



VIEWS OF DEN NETWORKS LTD, NEW DELHI TO THE CONSULTATION PAPER (“CP”) DATED 25.10.2021 OF TELECOM REGULATORY AUTHORITY OF INDIA PERTAINING TO THE “MARKET STRUCTURE/COMPETITION IN CABLE TV SERVICES”.

At the outset, it is noted that the comments in this paper are premised on our understanding of the broadcasting and cable TV industry practices, its gradual growth over the decade and the current legislative structure with respect to regulation of the cable TV industry and the ancillary markets. The comments herein are proposed with the intent to protect the interest of industry players as well as the Consumers.

The objective of the Cable Television Networks (Regulation) Act, 1995 ‘*hereinafter* referred to as ‘the Cable TV Act’ is to regulate the operation of cable television networks in the country and rightly so, over the years the cable TV industry has evolved manifold with the incoming of diverse market players including DTH, HITS and IPTV and the consumers have been the receiving end of the benefits that have ensued from the increased competition in the cable TV industry. At this juncture, it is pertinent to observe that the fundamental objective behind the imposition of any restriction or enhanced regulatory practices for controlling market dominance in the cable television industry would be to ensure protection of consumers’ interest and that in the present regime, the freedom of choice enjoyed by the consumers is paramount. Having said that, prevention of any form of entry barrier in the relevant market for new entrants is another significant consideration. Therefore, at any given point of time, competition and market dominance should be viewed from the perspective of consumer interest, availability of consumer choice and free trade in that sector.

The consumers now a days have myriad of options at the tip of their fingers with respect to choosing a service provider that provides them the best services in their desired platform. With the advent of digitalization, mandatory requirement of set top boxes for cable TV operators in 2012 followed by the emergence of DTH players in the TV distribution industry emerged as increasingly strong competitors to Cable TV Operators, the cable TV industry was undergoing pivotal



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changes and within a short span of about a decade, DTH services have captured close to half of the pay TV market in India.

It is well recognized by the Authority that the Broadcasting Industry has majorly four permitted service providers (Distribution Platform Operators 'DPOs'), i.e., MSOs, DTH, HITS and IPTV with all four rendering services that are substitutable in nature. As per several FICCI reports on Broadcasting Sector released from time to time, in the year 2014 there were approximately 99 million subscribers while the DTH subscribers were 37.19 million which reflects Cable TV operators as the Industry leaders at that time. Contrary to that, within a short span of 6 years the market structure currently comprise of 70.99 million subscribers of DTH, 73 million subscribers of cable television operators, 2.15 million of HITS with IPTV services also being rendered by few service-providers. Moreover, the subscriber base of Free Dish has also seen an exponential growth and presently stands as 38 million. This clearly reflects that the consumers are no longer devoid of choices and the market is not driven by any one single Distribution Platform Operator. Moreover, with the introduction of multiple "Over the Top" commonly referred as 'OTT' platforms, the consumers have access to video/television services including linear TV channels and as per the available data, the Subscription Video on Demand (SVoD) OTT players account for an approximate cumulative subscriber base of 66.71 million. These OTT platforms which are currently outside the purview of any regulatory or licensing regime have developed as another major distribution platform which is rapidly asserting its presence in the relevant market. It is therefore apparent that there exists no monopoly/market dominance as no one single player is dominant in the market and the presence of multiple players offering substitutable services provides diverse choices to the consumers at competitive tariffs.

More recently MIB pursuant to circular dated 27th January 2017, allowed all MSO license holders to provide Cable television services on a pan-India level as opposed to the earlier licensing framework which restricted MSOs to certain cities/districts/states. Several MSOs are providing Cable TV services irrespective of geographies on a pan-India level, thereby increasing the number of MSO players across the entire country and strengthening the level of competition even amongst the MSOs. In terms of the aforesaid, Cable TV Operators cannot anymore be considered as competing only in regional/ state specific markets in India as the business operations have evolved to pan-India levels akin to the DTH players and the consumer is no longer obligated to subscribe to cable television services of MSOs only.



