregator' which is as under:-

"11. As on date there are around 233 pay channels (including HD and advertisement-free channels) offered by 59 pay broadcasters. These channels are distributed by 30 broadcasters/aggregators/agents of broadcasters. ***Of these, the four main aggregators and the number of TV channels they distribute are: Media Pro Enterprise India Private Limited – around 75 channels****, IndiaCast UTV Media Distribution Pvt. Limited – around 35 channels, M/s Sun Distribution Services Private Limited – around 30 channels and MSM Discovery Private Limited – around 30 channels.*

12. One of the prime drivers for the emergence of authorized distribution agencies of broadcasters could be the fact that the analog Cable TV distribution market is too fragmented with the presence of a very large number of MSOs and LCOs thereby, posing practical difficulties for the broadcasters to deal with them individually. However, the trend observed in this market is the entry of big broadcasting houses into the business of aggregation by forming joint venture companies……….

13. ………….. This together with the misuse of market dominance by the aggregators has led to aberrations in the market. With time, consolidation has taken place in the aggregators' business and now the top four aggregators control around 73% of the total pay TV channel market and wield substantial negotiating power which can be, and is often misused."

No Mutual Aggrements- TRAI should make a Standard Agreement.

This industry has no standard practices in its functioning and there is no trust between the stakeholders. Thus to start with, regulations should be such that they do not leave anything to speculation and imagination leading to unnecessary litigations that prolong the process of growth rather than benefit the nation and the consumers apart from the litigants paying through their nose. For a small business owner getting into a tedious litigation becomes a question of survivability whereas large companies prefer to go to courts to delay the matters with the help of very senior lawyers who charge a ton. These large companies use litigations to gain more time and to exploit, harass and weaken the small player.

Counter Comments to a few responses from Aggregators

Please find below our counter comments to some of the comments made by aggregators in response to the Consultation:-

1. Media Pro Emergence of Aggregators (Para 1, Page 2)

Aggregators emerged in 2002 at a time when Pay TV and subscription revenues for broadcasters was at a nascent stage and the broadcasters were over dependent on advertisement revenue to finance the rising content cost. With cable and satellite homes growing leaps and bounds broadcasters wanted to maximize penetration and reach maximum homes across the country. In a fragmented cable market which was characterized by rampant under-declaration in the absence of addressability, the cost of operating and running a distribution set up was very high for both small and big broadcasters. Hence, aggregators/ authorized distribution agencies enabled the broadcasters to penetrate deep and establish a subscription revenue model by providing the following support

a. *economies of scale*
b. *competitive offering and*
c. *market knowledge i.e strong understanding of the market, both in terms of subscriber base and their willingness and ability to pay for different channels*
d. *execution of single agreements with over 6000 operators covering over 700 pay and FTA channels.*

COFI – Counter Comments

MediaPro claims are far from truth.

1. **There were only 37 pay channels in 2002**. They all belonged to Star TV (8 Ch), Zee TV (16 Ch), Sony (6), ESPN (2 Ch, now all in Star). All were foreign broadcasters and knew that pay channels are not distributed without addressability. Still 1994 onwards they started converting their FTA channels into 'Pay' to exploit the fast growing Indian Market and maximise their profits and reach earning both from subscriptions and advertisements. They introduced decoders with encryption to receive their channels so that they could arm-twist the operators by switching off the device whenever they wanted. This way they made a fool of cable operators, consumers and the government and shipped millions of dollars to their foreign accounts till Downlinking Guidelines were enforced in 2006.

Questions that arise are:

2. **Broadcasters did not ask the government and lobby hard to bring addressability at the time when first 'Pay' Channel was launched in 1994? Why did they wait for so long knowing that without addressability they could never get the correct figures of subscribers and ask operators to pay as per number of viewers. Why did they launch so many pay channels without addressability?**

Pay Broadcaster	**2002**	**2013**	**Remarks**
Star TV	**8**	**33 + 7 HD**	**Media Pro**
Zee TV	**13**	**37 + 8 News**	**MediaPro**
Turner	**3**	**5**	**MediaPro**
Sony	**2**	**6**	**MSM Discovery**
Discovery	**2**	**9**	**MSM Discovery**
ESPN (now with Star)	**2**	**3**	**MediaPro**
Ten Sports	**1**	**3**	**MediaPro**
Total	**31**	**105**	**Growth of 300%**

3. **What subscription revenue model was worked out by aggregators/ broadcasters for Indian subscribers when launching pay channels on analogue cable**? What is the present revenue model of aggregators/ distribution agents for analogue market and what is its basis?

