Telecom Regulatory Authority of India

Recommendations

on

"Market Structure/Competition in Cable TV services"

New Delhi, India

7 September 2022

Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi-110002

CONTENTS

Annexures

CHAPTER 1

INTRODUCTION

1.1 TRAI received a back reference dated 19th February 2021 from Ministry of Information and Broadcasting (MIB), Government of India **(Annexure 1)** mentioning therein that a considerable time has passed since TRAI issued its recommendations[1] on Monopoly/Market dominance in the cable TV services on 26th November 2013. Further that the media and entertainment (M&E) landscape has changed drastically, particularly with the advent of new digital technologies in this sector. Therefore, MIB raised some of the issues for further consideration and requested that TRAI may provide a fresh set of recommendations in the matter looking at the subsequent developments/expansion in the M&E sector.

1.2 The genesis of current consultation lies in a reference sent in 2012 by the Ministry of Information and Broadcasting (MIB), vide its letter dated 12th December 2012 (**Annexure 2).** MIB had sought recommendations of TRAI under Section 11(1)(a) of the TRAI Act, 1997, on the issues related to monopoly/market dominance in the cable TV services. The reference inter-alia stated that, '*in view of the fact that the cable TV distribution is virtually monopolized by a single entity in some states, it has become necessary to examine whether there is a need to bring in certain reasonable restrictions on Multi System Operators (MSOs) and Local Cable operators (LCOs), including restricting their area of operation or restricting the subscriber base to prevent monopoly*'. MIB requested TRAI to provide recommendations on the following:

> *"In order to ensure fair competition, improved quality of service, and equity, should any restriction be imposed on MSOs/LCOs to prevent monopolies/accumulation of interest? If yes, what restrictions should be*

---

[1] Recommendations on Monopoly/Market dominance in cable TV services dated 26.11.2013 https://trai.gov.in/sites/default/files/Recommendations__Cable_monopoly__final__261113%20%281%29.pdf

imposed and what should be the form, nature, and scope of such restrictions? Accordingly, amendments required in the Cable Television Networks (Regulation) 1995 Act and Rules framed thereunder may also be suggested."

1.3 After due consultation, TRAI issued its recommendations[2] on Monopoly/Market dominance in the cable TV services on 26th November 2013.

1.4 In response to MIB back reference dated 19th February 2021, after due examination of the issues and research, TRAI issued a Consultation paper on 'Market Structure/Competition in Cable TV services' on 25th October 2021 to solicit the comments/views on monopoly/market dominance/ competition issues in cable TV services. Written comments on the consultation paper were invited from the stakeholders by 22nd November 2021 and counter comments, if any, by 6th December 2021. On the request of the stakeholders the last date for submission of comments and counter comments was extended up to 6th December 2021 and 20th December 2021, respectively. TRAI received a total of 70 comments and 7 counter-comments on the above-mentioned consultation paper. All the comments[3] are available on TRAI's website. After considering the observations of the MIB, written comments of stakeholders' deliberations in the Open House Discussions held on 27.01.2022 and its own analysis, TRAI has finalised the recommendations.

1.5 Chapter 2 discusses issues related to Monopoly/market dominance/competition in the Cable TV industry. Chapter 3 summarizes the Authority's recommendations on the subject.

---

[2] Recommendations on Monopoly/Market dominance in cable TV services dated 26.11.2013 https://trai.gov.in/sites/default/files/Recommendations__Cable_monopoly__final__261113%20%281%29.pdf

[3] https://trai.gov.in/consultation-paper-market-structurecompetition-cable-tv-services

CHAPTER 2

MONOPOLY/MARKET DOMINANCE/COMPETITION ISSUES IN THE CABLE TV INDUSTRY

2.1 All the issues related to Monopoly/market dominance/competition in the Cable TV industry raised in the consultation paper are discussed below. This chapter is divided into the following three sections:

i) Section A - This section discusses issues related to market structure. In the consultation paper on ''Market Structure/Competition in Cable TV services'' dated 25th October 2021, TRAI had sought comments of the stakeholders on various questions (issues for consultation). This section deliberates upon Q1-Q5 and Q7-Q24 of above-mentioned consultation paper.

ii) Section B – This section discusses issues related to Infrastructure sharing at LCO level referred to in Q6 of above-mentioned consultation paper.

iii) Section C – This section discusses issues related to Merger & Acquisition, vertical integration and horizontal integration referred to in Q25 of above-mentioned consultation paper.

Section A: Issues related to market structure

2.2 In the consultation paper on ''Market Structure/Competition in Cable TV services'' dated 25th October 2021, TRAI had sought comments of the stakeholders on the following:

"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."

"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."

2.3 Many stakeholders believed that there is sufficient competition in the television distribution sector. One association emphasized that the issue of market dominance by MSO does not really exist as there is not only competition within MSOs, but also with other players in the market like DTH, HITS, IPTV, Free Dish and OTT platforms. According to them, the services offered by the MSOs are completely substitutable by all the aforesaid players. This effectively renders a perfectly competitive market. Therefore, this group of stakeholders have suggested that TRAI's earlier recommendations on the subject should be withdrawn. Another association opined that there is sufficient competition in pan-India Cable Satellite Television Market. The association suggests that Cable television market would be best served by market driven competitive forces and a very light touch regulatory approach. A stakeholder opined that there is sufficient competition in the Television distribution sector. Platforms like DTH, Cable, IPTV, Free Dish and OTT are available across all the states and are providing healthy competition in the broadcasting and distribution industry.

2.4 TRAI received numerous comments from various small MSOs and LCOs in West Bengal. These comments were mostly similar in nature. These stakeholders emphasized existence of sufficient competition in television distribution in the state of West Bengal. A DTH operator highlighted that consumer today has multiple content viewing platforms to choose from. These include DD Free Dish, Cable, MSOs, HITS, DTH to OTT. Therefore, there is adequate competition in the sector. At the same time, they also highlighted about asymmetry in the regulations. While the DTH sector is micro regulated, made to pay License Fee, there is minimal scrutiny for Cable TV while DD Free Dish and OTT have no regulation. A broadcaster opined that while there is sufficient competition in the cable TV and DTH segments, the HITS and IPTV services are way behind.

2.5 On the other hand, some stakeholders opined that the level of competition in television distribution sector is not sufficient. In this regard, a broadcaster highlighted that some markets/states are dominated by single player and/or limited players. Further, monopoly of cable TV service provider will result in killing consumer choice and imposing supplier driven offerings. Service provider will only allow its network access to such channels of broadcasters for which it is getting hefty carriage fee, without giving any heed to consumer requirement in the relevant market where it operates. In addition, the broadcaster also pointed out that certain MSOs which operate in more than one state/area have uniform offering to all areas without keeping in mind the demography of various markets in which it operates.

2.6 Furthermore, a consumer association commented that there is competition in cable TV services, however, it is not uniform across the country. MSOs and LCOs are mostly regional operators; while some regions (mostly North India) benefit from the service of multiple cable operators, states in the South see some monopolization by cable operators.

2.7 In addition, TRAI had also sought opinions of the stakeholders on market structure. The stakeholders were asked, 'do they think that there is a need to regulate the issue of monopoly/oligopoly/market dominance in the Cable TV services, considering the current regulatory framework'. In this regard, TRAI requested the stakeholders to substantiate their responses by providing reasoning/justification.

2.8 In response, many stakeholders suggested that there is no need to regulate the issue of monopoly/oligopoly/market dominance in Cable TV services. Various stakeholders commented that in the state of West Bengal there is no need to augment competition enhancement measures for the LCO sector as there is enough scope and options for customers to avail the Cable TV services.

2.9 A group of MSOs pointed out 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. In addition, they also stated that earlier recommendation on the "Market Structure/Competition in Cable TV sector" does not hold merit now, in view of the changed market and distribution structure. One MSO highlighted that introduction of more regulations is prejudicially affecting the industry's growth and is also resulting in degrowth. An association, commented that forbearance approach may naturally nudge the industry towards an optimal equilibrium of competition across the media industry. Regulators must place trust in the market, for the industry to achieve its maximum potential.

2.10 A broadcaster proposed that given the multiplicity of platforms there is no need to regulate distribution services as such. However, there is a need to regulate certain unhealthy practices/issues in Cable TV services due to the existence of cross holding in the sector both vertically and horizontally. This cross holding can lead to preferential treatment by DPOs to members of their own group. An association pointed out that there is no law regulating horizontal monopolies specific to the media industry. There is no law regulating cross-media ownership and vertical integration in the media. Similarly, another broadcaster believed that, though there are stipulations relating to shareholdings of broadcasters in the DTH sector, no such stipulations exist with respect to MSOs and LCOs. There is a need to recommend cross-holding restrictions amongst various categories of DPOs/ service providers.

2.11 On the other hand, some stakeholders believed that there is a need to regulate the issue of monopoly/oligopoly/market dominance in Cable TV services. In this regard, a broadcaster suggested that at any given time there must be minimum three MSOs operating in any relevant market and same number of last mile operators operating in the sub-area of the relevant market. The broadcaster further recommended that TRAIconsider the possibility of homes having a choice of more than one MSO service in the same area. Another broadcaster stated that there is need to regulate the issue of monopoly/oligopoly/market dominance in the Cable TV Services. Since, even with the presence of other mediums of distribution, MSOs play a significant role in the television channel distribution because of its uniqueness in offering local channels.

2.12 A broadcaster opined that the level of competition in the MSOs' business is not uniform across the country. Certain states (e.g., Delhi, Karnataka, Rajasthan, West Bengal, and Maharashtra) have many MSOs providing their services whereas in certain other states like Tamil Nadu, Punjab, Orissa, Kerala, Uttar Pradesh, and Andhra Pradesh the cable television market is dominated by one or two MSOs. DTH service providers do offer an alternate option for consumers. Accordingly, the broadcaster suggested that there is a need for authorities to be set up / established at state levels.

2.13 An association suggested that TRAI must examine and purge monopoly abuse in any form, including bundling, ex ante restrictions on bundling in a competitive market may obviate benefits from being delivered to consumers.

2.14 With regards to the issue of market dominance, an individual highlighted that the issue has been decided by Supreme Court of India. Accordingly, the stakeholder opined that any matter of dominance by any aggrieved party needs to be brought before CCI through filing appropriate information. Any amendment in TRAI regulation regarding 'dominance' issue may be incorporated in the light of judgement.

2.15 During the consultation process, TRAI had also sought view of the stakeholders on the following question:

"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."

2.16 In response many stakeholders suggested that any restrictive treatment in terms of market capping/ regulations is uncalled for and would be in utter defiance of the spirit of a competitive market. Any regulatory measures to control will be against the interests of the stakeholders, including the liberty of the consumers to avail services of their desired service provider. On the other hand, some stakeholders suggested certain measures that are necessary to avoid monopoly. A broadcaster opined that no single entity and/or any person and/or body corporate (including its JVs, subsidiary, associates, holding company) should be permitted to have market share of more than 25% in the relevant market. For, this purpose relevant market shall be restricted to districts and/or major cities in case of tier 1 and tier 2 cities. In addition, the broadcaster also suggested to restrict market share and number of active subscribers handled by single entity. Another broadcaster opined that TRAI has prescribed the regulatory framework for "must provide"[4], however, there is no effective "must carry[5]" provisions and the cable operators still have wide discretion in carriage of channels, its placements, its packaging, non-carriage of channels due to "non-availability of frequency" etc. thereby negating to a large extent "must carry" provision. There are instances of many cable operators operating in tandem to create monopoly in television distribution business. The broadcaster urged that TRAI should have a dedicated cell to check such practices. Further, another broadcaster suggested that there is a need to regulate certain unhealthy

---

4 'Must provide' principle in essence mandate a broadcaster to must make available its TV channels to DPOs, on non-discriminatory basis within a given territory (For details please refer para 17 and 18 of Explanatory Memorandum of Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (as amended) (henceforth referred to as Interconnection Regulation 2017).

