Cable Operators Federation of India

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The Chairman
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Kind Attn: Dr Rahul Khullar /Sh. Rajkumar Upadhyay

Sub: Counter Comments on Consultation Paper on Monopoly/Market dominance in Cable TV services Dated 03 June 2013

Please refer to your above mentioned Consultation Paper.
Our question-wise response to comments uploaded on your website are given below.

1. Introduction

At the outset we wish to submit that TRAI's consultation is very limited in its approach and due to ignorance of the ground reality TRAI has not framed any question on the root-cause of the problem-controlling the 'Pay' TV broadcasters. Thus, this consultation appears to **favour only and only the 'Pay' BROADCASTERS. Broadcasters, MSOs**

and LCOs, all are in the value chain of cable TV services. Why have the broadcasters been left out while tackling the issue of Monopoly in the cable TV market?

MONOPOLY/ market dominance starts from these Pay Broadcasters. They sell channels in bouquets on minimum guarantee to the MSOs and MSOs do the same with LCOs. They switch-off the channels to bring the MSOs and LCOs to their terms. The same happens with IPTV and DTH players.

This consultation paper is worthless unless issue of VERTICAL MONOPOLY and CROSS MEDIA OWNERSHIP is resolved.
Since root-cause of monopolies is the pay broadcaster, they should be brought under the ambit of regulations to curb monopolies and their QoS, pricing of channels, fair competition between broadcasters should also be considered.

It is the Pay TV Broadcasters who started **their monopolistic ventures** in India through their DTH operations and MSO networks so that they could reach maximum subscribers and later when addressability is finally introduced, they would make maximum profits.

All MSOs having large monopolies are related to pay broadcasters. TRAI has not framed any question in the consultation on how monopolistic ways of these Pay TV broadcasters can be curbed.
We have covered this issue in our response to consultation on amendments to Tariff Order and Interconnect Regulations on 3rd July 2013. Without exercising any control on Pay Channels and method of

their distribution to the consumers, no control on monopolies and cross media ownership can be exercised. **We suggest TRAI to issue another consultation on how to control monopolies in the Pay TV market the way FM Radio Operators are regulated.**

Today there are 870 registered channels out of which only about 180 (20.7%) are pay channels (TRAI has even failed to get a list of pay channels and their rates uploaded on their website for public information). Majority of these pay channels are controlled by just two major broadcaster groups. All monopolies in the industry emanate from these powerful pay broadcasters, whether it is on national level, state level or local.

2. <u>TRAI also impeded the growth of Cable TV industry and allowed monopolies to grow</u>

(a) TRAI was handed over the industry in 2004 January after the government wanted to focus on 2004 elections. DTH had already commenced operations by then.

(b) First thing TRAI did was to freeze consumers' subscription rates for an indefinite period cutting down any further growth in the ARPUs and discouraging future investments and growth of cable TV Networks. It never thought of defreezing the tariffs or enforce its own as it does for telecom industry. During these ten years of TRAI rule, Industry has gone from bad to worse as Pay Channels and MSOs kept exploiting the LCOs while subscriptions were not allowed to grow.

(c) For ten years LCOs lived in a hope of government paying attention to their business but they were deliberately handed over to large MSO groups owned by pay broadcasters using DAS laws.

(d) During this period of ten years Pay broadcasters increased their reach through DTH operations as well as MSO networks and their monopolies in the TAM markets kept on increasing without any addressability in place. Even if DTH is addressable, no a-la-carte choice or interoperability was provided to consumers and government did nothing for consumers.

(e) During implementation of DAS laws meant to digitize the analogue cable TV market, DTH was encouraged to expand in competition with digital cable operators who were facing teething problems of migration. In fact DTH operators were made part of every I&B and TRAI task force and encouraged to poach on the troubled and confused cable TV consumers. Ministry was overjoyed with success of DTH operators mentioning their achievement in every press release and feeling proud of their success.

(f) Ministry and TRAI both are confused whether they have to digitize analogue cable TV or **increase digital TV penetration in India. If later is the case, terrestrial TV and DD DTH should also have been included.**

3. <u>No Quality of Service Norms for Broadcasters</u>

Surprisingly, TRAI has not asked broadcasters to maintain any standards of quality of service. Stake holders have said that large monopolies provide better quality of signal to consumers than what the LCOs gave. We wish to counter this point.

Quality of broadcast signals starts from the broadcast studios of TV channels and ends at the customer terminal.

(a) Many broadcasters do not follow the ITU (International Telecom Union) guide lines and international norms for broadcast signal quality. They try to accommodate more channels in the same bandwidth to save money, giving poor quality satellite signals to cable operators.