4. **How did Aggregator/Agent make their distribution deals with cable operators?- These were all based on Negotiations.** Indian operators did not have the experience of distributing pay channels. They were not aware what games were being played with them when pay channels were given to them on very low, fixed monthly/ quarterly fee. There was no **methodology worked out by broadcasters/ agents/ aggregators to work out the negotiated number of subscribers in each network in analogue market. This was purely on the strength of how**

much maximum amount they could extract from cable operators.

5. **UNDER-DECLARATION- a ploy of broadcasters to lobby with government against LCOs. B**roadcasters did not know the exact number of their viewers and to get the maximum amount blamed the operators for under-declaration on the negotiated number of subs they made the operators sign on. They made yearly deals on negotiated fixed amount and increased the amount arbitrarily as and when they wanted. Also kept blaming operators at various Forums while making them pay for all channels in a bouquet for the same number of subscribers creating an anti-operator sentiment.

6. TRAI must ask the aggregators/ distribution agents to provide network/city wise deals done for their channel bouquets explaining the methodology of working out the fixed amounts.

7. In Fact Aggregators/ distribution agents made more money by raising dummy/ new operators and instead of reducing the number of connections correspondingly while working out the agreements, they charged each operator/ MSO for the same number of subscribers and thus made money many more times than the Cable TV Households in a city. This is becoming evident now in DAS implementation.

8. Aggregators must declare how many MSOs are their partners (like DEN, Siti, Sumangali and Hathway) and what deals have they made with them for different cities/ areas.

9. **Sub Para (d).** What is the basis /terms & condition/methodology of broadcasters signing single agreement with aggregator for all India (all distribution platforms including 6000 MSOs, DTH and IPTV operators)? **If it is on commission basis, what is the percentage of commission? Is there any minimum guarantee given by the aggregator to the broadcaster for whole of India? If so, what is the basis of this minimum guarantee?**

10. How are the distribution deals done by aggregators with DTH and IPTV platforms which are completely addressable and digital? Are they done per subscriber basis?

For their own convenience Broadcasters made one single agreement with Aggregators on all India basis for all distribution platforms on minimum guarantee and fixed amount. Side by side broadcasters created their MSOs and DTH operations to monopolise the market and kill the business of other independent MSOs and LCOs. This is a deep **CONSPIRACY** to capture media on ground and sky with the help of aggregators in the name of **Market Knowledge** and **Carriage Fee**. Carriage fee was given to only their own MSOs and DTH partners. LCOs whose network every one used to reach the subscriber, never got a single penny.

Please Find below our counter comments on the comments of some Aggregators.

MediaPro-Evolving Role of Aggregators: Analog Era – 2002 -2012 (page 3)

'The analog era was characterized by (i) lack of addressability and rampant under-declaration (iii) ballooning carriage payouts for broadcasters(reached 2000 crores in 2011-12 from a miniscule 50 Crores in 2003-04) wiping out subscription income gain (iii) emergence of MSO monopolies (iv) emergence and rapid growth of DTH to 33 million homes in just 6 years between 6 players (vii) Regulatory Intervention by the Telecom Regulatory Authority of India ("TRAI") (since 2004) in the form of extensive Regulations, briefly set out below which were highly skewed in favour of the distributor of TV channels:'

COFI Counter Comments

1. **(ii) Rampant Under-Declaration. FALSE,** All deals with cable operators are dictated by aggregators while negotiating because they have the power to switch-off the service and kill the business of an operator/ MSO. How did they arrive at the figures of under-declaration? TVHH figures were brought down from 123 lakh given by the broadcasters to 68.3 lakh in Phase-I after Ministry relied on figures of Census 2011. This is a reduction of 46% in cable homes. This indicates that **all negotiated deals were based on inflated figures and all 'Pay' broadcasters are overcharging MSO & cable operators. The word 'under-declaration' has been coined by broadcasters/aggregators to misguide the Regulator and the government and create an anti LCO sentiment.**

2. **(iii) Balooning Carriage Fee.** **FALSE,** Most of the Carriage Fee they paid was to their own MSO partners- MSOs (DEN, Siti, Sumangali and Hathway) and DTH operators (TATASky, DishTV and Sun Direct). All non aligned operators are suffering financially. Let these broadcasters/aggregators/agents give the amount of carriage fee paid to their own partners and others to clarify their plight.