5 'Must carry' principle make it obligatory on part of DPOs to carry signals of TV channels of broadcasters, on receipt of written request for the same, on non-discriminatory basis. (For details please refer para 19 to 39 of Explanatory Memorandum of Interconnection Regulation 2017).

practices/issues in cable TV services due to the existence of cross holding in the sector both vertically and horizontally.

2.17 A DTH operator pointed out that there are no cross-holding restrictions on the Cable sector while the DTH sector is burdened with 20% cap on shareholding by the Broadcasting sector. The DTH operator emphasized that this restriction must either be extended to Cable, OTT and DPOs or must be done away for DTH as well. The DTH operator further added that there should be equal monitoring of compliances for all and license fee if not being imposed on Cable and OTT, it should be removed for DTH. On these issues, TRAI has issued another consultation paper on 'Issues Related to Cross Media Ownership' on 12th April 2022.

2.18 Furthermore, another MSO requested that TRAI takes stringent action against violators with huge penalties– especially on habitual defaulters so that the regulations and Supreme Court orders are implemented with due seriousness. The MSO also urged TRAI to enforce regulations regarding non-discrimination by broadcasters. A large number of stakeholders commented that MSOs with a larger economic power try to make some sort of dominance by acquiring smaller MSOs or LCOs. So, some regulatory mechanisms are essential to regulate such trends.

2.19 One stakeholder opined that before this issue is addressed, the Regulator, based on the data available with it, should conduct a survey and identify the markets where the entry of new entrants is not permitted or is difficult. This can be done city wise/state wise. The Regulator should provide stakeholders with the current market share of the operators pan India, identify the reasons of concentration and monopoly in the markets. Only after sharing such information, the regulator should invite suggestions of stakeholders for practical solutions. To address issues related to monopoly/market dominance in Cable TV sector, an association requested TRAI to allow interoperability of the STBs. Further, the association commented that BARC's ownership structure should be reformed. Network neutrality is essential. TRAI should ensure that owners of infrastructure do not block or degrade traffic in favour of their own services. Further that these providers do not adopt discriminatory data caps. Moreover, last mile interconnection of broadband networks must be secured.

2.20 On the other hand, an association commented that any regulatory intervention in terms of market capping/regulations is uncalled for. Also, an MSO stated that introduction of more regulations is prejudicially affecting the industry's growth and is also resulting in degrowth. Similarly, another MSO opined that there is no question of issues related to monopoly/ market dominance in Cable TV sector. And further suggesting or introducing more compliances is only going to make the functioning of MSO more cumbersome. Another stakeholder opined that Cable TV industry is facing acute competition now a days and the industry is facing acute revenue fall. Impetus needs to be given to this decaying industry with Government support by way of providing infrastructure status and other support rather than putting curbs on the business in the name of creating competition.

2.21 An individual stakeholder commented that the issue has been decided by the Supreme Court of India. Accordingly, any matter of dominance by any aggrieved party needs to be brought before CCI through filing appropriate information. Any amendment in TRAI regulation regarding 'dominance' issue may be incorporated in the light of judgement.

2.22 Further, in the consultation paper on ''Market Structure/Competition in Cable TV services'' dated 25th October 2021, TRAI had asked the following:

> *"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."*

2.23 In this regard, a large number of the stakeholders believed that there are no entry barriers in the Indian cable television sector. A broadcaster commented that with the advent of the current regulatory framework, entry barriers have been reduced significantly. Similarly, an individual opined that apparently there are no entry barriers in the cable television sector.

2.24 Contrarily, some stakeholders believed that there are entry barriers present in the cable television sector. A broadcaster highlighted that dominant MSOs in certain markets might misuse their market power to create barriers of entry for new players, provide unfair terms to other stakeholders in the value chain and distort competition. Further, another broadcaster emphasized that some regulatory norms for entry such as minimum net worth, corporate status, technical infrastructure (including fully addressable SMS), BIS standards compliance, etc. will lead to the formalisation of the sector and help it to achieve scale. A group of stakeholders from West Bengal suggested that there is a need to create barrier for new LCOs in West Bengal as the competition is too high.

2.25 An MSO commented that question of entry barrier in cable and DTH industry depends on many factors based on the ground realities of this struggling industry. The initial cost of setting up an MSO/LCO network or DTH infrastructure is the main challenge to any new entrants in this business. The MSO further added that it will be a utopian idea to open this industry for new entrants when the existing stakeholders are striving and find it difficult to survive. An association opined that TRAI should consider the extent to which state-owned enterprises and restrictive regulations create such barriers. Another association opined that there is a need for more legal flexibility and ample opportunities to emerge as an MSO for those LCOs who are looking to enter as MSOs.

2.26 TRAIhad also sought views of the stakeholders on the following issue:

"Q 5. 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."

2.27 In response, many stakeholders opined that there is no need to regulate LCOs to protect the interest of consumers and ensure growth/competition in the Cable TV sector. Numerous stakeholders suggested that there is no need to regulate LCOs in the state of West Bengal to protect the interest of consumers and ensure growth/competition in the Cable TV sector. Further, a broadcaster commented that there is minimalistic need to regulate LCOs since the supply of signal and offering is controlled by MSOs. An MSO was of the opinion that supporting them is more important than controlling them. Similarly, a broadcaster commented that regulation should be "light touch" that will encourage consolidation and growth.

2.28 A consumer association commented that LCO's energy should be utilized positively by motivating them to form their co-operative and become MSOs. They should take initiative to invest and participate in activities under the objectives to develop Cable TV industry in their areas and state by expanding the network, upgrading technology, finding new avenues of activities etc.

2.29 On the other hand, a few stakeholders believed that there is a need to regulate LCOs to protect the interest of consumers and ensure growth/competition in the Cable TV sector. A broadcaster highlighted that in many areas, LCOs enjoy market power and independently control the market.

2.30 Few MSOs suggested that LCOs may be permitted to register themselves with MIB and an undertaking be obtained from the LCO to comply with all relevant provisions of the Cable Television Network (Regulation) Act, 1995. TRAI 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.

2.31 Similarly, a broadcaster commented that LCOs are already required to register themselves with the concerned post office of the area. This should be online on a common portal where the data of all LCOs would be maintained centrally and

MIB and TRAI would have access to the data. The need is to have an effective mechanism to ensure the compliance to the existing regulatory provisions. A DTH operator opined that there should be certain criteria for LCOs to get license from the TRAI. An association suggested bringing uniformity in Right of Way (RoW) process/approvals across the country. A stakeholder opined that LCOs switch over to the other competitor MSOs without settling the dues or returning the STBs, creating a huge loss to the preceding MSO, and suggested certain measures to address the same.

2.32 With regards to relevant market of cable television operators for measuring its market power, TRAI in its previous Recommendations on Monopoly/Market dominance in cable TV services dated 26th November, 2013 had stated that the state, with certain exceptions, should be considered as the relevant market for assessing monopoly/ market dominance of MSOs in TV channel distribution market.

2.33 During the present consultation process, TRAI had also sought opinion of the stakeholders on the following questions:

"Q 7. What should be the relevant market for measuring the market power of cable services? Do provide full justification for your response."

"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."*

2.34 In this regard, many MSOs suggested that relevant market for all players should be 'pan India' and shall include subscribers of all technologies/platforms across the country. There should be no segregation of criteria for market concentration amongst the players. An MSO stated that the product market would include all platforms and the relevant geographic market shall include the entire country.

2.35 On the other hand, a broadcaster commented that State' should not be the relevant market for measuring market power in the Cable TV sector for the reason that all areas in a state do not hold the same commercial and financial value for the MSOs. Market power should be measured by market share of cable operators/ DPOs in cities and towns classified based on their commercial value. Based upon the commercial value of the relevant markets, in the descending order, broad categories of cities and towns/ relevant markets can be classified. In addition, an association also commented that the relevant market for determining market strength in the television industry cannot be primarily dependent on the state. A broadcaster emphasized that a particular State in certain situations can be a relevant market. However, before this issue is addressed, the Regulator based on the data available with it, should conduct a survey and identify the markets where the entry of new entrants is not permitted or is difficult. This can be done city wise/state wise.

2.36 Another broadcaster opined that relevant market should be district or area based on population of the district/city. No single entity and/or any person and/or body corporate (including its JVs, subsidiary, associates, holding company) shall be permitted to have market share of more than 25% in the relevant market. For, this purpose relevant market shall be restricted to districts and/or major cities in case tier 1 and tier 2 cities. Similarly, a large number of stakeholders also suggested that district should be the relevant market for measuring the market power.

2.37 Further, a broadcaster commented that market power should be measured by market share of the concerned Operator in terms of its absolute subscriber base vis a vis the genre and language. Similarly, a few stakeholders suggested that Indian Cable TV market can be based on the number of customers rather than a specific region or state. Alternatively, an association opined that TRAI should construct a systematic conceptual framework that must be followed while determining the relevant market. A stakeholder opined that now big corporate MSOs with huge investment support from a large telecom player are expanding their FTTH network all over India and capturing local market by adopting modern marketing strategies. Their main targets are the states where small MSOs dominate the market. Their business strategy is to penetrate rural potential market of these states by offering some free schemes and after capturing market they will exploit LCOs and customers ensuring return on their huge investment on FTTH, GPON etc. Regulator must analyze this reality before deciding on relevant market for controlling monopoly in cable TV business. Another opinion was that Indian cable TV market can be based on the number of customers rather than a specific region or state. A stakeholder commented that considering India's language clusters, the table 3.1 (of TRAI's consultation paper on "Market Structure/Competition in Cable TV services" dated 25th October 2021) categorises the relevant market in an apt manner at state level. The subscriber base is already reported to broadcasters state wise and this data helps in knowing the statewise market dominance of MSOs.

2.38 An association opined that a state or city or sub-city can be identified as relevant geographic market for cable television services whereas a few other stakeholders disagreed and stated that a state or city or sub-city cannot be identified as relevant geographic market for cable television services.

2.39 An MSO opined that the relevant geographic market can be at state level and the focus should be to curb the dominance of MSO based on discriminatory deals of broadcaster to enhance market dominance by a particular MSO in the state. A few stakeholders suggested that population density district wise should be factored in to define relevant geographical market. Many stakeholders opined that the languages spoken district wise should be factored in to define relevant geographical market.

2.40 In order to further deliberate this issue, TRAI had sought comments of the stakeholders on the following issue:

"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."

2.41 In this regard, many stakeholders opined that MSOs and its Joint Ventures (JV) should be treated as a single entity, while considering their strength in the relevant market.

