September 3, 2013

Mr. Wasi Ahmed
Advisor (B&CS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg
New Delhi - 110002

Sub : Consultation Paper on Distribution of TV Channels from Broadcasters to Platform Operators dated August 6. 2013

Dear Sir,

We are forwarding herewith the response of MediaPro Enterprise India Private Limited to the aforementioned Consultation Paper.

We request you to provide us an opportunity to explain your our position to the Authority in person and also request that in the light of the far reaching implication of the subject matter of this paper, the Authority hold a minimum of 3 open house discussions to enable the stakeholders to deliberate and discuss the same at length.

Please note that this response is without prejudice to our rights and contention in Civil Appeal Nos 2847 to 2854 of 2011, D 8827/2011 and 829-833 of 2009 pending before the Hon'ble Supreme Court.

Thanking You,

FOR MEDIAPRO ENTERPRISE INDIA PRIVATE LIMITED

V.SHYAMALA
HEAD – LEGAL & REGULATORY

RESPONSE OF MEDIAPRO ENTERPRISE INDIA PRIVATE LIMITED ON THE CONSULTATION PAPER ON DISTRIBUTION OF TV CHANNELS FROM BROADCASTERS TO PLATFORM OPERATORS DATED AUGUST 6, 2013

ROLE OF AUTHORIZED DISTRIBUTION AGENCIES

Before we provide our detailed response to the Consultation Paper, we wish to present to the Authority a brief snapshot on the evolution and role of authorized distribution agencies in the distribution value chain.

Emergence of Aggregators

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.

Evolving Role of Aggregators: Analog Era – 2002 -2012

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 favor of the distributor of TV channels:

- price and bouquet freeze of channels with no corresponding freeze on carriage/placement payouts
- "Must Provide" of content by broadcasters to distributor of TV channels with no "Must Carry obligation on the distributor of TV Channels
- disconnection notice of 3 weeks for disconnecting channels (the maximum prescribed in India for any services. Even essential services like power and electricity do not have such long notice period)
- Compulsory A-la-carte offering of channels

- The Telecom Disputes, Settlement and Appellate Tribunal (TDSAT) with exclusive jurisdiction to adjudicate all resolve all disputes;
- Broadcasters to file Interconnect Agreements with Authority with no such obligation on the MSOs and LCOs

The aforesaid factors gave enormous and disproportionate bargaining power to the MSOs and they could exert significant countervailing power on the broadcasters /aggregators/authorized distribution agencies of broadcasters. The aggregators provided the necessary negotiation leverage on carriage and subscription deals and enabled them deal with cable monopolies and mega DTH players. In fact despite the presence of aggregators, the MSOs enjoyed a dominant position and often misused their dominant position as has been highlighted by the Authority in the Consultation Paper on Monopoly/Market dominance in Cable TV Services.

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 broadcasters/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.

Role of Aggregators in the DAS Era : 2013 Onwards

The DAS era is yet to bring about the radical change in the sector that was expected. Moreover the implementation of digitization is yet to take effect in more than 50% of the country and the market is currently divided into analog, DAS and DTH which provides the MSOs humungous negotiation power. In effect, the distributors of TV channels continue to enjoy the same benefits as it was before the implementation of DAS Phase 1 & 2 as set out below:

(i) MSOs and DTH operators continue to enjoy the benefits of Regulations despite the fact that the Authority has always taken a position since 2004 that implementation of DAS should pave the way for de-regulation and market forces to take over;
(ii) MSOs and DTH operators get even more bigger and dominant with market consolidation and MSOs acquiring stake in networks of Local Cable Operators; buzz of mergers in DTH;
(iii) MSOs continue to charge huge amount as carriage with only minimal reduction from the analog era despite increased capacity, when the market calls for rationalization of carriage fee
(iv) No visibility on subscriber data even after 10 months of implementation of DAS; packaging and billing of consumers still not implemented; outstanding of MSOs to Broadcaster/aggregators mounting.