3. **(iv)** **Rapid growth of DTH:-** In their response all aggregators are trying to mislead the TRAI, the government, the public by not telling that DTH was started by all pay broadcasters to capture the market directly by bypassing cable operators. To hide their shady subscription deals they lobbied hard and got the CAS deferred so that no transparency was introduced to the industry and they could continue their exploitation of Indian Cable Industry as well as subscribers. Telecom Operators started DTH much later. This enabled DTH operations of broadcasters to capture subscribers in rural, far flung areas and in cable-dry areas.

***Media Pro* (page 3 para 1)** *'The aggregators provided the necessary negotiation leverage on carriage and subscription deals and enabled them deal with cable monopolies and mega DTH players.'*

COFI Counter Comments

This statement is totally false. Aggregators/Distribution Agents existed even before carriage fee payments started in the industry. The fact is that carriage fee was started by a broadcaster (NDTV) with the aim to get on the Prime Band and beat the competition. It became a trend followed by all Broadcasters after 2003. MSOs/ Cable Operators and DTH operators started using this carriage fee to counter the ever growing pressure from Pay Broadcasters to pay more for new channels in fixed amount deals as well frequently increased subscriber numbers.

***Media Pro**: MSOs wanting to use carriage revenue as capex to fund digitization*

COFI Counter Comments Maybe their own associated / partner MSOs were funded of the Capex for Digitization. While No aggregator is giving a single penny as carriage, it's the channel broadcaster directly who was entering into the carriage deals.

Media Pro(page 3 para 2)

'To elaborate the above position further it is submitted that, the net realization of broadcasters, net of carriage fee was less than 4% of the subscription revenue collected by operators from end subscribers. For instance, of the total subscription revenue of Rs 18000 crores collected from the 88 mn cable satellite households in 2011-12, with an Average Rate Per User ("ARPU") of Rs 170 by the cable operators, the roadcasters/aggregators received a share of approximately 15% at Rs 2700 crores as against global bench mark of 35% to 40%-. If one were to take into account the carriage payout of Rs 2000 cores, the net realization of broadcasters falls below 4% at 700 crores.'

One Alliance

See the charts on the next pages

Having dealt with the basis of the CP in great detail we take this opportunity to explain some very relevant facts and views that are intricately related to the subject and shall be useful for the Hon'ble Regulator to consider while taking a decision as regards the further action in relation to this Consultation Paper:

A. <u>MSOs : The Market Reality Vs the Perception</u>

Navigating through the various paragraphs in the present Consultation Paper, one gets to feel that the broadcasters / aggregators have attained a dominant position are abusing the same. The MSOs / LCOs have been portrayed as the victim of the dominance exploited by the broadcasters / aggregators. The consumers who ultimately generate the entire subscription revenue have been devoid of the fruits of digitalisation for reasons attributable to the broadcasters / aggregators.

We would like to draw the attention of the Hon'ble Regulator towards the following graphs (based on industry figures and estimates) that presents an entirely different picture than above-