2.42 An MSO suggested that any JV or subsidiary where MSO has more than 50% equity directly or indirectly can be treated as a single entity. Similarly, another MSO commented that a threshold limit of 50% of market share to be fixed for any such JVs. While many stakeholders suggested that if an MSO acquires more than 20% share capital of an entity or LCO that must be treated as a single entity. A broadcaster commented that it supports the definition of control proposed by TRAI to determine the relationship of MSO and its JV. A stakeholder also opined that for all practical purposes, the MSOs and their JVs are to be considered as a single entity, as they share common infrastructures like CAS/SMS etc. In such cases, MSO and JVs are equally responsible for their Regulation related obligations as they both have their own Certification from the MIB. But as far as their relevant market strengths are concerned, the question of them being taken as a single entity or not does not arise.

2.43 On the contrary, many stakeholders believed that MSOs and its Joint Ventures (JV) should not be treated as a single entity, while considering their strength in the relevant market. Many MSOs believed that each licensed entity, irrespective of being a joint venture or subsidiary of any other company, should be considered as a separate entity. The subscriber base to ascertain the relevant market should also be independent and separate for each such licensed entity.

2.44 Furthermore, TRAI in the consultation paper on ''Market Structure/Competition in Cable TV services'' dated 25th October 2021 had sought views of the stakeholders on the following question:

"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.

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."

2.45 With regards to the issue whether HHI is appropriate to measure market concentration of MSOs in the relevant market, many stakeholders responded affirmatively. However, on the other hand, many MSOs felt that HHI is not appropriate to measure market concentration of MSOs.

2.46 Many MSOs emphasized that market dominance can only be truly ascertained by taking into account the market shares of all the players, i.e. MSOs, DTH, HITS, IPTV, Free Dish, and OTT platforms. A group of MSOs commented that before recognizing any tool for the purpose of determining market concentration/dominance; TRAI should strengthen the mechanism for ascertaining the relevant market shares of each of the aforesaid entities. Each of the aforesaid entities should be mandated to submit data with respect to their relevant shares both at pan-India level and state level, to TRAI, on a monthly basis. All such data should be duly audited and verified by an independent panel of auditors empanelled and engaged by TRAI.

2.47 A broadcaster opined that Competitive Balance (CB) is measured as square of market share of the most dominant operator divided by HHI. This measure does have the convexity property of HHI wherein if the CB increases the concentration or the monopolistic nature of the market increases. However, this measure also considers the fact that a merger not involving the market dominant operator is better for the competitiveness of the market. While an association proposed that TRAI may use a combination of factors (such as Price level observations, Market share observations, Collusive activities, Analysis of the firm's strengths, Analysis of barriers to entry, Quantitative measures of market dominance) to assess market dominance in a given utility sector so as to avoid the potential pitfalls of using certain indicators in isolation. An MSO opined that concentration should be calculated based on market share based on subscriber numbers and not the revenues.

2.48 Further, many stakeholders opined that MSO and its JVs should be considered as a single entity for calculating their HHI. A stakeholder opined that a JV or subsidiary with more than 50% equity should be treated as a single entity

2.49 In its previous recommendations on Monopoly/Market dominance in Cable TV services dated 26th November 2013, TRAI had stated that the threshold value for any individual/ 'group' entity contribution to the market HHI should be no more than 2500.

2.50 In this regard, during the present consultation process, TRAI had again sought opinion of the stakeholders on this matter and had requested the stakeholders to share their views on the following:

"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."

2.51 In response, many stakeholders opined that there is a need to revise threshold HHI value of 2500 as previously recommended. Many MSOs commented that they do not advocate the use of HHI or any such market concentration measures, for ascertaining market dominance. In addition, many stakeholders believed that market dominance can only be truly ascertained by considering the market shares of all the players, i.e. MSOs, DTH, HITS, IPTV, Free Dish, and OTT platforms.

2.52 A broadcaster emphasized that the threshold should be revised to ensure that no single entity has market share of more than 25% in the relevant market. For, this purpose relevant market shall be restricted to districts or major cities in case of tier 1 and tier 2 cities. There should be at least four to five players present in a relevant market. The broadcaster further suggested to restrict market share and number of active subscribers handled by single entity. While another broadcaster was of the opinion that be it HHI or CB, the measure alone cannot justify the competitive intensity of a market. The broadcaster requested TRAI to evaluate the competitive intensity of a market by looking at other factors as well such as prices prevailing in the market (common perception is that if an operator has dominant market power, then he is likely to increase the prices), profits of the operators, churn (number of operators that have entered or exited the market in a given time frame).

2.53 Many stakeholders suggested that threshold value of market share should not be more than 2000. Similarly, an association also proposed to decrease the threshold of HHI to declare a score of 2000 as highly concentrated rather than a score of 2500. One stakeholder suggested that there is a need for Authorities to be set up at State Levels to: a) Initiate investigation of potentially anti-competitive behaviour; b) Prosecuting such behaviour; c) Imposing sanctions upon parties convicted of having committed anti-competitive actions; d) Monitoring the activities of the operators to ensure that they comply with their obligations including data maintenance, piracy and quality requirements.

2.54 On the other hand, some stakeholders were of the opinion that there is no need to revise threshold HHI value of 2500 as previously recommended.

2.55 In the consultation paper on "Market Structure/Competition in cable TV services" dated 25th October 2021, TRAI had requested the stakeholders to comment on the following:

"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."

2.56 In this regard, majority of the stakeholders commented that there is no need for assessment of competition at LCOs level on district/ town basis. A broadcaster commented that only monitoring and required actions may be taken against specific instances of abuse of position or non-compliance of the regulations. An MSO felt that instead of being inundated with huge data at district level, it is better to achieve the objective at state level first before focusing on district/city level.

2.57 On the other hand, some stakeholders opined that there is a need for assessment of competition at LCOs level on district/ town basis. A broadcaster suggested that threshold HHI of 2500 is fine. However, with constant threat from OTT and FTA platforms, there is likelihood of concentration in the market in future. In such cases, the threshold of 2500 should be increased further. HHI or CB measure alone should not be the deciding factor. The broadcaster suggested that TRAI should also look at other factors to decide if the dominant players are using any unfair means to hinder a perfect competitive scenario. An association opined that HHI threshold should be less than 0.01 (or 100), indicating a highly competitive zone.

2.58 Furthermore, TRAI in its Recommendations on Monopoly/Market dominance in cable TV services dated 26th November, 2013 had stated that in the cases where any group's contribution to market HHI is more than 2500 in a relevant market as on the date of issue of guidelines, such legal entity/ 'group' shall take necessary remedial measures, within 12 months from the date of issue of guidelines, so as to limit its 'control' in various MSO(s)/ LCO(s) in such a way that the contribution to market HHI of that 'group' reduces to less than or equal to 2500. In addition, in 2013 recommendations, TRAI had also stated that any MSO who by itself contributes to more than 2500 HHI in a relevant market should not be permitted to merge with or acquire the 'control' of any other MSO/ LCO in that relevant market. Also, the tariff offerings, interconnect agreements, must carry provisions and quality of service of such MSO would be closely monitored by TRAI for any anti-competitive practices.

2.59 In this regard, during the present consultation process, TRAI had sought views of the stakeholders on the following:

> *"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 "*

2.60 In response, many MSOs suggested that in such instance, wherein there is nil probability of the existence of any dominant player, they 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. A broadcaster emphasized that the issue should not be determined only by market share. Adverse effect on competition, if any, should invite regulatory intervention. The size of an MSO by itself ought not to be a concern if the MSO's actions do not have an adverse effect on competition in the relevant markets. One opinion was that there is no need to regulate the MSOs to control the market share. Another opinion received was that instead of trying to reduce the HHI after it exceeds the threshold limits, it is recommended to prevent market concentration by curbing discriminatory practices by broadcasters which lead to higher market concentration.

2.61 A broadcaster opined that such legal entity/ 'group' shall take necessary remedial measures, within 12 months from the date of issue of guidelines, to limit its 'control' in various MSO(s)/LCO(s) in such a way that the contribution to market HHI of that 'group' reduces to less than or equal to 2500. Any MSO who by itself contributes to more than 2500 HHI in a relevant market should not be permitted to merge with or acquire the ‘control’ of any other MSO/LCO in that relevant market. The MSO/Group may undertake the process of corporate restructuring like alter its equity pattern, debt-servicing schedule, equity holdings, and crossholding pattern to regulate and bring the market share/HHI below the threshold level. Another broadcaster was of the opinion that MSOs should be given six months’ time to comply with the revised threshold limits. Some stakeholders believed that a legal and regulatory framework must be established to reduce the market share / HHI below the threshold level.

2.62 Furthermore, in the consultation paper on ''Market Structure/Competition in Cable TV services'' dated 25th October 2021, TRAIhad also requested the stakeholders to comment on the following:

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

2.63 In this regard, many stakeholders opined that DTH services are not perfect substitute of cable television services. A broadcaster highlighted that MSOs have a uniqueness in offering local channels based on geographical demography and cater to the specific needs of people from specific area. Another broadcaster highlighted that DTH platform operators in view of the nature of service are not allowed to offer other services such as broadband, voice or data whereas the cable operators can provide such services by meeting additional conditions. The cable services are able to provide the relevant content for their areas of operations whereas the DTH content will be same for all subscribers in the country. In addition, Cable services are less prone to weather disturbances compared to DTH services whereas the DTH services can reach most parts of the country even in secluded and difficult terrains.

2.64 Many stakeholders opined that they don’t think DTH services are perfect substitute of Cable TV services unless and until they provide Internet or

Broadband service along with Cable TV. An MSO mentioned that there is no exclusive content or local content on DTH which a subscriber can enjoy in any cable network. Even in technical service and customer care, cable operators are much ahead of DTH operators. Another major differentiator is the capacity of local cable operators to provide effective broadband service to customers using same fiber network, while DTH operators are unable to provide broadband.

2.65 However, on the other hand, many stakeholders opined that DTH services are a perfect substitute of cable television services. An association stated that while the platforms vary by technology and quality of service delivered, they are similar with respect to content delivered. A DTH operator was of the opinion that DTH sector is micro regulated, there is minimal scrutiny for Cable sector stalling the growth of DTH sector. Additional burdens like License Fee and Cross Holding restrictions are also imposed upon DTH.

2.66 With regards to the issue of market dominance, TRAI in its Recommendations on Monopoly/Market dominance in Cable TV services dated 26th November 2013 had stated that the market dominance should be determined based on market share in terms of number of active subscribers of MSOs in the relevant market. To measure the level of competition or market concentration in a relevant market, the Herfindahl–Hirschman Index (HHI) should be used.

2.67 In this regard, during the present consultation process, TRAI had sought comments of the stakeholders on the following:

> *"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."*

2.68 Some stakeholders were of the opinion that there is no need to change the criterion of market share in terms of number of active subscribers for determination of market dominance. Many stakeholders suggested that the number of customer subscriber base should be the major criterion to determine the market share of the MSO along with their JVs.

2.69 Some stakeholders opined that active subscriber base of JVs may also be considered while determining the market dominance of an MSO. However, many stakeholders suggested that active subscriber base of JVs may not be considered while determining the market dominance of an MSO.