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It is pertinent to note that presently the broadcasting sector is laced with fierce competition amongst all the aforesaid market players and the existence of any form of monopoly by one single player is unlikely. The existence of monopoly would entail that in the relevant market there is a single/dominant seller for a product/service and there is no close substitute of the commodity offered by that single /dominant seller to the buyers. As enumerated in the foregoing paragraph that the services offered by the DPOs have perfect substitutes in the market and all such DPOs are already offering various competitive schemes to the subscribers due to fierce competition in the market and there is no requirement for imposing additional regulation.

Further, the present legal regime regulating the broadcasting and cable TV sector inclusive of the Cable TV Act and along with the regulations provide sufficient safeguard to the consumers as well as the market players. The DPOs are therefore, heavily regulated and are being micro managed in terms of the regulatory framework and under no circumstance, such DPOs can exploit the consumers by exorbitant prices and/or restricting their choice. Hence, it is quite unlikely for any DPO to hinder competition and use its dominance for unjust enrichments, in any manner or form, under the present regulatory framework. In this context, it is pertinent to note that the competition in the Cable TV sector is not just limited amongst various DPOs but also amongst multiple MSOs as well as thousands of LCOs. As per reports, in India there were 1733 registered MSOs as on the 1st September, 2021 and an estimated 1,55,303 LCOs as on the 1st of March 2021. MSOs and LCOs have a co-dependent relationship, with LCOs offering the last-mile services such as access, billing and collections, while MSOs offer scale functions such as technology and infrastructure.

Under the Cable TV Act and Cable TV Rules there is no restriction on the number of MSOs/LCOs operating in any particular area neither there is any requirement for regional licenses, evidencing that there are no regulatory or entry barriers and that the sector is profoundly competitive with players offering price competitiveness, provisioning of a greater number of channels and increasing the quality of broadcast. Any proposal to introduce unjustifiable restrictions on MSOs in absence of any evidence reflecting the existence of monopoly or market dominance will tantamount to infringing the freedom of trade and business under Article 19(1)(g) of the Constitution of India, 1950.



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It is pertinent to mention here that the Authority in its recommendation on Entry level Net worth Requirement of Multisystem Operators in Cable TV distribution published in July 2019 has inter-alia stated that “...MSOs are granted registration as per their application on non-exclusive basis. They are further allowed to operate in any part of the country irrespective of their registration for specified DAS notified area. Thus, the sector is by design already a multi-operator and competitive sector with presence of other MSOs as well as DTH players.” The authority has further stated that “The ‘New Regulatory Framework’ has not only addressed many of the market asymmetries prevailing earlier in the sector but also introduced provisions that enable smaller MSOs. A detailed white paper has been published and issued by TRAI that highlights the benefits of new framework for small MSOs. The new framework provides an enabling environment for aspiring LCOs to move further in their business and become an MSO either on their own or by forming LCO groups (in form of Cooperative or joint associations). The new framework, in this regard fulfils the policy objectives of the government of India to promote entrepreneurship and enable small business.” It was further observed that “...it is explicit that the DAS implementation has enabled a new system, whereby the emphasis has shifted from area of operation to the actual number of subscriptions. It is on record that in its recommendations on ‘Restructuring of Cable TV Services’ in July 2008 the authority had recommended area wise registrations for MSO. However, at that time the context was different. The sector was evolving from an unorganized, informal structure and was primarily analog transmission with no addressability. Since the implementation of DAS the context and the structure of Cable TV distribution have undergone a change and the sector has evolved to a formalized structure. Therefore, the said recommendations do not hold merit now, in view of the changed market and distribution structure.”

The Authority has rightly opined that since the implementation of DAS, the context and structure of Cable TV distribution has transformed into a formalized structure coupled with sufficient competition in the market. Hence, in our humble opinion, the earlier recommendation on the “Market Structure/ Competition in Cable TV Sector” do not hold merit now in the light of the changed market/distribution structure and authority should withdraw its earlier recommendation on “Market Structure/ Competition in Cable TV Sector” and this consultation papers should be closed as in current scenario consultation on Market Structure/ Competition in Cable TV Sector is not required.