In the circumstances, when the distributors of TV channels continue to enjoy disproportionate bargaining power even in the DAS era, aggregators provide the necessary counter balance to the broadcasters to (i) counterweigh the growing size of operators (ii) assist broadcasters is getting their fair share of subscription revenue in the DAS markets which is long pending (iii) economies of scale (iv) controlling carriage costs (v) combat piracy which is rampant (vi) penetrate into rural markets which constitutes approximately 37% of the cable household spread across 50,000 village/towns catered to by over 2500 cable operators. Moreover, so long as the distributor of TV channels have significant countervailing power on the aggregators as is the case and explained above, there is no way that the aggregators can wield significant bargaining power, gain dominance and misuse the same.

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.

Consultation process contrary to the principles of transparency as embodied in the Telecom Regulatory Authority of India Act, 1997 ("TRAI Act").

We would like to respectfully submit to the Authority that the present consultation paper is not in line with the principles of transparency as enshrined in the TRAI Act. In the past, whenever the Authority has initiated consultation process on any issue, the Consultation Paper lists issues for consultation and analyses the impact of the identified issues, supported by data points and seeks the views of the stakeholders on possible solutions. It is only after the stakeholders deliberate the identified issues through written comments and open house discussions that the Authority forms an opinion on the need and nature of intervention (if any), based on the feedback received during the consultation process. However, the present paper is conclusive and defeats the very purpose of consultation by proposing amendments to the existing regulatory framework on the basis of foregone conclusion that the authorized distribution agencies wield substantial negotiating power which can be, and is, often misused leading to several market distortions. 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

A perusal of the above paragraph very clearly demonstrates that the Authority even before the process of consultation commences has concluded that it is necessary 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.

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.

The Authority would agree that a handful of complaints cannot be the foundation for amending the regulatory framework by mandating provisions which are hugely restrictive. It is respectfully submitted that, if the Authority enacts legislations/change law to redress

regular disputes amongst service providers, it will be amount to mockery of jurisprudence/legal system.

While we are fully confident that the Authority will follow the principles of transparency as embodied in the provisions of the TRAI Act, we earnestly request the Authority to adopt a pragmatic and balanced approach. The Authority will agree that the broadcasting/distribution sector is an amalgam of the interests of all its stakeholders viz the operators across all delivery platforms, broadcasters/producers of content and the end consumers. If the Authority decides to impose extreme form of regulation to satisfy the one sided demands of a section of stakeholder, it will not only be extremely counter -productive for the working of the distribution sector, but will also set a bad precedent for future whereby all stakeholders will seek change in law or enactment of legislation to redress their grievances to the detriment of others. Indeed, we would make the point that the multitude of providers of services, both within the industry and increasingly from the industry to consumers, is an important part of the environment, of which the Authority should take due note in making its decisions on the issues covered in the Consultation Paper.

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

A perusal of the consultation paper reveals that the Authority has initiated this consultation process and suggested the proposed amendments on the forgone conclusion that, as a result of the four main authorized distribution agencies controlling 73% of the total Pay TV market, which include popular pay TV channels, the Authorized distribution agencies wield substantial negotiating power which can be, and is often misused leading to several market distortions. It is respectfully, submitted that in forming such an opinion the Authority has ignored the provisions of the Competition Act and the jurisdiction of the Competition Commission of India (CCI) in investigating and adjudicating matters in relation to monopolistic trade practice, dominance and abuse of dominance.

In the absence of any investigation and evidence, merely because four authorized distribution agencies control 73% of the total pay TV market will not automatically mean they have dominant position in the market and have abused such dominance. Even in other sectors like airline, telecom, banking, insurance etc three to four players control majority of the market. In this regard it is important to note that majority of the cable and DTH households are controlled by 5 to 6 players.

Further, we wish to bring to the notice of the Authority that the CCI after a detailed investigation under section 26(1) of the Competition Commission Act, in the complaint filed by Shri Yogesh Ganeshlaji Somani in case No 31/2011 against the joint venture formed between Star Den Media Services Private Limited and Zee Turner Limited held that the joint venture parties and the joint venture Media Pro Enterprise India Private Limited have not contravened the provisions of either section 3(3) or Section 4 of the Competition Act. The CCI also noted that the informant has not placed any evidence or data which can contradict the findings of the Director General's (DG) Report. In the DGs report it was clearly observed that the investigation has not revealed any evidence which suggests that any MSO or DTH operator has shut down its business due to the greater bargaining power of the JV

and there is no evidence which suggests that entry of any MSO or DTH has been restricted due to the greater bargaining of the JV.