2.70 Furthermore, in the consultation paper on ''Market Structure/Competition in Cable TV services'' dated 25th October 2021, TRAI had also sought comments of the stakeholders on the following:

"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. "

2.71 Many MSOs opined that unlicensed video and audio streaming services as well as the OTT platforms should be definitely accounted for the purpose of determination of market dominance. A stakeholder opined that it is imperative that OTT Service Providers are under some form of regulation like all the other stakeholders in the relevant market. Similarly, a DTH operator highlighted that in terms of Clauses 5.6 and 5.7 of MIB's Downlinking Guidelines, a Broadcaster is not entitled to re-lay or transmit TV content/channels directly to the consumer and must do so only through a DPO, however the broadcasters relay their linear channels on their own OTT Platforms. The DTH operator further urged TRAI to categorise Streaming services / OTT as a DPO and to regulate Streaming services/ OTT services on the same terms as the DTH operators are regulated. Similarly, another MSO requested that TRAI brings OTT under the ambit of regulation and provide a level playing field. A stakeholder opined that the future of Television is very bleak due to competition from streaming platforms, and if Government puts more control on LCO/MSOs in the name of controlling monopoly, then it would adversely affect cable TV sector.

2.72 On the contrary, a broadcaster opined that new technological developments should not be taken into account for determining market dominance else they may become entangled in regulatory requirements which may hamper their growth prospects. Another broadcaster commented that TRAI should consider dealing with alternate service provider separately. Yet another broadcaster felt that market dominance is a specialist field which should be left to expert statutory bodies (like the CCI) to determine. TRAI should leave it to CCI to decide if market dominance exists and whether there is an adverse effect on competition. One stakeholder opined that the accessibility of these services is mainly restricted to the youngsters / certain class of consumers, therefore, the same shall not be accounted while determining the market dominance.

2.73 An association stated that OTT services and TV distribution are different services. Different services require differential regulatory treatment. Competition concerns in one market cannot be a cause for regulation in another market. Ex-ante competition regulation without a market assessment throttles innovation instead of promoting competition. Rise and development of OTT services in not relevant for determining the market dominance of cable TV, including DTH operators, HITS operators and IPTV operators. Copyright Act, 1957 enables exploitation of content through any medium. Another association was of the opinion that putting fetters on the ability to make content created/licensed by any broadcaster, available on OTT platform(s) would be against the letter and spirit of freedom and speech and expression guaranteed under Article 19(1)(a) of the Constitution.

2.74 In addition, an individual was of the opinion that Video on Demand (VOD) segment does not present any features that could possibly invite economic regulation. An empowered body under the Competition Act, 2002 viz. the CCI has the mandate to intervene in any sector, including the VOD segment, on the basis of a complaint or even suo moto if indeed there is an instance of competition being suppressed through measures like a cartel or abuse of dominance. VOD segment is thus best left to the forces of competition and to be dealt with by the existing law on competition.

2.75 Many stakeholders suggested that price parity should be maintained in the different streams of the industry, so that no consumer may feel being cheated. All viewing content should pass the benchmark of Indian culture and heritage. Viewing content should be segregated in two segments, with advertisement and without advertisement. Price of live content should be same on all platforms.

2.76 Further, TRAI in its Recommendations on Monopoly/Market dominance in Cable TV services dated 26th November 2013 had recommended the following:

"2.4 Any M&A among MSO(s) or between a MSO and LCO in a relevant market shall require the prior approval of the regulator. The decision on any proposal, complete in all aspects, shall be conveyed within 90 working days.

2.5 Such proposals of M&A shall be approved, provided the following two conditions are satisfied:
1. Post-M&A the contribution of resultant entity to the market HHI does not exceed 2500, and
2. Depending on the value of the post-M&A market HHI, any one of the following conditions are met:
(i) either the post-M&A HHI of that market is less than 2000, or
(ii) in cases where the post-M&A market HHI is between 2000 and 3300, the proposed M&A does not result in an increase in market HHI (delta) by more than 250 points, or
(iii) in cases where the post-M&A market HHI is beyond 3300, the proposed M&A does not result in an increase in market HHI (delta) by more than 100 points.
For calculating the increase in HHI (delta) as a result of the M&A among MSO(s) or between an MSO and LCO in the relevant market, the difference of the market HHI pre-M&A and post-M&A shall be taken."

2.77 In this regard, during the present consultation process, TRAI had requested the stakeholders to share their opinion on the following:

“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. “

2.78 In response, some stakeholders agreed with the restrictions prescribed in TRAI’s previous recommendations. A broadcaster further commented that they agree with the imposition of restrictions based on the threshold values of HHI, as prescribed in TRAI’s recommendations of 2013. However, these values should be time tested and TRAI or any competent authority also should take up the cases of M&A and/or exercise control over potential of abuse of market for regulatory scrutiny and restrictions, as and when reported. Many stakeholders mentioned that they agreed with TRAIs previous recommendation that in no circumstances HH Index of any MSO should exceed 2000.

2.79 Many MSOs emphasized that in such instance, wherein there is nil probability of the existence of any dominant player, they 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. A stakeholder opined that Market dominance is a specialist field which should be left to expert statutory bodies (like the CCI) to determine. TRAI should leave it to CCI to decide if market dominance exists and whether there is an adverse effect on competition.

2.80 Moreover, in consultation paper on ''Market Structure/Competition in Cable TV services'' dated 25th October 2021, TRAI had also sought opinions of the stakeholders on the following issue:

“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. “

2.81 In this regard, many MSOs opined that the activities that are proposed to be regulated are already covered under the Competition Act, 2002 hence, any parallel legislation imposing any form of restrictions/ market cap on MSOs/ LCOs will only act as an impediment for growth and add to the confusion, expose the stakeholders concerned to unnecessary litigations and judicial interventions. An association, mentioned that CCI exists as an apex body to monitor and regulate any instance of abuse of market-power and anti-competitive arrangements. Similarly, a broadcaster also stated that adverse effects of competition, monopolies, monopolistic practices are better left to CCI, a body that has been established by the Parliament for precisely this purpose.

2.82 Another broadcaster highlighted that some MSOs have been acquiring market share and scaling up their operations through M&A with other MSOs/LCOs in the relevant market. Restrictions are required to be framed to prevent an entity from building dominant positions in the TV channel distribution market through M&A among competing entities. An MSO suggested that TRAI may introduce strict control on M&A by large business houses having profit motive and monopoly tendencies. The MSO also stated that there is a need to support local level small M&A aiming to support LCOs to develop their infrastructure and sharing of infrastructure to provide effective service to last mile customers. A stakeholder opined that to curb anti competition/monopolistic practices while Competition Act 2002 is in force, Section 14 of TRAI Act, 1997 allows parallel jurisdiction of Competition Commission of India to investigate from the competition point of view which will help curb anti-competitive activities of the players. Strengthening the powers of CCI under this section will help in dealing with violators of Competition Act 2002, with a firm hand.

2.83 Many stakeholders believed that merger and acquisition amongst MSOs should be under strict observation of authorized body, such as SEBI and company registration authority. In case of any merger and acquisition, LCO(s) associated with merging MSOs, should be informed and their opinion should be emphasized and esteemed.

2.84 Furthermore, during the consultation process, TRAI had also requested the stakeholders to share their views on the following:

"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."

2.85 In this regard, a broadcaster opined that there should be adequate measures to check that monopoly or oligopoly does not come into being as it can harm the interest of the entire broadcasting industry as well as the consumers. Another broadcaster believed a "light touch" and predictable regulatory environment with minimal regulatory intervention would best encourage competition and the growth of the industry.

2.86 A DTH operator suggested that cross-holding restrictions that are currently applicable for DTH sector must be made applicable for all, else should be removed for the DTH sector. Broadcasters today are running their own OTT Platforms and there are no cross-holding restrictions on them. This is leading to monopolistic market as the price at which the Broadcasters are offering content to DPOs and their subscribers are far higher than that of their own platforms. Further, proper disclosures of ownership and shareholding needs to be ascertained while approving mergers & acquisitions in the Broadcast and Telecom Industry.

2.87 A stakeholder opined that the reference may be made to the Section 5 and 6 of the Competition Act, 2002 under the head "Regulations of Combinations" while considering to curb the monopolistic menace which may arise in case of M&A. Some MSOs have been acquiring market share and scaling up their operations through M&A with other MSOs/ LCOs in the relevant market. Restrictions are required to be framed to prevent an entity from building dominant positions in the TV channel distribution market through M&A among competing entities. Another stakeholder opined that in cable industry the negative impact of any regulations has been borne by MSOs and LCOs who have to ensure prompt service to customers at lesser rate, which entails huge investment in infrastructure as well as product diversification. Any further control on their effort to increase business volume to reduce cost and sustain in the industry should not be curtailed by new regulatory measures in the name of creating competition in an industry where there is stiff competition at present.

2.88 TRAI in its previous recommendations on Monopoly/Market dominance in cable TV services dated 26th November 2013, had recommended the following definition of control:

"2.6 An entity is said to 'control' an MSO/ LCO and the business decisions thereby taken, if the entity, directly or indirectly through associate companies, subsidiaries and/or relatives:

*(a) Owns <u>at least twenty per cent of total share capital</u> of that MSO/ LCO. In case of indirect shareholding by an entity in MSO(s), extent of ownership would be calculated using the <u>multiplicative rule. For example, an entity who owns, say, 30% equity in Company A, which in turn owns 20% equity in Company B, then the entity's indirect holding in Company B is calculated as 30% * 20%, which is 6%.</u>; Or*

(b) exercises de jure control by means of:

(i) having <u>not less than fifty per cent of voting rights</u> in the MSO/ LCO; Or

(ii) appointing <u>more than fifty per cent of the members of the board of directors</u> in the MSO/ LCO; Or

(iii) <u>controlling the management or affairs</u> through decisionmaking in strategic affairs of the MSO/ LCO and appointment of key managerial personnel; Or

(c) exercises de facto control by means of being a party to <u>agreements, contracts and/or understandings,</u> overtly or covertly drafted, whether legally binding or not, that enable the entity to control the business decisions taken in the MSO/ LCO, in ways as mentioned in (b) (i) (ii) and (iii) above.

For this purpose:

(i)The definitions of 'associated company', 'subsidiary' and 'relatives' are as given in the Companies Act 2013.

(ii) An 'entity' means individuals, group of individuals, companies, firms, trusts, societies and undertakings."

2.89 In this regard, in the consultation paper on ''Market Structure/Competition in Cable TV services'' dated 25th October 2021, TRAI had requested the stakeholders to comment on the following:

"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."

2.90 In response, many stakeholders agreed with the definition of control as provided by TRAI in the 2013 recommendations. A broadcaster was of the opinion that the definition should, time and again, be revisited to keep it in consonance with the definitions prescribed under the Competition Act, 2002 & the prevailing SEBI Takeover Regulations.

2.91 On the other hand, many other stakeholders disagreed with the definition of control as provided by TRAI in the 2013 recommendations. Many stakeholders suggested that the definition of 'control' as prescribed under The Companies Act, 2013 shall be applicable, for all purposes. Similarly, a broadcaster highlighted that "Control" is well defined in legislations like the Companies Act 2013, Competition Act 2002, the SEBI Act 1992. There is no need to reinvent the wheel and the most suitable of these definitions can be incorporated by reference.