It is further stated that the ‘Competition Commission of India’ (CCI) established under the Competition Act, 2002 as Market Regulator is bestowed with the



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jurisdiction to initiate and entertain all and any instance of Abuse of Dominant Position and Anti-Competitive Agreements of sorts and has the Quasi- Judicial powers to impose penalties and issue cease and desist directions. Moreover, the provisions of the Competition Act has an override effect in the matters of Competition on all other provisions contained in any other law for the time being in force. The CCI is entrusted with wide powers to not only regulate traditional mergers and acquisition but also to regulate the acquisition of control including shares, voting rights or assets etc. Therefore, any parallel legislation imposing any form of restrictions on MSOs/ LCOs will only act as a hindrance for growth and lead to unnecessary litigations and judicial interventions.

Accordingly, the current consultation paper should be closed and earlier recommendations on “Market Structure/ Competition in Cable TV Sector” should be recalled.



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Issues for consultation:

Q1: Given that there are multiple options for consumers for availing television services, do you think that there is sufficient competition in the television distribution sector? Elaborate your answer with reasoning/analysis/justification.

Answer: In response to the above question, we would like to reiterate our response in the introductory paragraphs wherein it is observed that the industry structure has changed considerably in the past few years with the increasing foothold of DTH, HITS and OTT Services as distribution platforms. Within a short span of 6 years, the market structure currently comprise of 70.99 million subscribers of DTH, 73 million subscribers of cable television operators, 2.15 million of HITS with IPTV services also being rendered by few service-providers. Moreover, the subscriber base of Free Dish has also seen an exponential growth and presently stands as 38 million. This clearly reflects that there exists near perfect competition in the market not just amongst DPOs but also in intra level with the MSOs. The same is evident from the fact that there exists more than 1700 registered MSOs that are competing in the market with fair competition. The Cable TV Act and the Cable TV Rules do not restrict the number of MSOs/LCOs operating in any specific area. In the initial stages of digitization, MSO registrations were given for specific city, town, state, or PAN India, in DAS notified areas as mentioned by the applicant MSO. However, vide a circular dated 27th January 2017, MIB conveyed that all registered MSOs are free to operate in any part of the country.

Therefore, there exist no restriction or barrier in entry or exit in the broadcasting market which provides sufficient options to the consumer to choose the services of MSO they prefer.



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Q2: Considering the current regulatory framework and the market structure, do you think there is a need to regulate the issue of monopoly/oligopoly/market dominance in the Cable TV Services? Do provide reasoning/justification, including data substantiating your response.

Answer: It is submitted that there is enough competition in market thus the issue of monopoly/oligopoly/market dominance does not arise. Further there exists sufficient rules and regulations that regulate every activity of market players and regulatory compliances are required in day to day business of the MSO which refutes any act which might hamper the interest of the consumers or the existing competition in the market.

Further, amongst the myriad of initiatives undertaken by the Authority for maintain fair play in the market, the regulations provides for Reference Interconnect Offer (RIO) based pricing mechanism but the same was made infructuous through negotiated fixed fee deals. In order to rectify this, the new regulatory framework for the broadcasting sector introduced in 2017, required maintaining level-playing-field coupled with reduced litigations among stakeholders, and providing fair opportunities to smaller MSOs. As per the 2017 regulatory framework, broadcasters have been mandated to publish an RIO giving transparent and non-discriminatory terms, including discounts (if any) based on measurable parameters. This enables every distributor in getting non-discriminatory deals on a transparent basis. Broadcasters are mandated to enter into agreements with the distributors based on RIO.

Further it is pertinent to note that the number of registered MSOs has increased significantly from around 160 at the beginning of 2015 to 1733 in September 2021. MIB vide its letter no. 2/31/2016- DAS dated 16th May 2018 had



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requested TRAI to give its recommendations on the appropriate entry level net worth for the MSOs. In response, the Authority in its Recommendations on Entry Level Net worth requirement of Multi-system Operators in Cable TV services dated 22nd July 2019 had recommended that there is no necessity for fixation of a minimum entry level net worth for MSO registration. As prevalent, any individual, company, corporate firm, or LLP that fulfils provisions of the Cable TV Rules, may be granted MSO registration. The recommendation has been duly accepted by the government. Therefore, there is hardly any entry barrier in permission/ registration of a new business entity to become a service provider.