Similarly, the CCI in a notice received under sub-section (2) of Section 6 of the Competition Act, 2002, given by UTV Global Broadcasting Limited (UGBL) approved the combination relating to the acquisition of 26% of the equity shareholding in IC Media Distribution Services Private Limited ("IC"), a wholly owned subsidiary of aggregator Company Indiacast Media Distribution Private Limited (Indiacast). The notice was filed pursuant to the execution of Joint Venture Agreement between Indiacast and UGBL. In this case the CCI after proper assessment of the proposed combination after considering the relevant factors mentioned in section 20(4) of the Competition Act, 2002 formed an opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India and accordingly approved the combination. This combination resulted in Disney group and Indiacast group granting exclusive license to IC to distribute their television and both UGBL and Indiacast ceasing to their aggregation business in India by providing the service of aggregation of television channels in India through IC by way of the proposed combination.

We submit that when the CCI which is a specialist body that has been constituted under the Competition Act, 2002 to deal with issues relating to monopolistic trade practices, anti - competitive agreements and dominance has held that two of the aggregator JVs have not violated the provisions of the Competition Act and is not likely to have an appreciable adverse effect on competition in India, the Authority has no jurisdiction to hold otherwise.

Existing Regulatory Framework /TRAI Regulations adequately covers Authorized Distribution Agencies/Aggregators

It is submitted that the Consultation Paper is based on the misnomer that the authorized distribution agencies/aggregators as a separate legal entity have not been specifically defined anywhere; neither in the law or the statutory rules, nor in the regulatory framework for the broadcasting and cable services sector. However, on the contrary as has been observed in the paper, authorized distribution agencies are covered under the definition of "Broadcasters" in the TRAI Regulations, Cable Television Network Regulation Act 1995, and the rules made thereunder. In fact, the authorized distribution agencies have been complying with all the regulatory provisions enshrined in the TRAI's Interconnection Regulations, Tariff Orders, Register of Interconnect Agreement Regulations since 2004.

Moreover, the authorized distribution agencies have also been recognized as service providers by the Hon'ble TDSAT, High Courts and Supreme Court in a plethora of judgments, which are binding on both the broadcasters and their authorized distribution agencies.

Even the Authority was always conscious of the role played by the aggregators in the distribution chain since the time it took charge of the broadcasting and services sector in January 2004. Accordingly the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004) dated 10th December 2004 included "authorized distribution agency" within the purview of the definition of "Broadcasters". Clause 3.4 of the Regulations enables the distributor of TV channels to approach the

broadcaster directly to obtain the signals of channels which have been denied to them by the authorized distribution agency/agent or intermediary. In fact clause 3.3 of the Regulations very clearly state that a broadcasters shall not be held to be in violation of clauses 3.1 and 3.2 if it is ensured that the signals are provided through a designated agent or other intermediary and not directly.

Be that as it may, if the Authority feels that more clarity is needed in the regulations to treat the authorized distribution agencies as a separate legal entity, the same can be done by simply defining "aggregators" separately as in the case of MSOs, cable operators and other stakeholders.

Moreover, it is submitted that the present paper instead of bringing the "authorized distribution agencies" within the purview of regulatory framework has on the contrary proposed de-recognition/elimination of "authorized distribution agencies" from the regulatory framework and the value chain through the proposed amendment to the definition of "broadcasters".

Aggregation and retransmission of channels is the heart of distribution in the Broadcasting and Cable services sector:

It is submitted that the paper fails to recognize that aggregation and retransmission of signals of channels is the heart of distribution in the broadcasting and cable sector and is present across the distribution value chain. Even the distributors of television channels like DTH, IPTV, HITS and MSOs are aggregators of channels who aggregate channels of multiple broadcasters and retransmit the same to the end consumers/viewers. To illustrate further, the MSOs aggregates signals of channels of multiple broadcasters and re-transmit the same to over 60,000 LCOs' across the country, who in turn retransmit the same to end viewers/subscribers. Here the MSOs execute contracts with over 60,000 LCOs on a principal to principal basis and the Authority has given complete freedom to the MSOs to demarcate the role and responsibilities of LCOs in a manner they deem fit. The same is the case with DTH operators who retransmit the signals of several broadcasters directly to the end consumers. In fact in the HITS system a single HITS operator aggregates content of several broadcasters and has the ability to retransmits the same to the MSOs and LCOs not only across the country but also to several other countries given the vast foot print of HITS technology.