(b) Using lower bandwidth and compressing more channels in a single transponder to save on costs results in poor video/ audio quality, freezing or pixelating of picture and noise spill-over.

(c) Broadcasters also keep changing satellites because of which operators have to incur more expenses for distribution with additional dish antenna, IRD etc.

(d) Broadcasters provide cheap IRDs to the cable headends resulting in poor quality signal un fit for distribution on a large network. Ordinary IRDs output an analog signal which requires to be digitized again, resulting in generation loss.

Our question wise counter comments are given below:-

4. **<u>Market Structure and dominance issues</u>**

Q1. Do you agree that there is a need to address the issue of monopoly/market dominance in cable TV distribution? In case the answer is in the negative, please elaborate with justification as to how the ill effects of monopoly/market dominance can be addressed?

Yes, there is need to check monopolies and market dominance but this must start from Broadcasters. **We agree with Fastway that-**

(a) There is no restriction on the number of channels owned by a single entity/ promoter.

(b) There is no restriction on a-la-carte/ bouquet rates of pay channels. Broadcasters decide their own rates without any restrictions. No restriction on cross media holdings of broadcasters in distribution platforms like MSO and DTH. Few broadcasters have invested heavily in MSOs to create their monopoly market.

(c) MSOs business just to consolidate their monopoly position. Broadcasters and MSOs ensure that the consumers have very little choice of programmes.

(d) In spite of Supreme Court judgement (Sea TV Vs Star India), no amendments or changes in regulations have been made to stop broadcasters appointing MSOs as their distributors.

(e) No restriction on Pay Channel Aggregators deemed to be broadcasters owning a National MSO Network.

(f) Broadcasters have consolidated their monopoly position by vertical mergers and cartels to enforce and dictate their terms on MSOs viz a viz consumers.

(g) TRAI or other regulatory/ Competition authorities have not taken cognisance of biggest merger of two major broadcasters of India.

(h) Pay Broadcasters force their bouquet of channels and shut off to increase subscription at the behest of National MSOs and do not allow other independent MSOs to flourish.

These are the examples of monopolistic, arbitrary and anti consumer practices which trouble/ harass consumers.

Very surprising that many stake holders like Siti Cable, Hathway, Ortel, TNN, GTPL, Nishith Desai Associates etc. have said that there is no dominance and enough competition exists in the market. They say that there is no need to address this issue at all. However, this is the biggest hindrance to the progress of the industry.

5. <u>Vertical Monopolies and Cross-media Holdings to be checked.</u>

Unless we check the vertical monopolies and cross media holdings by the large media groups, we cannot stop the growth of monopolies in the market and TRAI's this exercise will be futile.

6. <u>Modus Operandi of 'Pay' Broadcasters to create large monopolies in Cable TV Services</u>

a) They sell channels in bouquets on minimum guarantee to MSOs/ LCO (Their Distributors/ JV partners)

b) Since minimum guarantee involves payment of huge amount, it is a question of forcing revenue out of LCOs and independent operators. Only the powerful persons like politically connected, local mafia, real estate players, liquor mafia etc. who can manipulate the local administration or state government, become JV/ distributors.

c) To extract maximum amount from cable operators to pay to the Broadcasters and also make hefty profits these distributors use the same modus operandi with cable operators.

d) Extraction of money from small players become easy if these distributors/ JVs can create huge monopolies using their power and clout.

e) Due to these monopolies, the distributors / JV partners also force smaller players to give-up their business and hand over to them.

f) In large cities, these distributors of different pay channel groups also cartelise market not to interfere in each others' area.

g) Local operators try to do the same to their consumers, passing on the burden to them.

h) Unless TRAI curbs this modus-operandi of Pay Broadcasters, it is not possible to control monopolies.

7. **Bring Interoperability to Curb Monopolies**

Government should also permit technical interoperability to benefit the subscribers. MSOs/DTH operators hesitate to implement this feature in their STBs because it permits the subscribers to shift to another service provider without changing the STB. TRAI should give strict instructions to the distribution platforms like MSO/DTH etc. that if a subscriber purchases a set top box from open market which is interoperable (with CI slot), then MSO/DTH player must provide CAM Module + CAS card to the subscriber so that subscriber can easily switch over their service provider.

8. Introduce Four MSOs and Four LCOs Rule in each area/locality

For consumer interest there should be minimum four MSOs and four LCOs in each area/ locality so that there is enough choice made available and monopolies are not created.

9. **Check on national MSOs controlling other MSOs and Independent MSOs.** To curb horizontal monopolies and cartelisation check should be made on the national MSOs.

10. **Mandatory Services to non-TAM cities (TNN)** Government must ensure that national as well as regional MSOs are obligated to provide services in the rural areas and semi-urban areas so that there is an all-round progress. It should also be mandatory for them to provide broadband access in their licensed area.