Moreover, the regulatory framework provides for time-bound provisioning of signals by the broadcasters to new MSOs. Furthermore, the new regulatory regime enables even the smallest of the MSOs to get non-discriminatory interconnection terms based on reference interconnect offer.

Q3: Keeping in view the market structure of television broadcast sector, suggest proactive measures that may address impending issues related to monopoly/market dominance in cable TV sector? Provide reasoning/details, including data (if any) to justify your comments.

Answer: As stated earlier the existing regulatory framework already provides level-playing field as every distributor gets the broadcasters' signals in a non-discriminatory manner. Any entity that is desirous of functioning as multi-system operator can do so with complete ease by obtaining a permission/ license from the Ministry of Information and Broadcasting under Rule 11 of the Cable Television Network Rules, 1994. Similarly, any LCO can become operational by obtaining a postal registration in terms of Rule 5 of the Cable Television Network Rules, 1994. Furthermore, with the improving technologies and easy access to bandwidth, it is possible for any MSO to expand services in different



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ities/regions and post 2017, the MSOs are allowed to operate on Pan India basis and are no longer restricted to specific regions. The MSOs are free to enter into agreements with multiple LCOs in any territory for distribution. Therefore, there are no entry barriers in the cable television distribution market.

Therefore there exists no question of issues related to monopoly/market dominance in cable TV sector further suggesting or introducing more compliances is only going to make the functioning of MSO more cumbersome.

Q4. Do you think that there are entry barriers in the Indian cable television sector? If yes, please provide the list and suggest suitable measures to address these? Do provide full justification for your response.

Answer: We are not of the opinion that there exist any entry barrier in the Cable TV Industry. The same can be observed from the fact that the MIB in 2018 had requested TRAI to give its recommendations on the appropriate entry level net worth for the MSOs. In response, the Authority in its Recommendations on Entry Level Net worth requirement of Multi-system Operators in Cable TV services had recommended that there is no necessity for fixation of a minimum entry level net worth for MSO registration. As prevalent, any individual, company, corporate firm, or LLP that fulfils provisions of the Cable TV Rules, may be granted MSO registration. The recommendation has been duly accepted by the government. Therefore, there is hardly any entry barrier in permission/ registration of a new business entity to become a service provider.

Moreover, the regulatory framework provides for time-bound provisioning of signals by the broadcasters to new MSOs. Furthermore, the new regulatory regime enables even the smallest of the MSOs to get non-discriminatory interconnection terms based on reference interconnect offer.



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Further, as per the MIB guidelines even an individual can get itself registered as a MSO by submitting a processing fee of mere INR One lakh (Rs. 1,00,000/-). The application procedure has been simplified to a great extent. One can now apply online on the Broadcast Seva portal of MIB. There are quite a few instances where LCOs have come together and started operating as MSOs. Such LCO groupings have a definite business advantage as they understand the business from the grassroot levels.

Therefore, there are no entry barriers in the cable television sector.

Q5. Do you think that there is a need to regulate LCOs to protect the interest of consumers and ensure growth/competition in the cable TV sector? If yes, then kindly suggest suitable regulatory/policy measures. Support your comments with reasoning/ justification.

Answer: We do not see any need to regulate the LCOs in light of competition/ market structure. We have already established in our introductory remark that a perfectly competitive market is in existence even amongst the LCOs, inter-se. However, on account of existence of varied set of rules for obtaining postal registration across various districts and states in the country, the process of obtaining registration becomes cumbersome for the LCOs who intend to operationalize their business. Hence, with a view to streamline, bring complete uniformity in the registration process of such LCOs across the entire country and to ensure that such LCOs have ease in provisioning their services, we suggest that a central registering authority with centralized web portal be notified under the CTN Act for hassle-free registration of such LCOs. It is suggested that such LCOs may be permitted to register themselves with MIB using an automated platform with Aadhar verification and an undertaking be obtained from the LCO to comply with all relevant provisions of the CTN Act.