In this context it is important to highlight the emergence and evolution of MSOs in India as has been recognized by the Authority in its several Consultation papers. In the early days of cable, there were no MSOs and the broadcasters negotiated directly with LCOs as the number of broadcasters were limited and most channels were Free-to-Air. However, the number of operators grew significantly, driven largely as by the prospects of this industry and the absence of a regime to cap the number of operators. As a result the subscriber base became increasingly fragmented across thousands of LCOs. As the cost of down-linking signals grew (in line with the number of channels), it became inefficient for every LCO to invest in equipment to service a few hundred households. This led to the emergence of the MSOs who were the "master distributor" who would purchase content from various broadcasters and provide it to multiple LCOs. Similarly, the authorized distribution

agencies/aggregators sell content to the master distributor MSO who in turn sells it to the LCOs and the LCOs to viewers.

Hence to restrict authorized distribution agencies from aggregating channels and yet allowing the distributors of TV channels the complete freedom to aggregate and distribute content in the manner they deem fit is highly discriminatory and shifts the bargaining power completely in favor of the distributors of TV channels to the detriment of broadcasters and their authorized distribution agencies.

Business of Aggregators is highly regulated vis-a-vis downstream distributors of TV Channels which addresses the concerns of the Authority highlighted in the present Consultation paper:

The business of aggregators is already highly regulated. Some of the key regulations which have been issued by the TRAI, while regulating the relationship between broadcasters/aggregators and the distributors of TV channels are as follows:

Must provide/Non-discriminatory access to TV signals: Making it mandatory for the aggregators to provide TV signals to the distributors on a must-provide basis and on non-discriminatory terms

Pricing of channels: Passing tariff orders from time to time prescribing the maximum tariffs for TV channels (both bouquets and individual channels) that can be charged by (i) the broadcasters/aggregators from MSOs as well as the DTH operators

Must provide/Non-discriminatory access to TV signals:

The Interconnect Regulations of the TRAI mandate that all broadcasters/aggregators are required to provide TV signals to MSOs/LCOs/DTH service providers on request on non-discriminatory terms.[1] 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.[2] 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.[3] Further, broadcasters are also not allowed to enter into an agreement with any distributor, including exclusive contracts in a manner so as to preclude other distributors from obtaining access to TV signals of their channels.[4]

It may also be noted that as per the Interconnect Regulations allows any person to 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.

As a result of these provisions, the 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

[1] Regulation 3.2 of Telecommunication (Broadcasting and Cable Services) Interconnection Regulations
[2] Regulation 3.5 of Telecommunication (Broadcasting and Cable Services) Interconnection Regulations
[3] Regulation 4 of Telecommunication (Broadcasting and Cable Services) Interconnection Regulations
[4] Regulation 3.1 of Telecommunication (Broadcasting and Cable Services) Interconnection Regulations

pricing etc. This in turn ensures that the levels of effective competition in the market remains unaffected, and distributors are able to carry TV signals of their choice. That said, it may be noted that while there is a "must provide" obligation on the broadcasters/aggregators, there is no corresponding "must carry" obligation on the distributors thereby leaving the choice of channels which may be carried by an MSO/DTH operator and ultimately made available to the viewer completely to the MSOs/DTH operator's discretion.

Pricing of channels

TRAI issues tariffs orders from time to time prescribing ceiling prices at which the broadcasters/aggregators can offer individual channels or bouquets of channels to MSOs as well as DTH operators.

The wholesale tariff structure which can be charged to the operators in the analog platform for individual channels as well as channel bouquets was last fixed in 2007 and all TV channels continue to be provided till date at these prices. [5] Prior to that, the rates of the channels were frozen vide tariff orders issued by TRAI in 2004[6]. Further, in 2010, TRAI imposed a wholesale tariff structure in relation to the prices that were offered by broadcasters to distributors in the digital platform, effectively capping the prices at 35% of analog cable rates.[7] After a lot of opposition by leading broadcasters, the Supreme Court in April 2011 raised the cap to 42% of the analog cable rates.