2.92 Further, in order to discuss the issue in detail, during the consultation process, TRAI had also sought opinions of the stakeholders on the following:

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

2.93 Some stakeholders opined that the definition of 'control' should not be different for different kinds of MSOs. In this regard, a broadcaster suggested that there should be some specific exhaustive guidelines/rules which could govern different kinds of MSO's (only possible after reasonable classification) as the definition provided above is inclusive of controlling stake, voting rights, etc., which may not fit MSOs that are proprietorship or partnership, etc. MSOs which are unlisted companies, must follow the definition of control given under the Companies Act 2013, and for MSOs which are or which may later become listed companies, they would be bound by the provisions of the Companies Act 2013 and SEBI regulations. Some stakeholders opined that definition of 'control' as prescribed under The Companies Act, 2013 shall be applicable, for all purposes. A stakeholder opined that "Control" is well defined in legislations like the Companies Act 2013, the Competition Act 2002 and the SEBI Act 1992. There is no need to reinvent the wheel and the most suitable of these definitions can be incorporated by reference.

2.94 Moreover, in the consultation paper dated 25th October 2021, TRAI had also requested the stakeholders to share their views on the following question:

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

2.95 Many stakeholders responded that TRAI should restrict the ambit of its recommendations only on certain kinds of MSOs. Many MSOs emphasized that services of MSOs, DTH, IPTV, HITS, Free Dish and unlicensed OTT platforms are perfectly substitutable amongst one another. There is no requirement to introduce any form of restrictions regarding market capping on the MSOs. An MSO commented that there should not be any discrimination in recommendations across the MSOs in the country. Further, a broadcaster opined that MSOs are only one part of the distribution ecosystem and without looking at the sector as a whole, it will not serve any purpose.

2.96 Many stakeholders opined that small MSOs cannot dominate the market due to their size and volume. Big corporate and multinational MSOs have the power and capacity to dominate the market. An association believed that because of their size and volume, small MSOs cannot dominate the market. Major corporate and multinational MSOs can dominate the market, and large multinationals have various advantages over other enterprises. Another association commented that there is no requirement to introduce any form of restrictions regarding market capping on MSOs/LCOs.

2.97 In addition, TRAI in its previous recommendations on Monopoly/Market dominance in Cable TV services dated 26th November 2013, had prescribed the following reporting requirements for MSOs:

"2.12 The Following information shall be disclosed by the MSOs on their website:

(a) Ownership pattern including foreign investment/ joint venture details;

(b) List of MSO(s)/LCOs, who are part of the 'group' in the relevant market;

(c) Details of Chairman, Directors in the Board, CEO and CFO;

(d) State-wise (as given in table 1.2) geographical area coverage details.

2.13 The Following information shall be provided by the MSOs annually to MIB and TRAI :

(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 (as given in table 1.2) geographical area coverage details.

2.14 State-wise (as given in table 1.2) number of active subscribers will be provided by the MSOs to MIB and TRAI on quarterly basis."

2.98 During the present consultation process, TRAI had again sought views of the stakeholders on this issue:

"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. "

2.99 In response to this question, many stakeholders agreed 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.

2.100 On the other hand, many MSOs disagreed with the disclosure and monitoring requirements mentioned in the 2013 recommendations. Many MSOs opined that regarding the MSOs listed on Stock Exchanges, annual information with regard to points (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 business. Additionally, details with respect to point (f) i.e., 'State-wise geographical area coverage' would be very elaborate and cumbersome. These MSOs further pointed out that most of the aforesaid information is already part of M-PMR and Q-PMR that are submitted by the DPOs to TRAI on monthly and quarterly basis respectively.

2.101 Many MSOs suggested that all the players in the Television Distribution Market should be mandated to share the aforesaid information, without any exception. This will enable TRAI to have an overall and accurate insight into the television distribution market.

2.102 In addition, in the consultation paper on ''Market Structure/Competition in Cable TV services'' dated 25th October 2021, TRAI had also requested the stakeholders to share their opinions on the following:

> *"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."*

2.103 Many MSOs emphasized 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, the services catered being perfectly substitutable and on account of DPOs being heavily regulated in terms of stringent regulatory framework. Similarly, an association also stated that there cannot be any instance of prevalence of 'abuse of dominance' in the distribution services.

2.104 A broadcaster stated that dominant position and monopoly power in relevant market can result in form of a cable operator acquiring control of market through mergers and acquisitions. However, with MRP regime and the regulations on protection of consumers, the consumer interest will be largely protected. Another broadcaster was of the opinion that monopolistic practices also increase when there is a fight for maximization of revenues by the DPOs at ground level. There are situations where there are increasing cases of piracy and increasing cases of territorial transgression (without once seeking permission from the broadcasters). This leads to unhealthy competition at ground level, undercutting and minimization of revenues for the broadcasters. There are instances where a dominant DPO has made it difficult for some broadcasters to have access to its distribution network for carrying content to consumers.

2.105 Some stakeholders commented that small MSOs and LCOs should be supported at all times. If small MSOs and LCOs were barred from the market, major MSOs and corporations would undoubtedly dominate and experience the detrimental repercussions of consumer governance. Many stakeholders opined that small MSOs and LCOs should always be encouraged. Big and multinational MSOs should not be liberated to connect consumers directly.

Analysis and Recommendations

Impact of TRAI's new regulatory framework on Market Structure

2.106 The Indian Broadcasting sector has expanded significantly in the past few years. Two most remarkable developments have been the digitization of Cable TV services and implementation of TRAI's new regulatory framework for Broadcasting and Cable TV Sector. The regulatory framework now comprises of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017, the Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017 and the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017, as amended [collectively referred to as new regulatory framework].

2.107 TRAI has taken several initiatives in the recent years to increase transparency, non-discrimination, protection of consumer interest and enabling orderly growth of the sector. The new regulatory framework has been quite successful in establishing harmonized business processes in the sector, level-playing-field, bringing-in transparency, reducing litigations among stakeholders and providing equal opportunities to smaller Multi System Operators (MSOs) and broadcasters. As a result, the television broadcasting sector has flourished and the level of competition has increased manifold.

2.108 The new regulatory framework has encouraged small and medium distributors. Network Capacity Fee (NCF) is one such measure which has enabled an assured and dedicated revenue stream for MSOs. MSOs make significant investment to establish and maintain their networks. In the previous regime, distributors of television channels did not have any fixed source of revenue. Their income depended largely on the revenue share earned by providing the pay channels of broadcasters. NCF is the apportioned network cost per subscriber per month for the MSO and LCO.

2.109 Prior to implementation of new regulatory framework 2017, broadcasters could impose discriminatory conditions on distributors. Such discrimination was one of the major problems. Less favourable deals for small distributors created unequal market opportunities. This hampered the existence of medium and small DPOs and hence affected the level of competition in the market. The transparent service offerings through Reference Interconnect Offer (RIO) based regime coupled with the 'Must Provide' provisions empower small and medium distributors. Furthermore, the new regulatory framework also prescribes that the Reference Interconnection Offer (RIO) of a broadcaster must be in form of an agreement in ready-to-sign condition. Distributors are empowered as they can now sign and send the RIO published to concerned broadcaster, which is treated as a binding agreement.

2.110 In addition, all conditions including those of distribution fee and the criteria for discount must be prescribed in the RIO and must be same for every DPO. In the previous regime, small and medium distributors were subjected to target-based discounts. In some cases, distributors were required to achieve 100% penetration levels for certain channels and bouquets to receive discounts on channels/bouquets. It was very challenging for distributors to survive in the market without availing such discounts. However, the new regulatory framework enables DPOs in getting non-discriminatory deals on a transparent basis. Thus, every DPO irrespective of its size is assured of earning distribution fee on non-discriminatory basis.

2.111 Moreover, the new regulatory 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). Such groupings of local cable operators have an advantage over other distributors as they can create local content (subject to specific guidelines of MIB) suited to the tastes and preferences of their regional consumers. TRAI has published a white paper titled 'Benefits of New Framework for Small MSOs'[6] highlighting more details.

Other Regulatory and Policy initiatives

2.112 It may also be recalled that TRAI 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. TRAI recommendation has been duly accepted by MIB. As a result, there are very minimal or no entry barrier in permission/registration of a new business entity to become a service provider.

2.113 As also pointed out in TRAI consultation paper dated 25th October 2021 on Market Structure/Competition in Cable TV services, as per the MIB guidelines

[6] https://trai.gov.in/sites/default/files/WhitePaper_23042019.pdf

even an individual can get himself registered as an 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.

2.114 It may also be highlighted that previously MSO registrations were given for specific city, town, state or pan India in DAS notified areas as mentioned by the applicant MSO. However, MIB vide its circular dated 27th January, 2017[7] allowed MSOs to operate in any part of the country irrespective of their registration area. Thus, there is no restriction on the number of MSOs present in a particular market. Various MSOs are now providing Cable TV services spread over wider geographies as well as on a pan India level, thereby increasing the number of MSO players across the entire country and strengthening the level of competition in the sector.

2.115 It is also pertinent to highlight that consequent upon acceptance of TRAI recommendations on "Sharing of Infrastructure in Television Broadcasting Distribution Sector" dated 29th March 2017, the sharing of infrastructure by Multi-System Operators is permitted vide MIB order dated 29th December 2021[8]. Further MIB vide its order dated 6th November 2020[9] also permitted sharing of infrastructure between HITS operators and MSOs. This is expected to significantly reduce the cost of operation of distributors thereby supporting ease of doing business. This is expected to further increase the number of platforms in India and hence enhance the level of competition in the Cable TV distribution sector.

Overview of Broadcasting sector and level of competition

2.116 As a result of the multiple initiatives taken by TRAI and the Government of India, the television distribution sector has grown substantially. As per an industry report, in the year 2021, the TV universe consists of approximately 67

---

[7] Source: https://digitalindiamib.com/Registrered%20MSOs%20can%20opearte%20anywhere%20in%20India%20-%20Circular%20dt%2027-1-2017.pdf

[8] Source: https://mib.gov.in/sites/default/files/Guidelines%20for%20sharing%20of%20infrastructure.pdf

[9] Source: https://mib.gov.in/sites/default/files/Amendment%20in%20HITS%20guidelines%20.pdf

million cable TV households[10], 3 million HITS subscribers[10] and 43 million Free DTH households[10]. In addition, as reported by the pay DTH operators to TRAI, there were 67.04 million pay DTH active subscribers at the end of June 2022. Further, reported subscriber base by the IPTV Operator were around 7,24,000 at the end of June 2022.

2.117 It may also be noted that the level of competition has also increased significantly in the recent years. Alongside the growth in the subscriber base, the number of platforms & service providers have also increased at a very rapid rate. The television industry has been under pressure due to Covid 19 in last two years. In addition, there is competition due to increasing availability of video on demand services including Subscription Video on Demand (SVOD) services. Today, the number of platforms available to the consumers for enjoying broadcasting content include those provided by MSOs, DTH operators, HITS operators, IPTV operators, DD free dish and Over the Top (OTT) platforms.