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Besides the aforesaid, it is also urged that the Authority should ensure that the LCOs ensure strict compliance with the applicable regulatory framework as well as the subsisting agreements that are executed by them for retransmission of signals in terms of the Interconnection Regulations.

Q6. What should be the norms of sharing infrastructure at the level of LCO to enable broadband services through the cable television infrastructure for last mile access? Is there a possibility that LCO may gain undue market control over broadband and other services within its area of operation? If yes, suggest suitable measures to prevent such market control. Provide detailed comments and justify your answer.

Answer: In response to this question, it is stated that the Authority would acknowledge and agree that the cable television operators have technical expertise for ensuring seamless delivery of cable television services. However, whether the infrastructure has formidable capacity to deliver broadband services requires thorough analysis and determination of the several aspects including but not limited to which part of the cable television network and in what manner is the infrastructure proposed to be utilised for delivery of broadband services, any additional network equipment or hardware elements required for deployments and if yes what are such additional requirements and whether there is any additional technical expertise or investment requirement that requires to be obtained/made for enabling the subsisting infrastructure to deliver broadband services.

It is pertinent to note that most MSOs engaged in the provisioning of broadband services through LCOs infrastructure continue to rely on outdated technologies that prove deficient in the delivery of high-speed broadband services. Therefore, the provisioning of high-speed broadband services using the fiber network of LCOs would require an upgradation of LCO's network to the latest available



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technology, that calls for huge investments and support from the government. We therefore urge the Authority to grant 'infrastructure status' to Broadcasting & Cable industry and thereby allowing the MSOs and the LCOs to access the following benefits:

- a. Capital borrowing should become cheaper for upgrading technologies and optical fiber network.
- b. Considerable reductions in interest rates shall be allowed for long term borrowings.
- c. Ease in getting higher external borrowing
- d. Special financial assistances from external agencies like India Infrastructure Finance Co, IDFC etc. to be extended to broadcasting sector.
- e. Tax holiday as per 80-1A of Income Tax act.
- f. Exemption from paying custom duties on Optical Line Terminal (OLTs), Optical Network Units (ONUs), Network Operations Centre (NOC) infrastructure, that are used for providing broadband services,
- g. Providing impetus to indigenous manufacturing of OLTs, ONUs and NOC related infrastructure ensuring that the indigenous products are available at comparable prices.

Q7. What should be the relevant market for measuring the market power of cable services? Do provide full justification for your response.

AND



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Q 8. Can a state or city or sub-city be identified as relevant geographic market for cable television services? What should be the factors in consideration while defining relevant geographic market for cable television services? Do provide full justification for your response.

Answer: *The relevant market means the market which may be determined as relevant product market or the relevant geographic market or with reference to both the markets; The product market would include all platforms and the relevant geographic market shall include the entire country.*

Q 9. Do you think that MSOs and its Joint Ventures (JV) should be treated as a single entity, while considering their strength in the relevant market? If yes, what should be the thresholds to define a MSO and its JV as a single entity? Do provide full justification for your response.

Answer: We are of the opinion that the MSOs and its Joint Ventures (JV) or any of its subsidiary should not be treated as a single entity. While considering their strengths, their subscriber base in the relevant market should also be independent and separate for each such licensed entity.

Q 10. Which method is best suited for measuring the level of competition or market concentration of MSOs or LCOs in a relevant market?

a) Provide your suggestions with justification.

b) Do you think that HHI is appropriate to measure market concentration of MSOs in the relevant market? Do provide full justification for your response.



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c) If yes, then in your opinion should MSO and its JVs may be considered as a single entity for calculating their HHI? Do provide supporting data with proper justification for your response.

AND

Q 11. In case you are of the opinion that HHI may be used to measure market concentration of MSOs in the relevant market, then is there a need to revise threshold HHI value of 2500 as previously recommended? If yes, what should be the threshold value of market share beyond which a MSO and its group companies should not be allowed to build market share on their own? Do provide full justification for your response.