As a result of 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.[8]

It may also be noted that the composition of bouquets provided by broadcasters as of December 1, 2007 was also frozen and the option of providing channels on an *à* la carte basis by broadcasters was made mandatory.[9]

Thus the rates of all channels/bouquets have been frozen since 2003 and only inflation related increase has been allowed by TRAI from time to time.

The motivation of imposing this limitation is to ensure that no broadcaster/aggregator can control or influence the distribution market by virtue of it being vertically integrated with the downstream distributors, and hence will not be in a position to influence the levels of effective competition in the downstream market as can be seen from the Explanatory Memorandum to the Interconnection Regulations and Tariff Orders. Further, it ensures that none of the distributor of TV channels are denied access to exclusive television channels. The present regulatory

[5] See eighth amendment to the Principal Tariff Order on October 4, 2007.
[6] Telecommunications (Broadcasting and Cable) Services Tariff Order, 2004 (1 of 2004); Telecommunications (Broadcasting and Cable) Services Tariff (First Amendment) Order, 2004 (3 of 2004); Telecommunications (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) and Telecommunications (Broadcasting and Cable) Services (Second) Tariff (Second Amendment) Order, 2004 (8 of 2004)
[7] Telecommunications (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010.
[8] See eighth amendment to the Principal Tariff Order on October 4, 2007.
[9] See eighth amendment to the Principal Tariff Order on October 4, 2007.

framework already provides the necessary checks and balances and addresses the concerns highlighted in the consultation paper and hence, there is no justification for the Authority to intervene any further.

Distributors of TV Channels exert significant countervailing power on Aggregators;

In order to assess the market position of authorized distribution agencies, it becomes essential to determine: (i) whether aggregators face countervailing buying market power (ii) the extent of influence of such countervailing buying power. It is essential to determine the level of countervailing market power, since it would reflect the ability of an aggregator to affect the market. In other words, the ability of an aggregator to affect the market would depend a great deal on the degree of 'bargaining power' exerted by the buyer, in this case distributor of TV channels like MSOs and LCOs-who are the immediate consumers of the services provided by aggregators.

The aggregators do not have the ability to affect distributors in the downstream market, i.e. distributors. This is primarily due to the significant countervailing power exerted by the immediate customers of content aggregators i.e MSOs and other distributors. The structure of the business for distribution of TV channels is such that there is complete dependence of broadcasters/content aggregators on the distribution network of DTH operators and MSOs to distribute their content to the end consumer. This complete dependence on MSOs - both in the analog and digitized market ensures that content aggregators cannot exercise any significant influence over MSOs. Put simply, MSOs exert significant countervailing power upon content aggregators due to (i) complete control over their distribution network that allows them to under declare the actual subscriber base (in the analog segment) and deprive content aggregators from their fair share of revenue and (ii) the ability of MSOs to charge exorbitant carriage and placement fees as has been highlighted by the Authority in its Consultation Paper on Monopoly/Market dominance in Cable TV Services which is reproduced below :

Quote:

1.12 The size of markets catered to (across states, cities and even localities) by an MSO determines its market power and influence. One of the ways in which MSOs have tried to expand and increase their size (and influence) is by buying out LCOs and smaller MSOs. The joint venture/subsidiary model has emerged as a result of mergers and acquisitions (M&A) of LCOs/MSOs by large MSOs. The MSOs have varying levels of ownership interest in these LCOs. Typically, MSOs provide more favorable terms and financial assistance to joint venture companies and subsidiaries. The point is that, by way of acquisition, joint venture or subsidiary, some MSOs have been increasing their presence and size leading to a situation of a market dominance.

1.13. There are instances where the dominant MSOs are misusing their market power to create barriers of entry for new players, providing unfair terms to other stakeholders in the value chain and distorting competition. MSOs with significant reach (i.e large network and customer base) are leveraging their scale of operations to bargain with broadcasters for content at a lower price and also demand higher carriage and placement fees. Such MSOs are in a position to exercise market power in negotiations with the LCOs on the one hand, and with the broadcasters on the other.