11. Some suggestions to curb the monopolistic practices of Broadcasters are given below:-

(a) Restrict the number of channels by each broadcaster; it should not be more than ten.
(b) Further restrict the number of channels genre wise for each broadcaster, it should not be more than two.
(c) Every broadcaster either distribute their contents themselves or shall appoint compulsory minimum of two or more agencies / distributors as was the Intent of law from whom the service providers (MSO/DTH Operators) can take contents. In this scenario no channel aggregator is permitted. Agreements should only be between Licensed Broadcaster and Licensed Service Provider (MSO/DTH Operator).
(d) Broadcasters must declare MRP of individual channel as well as bouquets of channels to the subscribers so that transparency be maintained. Subscribers must know the MRP of the channels they choose so that they may not feel cheated. Presently on different platforms different service providers are charging different rate for the same channel. LCOs also have no idea about the rate on which they will get the margin. If broadcaster declare the MRP then it becomes easy to achieve the transparency at each and every level.

Presently restriction of 12 minutes per clock hour on advertisements is same for FTA and pay channels. This is unjustified. This restriction is right for FTA channels but for pay channels it should not be more than 6 minutes. Apart from making a difference in the two types of channels, conversion from one to the other will also benefit the subscribers. If subscriber opts for FTA channel he pays less and if he subscribes a pay channel, he can freely watch the channel with less advertisements.

12. To curb monopolies in MSO operation following is suggested:-

(a) Restrict the total number of home passed per control room like one control room should not have more than 1 million home passed. For example if MSOs spoils the signal of any broadcaster like disturbing audio of the channel in a large network, may make an excuse of a technical problem but if the MSO has more than one control room and in all the control rooms a similar problem remains, the same then is clear that it is due to malafide intention of the MSO and the act is done deliberately.

(b) If an MSO has 4 million subscribers then as per TRAI guidelines unless 5% (200000) subscribers demand any particular channel MSO need not telecast that channel on its network. Whereas if he has to establish a headend for only 1 million subscribers, demand from only 50000 subscribers will make him telecast the channel.

(c) Restrict MSO that there shall not be more than 20% stake of total subscribers base of the respective city. Apart from this restriction, state level restriction can also be imposed. An MSO can be restricted to a particular state.

13. **<u>Counter Comments on Comments by Nishith Desai Associates and other MSOs</u>**:

<u>Enough Competition Already exists- A Myth</u>

(a) **<u>828 channels, 60000 LCOs and 6000 MSOs – (Headends), 7 DTH and a few IPTV operators</u>.** TRAI report in Para 2.8 tells the truth in black & white while giving out the STB seeding report of different **MSOs.** This report pertains to Phase I & II of Digitalisation where four metros and 38 major cities are included. This is the main market of pay channels and we come to the following conclusion:-

(i) 73.7% market is with five National MSOs.

(ii) 62% market is occupied by three National MSOs and two regional MSOs who are supported by Pay channel broadcaster groups. Another 3% is controlled by a political party supported by the same pay channel groups who have given the distribution right to this MSO.

(iii) Only 11% of the market is with the rest 5900 of smaller independent MSOs in the country.

(iv) There is no IPTV player worth the mention in the country.

(v) DD Direct + DTH is only FTA and does not have any pay channels.

(vi) Out of other 6 DTH players, three are Pay Broadcasters, two are telecom operators having Broadband, IPTV, Radio and DTH services and they are also pay broadcasters. Even 3G and 4G is being served by them.

(b) We wish to ask Siti Cable, Hathway, Ortel, Fastway, GTPL, Nishith Desai Associates etc. where is that '**enough**

competition' in the market that they believe exists? More than 70% of prime market is controlled by just three pay broadcaster supported groups. If it is not monopolisation and abuse of dominant position, then what can we name it, not consolidation certainly? TRAI has given enough evidence of this in their Consultation Paper.

Most of the problems faced by the industry including hurdles in DAS implementation are due to cross media ownership, vertical and horizontal monopolies and cartelization.

Even Competition Commission has failed to nail them down as it is not aware of the ground reality and relies mostly on the paper evidence. Everything appears fine on paper whereas small stake holders feel adverse impact of monopolies every day. These companies are taking undue advantage by indulging in unfair practices which are difficult to prove in court of law because there is no law.

14. <u>Counter Comment-Nishith Desai</u>

M/s Nishith Desai Associates have praised DTH for its exponential growth in the last five years compared to cable TV attributing it to consumers considering it as a meaningful alternative to cable TV. This is not true because whereas, growth of cable was stubbed, DTH was promoted by the government from the beginning.