Answer: In view of the introductory observations, we reiterate that there is sufficient competition and no instance of monopoly is prevalent in the broadcasting sector amongst the DPOs. Therefore, the use of HHI or any such market concentration measures, for ascertaining market dominance on account of a couple of concerns that need to be addressed is not supported by us. The Authority has established that HHI index is determined by summing the squares of individual market shares of all market participants. As has already been established that the distribution services in the present times, is being catered not only by the MSOs and LCOs but also by DTH, HITS, IPTV, Free Dish as well as OTT platforms which have become formidable players and are providing huge competition to the MSOs. The MSOs and the LCOs, therefore, cannot be singled out for ascertaining dominance in any geographical market as the same would stand arbitrary against the interests of the MSOs and LCOs. Hence, market dominance can only be truly ascertained by taking into account the market shares of all the players, i.e. MSOs and LCOs but also by DTH, HITS, IPTV, Free Dish as well as OTT platforms.



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Q 12. Do you think that there should be assessment of competition at LCOs level on district/ town basis? If yes, what should be threshold HHI in your opinion for such assessment. Justify your answer with detailed comments and examples.

Answer: In our opinion we do not see any need to regulate the LCOs in light of competition/ market structure. There already exists a perfectly competitive market amongst the LCOs, inter-se. We reiterate that there has been an exponential rise in the number of LCOs since 2012 that evidently establishes the existence of enough competition among the LCOs at every level thus district/ town basis assessment is not necessary.

Q 13: In cases where a MSO controls more than the prescribed threshold, what measures/ methodology should be adopted to regulate so as to bring the market share/HHI below the threshold level? Specify modalities for implementation and effects of such process. Do provide full justification of your response.

Answer: It has been noted that market dominance cannot be encouraged as it could lead to non-competitive practices. However, in the instant scenario, the broadcasting industry is laced with fierce competition coupled with stringent regulatory regime that renders it highly improbable that any single DPO will be dominant and create monopoly in the relevant market. As stated earlier, the services of all the DPOs are perfectly substitutable since the consumers are at liberty to choose not only from amongst the DPOs and platforms of Free Dish and unlicensed OTT players, but also inter-se amongst the same platform service providers.

Q.14. Do you think that DTH services are not perfect substitute of cable television services? If yes, how the relevant market of DTH service



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providers differs with that of Multi System Operators or other television distribution platform owners? Support your response with justification including data/details.

Answer: It is stated that in the current broadcasting regime, the consumers have multiple options at hand like DTH, OTT, IPTV and are no longer confined to just Cable TV Services. Both DTH and Cable TV are offering best schemes at competitive prices to the subscribers due to fierce competition in the market. In this context, the market share of any cable TV MSO should be calculated after factoring in the presence and market shares of competing services such as DTH, IPTV and any emerging platform which vies for the same subscribers. Viewing cable TV homes or subscribers or STBs seeded in isolation to calculate an MSO's market power is fallacious and takes a very narrow and misleading view of market dominance. Hence, in our view, it is optimum to suggest that DTH Services is a perfect substitute of Cable TV Services and geographical location is no longer a barrier in the advancement of services. Similar view was opined by TRAI in its earlier consultation paper titled "*Monopoly/Market Dominance in Cable TV Services*" released on 3rd June, 2013.

Q 15. Is there a need to change the criterion of market share in terms of number of active subscribers for determination of market dominance? Should the active subscriber base of JVs may also be considered while determining the market dominance of a MSOs. Do elaborate on the method of measurement. Provide full justification for your response.

Answer: Please refer to our response to Question Number 9.



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Q.16. How the new technological developments and alternate services like video streaming services should be accounted for, while determining market dominance? Justify your response with data/ detailed comments.