1.14 Large MSOs, by virtue of securing content at a lower price and charging higher carriage and placement fee from broadcasters, are in a position to offer better revenue share to LCOs. They therefore can incentivize LCOs to move away from smaller MSOs and align with them. Such MSOs use their market power to provide unfavorable terms or make it difficult for the broadcasters to gain access to the distribution network for reaching the customers. There are instances where a dominant MSO has made it difficult for some broadcasters to have access to its distribution network for carrying content to consumers. Blocking content selectively can also become an obstacle to promoting plurality of viewpoints.

Unquote

It is necessary to point out here that despite enhancement of bandwidth and carrying capacity in the digital environment, MSOs and DTH operators demand exorbitant carriage fee from the broadcasters and fully exploit "must provide" regulatory mandate with no corresponding "must carry".

Moreover, as a result of monopolies at the last mile, despite the Broadcasters making available the signals of its channels to the MSOs, the LCOs refuse to carry the channels on its network thereby depriving the broadcasters to showcase its content to the viewers.

De-bundling at broadcaster/aggregator level will not result in consumer benefit unless the distributor of TV Channels offer Broadcaster wise bouquets to end subscribers/consumers

Firstly, it is submitted that the aggregators offers channels on both a-la-carte and bouquet basis to the distributor of TV Channels. The price/rate of channels – both a-la-carte and bouquet and the bouquet composition is regulated by the TRAI through its Tariff Orders as explained in the preceding paragraph. Hence, there is no compulsion on the distributors of TV channels to subscriber to all the channels distributed by the aggregators and they have an option to subscribe for the channels that they want on a-la-carte basis.

Moreover, it is submitted that de-bundling of channels at the broadcaster level as envisaged in the present consultation paper will neither translate into consumer benefits as nor will it bring about growth in the broadcasting and cable sector. On the contrary it will give unchecked powers to the distributors of TV channels which will severely impact the growth of the sector and consumer interest. Though the proposed regulation bars authorized distribution agencies from bundling bouquet or channels of one broadcaster with another broadcaster, there is no bar on the distributor of TV channels like DTH operators and MSOs from bundling bouquets of several broadcasters and offering the same to the end subscribers/viewers. Hence, the proposed amendment is discriminatory and provides undue advantage and bargaining power to the distributor of TV channels and compromises the interests of the broadcasters/aggregators completely. In fact, this will result in the Authority conferring unbridled powers in the hands of the distributor of TV channels and leave the broadcasters and consumers at the mercy of monopoly distributors.

MSOs/LCOs erroneously shifting the onus of transition woes of Digitization on the Aggregators

The genesis of this consultation paper as is evident is the alleged non-cooperation and high handed behavior of the authorized distribution agencies during the implementation of Phase 1 and 2 of digitization. In this context, it is submitted that the MSOs have completely misled the Authority and the MIB by providing inaccurate information and distorting the real facts. The MSOs have conveniently shifted the entire burden of transition/implementation woes of digitization on the authorized distribution agencies despite the fact that the broadcasters and the authorized distribution agencies have provided all necessary support in execution of agreements. In fact the Authority and the MIB are fully seized of the same and have been updated from time to time on all the issues in relation to signing of agreements during the several meetings that were called during the implementation of digitization.

In this context it is important to submit that "deal making" between broadcasters/aggregators and distributors of TV channels is an extremely complex process as is the case with any business and is largely driven by commercial and business considerations. The DAS deal making was even more complex for the following reasons :

- Both broadcasters/aggregators and MSOs were establishing the business model for DAS for the first time. Same is the case with regard to deals amongst other stakeholders : MSO vs LCOs and MSOs/LCOs vs Viewers/ end subscribers.
- Absence of actual or prospective subscriber base information with the MSO.
- Technical audit issues; non- compliant and lack of readiness of Digital Addressable Systems (DAS) of MSOs
- The resistance of MSOs to shift from the carriage dependent model to the Pay TV model
- MSOs insisting on freeze on pay out of subscription revenue and carriage fee revenue for 2-3 years and adopted "wait and watch" strategy till the fag end of digitization
- Legal paperwork and multiple petitions being filed by MSOs and LCOs in several courts seeking extension in the date of digitization which added to the uncertainty;
- MSOs wanting to use carriage revenue as capex to fund digitization
- MSOs own deal sign up issues with LCOs which got even more complex where the LCOs were joint venture partners of MSOs.
- Poor deployment of STBs by MSOs to derail DAS, create panic and unwarranted fears of blackout.