2.118 As on 1st August 2022, there are 1755[11] (includes 3 provisionally registered) MSOs registered with MIB. Further, as per the information reported to TRAI there were an estimated 4 pay DTH operators, 1 HITS operator, and few IPTV operators, at the end of June 2022. MIB vide its letter dated 26 April 2022 has informed TRAI that they have received information from the Department of Posts as per which the number of LCOs registered in the country as on 01.01.2022 is 81,706. However, as per the data reported to TRAI by top 16 DPOs (14-MSOs, 01-HITS Operator and 01-IPTV Operator), the total number of LCOs linked with them are around 1,72,063 LCOs as on quarter ending June 2022[12]. In addition to that, public service broadcaster - Doordarshan, provides a free-to-air DTH service in India. Apart from these traditional modes of

---

[10] FICCI EY Report (March 2022) titled "Tuning into consumer -Indian M&E rebounds with a customer-centric approach

[11] Source: https://mib.gov.in/all_broadcasting_documents

[12] Disclaimer:- The actual number of cable operators mentioned above (172063) may vary, as sometimes the same cable operators may be associated with more than one MSO. This figure is derived from the Top 16 DPOs (14-MSOs, 01-HITS Operator and 01-IPTV Operator) who are reporting the data to TRAI on regular basis.

distribution, there are more than 40[13] OTT platforms available in India which offer media content over internet.

2.119 It is also pertinent to note that the number of registered MSOs has increased significantly from 159 at the beginning of 2015 to 1765 in March 2022. Figure 1 shows the pattern of increase in the number of registered MSOs:

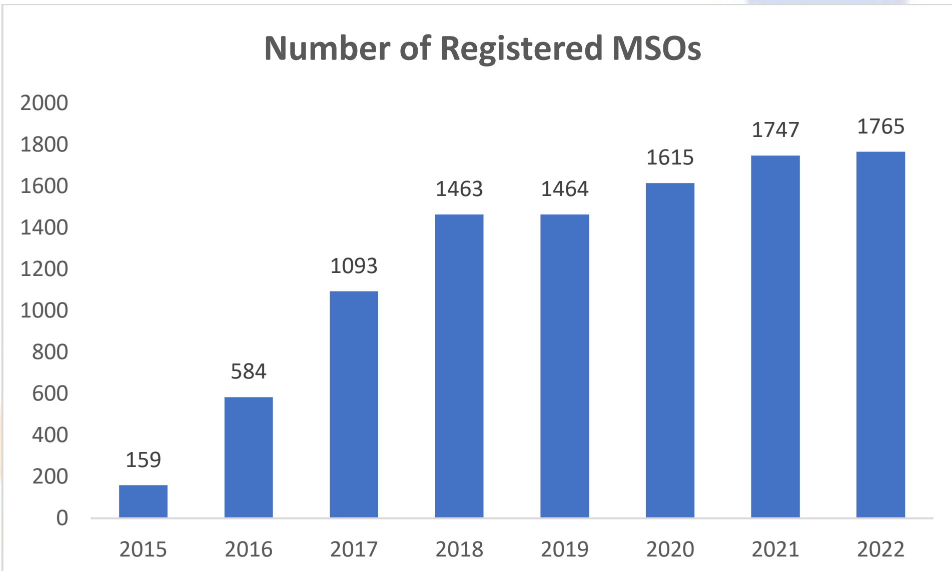

Figure 1: Growth in the number of registered MSOs*[14]*

2.120 Simultaneously the Broadcasting industry has also witnessed a tremendous growth in the subscriber base of these DPOs. As per TRAI Performance Indicator Report[15] January-March 2022, top 12 MSOs and 1 HITS operator (having more than one million subscribers) have a total active subscriber base of around 45.92 million. In addition, a total of 66.92 million subscribers are served by pay DTH operators. Further, as per FICCI EY report issued in March 2021[16], DD Free Dish crossed an estimated 40 million TV homes.

[13] Source: https://en.wikipedia.org/wiki/Over-the-top_media_services_in_India
[14] Source: https://digitalindiamib.com/
[15] Source: The Indian Telecom Services Performance Indicator Report January - March, 2022 (https://trai.gov.in/sites/default/files/QPIR_26072022_0.pdf)

[16] Source: India's Media & Entertainment sector reboots in 2020 (Plating by New Rules) https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2021/ey-india-media-and-entertainment-sector-reboots.pdf

2.121 As per an industry report[17], the TV universe consisted of approximately 72 million cable TV households in the year 2020, which reduced to 67 million in the year 2021.

2.122 Similarly, figure 2 highlights the year-on-year growth in the net active subscriber base of DTH operators in India:

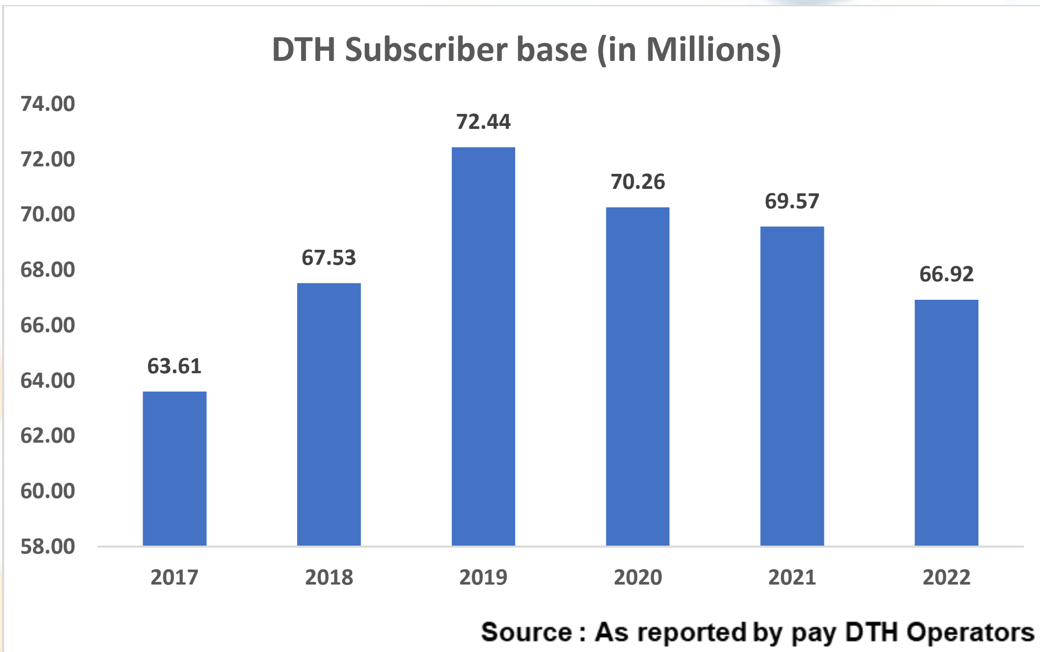

Figure 2: Growth in number of DTH subscribers (in Millions)

2.123 The level of competition is further illustrated by the huge number of LCOs present in the country. These LCOs can reach even the remotest of areas to offer their services. In addition, they also have the liberty to move to another MSOs to seek additional gains.

2.124 Availability of multiple platforms have also resulted in increased affordability. As per ICRIER Report[18], DTH prices in India compare favourably with operators

[17] FICCI EY Report (March 2022) titled "Tuning into consumer -Indian M&E rebounds with a customer-centric approach

[18] Source: Comparison of packages across countries, Page 15 of ICRIER Report titled 'An Analysis of Competition and Regulatory Intervention in India's Television Distribution and Broadcasting Services'. Available at https://icrier.org/pdf/An_Analysis_of_Competition_and_Regulatory_Interventions

in other countries. According to the report, at an average price of $~5.53 in India, the Indian consumer pays around 20 to 25% as compared to average price paid by TV consumer in UK, USA, Thailand, or Malaysia.

2.125 Further, TRAI has recently released a consultation paper on 8th December 2021 on Ease of Doing Business in Telecom and Broadcasting Sector to identify various concerns in the existing processes and initiate appropriate measures for the reforms required in the regulatory processes, policies, practices and procedures in the telecom and broadcasting sector for creating conducive business environment in India. Creation of favourable policies acts as a catalyst in attracting large number of players in the sector and further improves competition.

Recent Trends and Technological Developments in the Broadcasting sector

2.126 Alongside the rapid growth in the number of MSOs, DTH operators and LCOs, India has experienced a shift in consumer preferences from traditional modes of broadcasting to "Over the Top" (OTT) services. It is important to consider that the viewing habits of Indian consumers have evolved a lot in the last few years. As a result, consumers now have an additional medium to relish video content.

2.127 OTT plays a prominent role in the Indian socioeconomic landscape. According to a report: 'OTT - A Paradigm Shift in Media & Entertainment' issued in July 2021[19], the size of the OTT market in financial year 2020 was in the range of US$ 1.7 Billion (both Video and Audio).

2.128 The OTT segment in India has benefitted immensely because of access to better networks, digital connectivity, increased smartphone penetration and more importantly low mobile data prices in India. OTT platforms have been increasingly attracting wide range of subscribers across the country.

[19] Source: https://rbsa.in/ott-a-paradigm-shift-in-media-entertainment/

2.129 OTT landscape is expected to get hyper competitive and attract a huge number of customers in the coming years. This further illustrates that fierce competition is prevalent in the sector and it is only expected to grow in future.

2.130 Further, a rapid pace of technological developments has enabled provision of internet and telephone services over cable TV networks. The cable TV networks have already expanded and cover a large proportion of the country. Therefore, many cable operators have started offering broadband services by taking feeds from the Internet service providers (ISPs) and Telecom service providers (TSPs).

2.131 TRAI is of the opinion that the landscape of the Broadcasting industry has changed drastically since its previous recommendation on Monopoly/Market dominance in Cable TV services on 26th November 2013.

2.132 As highlighted above, the level of competition has increased rapidly both in terms of number of players and number of platforms in the recent years. Further, as agreed by most of the stakeholders, the entry barriers in the Cable TV sector have reduced significantly because of the numerous initiatives taken by the Government of India and TRAI. The successful implementation of Digital Addressable Systems (DAS) and TRAI's new regulatory framework have been path-breaking in bridging the gap and encouraging small and medium scale MSOs in setting up their businesses. The Government has simplified the process of registration of MSOs, and it requires a nominal processing fee of rupees one lakh for an MSO to start its business. Moreover, there are no restrictions on the area of operation of MSOs. As highlighted earlier, as per MIB circular dated 27th January 2017, MSOs are free to operate in any part of the country irrespective of their registration area. There are several MSOs who are offering their services in multiple states and even pan India in some cases. Therefore, it can be concluded that at present there are very minimal or no entry barriers in the Indian cable television sector.

2.133 A fair and transparent regulatory regime provides for a guaranteed NCF and non-discriminatory distribution fee and discount for all distributors irrespective of their scale or size. In addition, (as stated above) any DPO can now sign and send the RIO published by any broadcaster and it is treated as a binding agreement. TRAI's recommendations on no requirement of minimum entry level net worth and sharing of infrastructure between MSOs and HITS operators and amongst MSOs motivates small scale MSOs and LCOs to enter the industry and flourish in their respective businesses.