<u>Subscription Earnings and Carriage Payouts for the Industry</u>

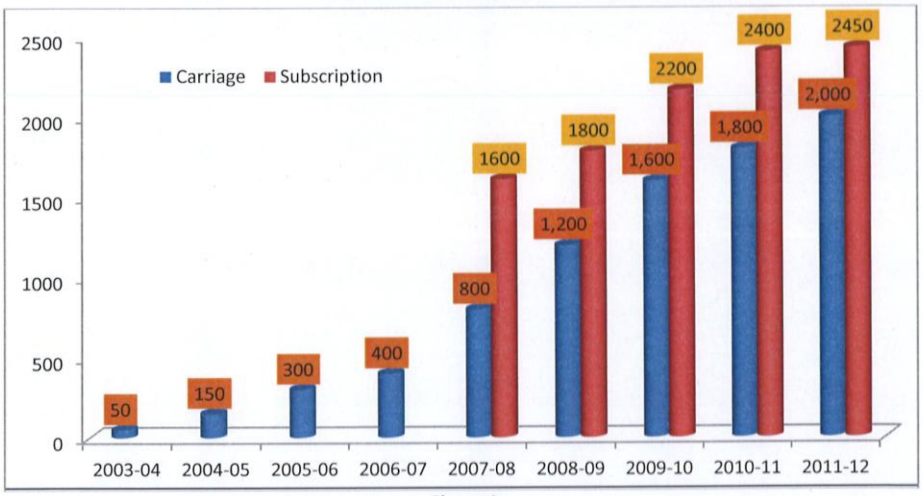


Figure 1

Subscription Revenue CAGR – 13%	**Carriage CAGR – 26%**
Subscription Revenue for last 2 years – 1%	**Carriage for last 2 years – 11%**

The following inferences emerge from the graph depicted above:

(i) Carriage money was being paid the MSOs even when there was no corresponding subscription income for the broadcasters / aggregators.

(ii) The susbcription revenue grows at a CAGR of 13% and the carriage income for the MSOs has grown at a CAGR of 26%.

(iii) The subscription revenue net of carriage payment in 2007-08 was Rs. 800 crores which in the year 2011-12 has reduced to Rs. 450 crores. In other words there is net loss of subscription earnings and the same has gone down by about 43.75%

(iv) Over the last 2 years depicted in the graph, the subscription earnings have grown by just about 1% wheras the carriage earnings of the MSOs have witnessed a surge of about 11%

In short, the ballooning carriage payouts practically wipe out the cable income gains for broadcasters / aggregators

Value (lost in the) Chain – Analog Era

	Households Mn	ARPU In INR	Ground Collections (Rs. Crs.)	Broadcasters Revenue (Rs. Crs.)	% Content cost	Per HH earning for broadcasters
Cable	88	Rs 170	18,000	2700	15%	Rs.26
DTH	32	Rs. 170	6,500	2500	39%	Rs.65
Total	120		24,500	5,200		

Figure 2

(i) Subscription revenue generated from the Cable platform is Rs. 2,700 crores;

(ii) Carriage payments made to the Cable Platform is Rs. 2,000 crores (refer figure 1);

(iii) Net balance available with Broadcasters / Content Aggregators is Rs. 700 crores;

(iv) Rs. 700 crores earings from 88Mn households averages about less than Rs. 7.00 per household.

At net level (post carriage) broadcasters realize <u>less than 4%</u> of the cable consumer payouts as content fee, which by no standards is the fair share to the broadcasters as against the global benchmark of 35 to 40%.

The cable platform enjoy disproportionate balance of power in the Analog Era.

<u>Counter from COFI on ‘only 4% margin for Broadcasters’</u>

<u>Wrong Calculations of Subscription Percentage of Pay B’ Casters</u>

In response to TRAI consultation on Channel Distributors and aggregators, Aggregators including Media Pro and One Alliance project wrong statistics that Pay broadcasters get net 4% from subscriptions after paying carriage fee. This is totally false and the graph and other figures that have been given as a statistics in the One Alliance comments purported to be based on some industry estimates are completely fabricated.

1. Broadcasters’ figures are all skewed to project their point of view.
   a) Why are the broadcasters/aggregators mixing up the carriage fee with subscription amount? Instead they should take into account ad revenue and all other forms of revenue earned from-
      (i) **sponsorships**,
      (ii) **paid news**,
      (iii) in programme advertising (Non- FCT Branding),
      (iv) Revenue from programme syndication,
      (v) **SMS contracts with telecom companies**,
      (vi) **Subscription and other revenue from foreign markets** etc.

   for the same content to calculate their total revenue. **In non-addressable system there is no ‘Pay’ TV. All revenues are based on mutual agreements and broadcasters found many ways to exploit the LCOs and subscribers. They even flouted the quality of service regulations of caps on advertising.** They never cared for discomfort of subscribers in whose name they made money and became billionaires.