Despite the aforesaid challenges, the broadcasters/aggregators fully co-operated with all stakeholders and ensured that agreements with all MSOs were signed as soon as possible. In fact in DAS 1 all agreements were executed before the date of implementation on 1st November 2012 and in case of DAS 2 within 2 months from the date of implementation on 1st April 2103 without any major inconvenience to MSOs of disconnection of signals of channels.

It is important to once again to highlight and clarify to the Authority that aggregators neither compelled MSOs to execute fixed fee deals nor impose all their channels forcibly on the MSOs as has been observed in the paper. In fact the aggregators and broadcasters were keen only on executing cost per subscriber deal and break away from the norms of deal making of analog regime given the fact that digitization was to bring in the much needed transparency on the actual subscriber base of the MSOs as against the rampant under declaration that were prevalent in the analog market.

However, since the Digital Addressable systems (DAS) of all the MSOs were not ready and there was no visibility on retrospective or prospective subscriber base data, the MSOs requested that deals be finalized on fixed fee basis with a clear understanding that once DAS is implemented and there is visibility on subscriber data, the deals would move to cost subscriber basis. It was only on the insistence of the MSOs, the request of the Authority/MIB and in the interest of smooth transition to digitization that the broadcasters and authorized distribution agencies executed fixed fee deals. Moreover, all these agreements are mutually negotiated agreements and the MSOs cannot cry foul after having executed the same on their own free will. In this context it is interesting to point out to the Authority that ironically wherever the MSOs acquired higher subscriber homes/networks as against analog era (which was the case in almost all areas), they conveniently failed to share the subscriber data and made a hue and cry seeking reduction in fee on the premise that they have lost subscribers without providing any report/data to the broadcasters/aggregators.

It is also important to point out that it is not correct to state that all the deals signed by authorized distribution agencies are fixed fee deals. The authorized distribution agencies have also executed deals on cost per subscriber basis with some MSOs at a highly discounted rate. These agreements have also been filed with the Authority.

It is further submitted that the broadcasters and aggregators executed agreements with the MSOs despite the fact that the DAS of almost all MSOs were not compliant of the stipulations set out in the Interconnection Regulations and in some cases it continues to be non-compliant. Moreover, certain MSOs did not even have their digital headends and yet in the interest of roll out of digitization we executed agreements even with such MSOs.

It is indeed unfortunate that despite all support the authorized distribution agencies are being wrongly accused of indulging in monopolistic trade practices. It is further important to note that even today the broadcasters and authorized distribution agencies have not been provided the Subscriber Report by several MSOs and have huge outstanding. Even in cases where reports have been provided, they are in accurate and incorrect and not as per the TRAI Regulations. While the MSOs are complaining about authorized distribution agencies, they themselves have failed to comply with the TRAI Regulations.

Notwithstanding the above, all the agreements executed by the authorized distribution agencies are filed with the Authority. If the Authority for any reason finds some agreements not fully compliant of applicable regulations, they have the powers under the Regulations to intervene in such cases after providing an opportunity of being heard to the concerned parties. Further, as explained above, the MSOs can seek redressal before the Hon'ble TDSAT and are indeed doing so. However, this certainly cannot become the basis for

making sweeping changes in the existing regulatory framework and eliminate an existing stakeholder (authorized distribution agencies) from the value chain.

Proposed amendments frustrates the objective of Digitization :

In addition to providing the consumers the freedom of choice/quality viewing experience and check tax evasions by errant cable operators, the key objectives of digitization was to bring in the much needed transparency in the distribution chain, bring an end to the rampant under declaration that was prevalent in the analog market and ensure equitable distribution of subscription revenue across all stakeholders in the distribution chain. We have set out below a table which reflects the expectations/intent of implementation of DAS and the reality.