2.134 As a result of the several measures, the country consists of 1755 registered MSOs (includes 3 provisionally registered) as on 1st August 2022. Further, it is pertinent to note that in addition to MSOs 4 DTH operators (and DD free dish), few IPTV operators also offer broadcasting services to the consumers. In addition, with the tremendous growth of OTT video service, consumers have a wide variety of options to choose from.

2.135 As regards to framing regulations for LCOs, the new regulatory framework issued by TRAI appropriately safeguards the interest of cable operators by offering them an assured NCF. Various policy initiatives taken by the government and TRAI motivates LCOs to excel further and become MSOs.

2.136 Further, it may be noted that cable operators are adequately controlled and governed by the provisions of Cable Television Networks (Regulations) Act 1995 (as amended).

2.137 Hence, considering the number of options available to the consumers, the Authority is of the view that at this stage there is no need to intervene in the current structure of Cable TV distribution sector at MSO or LCO level.

2.138 In view of the foregoing discussions, there is enough evidence to confirm that sufficient competition is present in the television distribution sector. By and large no monopoly is prevailing or subsisting in the cable television industry. Though there may be some pockets in some cities where only one multi-Systems Operator may be providing services, the consumers have other options to avail connection from other sources such as DTH players etc. Therefore, the television distribution market does not suffer from the ills of monopoly to a great extent. Some stakeholders have raised concerns over vertical integration resulting into adverse effect on competition. However, with regards to such cross-holding in terms of vertical and horizontal integration and Merger & Acquisition (M&A), TRAI has issued a separate consultation paper. Issues related to distortion of competition by vertically aligned entities will be discussed at greater length through the consultation on 'Issues relating to Media Ownership'[20].

2.139 In view of above, discussions with respect to other issues related to monopoly/market dominance/competition in cable TV sector such as entry barriers, relevant market, Treatment of MSOs and its Joint Ventures (JV) as a single entity, level of competition, market control, market dominance, merger & acquisition, disclosure and monitoring requirements, etc. does not entail further specific analysis.

2.140 TRAI has followed a light touch regulatory approach since its inception. TRAI will continue to closely monitor any instance of abuse of market dominance. If expedient, TRAI may take suitable measures to restrict any discriminatory/distortionary practices that adversely affects other stakeholders and consumers in particular.

Recommendation of the Authority

2.141 **In view of sufficient competition in the cable television distribution sector at present, the Authority recommends that there is no need to introduce any additional regulations or take any corrective measures to enhance the level of competition in cable TV distribution sector. However, developments may be monitored and intervention as felt necessary shall be considered at appropriate time.**

[20] https://trai.gov.in/sites/default/files/CP_IRMO_12042022.pdf

Section B: Infrastructure sharing at LCO level

2.142 Further, in the consultation paper on "Market Structure/Competition in Cable TV services" dated 25th October 2021, TRAI had also requested the stakeholders to comment on the following:

"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. "

2.143 In this regard, many MSOs, highlighted that provisioning of high-speed broadband services using the fiber network of LCOs would require an upgradation of LCO's network to the latest available technology, that calls for huge investments and support from the government. These MSOs also urged TRAI 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.

Also, an association requested TRAI to consider granting of 'infrastructure status' to the network of LCOs.

2.144 An MSO opined that infrastructure sharing at LCO level will facilitate to establish broadband service to rural areas where even big ISPs find it difficult to develop their own infrastructure for effective broadband service. Regulator can adopt some policies for mandatory sharing of infrastructure at LCOs level for speedy and complaint free service to customers in a competitive environment.

2.145 A broadcaster pointed out that LCOs already connect their network with other ISP to provide last mile connectivity to their customers for not only the cable services but also the broadband services. Hence, regulatory intervention may not be required. Similarly, a large number of stakeholders highlighted that in West Bengal maximum LCOs share their own infrastructure of cable TV with the ISPs to enable broadband service to the users and enough competition exists here. Therefore, the stakeholder has suggested that there is no need for any intervention.

2.146 However, on the other hand, a broadcaster emphasized that there shall not be sharing of infrastructure at the LCO level, as LCO may gain undue market control at ground level. Similarly, a DTH operator commented that if broadband services are enabled solely through the Cable Operators then they will certainly gain undue market control over broadband and other services within its area of operation.

2.147 An individual suggested that 'Recommendations on Sharing of Infrastructure in Television Broadcasting Distribution Sector may be used to its full potential both in the interest of customer and 'Television Broadcasting Distribution Sector.

<u>TRAI's comments and analysis</u>

2.148 Globally, cable TV broadband (CATV) has become very popular as it is less expensive, quick to deploy and easier to handle. CATV broadband is usually offered to customers via the existing CATV network. This infrastructure can deliver higher broadband speeds with reliability as compared to DSL. In India, Cable TV industry has tremendous reach, deep into urban and rural areas. Because of its affordability and ubiquity, cable broadband could be, for India, a super-fast highway for broadband communications for most homes and businesses in the foreseeable future.

2.149 TRAI has carefully examined the varied and diverse opinions shared by the stakeholders of the Broadcasting sector on infrastructure sharing at the level of LCO to enable broadband services through the cable television infrastructure for last mile access. As mentioned in TRAI's recommendations on 'Roadmap to Promote Broadband Connectivity and Enhanced Broadband Speed' dated 31 August 2021, cable operators have an inherent strength in providing last mile access. The sheer reach of the cable network to large number of households renders this infrastructure both amenable and ideally suited to the delivery of broadband to a large segment of the population very quickly. Internationally, the growing convergence of cable broadcasting and broadband networks is being recognized. In many developed countries, broadband is, mainly delivered through the cable system. In India also, cable operators can play an important role in the delivery of broadband if an appropriate policy framework is put in place. For accelerated growth of cable broadband, a harmonized effort is required by the industry and the Government.

2.150 TRAI is of the opinion that sharing of infrastructure at cable operator level will facilitate broadband service in remote far-flung areas where it is difficult even for other big Internet Service Providers to develop their own infrastructure for effective broadband service. TRAI further noticed that provisioning of broadband and provisioning of Television content are dealt by two different licenses, one controlled by the Department of Telecommunications and other by Ministry of I&B.

2.151 The extant rules/ regulations for the use of cable television infrastructure for providing broadband require suitable review. A cable operator lays the network as per the rights available as per the Right of Way Rules under the Cable Television Networks (Regulation), Act 1995. In order to promote use of cable network for broadband services, Rules under the Cable Television Networks (Regulation), Act 1995, need to be suitably amended to encourage cable operators to provide last mile access to service providers for provisioning of broadband services. Cable operators may be encouraged to provide last mile access for broadband services on fair, transparent and non-discriminatory basis.

2.152 It may be noted that TRAI in its Recommendations on "Ease of Doing Business in Broadcasting Sector" dated 26 February 2018 has already recommended that the registration of LCO and its renewal should be carried out through online portal and the period of registration for LCO should be increased to 5 years. This will promote ease of doing business for the LCO. However, action on these recommendations remains pending with the Government.

2.153 As mentioned earlier, previously MSO registrations were given for specific city, town, state or pan India in DAS notified areas as mentioned by the applicant MSO. However, MIB vide its circular dated 27th January, 2017[21] allowed MSOs to operate in any part of the country irrespective of their registration area. Thus, there is no restriction on the number of MSOs present in a particular market and multiple operators can exist in the same area. Similarly, the current registration regime for cable operators does not restrict the number of service providers in any locality/ area. The extent provisions thus cause no entry barrier to cable operators in any specific area.

2.154 It may be noted that as per Para 2.3 of CHAPTER-VIII of 'License Agreement for Unified License', for providing service, the Licensee may appoint Franchisee for setting up and operation of rural telephone exchanges and last mile linkages

[21] Source: https://digitalindiamib.com/Registrered%20MSOs%20can%20opearte%20anywhere%20in%20India%20-%20Circular%20dt%2027-1-2017.pdf

thereof. The licensee may also appoint Cable Operators registered under The Cable Television Networks (Regulation) Act, 1995 and the amendments thereto, as Franchisee to use the last mile linkages in rural area provided by such Cable Operators. Para 2.4 of CHAPTER-VIII of above-mentioned license also mentions that the Licensee may provide internet service by using the Cable Network of authorized Cable Operator, as last mile linkage, subject to applicable Cable Laws (The Cable Television Networks (Regulation) Act, 1995) as modified from time to time. Further, para 24.4 of 'Licence Agreement for provision of Internet services', also mentions that Access to internet through authorised Cable Operator is permitted without additional licensing subject to applicable Cable Laws (The Cable Television Networks (Regulation) Act, 1995) as modified from time to time. Thus, cable operators (registered under Cable Television Networks (Regulation), Act 1995) are authorized to provide last mile access to telecom operator(s) (Telecom service providers, Internet service providers, etc.), for provisioning of broadband services without requiring any further registration.

Recommendation of the Authority

2.155 **The Authority recommends that the Government may take suitable measures to facilitate and promote sharing of cable infrastructure by Local cable operator with Telecom Service Providers to enable last mile for provision of broadband services. The Government may issue necessary amendments to existing rules/ guidelines, to enable use of last mile infrastructure created by cable operator by TSPs for promoting broadband connections.**

2.156 **The Government may amend the rules under the Cable Television Networks (Regulation), Act 1995 to explicitly indicate the following:**

"Cable operators may strive to provide last mile access to Access service providers/Internet Service Providers in a fair, transparent and non-discriminatory manner for proliferation of broadband services."

Section C: Issues related to Merger & Acquisition, Vertical Integration and Horizontal Integration

2.157 During the consultation process, TRAI had sought views of the stakeholders on the following:

"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."

2.158 In this regard, many stakeholders replied affirmatively that there is a need to recommend cross-holding restrictions amongst various categories of DPOs/ service providers. A broadcaster opined that any direct or indirect ownership, whatsoever, of broadcasters in cable distributor network, or vice versa should be scrutinized by the regulator for misuse of market dominance and should also be brought in the public domain by way of mandatory disclosures. TRAI should prescribe strict measures against 'Horizontal Integration' between MSOs in the same relevant market. At any given time, there must be minimum three MSOs operating in any relevant market and same number of last mile operators operating in sub-area of the relevant market.

2.159 Similarly, another broadcaster suggested that there is a need to regulate certain unhealthy practices/issues in Cable TV services due to the existence of cross-holding in the sector both vertically and horizontally. Even in advanced economies there are restrictions on cross-holding in media and entertainment given the sensitive nature of this sector. Another broadcaster believed that there is a need to check horizontal integration. Many stakeholders emphasized that cross-holding of both Horizontal and Vertical, among various categories of service providers should be allowed with appropriate regulation.

2.160 On the other hand, many stakeholders believed that there is no need to recommend restrictions on cross-holding amongst various categories of DPOs/ service providers. Many MSOs commented that there is no evidence of monopoly/market dominance by any of the DPO, irrespective of 'vertical integration', 'horizontal integration' or otherwise. A DPO pointed out that MSO or the DPO cross-holding is already subject to market restriction which is covered under the laws such as Companies Act 2013, and is also under purview of various regulators such as Competition Commission of India and SEBI. Thus imposing further restrictions will only curtail business synergies and affect the ease of doing business. A DTH operator was of the opinion that no Cross-Media restrictions must be imposed on any Distribution platform. Any such restriction only stifles growth of the sector and, it works against convergence and economies of scale. If no such restriction is being imposed on other platforms and OTT, then it ought to be removed for DTH as well.