   b) Why there is no revenue from ‘Pay’ Channels shown in the graph from 2003 to 2007? Pay channels started collecting revenue from 1994 itself. **Although as there were no addressable networks, cable operators and not the consumers paid for these FTA converted ‘Pay’ Channels as an authorisation fee.**

c) Only ‘Pay’ channels demand subscriptions whereas carriage fee is paid by ‘Pay’ channels as well as FTA channels. This means Rs 2000 crores paid in 2011-12 is the carriage paid by all broadcasters, FTA and Pay. However, subscription revenue of Rs 2700 crores is earned only by the 184 pay channels. Actual **Carriage fee paid by these 184 channels would be much less and their margins much higher**.

d) Out of 850 ch only 184 are pay channels (about 20% excluding HD). **Thus the subscription figures are only for 20% of the industry.**

e) Total 6000 IRD exist for pay channels. They do not feed 88 million subscribers as projected. **Pay TV viewership is not more than 30-40% in India** that too, restricted to mostly TAM cities. Rest is all FTA channels.

f) If all 6000 headends serviced 88 million subs, each head end would serve at least 14700 subscribers which is not true on ground.

g) **<u>One Alliance - Value (Lost in the) Chain-Analog Era</u> (Graph) These figures are also all wrong. TRAI should find out how many FTA headends exist and what is the average number of subscribers each one serves? This is very essential to know what percentage of people watch pay channels in India and what revenue is generated by FTA networks. Regulations need to be framed accordingly. FTA channels and ‘Pay’ channels must be treated differently in terms of licence fee, tariffs, advt duration caps etc.**

h) ARPU in cable is not 170/- as projected. This may be only DAS area ARPU. In all India, it may not be more than Rs 140 as 60 % TV subscribers, particularly in urban villages, rural areas and semi urban areas pay less than Rs 100/- per month and may not be watching any pay channels.

i) TVHH figures were brought down from 123 lakh given by the broadcasters to 68.3 lakh in Phase-I after Ministry relied on figures of Census 2011. This further doubts the revenue figures of Broadcasters and the cable & satellite universe projected by them.

j) **To know the real situation TRAI should ask Broadcasters-**

(i) How many IRDs each Pay Broadcaster has given to which all MSOs with details of addresses and contacts?

(ii) Number of subscribers for which each deal has been signed and the exact amount being billed.

(iii) **Carriage**

a. Was started by NDTV in 2003, to get visibility on Prime Band at the time of its launch. Other Pay Broadcasters followed suit to fight competition till it became a common practice.

b. Majority of carriage goes back to vertically integrated MSOs and DTH operators. Thus it is all in the same house.

c. TRAI should ask broadcasters amount of Carriage paid to each partner MSO/JV/Distributor separately and to other Cable operators and Independent MSOs with their details separately to assess the real situation.

iv) The above results will show that-

a. Large MSOs, mostly vertically integrated MSOs get 80% of carriage fee.

b. 50 % of carriage fee meant for MSOI and independent Cable Operators does not reach them and is used as kick backs by distribution teams of Aggregators/ Broadcasters.

c. To misappropriate this money, fake accounts are opened up by many local distribution agents in the name of Cable Operators and MSOI.

[Media Pro (Page 4).](#) Proposed amendments impinges on the fundamental rights of freedom to trade of the broadcasters and their authorized distribution agencies

The proposed amendments to the existing Telecommunication (Broadcasting and Cable) Services Tariff Orders, Interconnection Regulation and Register of Interconnect Regulations as annexed to the Consultation Paper, if notified by the Authority, will directly impinge upon the fundamental right of freedom to trade of the broadcasters and aggregators as enshrined in the Constitution of India. The proposed amendments mandates the specific role and responsibilities that can be assigned by the broadcasters to their authorized distribution agency, which effectively take away the fundamental right of the broadcasters to conduct and structure their business in a manner that they deem fit. It requires the broadcasters and their authorized distribution agencies to compulsorily restructure their business model which has been in existence for over 10 years, without any justification. In effect, it circumscribes the role of authorized distribution agencies in a manner which eliminates them completely from the value chain and threatens their existence.