Intent/Expectations	**Reality**
Transparency & Full Declaration to ensure equitable and fair distribution of subscription revenue in the value chain and check evasion of taxes	• No visibility on subscriber data • MSOs insist and fight on paying the same revenue as in analog and seek freeze of carriage revenue which delays deal finalization • MSO are billing LCOs for each household and enhancing their subscription revenue but, reluctant to pass on to the broadcasters their fair share • Huge outstanding in the market across MSOs • Lack of technical readiness
Increased capacity leading to elimination/rationalization of carriage fee and more channels being carried	• MSOs continue to demand huge carriage fee and offer (that too after prolonged negotiations) meager reduction
Choice and transparency to consumer	• Packaging and billing at consumer level still not implemented
MSO business model to shift from carriage to Pay TV	• MSOs continue to rely on carriage as the important source of revenue to fund digitization • MSOs have enhanced their subscription

As has been explained earlier, in the analog regime the broadcasters' share of subscription revenue was a less than 4% net of carriage payout and a meager 15% without taking into account the carriage payout as against global benchmark of 35% to 40%. Digitization was to unlock the real subscription revenue potential of broadcasters and reduce over existing over dependence on advertisement revenue. However, a perusal of the above table clearly demonstrates that the aggregators had no role to play in the current state of affairs vis-a- vis

digitization and are themselves victims of transition woes of digitization. Hence the proposed amendments in the regulatory framework deprives the broadcasters from deriving their equitable share of subscription revenue, eliminate/rationalize carriage fee outgo and reduce their over dependence on advertisement revenue. By proposing more one sided restraints on the broadcasters/aggregators the Authority is encouraging inequitable distribution of subscription revenue even in the digitized era and making the distributors of TV channels more powerful and dominant in the value chain to the detriment of other stakeholders.

Proposed Amendments is contrary to the interim orders of the Hon'ble Supreme Court in the appeals filed by the Authority against the orders of the Hon'ble TDSAT:

It is submitted that the rate and bouquet composition of channels offered by broadcasters/authorized distribution agencies are the subject matter of Civil Appeal nos 829-833 of 2009 in relation to the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order 2007 dated 4th October 2007 and Civil Appeal nos 2847-2854 of 2011 and D 8827/2011 in relation to The Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order 2010 dated July 21, 2010, filed by the Authority before the Hon'ble Supreme Court. The proposed amendments in the consultation paper, seeks to unbundle the bouquets and their rates which is the subject matter of the aforesaid appeals and therefore contrary to the orders of the Hon'ble Supreme Court in these appeals.

Conclusion

To sum up we are set out in the table below the myths that has led to the initiation of this consultation paper and the reality which will enable the Authority to form an unbiased opinion and take an informed decision on the need and extent of intervention required.

Myth	Reality
Aggregators wield substantial negotiating power which can be and is often misused leading to several market distortions	Distributors of TV channels enjoy enormous and disproportionate bargaining power and have misused their dominance with benefits of favorable regulations, ground monopolies; MSO/DTH operators exert significant countervailing power on Aggregators Mere control by few authorized distribution agencies of 73% of the Pay channels cannot automatically mean dominance and abuse of dominance by aggregators. Even the major chunk of cable and DTH households are controlled by 5 major MSOs and 6 DTH operators.
MSOs were forced to execute Fixed Fee deals during	MSOs insisted on Fixed Fee deals; in fact insisted on freeze of subscription pay outs and carriage revenue

implementation of DAS Phase 1 and 2.	which delayed deal negotiation and execution process The MSOs always had the option to subscribe for channels on per subscriber basis.
MSOs were compelled to subscribe for all bouquets/channels distributed by Aggregators	MSOs voluntarily and contracted/subscribed for all channels as the same was being offered to them by the broadcasters at a bulk discounted rate and it benefits the MSOs to have all the channels available on its Platform to effectively compete with other MSOs and DTH operators Authority must review agreements in greater detail to ascertain the nuances of the deal and its adverse impact on the MSOs as alleged.

We request the Authority to not initiate any drastic change in the regulatory frame work till the time the entire process of implementation of digitization is complete across the country. It is only when the market stabilizes post complete and real implementation of digitization across the country, will the Authority be able to ascertain the need and extent of regulations across the value chain. Any hasty regulatory intervention based on inaccurate information, misleading complaints and occasional standoffs between certain stakeholders will only create more chaos and unwarranted disputes amongst the stakeholder at a time when they are required to work hand in hand to successfully implement digitization and let the real benefits of the same flow across the value chain.

We are confident that the Authority will take into account the interests of the broadcasters and their authorized distribution agencies while finally deciding on the issues raised in the Consultation Paper.