TRAI's comments and analysis

2.161 In this regard, it may be noted that TRAI, on the references of Ministry of Information & Broadcasting (MIB), has initiated consultations and has come up with recommendations on various issues related to media ownership.

i) TRAI received an initial reference dated 22nd May 2008, from MIB seeking recommendations of TRAI for formulating a policy imposing restrictions on ownership of companies seeking licenses/permissions/registrations under various policy guidelines.

ii) TRAI gave its recommendations dated 25th February 2009 wherein TRAI recognized the need to establish requisite safeguards for dissemination of unbiased and impartial information and promote pluralism and diversity. TRAI recommended that MIB should perform a detailed market study to determine such safeguards. It was also recommended that guidelines for M&A should be notified after the requisite safeguards for horizontal and vertical integration are put in place.

iii) Thereafter, in 2009, a study on the nature and extent of cross media ownership was conducted by MIB through Administrative Staff College of India (ASCI) which reported the presence of evidence indicating market dominance in certain relevant media markets.

iv) Again, on 16th May 2012, the MIB vide a reference, requested TRAI to review the issue of vertical integration in the broadcasting and TV distribution sector and suggest measures to address the issue of vertical integration to ensure fair growth of the Broadcasting sector. Further, it called upon TRAI to suggest measures on cross media ownerships with an aim of facilitating plurality of news and opinions and accessibility of quality services.

v) After due consultation, on 12th August 2014, TRAI issued "Recommendations on Issues Relating to Media Ownership."

2.162 Now, TRAI has received another reference from the MIB vide letter no. No.8/17/2014-BP&L dated 19th February 2021. MIB has sought reconsideration of 2014 Recommendations of TRAI on certain points. As observed by MIB considerable time has elapsed since the said recommendations were made and during this period M&E landscape has changed drastically, particularly with the advent of new digital technologies in the sector. MIB has requested TRAI to re-examine its recommendations in the light of the subsequent technological developments in the media industry and issue a fresh set of recommendations in this regard.

2.163 In view of above, TRAI has already initiated the process to address the related to vertical integration, horizontal integration and M&A. Accordingly issues pertaining to vertical integration, horizontal integration and M&A are being dealt through a separate consultation process.

Other issues

2.164 As per extant Cable TV Rules, a cable operator, desirous of providing cable TV services has to apply for registration/renewal of registration to the Head Post Master of the Head Post Office of the area concerned. At present the process of registration as well as renewal of registration are manual. The Cable operator is required to fill-up a physical application form and to submit it to the concerned Head Post Office along with the requisite documents and requisite fee as provided in the Cable TV Rules for registration/ renewal of registration. The process of issue of duplicate registration, wherever required, is also done manually.

2.165 As mentioned in TRAI's recommendations on "Ease of Doing Business in Broadcasting Sector" dated 26th February 2018, the manual process of registration and renewal of registration is quite cumbersome. It has inherent inefficiency and it causes delays in issuance of registration and renewal of registration to the cable operators. This has lead to situations where cable operators run their network without valid registrations. The Interconnection Regulations made by TRAI prescribes that multi system operator shall enter into interconnection agreement only with those cable operators who have valid registration. Better usage of ICT can enable smooth and hassle-free registration. Accordingly, TRAI had recommended that the registration of LCO and its renewal should be carried out through online portal. These recommendations are yet to implemented by MIB. TRAI is of the view that these recommendations should be implemented by MIB at the earliest.

CHAPTER 3

SUMMARY OF RECOMMENDATIONS

3.1 In view of sufficient competition in the cable television distribution sector at present, the Authority recommends that there is no need to introduce any additional regulations or take any corrective measures to enhance the level of competition in cable TV distribution sector. However, developments may be monitored and intervention as felt necessary shall be considered at appropriate time.

3.2 The Authority recommends that the Government may take suitable measures to facilitate and promote sharing of cable infrastructure by Local cable operator with Telecom Service Providers to enable last mile for provision of broadband services. The Government may issue necessary amendments to existing rules/ guidelines, to enable use of last mile infrastructure created by cable operator by TSPs for promoting broadband connections.

3.3 The Government may amend the rules under the Cable Television Networks (Regulation), Act 1995 to explicitly indicate the following:

> ***"Cable operators may strive to provide last mile access to Access service providers/Internet Service Providers in a fair, transparent and non-discriminatory manner for proliferation of broadband services."***

Acronyms & Description

Acronyms	Description
BARC	Broadcast Audience Research Council
DAS	Digital Addressable System
DD	Doordarshan
DTH	Direct to Home
HITS	Headend in the sky
IPTV	Internet Protocol Television
LCO	Local Cable Operator
M & A	Merger and Acquisition
M & E	Media and Entertainment
MIB	Ministry of Information and Broadcasting
MSO	Multi-System Operator
NCF	Network Capacity Fee
OTT	Over the Top
RIO	Reference Interconnection Offer
TRAI	Telecom Regulatory Authority of India
TV	Television

Annexure 1

MIB back reference letter dated 19th February 2021

No.9/115/2012-BP&L
Government of India
Ministry of Information and Broadcasting
(BP&L Division)

Shastri Bhawan, New Delhi-110001
New Delhi, the 19th February, 2021

To

Shri Sunil K Gupta
Secretary
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
New Delhi.

Subject: TRAI's recommendations on Monopoly/Market dominance in Cable TV Services-reg.

Sir,

I am directed to refer to TRAI's recommendations on "Monopoly/Market dominance in Cable TV Services" dated 26th November, 2013. In this connection, attention is also invited to TRAI's letter No.21-07/2019-B&CS dated 10.07.2020 regarding jurisdiction of TRAI and Competition Commission of India (CCI) relating to anit-competitive practices in Media and Broadcasting Sector.

2. In this regard, it is submitted that these TRAI recommendations have accordingly been considered in this Ministry. It may be noted that considerable time has passed since the recommendations were made and the media and entertainment (M&E) landscape has changed drastically, particularly with the advent of new digital technologies in this sector. Therefore, it has been felt during the examination of the recommendations, that some of the issues need further consideration by TRAI vis-à-vis the recommendations:

(i) As per the TRAI recommendations it is not clear whether these will be applicable only to MSOs or also to the LCOs;

(ii) Whether HHI holds well even now as it was suggested in 2013 and also any other index has developed since then;

(iii) TRAI has recommended that if the groups' HHI contribution to market is more than 2500, it shall take remedial measures within 12 months from issue of guidelines to limit its control in MSOs/LCOs in such a way that HHI reduces to less than or equal to 2500. In this regard TRAI may suggest modalities for implementing the same and its effects in respect of ownership;

(iv) Part (a) of the dispensation proposed in para 1.57 of TRAI recommendations states that an entity is said to control an MSO/LCO, and the business decisions thereby taken, if it owns at least twenty per cent of total share capital of that MSO/ LCO. There can be scenario, where an entity has more than twenty percent stake in an MSO/LCO, yet may not control it owing to other majority shareholders. Further there can be scenario where more than one entity has stake exceeding twenty percent in an MSO/LCO.

The dispensation for defining control may be clarified by TRAI in such scenarios;

(v) It may be stated that what competitive practices would be monitored by TRAI and Government level and also how these will be monitored; and

(vi) In the TRAI recommendations it has not been stated that whether TRAI's recommendation on M&A would affect ease of doing business.

3. TRAI is requested to have a fresh look on recommendation “Monopoly/Market dominance in Cable TV Services” dated 26th November, 2013 and provide a fresh set of recommendation in the matter looking at the subsequent developments/expansion in the M&E Sector.

Yours faithfully,

(Gopal Sadhwani)
Director
Tele: 23385016
Email: sadhwani.gopal@gov.in

MIB letter dated 12th December 2012

उदय कुमार वर्मा
सचिव
UDAY KUMAR VARMA
SECRETARY
Tel.: 011-23382639
Fax.: 011-23383513

सत्यमेव जयते

भारत सरकार
सूचना और प्रसारण मंत्रालय
शास्त्री भवन, नई दिल्ली-110001
GOVERNMENT OF INDIA
MINISTRY OF INFORMATION & BROADCASTING
SHASTRI BHAWAN, NEW DELHI-110001

12.12.2012

Dear Dr. Khullar,

Multi System Operators (MSOs) and Local Cable Operators (LCOs) are required to be registered with local Post Offices to be able to operate in the permitted areas of registration However as per recent amendments in the Cable Television Networks (Regulation) Amendment Rules 2012, it has become mandatory for MSOs to get themselves registered with the Ministry of Information and Broadcasting to operate in those areas which are notified for analogue switch off under Rule 11C of the said Rules This provision is quoted as below:

On being satisfied that the applicant fulfils the eligibility criteria specified under rule 11B and the requirements of rule 11A, the registering authority shall, subject to the terms and conditions specified in rule 11D and the security clearance from the Central Government. issue certificate of registration.

2 There are no restrictions on the issue of accumulation of interest in terms of market share in a City, District, State or country by individual MSOs and LCOs in the Cable Sector. MSOs and LCOs are, therefore, free to operate in any area(s) of their choice after obtaining registration from the Ministry.

3 As TRAI is already aware, the accumulation of interest restrictions are applicable in case of FM Radios where no company or Group of companies can operate more than 40% of the total FM Radio channels in each city. Further, the total number of channels that a company or Group of Companies can operate cannot exceed 15% of the total number of channels allocated in the country This stipulation was imposed to ensure equity, fair play and to restrict monopolies This restriction also ensures that there will be adequate competition in the market and the same shall ensure diversity in content. However, no such restrictions exist for MSOs or LCOs in the extant Cable Rules

4 It has been observed that the cable TV distribution is virtually monopolized in some States as operation of the entire cable TV network is dominated by a single entity in that State. It is felt that such monopolies may not be in the interest of consumers and may have serious implications in terms of competition, pricing and healthy growth of cable TV sector in that market. Competition is good for the consumers as it leads to better quality of service at reasonable prices. Competition also gives a choice of service provider to the consumer

Contd Page-2/-

5. TRAI may be aware that the Competition Commission of India has recently passed an order with regard to the monopolistic practices adopted by a Multi System Operator and three others operating in a particular State and has also imposed certain penalties.

6. In view of above, it has become necessary to examine whether there is a need to bring in certain reasonable restrictions on MSOs and LCOs including restricting their area of operation or restricting subscriber base to prevent monopoly. TRAI is, therefore, requested to provide its recommendations under Section 11(1) (a) on the following:

> 'In order to ensure fair competition, improved quality of service, and equity, should any restriction be imposed on MSOs/LCOs to prevent monopolies/accumulation of interest? If yes, what restrictions should be imposed and what should be the form, nature and scope of such restrictions? Accordingly, amendments required in the Cable Television Networks (Regulation) 1995 Act and Rules framed thereunder may also be suggested."

Regards,

Yours sincerely,

Uday Kumar Varma

(Uday Kumar Varma)

Shri Rahul Khullar
Chairman
Telecom Regulatory Authority of India (TRAI)
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg (Old Minto Road)
New Delhi – 110 002.