It is further submitted that outsourcing the subscription revenue business by the broadcasters to authorized distribution agencies/aggregators is normal business structuring as is prevalent in the other sectors like banking, telecom, insurance etc and cannot be considered anti-competitive.

Counter by COFI

It is fine for a broadcaster to restructure its company but they have no right to impinge on the fundamental rights of thousands of LCOs and independent

MSOs, by misusing their position as aggregator for powerful 'Pay' Broadcasters.

Cable operators who are in existence for over 20 years are facing the biggest restructuring in DAS losing a huge revenue to the MSOs and aggregators. They are not being given the opportunity to continue with their business in the digital era.

***Media Pro* (page 4, last para) Consultation process contrary to the principles of transparency as embodied in the Telecom Regulatory Authority of India Act, 1997 ("TRAI Act").**

'Moreover, the paper concludes without any supporting data/evidence and investigation that authorized distribution agencies have misused their dominant position and their functioning are restricting the growth of the broadcasting and cable TV services sector. In this context it is relevant to highlight paragraph 5 of the Consultation Paper which is reproduced herein below'.

Quote
To address the issues that have arisen out of the present role assumed by the authorized distribution agencies of the broadcasters, ***it is essential to amend*** *the regulatory framework by adding provisions that clearly demarcate the role and responsibilities that can be assigned by the broadcasters to their authorized distribution agencies for distribution of TV channels to various platform operators*
Unquote

COFI Counter Comments

1. There are 186 cases filed by MSOs and LCOs against Media Pro in TDSAT in the year 2012 when DAS was being implemented. This itself is an enough evidence indicating anti-competition practices of aggregators/agents of broadcasters. It may be noted that maximum cases are against Media Pro (186 in a year) and there is no case filed by

either DEN or Siti Cable against the aggregator being its preferred vertically integrated partners.

2. Broadcasters / aggregators want to get away by saying that these court cases are normal, regular disputes by disgruntled MSOs due to lack of transparency, skewed distribution and high carriage fee. It may be normal for them but what happens to poor LCOs and MSOI coming from small places from the North East, J&K, Kerala, West Bengal etc. to get relief coming all the way to Delhi, hiring expensive lawyers, undergoing lengthy litigations facing delay tactics of the broadcasters and aggregators. Many have lost their livelihood in the process and many have given up in front of these powerful sharks and sold their networks. Is anyone including TRAI and the Ministry bothered?

***Media Pro**(Page 5) Consultation Paper initiated by the Authority on the basis of incorrect and misleading information provided by Complainant Multi System Operators ("MSOs") and Local Cable Operators ("LCO's")*

It is submitted that the Consultation Paper has been initiated by the Telecom Regulatory Authority of India ("TRAI"), on the basis of incorrect and misleading information provided by complainant MSOs and LCOs to the Authority and the Hon'ble Ministry of Information and Broadcasting ("MIB") alleging monopolistic practices adopted by aggregators.

From the Consultation Paper it is evident that the paper has been initiated on the basis of the complaints made by MSOs alleging that they were forced to accept unreasonable terms and conditions to obtain signals during the implementation of DAS Phase 1 and 2 and that too at the fag end of the deadline. However, the paper ignores the fact that these complaints are unsubstantiated with facts and data to establish monopolistic practices adopted by the aggregators or for that matter presence and misuse of substantial negotiating power. In fact, till date neither the broadcasters nor their authorized distribution agencies have been even provided an opportunity to present their case and be heard.

Further, these complaints are merely regular disputes between service providers for which the TRAI Act itself provides an inbuilt mechanism/ framework for dispute resolution in the form of Telecom Disputes Settlement and Appellate Tribunal ("TDSAT") which has exclusive jurisdiction to adjudicate upon disputes between service providers and has been doing so over 10 years since the Authority was notified as the sector regulator in January 2004.

Counter Comments from COFI

We do not know about the MSOs but the data and complaints given by us as annexures to our response on the TRAI consultation are highly authentic, real court cases and complaints showing the modus operandi and high handedness of Aggregators/distribution agencies. Many MSOs had to approach Courts to get content for DAS area.