Answer: The growth in OTT platforms, makes it of paramount to regulate such platforms. As observed in the introductory note, the OTT platforms that are presently outside the purview of any licensing and regulatory framework enable the consumers to have access to video/television services and have evidently established themselves as yet another platform for distributing media content and video services. The emergence of Smart TVs that enable consumers to connect to internet and other OTT platforms, besides providing access to the regular cable TV channels, are also expected to grow substantially in the future. Further, it can be said that they are equipped to serve the preferential demands of consumers from across the country since the consumers have the facility of choosing regional channels that they wish to watch and pay for those only.

Therefore, it is imperative that such OTT Service Providers are under some form of regulation like all the other stakeholders in the relevant market.

Q17. If HHI is used for measuring the level of competition, do you agree with the restrictions prescribed in TRAI's previous recommendations? If no, do provide alternative restrictions for addressing monopoly/market dominance in a relevant market. Do provide full justification for your response.

Answer: The definition of market for determination of market dominance is erroneous. As a result, any mathematical derivation based on such assumptions would be misleading. Moreover, sustenance of perfectly competitive market along with stringent regulatory framework renders the existence of monopoly/ dominance of any MSO in the market as impossible.



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As stated in the introduction, the services of all the DPOs are perfectly substitutable since the consumers are at liberty to choose not only from amongst the DPOs and platforms of Free Dish and unlicensed OTT players, but also inter-se amongst the same platform service providers. Therefore, in such instance, wherein there is nil probability of the existence of any dominant player, we do not advocate imposition of any restrictions on the MSOs for capping of market structure/ shares as the same will have an adversarial impact on the interests of the MSOs as well as the end consumers.

Q18. M&A in the cable TV sector may lead to adoption of monopolistic practices by MSOs. Suggest the measures for curbing the monopolistic activities in the market. Explicitly indicate measures that should be taken for controlling any monopolistic tendency caused by a merger or acquisition. Do provide proper reasoning/justification backed with data.

AND

Q 19. Ease of doing business should not be adversely affected by measures/ regulations to check merger and acquisitions. What compliance mechanism or regulations should be brought on Mergers and Acquisition to ensure that competition is not affected adversely, while ensuring no adverse impact on Ease of Doing Business? Do justify your answer with complete details.

Answer: The Competition Act, 2002 that has set up a nodal and regulatory body in the name of 'Competition Commission of India' (CCI) to investigate into any and all forms of anti-competitive agreements/ abuse of dominant position and the CCI also has powers to impose heavy penalties and direct entities to discontinue their operations and/or any instance of abuse of dominant positions. The Competition Act is a comprehensive legislation that



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deals with anti-competitive practices and lays down stringent policies for violation of the same. Importantly, the provisions of the Competition Act clearly state that it will override all other provisions contained in any law and that its provisions are in addition to and not in derogation of any other law. Thus, any restrictions that are proposed to be introduced to regulate anti-competitive activities in the cable industry may result in a conflicting jurisprudence or positions being developed. Therefore, CCI exists as the apex body to monitor and regulate any instance of abuse of market-power and anti-competitive arrangements. The activities that are proposed to be regulated are already covered under the Competition Act, hence, any parallel legislation imposing any form of restrictions/ market cap on MSOs/ LCOs (especially when the same is not called for in view of existence of perfect competition) will only act as an impediment for growth and add up to the confusion, expose the stakeholders concerned, to unnecessary litigations and judicial interventions.

Q20. Do you agree with the definition of 'control' as provided in the 2013 recommendations? If not, then suggest an alternative definition of 'control' with suitable reasoning/justification.

AND

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

Answer: In order to facilitate ease of doing business and to avoid unnecessary confusion, there should be uniformity in the regulatory regimes. Therefore, corporate compliances and sectorial compliances should be in sync with each other as conflicting provisions would expose to unwanted and unnecessary



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litigations and jurisdictions. Hence, the definition of 'control' as prescribed under The Companies Act, 2013 shall be applicable, for all purposes.

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

Answer: The Authority's attention is brought to the fact that the services of MSOs, DTH, IPTV, HITS, Free Dish and unlicensed OTT platforms are perfectly substitutable amongst one another. Hence, there is no requirement to introduce any form of restrictions regarding market capping on the MSOs. We reiterate that any proposal to introduce unjustifiable restrictions on MSOs in absence of any iota of evidence of proving monopoly/market dominance will tantamount to infringing the fundamental right under Article 19(1)(g) of the Constitution.