Media Pro(page 6) *Consultation Paper ignores the provisions of the Competition Act and the role of Competition Commission of India which inter alia regulates monopolistic trade practices, dominance and abuse of dominance*

Counter comments from COFI

Competition Act Already Exists but Ineffective for Media

We agree that there is a **Competition Act 2002** existing in the country that superseded the MRTP Act and it takes care of monopolies and anti competitive practices in any market including television media. Its implementation is being looked after by Competition Commission of India (CCI). There are many definitions like 'Acquisition', 'Agreement', 'Cartel', 'Consumer', 'Relevant Market', 'Service' etc. which already exist in the Competition Act and are to be determined by Competition Commission of India with reference to the relevant product market or the geographic market. However, **it has not proved effective in controlling the monopolies and market dominance by MediaPro or Sun Group because either the**

Commission does not understand the way media market functions or the law needs a total change to cater to the media market.

For example **CCI gave a clean chit to Media Pro** in a complaint by an individual of market exploitation by dominant position. Not only this, after the verdict of the DG Investigation giving clean chit, the complainant never appeared again when asked for his response by the Chairman. The argument in favour of Media Pro is very elusive and the whole investigation and interpretation of the relevant market will appear cooked up to any professional in the industry. The Commission said in its order dated March 21, 2013 that the joint venture

"It can not be concluded that the joint venture is a dominant player in the relevant market of the services of aggregating and distribution of TV channels to MSOs (Multi System Operators), DTHOs (Direct To Home Operators) and IPTVOs (Internet Protocol Television Operators) in India."

"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," CCI said.

Same is the case of a complaint by **JAK Communications MSO against SUN Direct DTH**. In this case the Commission considered DTH and Cable as two different markets with different products and hence gave a clean chit to Sun Group because it found that a DTH and a cable MSO can't be competitors. One of the members of the Commission did not agree with the verdict and gave a **dissent order**.

Please note that the numerous court cases against one entity itself shows its modus operandi and if all cases are against its monopolistic practices, it indicates the mal intention of creating such an entity. Investigations relied only on the explanations given by the involved parties. In the case of Media Pro the complainant was not a cable operator or suffering party and appears to be a fake who was made to complain to prove that

MediaPro is a very clean arrangement. The investigations do not speak of any interaction with various stake holders and market intelligence and cases in the courts.

Conclusion

By mere perusal of all the comments offered by the Broadcaster / Aggregators it appears they are still living in analogue era because most of the reasoning offered by them is in context of analogue transmission and not as per the DAS scenario which has already successfully completed 2 phases. Should we construe from this that broadcaster / aggregator again want to go back to the black era of analogue transmission wherein they were using arbitrary methods for deciding the price mechanism.

Noora Kushti (Fixed Match)

Comments on Consultation is a 'Noora Kushti' (a fixed Match) among Broadcasters, Aggregators and vertical Integrated MSOs and DTH operators. They are blaming each other to divert the issue by misleading the mind of the Regulator, Govt and Public.

MSOs becoming Powerful and not Aggregators

Broadcasters say MSOs are getting the 'biggest bargaining power', they are buying off LCOs to create lateral monopoly. Out of 5 Big MSOs, 3 belong to the vertical integrated groups of these broadcasters. Why don't they block their content for such MSOs? They should name them and expose their malpractices. As with TRAI's efforts total transparency has been achieved in Phase-1 &2, Broadcasters have started getting increased subscription revenue (Increase shown in their financial report) and decrease in carriage fee . Also increase in advt revenue, with actual number of subscribers being revealed (Set Top Box seeding is complete).

Broadcasters promoting --- Aggregators' needs/ requirement

Broadcasters are promoting the importance and need of Aggregators giving reasons like 'they know the Market', they 'help negotiate subscription and carriage deals' and bring 'efficiency' in distribution.

<u>Broadcasters get only 4% revenue</u>
They say that they get only 4% out of subscription revenue because carriage paid to MSOs is too high. Pertinent to note is that Broadcasters forgot to mention the Advt Revenue (80%) earned through the distribution platforms, International subscriptions and Advt for same content. (High earnings of broadcasters are proved by high salaries and bonus paid to their staff and huge money spent on their foreign jaunts and pleasure trips of their distribution agents and JVs etc.)

<u>Carriage Fee</u> --- Let the broadcasters segregate the amount of carriage paid to their vertically integrated MSOs and other MSOIs/LMO. To save on revenue, they should stop paying to these MSOs anymore. No carriage fee is paid to any LCO. **<u>Broadcasters</u>** should provide the details along with percentage of carriage paid to their own MSOs & DTH operators and other independent MSOs to know how much is distributed within the house.

<u>As per Batlivala</u> <u>& Karani report</u> in 2011-2012, out of 1600 crores of carriage paid, 1300 crores went to the top five MSOs. Broadcasters pay 20-40 crores as placement fee annually. That means only 300 cr were given to other MSOIs. Out of these five MSOs, four were their own partner vertical integrated MSOs (All in the same house).
Chrome Media report says that a music channel shelled out 23 crores for placement in UHF.
Makes us wonder why nothing was paid to the LCOs who actually serve their channels to the subscribers?
TRAI must take an account of all the backdated carriage fee paid by broadcasters to MSOs and divide proportionately among all LCOs/LMOs/MSOI or compensate in their billing and give bonus with retrospective effect.

<u>Blame</u>--- MSOs can't discipline LCOs so they want carriage. Industry needs to be fixed.
<u>Ans</u> --- It is true. TRAI has already fixed the LCOs by placing them under the control of the MSO, **now it must fix the MSOs, Aggregators and Broadcasters**.

Blame --- MSOs want to use carriage revenue as capex to fund digitization.

Ans ---No aggregator is giving a single penny as carriage to independent MSOs and LCOs/LMOs. They should name the MSOs who has been paid the money.

Fundamental Rights --- To protect their fundamental Rights (Broadcasters /Aggregators and their MSO & DTH) to do business, why do they infringe on the fundamental rights of the LCOs?

MSOs getting Negotiation power for Revenue and Billing of LCOs

RIO signing --- Broadcaster are shying away from their responsibility of signing the RIOs. Even the MIB gives advisories to Broadcasters and not to aggregators for any violation of the content and advt codes. Broadcasters are licensed not aggregators. Broadcaster cannot compare signing of RIO with carriage fees as carriage fees has decreased in DAS regime.

Economy of scale --- Aggregators make highly discounted deals with their own MSOs in the name of Bulk deals and economy of scale making small independent players pay them through their nose making their own business unviable. This calls for TRAI's immediate intervention as this is gross misuse of Dominant Position to throw out small operators.

Ploy of Broadcaster/Aggregator/ Vertical integrated MSOs and DTH.

Anti-Piracy **---** It is stated that Aggregators help the broadcasters in fighting piracy.
STBs are already seeded in DAS areas and no case of piracy in STBs by a consumer or anyone else has been reported so far.
No case of duplicating the smart card to do piracy has been reported.
In analogue regime it may be possible but with TRAI's efforts total seeding has been done in Phase 1 & 2 cities and rest of the country will also finish in the next one year.

Modus of Operandi--- First, Broadcasters/Aggregators will increase payment of MSOs before any major/ important event (Cricket Match or a new mega Serial), then they will cut signal of independent MSOs to demand more money and after that arrange RAIDS (Sometime by third party) lift up their equipment etc to ruin their business to benefit business of their partner MSO.

Aggregators Further Appointed Distributors & Sub-Distributors

All aggregators are resorting to appoint exclusive distributors and sub-distributors in the local market. These local distributors become too powerful taking up the distribution of all aggregators in different names and creating benami accounts. They help in creating monopolies becoming MSOs and LCOs if not in their names, in the name of their relatives.

Technical Audit Issue

Technical audit issues; non- compliant and lack of readiness of Digital Addressable Systems (DAS) of MSOs.

These are baseless allegations. In the name of technical audit aggregators are on the spree of witch hunting by imposing self made regulations.

(Third party audit people are generally their Ex-Employees or sister companies.)

You are requested to please consider these comments before taking any decision on finalising the regulations. We shall be pleased to discuss these points in details in person if need be.

Yours Faithfully,

Roop Sharma

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