Q 23. Do you agree with the disclosure and monitoring requirements mentioned in the 2013 recommendations to monitor the TV distribution market effectively from the perspective of monopoly/market dominance? If no, provide alternative disclosure and monitoring requirements. Do provide full justification for your response.

Answer: The existing laws and regulations governing cable television distribution require comprehensive and adequate disclosures to government and regulatory authorities.

The grant of DAS licenses is dependent on such disclosures. If there are any inconsistencies or violations of the conditions for grant of operating licenses to MSOs, the TRAI has the right to suspend or cancel their license. Hence, no new disclosures or defining or increasing the periodicity of disclosures is necessary.



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The Authority has previously prescribed in its 2013 recommendations that *the following information shall be provided by the MSOs to MIB and TRAI on annual/ quarterly basis:*

On Annual Basis:

- a. Share-holding pattern including foreign investment/ joint venture details as per instructions issued from time to time. Changes, if any, in the share-holding pattern during the reporting period, shall be reported within 30 days of such changes;
- b. Copy of shareholders agreements, loan agreements, contracts and/or understandings (once and subsequently for the changes);
- c. The details of MSO(s)/LCOs who are part of the 'group';
- d. Interests of the entity(ies) which controls the 'group' of MSOs/ LCOs in the relevant market;
- e. Details of Chairman, Directors in the Board, CEO and CFO;
- f. State-wise geographical area coverage details.

On Quarterly Basis:

- g. State-wise number of active subscribers will be provided by the MSOs to MIB and TRAI on quarterly basis.

With regard to the MSO's listed on Stock Exchanges, annual information with regard to a,d & e are available on the website of the Stock Exchanges as well as on the Website of the Company and is in public domain. However with regard to annual disclosures sought in point b & c , i.e. *loan agreements, contracts and/or understandings; the details of LCOs who are part of the 'group';* are confidential business specific details, and partial/complete disclosure of any such information could have an adverse impact on the



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business. Additionally, details with respect to point f i.e. 'State-wise geographical area coverage' would be very elaborate and cumbersome.

It is observed that most of the aforesaid information is already part of the Monthly Performance Monitoring Report (M-PMR) and the Quarterly Performance Monitoring Report (Q-PMR) that are submitted by the DPOs to the Authority on monthly and quarterly basis respectively. We are of the view, that all players in the Television Distribution Market should be mandated to share the aforesaid information, without any exception so that the Authority has an overall and accurate insight into the television distribution market.

Q24. Elaborate on how abuse of dominant position and monopoly power in the relevant market can manifest itself in cable TV services. Suggest monitoring and remedial action to preserve and promote competition. Do provide full justification for your response.

Answer: Kindly refer to our introductory observations which clearly highlights that that there cannot be any instance of prevalence of 'abuse of dominance' in the distribution of cable television services on account of presence of wide number of players and the services are substitutable. As per the current Competition Regime, the Act does not prohibit any entity from holding a dominant position. However, it restricts abuse of such dominant position with the intent to promote fair competition. In case of Cable TV Services, at present no single entity holds a dominant position as the consumers have plethora of options in the form of Cable TV Operators, DTH Service and OTT Platforms. Moreover, as per current law, Vertical and Horizontal integration of market players go through sufficient scrutiny before coming in force. Hence, no further remedial measure as such is required at this point of time.



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Q 25. Is there a need to recommend cross-holding restrictions amongst various categories of DPOs/ service providers? Do give detailed justification supporting the comments.

Answer: It is reiterated that the MSO or the DPO cross-holding is already subject to market restriction which covered under the purview of various regulators such as Companies Act 2013, Competition Commission of India and SEBI, thus imposing further restrictions will only curtail business synergies and affect the ease of doing business.

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

Answer: We humbly request the Authority to grant us an opportunity to discuss our response in a meeting.



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