15. <u>MSOs are incurring heavy investments.</u> We counter the comments of all MSOs who say they need heavy investments in Digitisation. Most of investments required in cable TV industry are to improve the last mile infrastructure that has a potential to become the broadband network of the country. Not even a single MSO has invested a single pie in the last mile of LCOs franchisee since 1994 leave aside for digitization. Nor any FDI is being spent on that. MSOs took money for STB as advance/ security deposit from LCOs who are now recovering it from subscribers. Digital Headends have become much cheaper than six years ago when TRAI said it requires Rs 15000 crores. Whereas cost of last mile upgrade for digital broadband has gone up as we take fiber closer to homes. As revenue share of LCOs has been drastically reduced, where is the money for upgrades?

16. Govt Helped Pay TV Broadcasters & DTH against Cable

Growth of DTH is related to monopoly of 'Pay' Channel Groups whom this law firm has been helping in the Courts as mentioned by them in their comments.

a) While Cable TV was regulated since 1994, government allowed pay TV channels and large broadcaster groups to exploit the cable TV market by giving them a free market without any restrictions.
b) Pay broadcasters were allowed to go direct to consumer homes through DTH technology bypassing cable operators.
c) Cable TV growth was stubbed by deferring CAS in 2003 and allowing Pay Broadcasters to invest in DTH platforms and MSO Networks encouraging cross media holdings and monopolies.
d) Even DTH operations suffered in the hands of 'Pay' Broadcasters from 2003 to 2008 because pay broadcasters refused to give their content to each other's DTH platform unless huge minimum guarantees were assured.
e) IPTV could not progress due to the same problem.
f) DTH Operators MSOs & IPTV platforms not supported by the major pay TV Groups are the ones always struggling to survive.

Even if they have resources, they are unable to do well because of high handed behaviour of the pay broadcasters. To avoid such problem, these players are either becoming pay broadcasters themselves or giving up their stakes to the pay broadcasters owned DTH platforms.

g) It is pertinent to note only Cable Operators are governed by a law ie Cable TV Act 1995. All others including TV channels & DTH have guidelines. These guidelines have been rampantly violated and are always challenged in the courts to keep them under wraps. Interoperability in DTH, TRAI Tariff Order for non-CAS areas, a-la-carte distribution etc are some examples.

17. **We counter the comments of Fastway** in Para 2. Of preliminary reasons in which they say that DAS regulations have taken care of all issues between the stake holders- interconnection, revenue share between broadcasters and MSOs, between MSOs and LCOs, consumer tariffs etc. and everything is well settled, so even if there is 100% monopoly, it would not affect consumers.

What we know is that every issue is either in the courts or being reviewed because expected results are not coming. State of Punjab has suffered the most due to monopoly of MSOs. Fastway, Sukhamri Hathway and Siticable have a truce in the state and authority of operating the MSO network, dealings with broadcasters for carriage fee and subscription amount etc. are being done only by Fastway on behalf of others.

18. <u>Relevant Market for measuring monopoly/market dominance</u>

Q 2. Do you agree that the State should be the relevant market for measuring market power in the cable TV sector? If the answer is in the negative, please suggest what should be the relevant market for measuring market power? Please elaborate your response with justifications.

No, a state should not be the relevant market. We counter the comments of Siticable, GTPL and other MSOs that the questions on relevant market and market dominance are outside the purview of TRAI. Reference to the issue has come from I&B Ministry and the issue has a lot of relevance for the growth of the Industry.

We have seen that many technical issues are involved in the cable TV and broadcasting industry and Competition Commission has not understood the industry so well. That is why the Commission cannot understand if there can be competition between a dominant DTH player who also is an MSO with an independent MSO in the case of JAK Commn Vs SUN Direct DTH. In the same way, it gave a clean chit to Media Pro, country's largest JV of pay broadcasters may be commanding not less than 70% of pay TV market in the country.

19. <u>Framing of Restrictions</u>

Q 3. To curb market dominance and monopolistic trends, should restrictions in the relevant cable TV market be:
(i) Based on area of operation?
(ii) Based on market share?
(iii) Any other?
Please elaborate your response with justifications.

Q 4. In case your response to Q3 is (i), please comment as to how the area of a relevant market ought to be divided amongst MSOs for providing cable TV service. Please elaborate your response with justifications.

Q 5. In case your response to Q3 is (ii), please comment as to what should be the threshold value of market share beyond which an MSO is not allowed to build market share on its own? How could this be achieved in markets where an MSO already possesses market share beyond the threshold value? Please elaborate your response with justifications.

Q 6. In case your response to Q3 is (ii), please comment on the suitability of the rules defined in para 2.26 for imposing restrictions on M&A. Do you agree with the threshold values of HHI and increase in HHI (X, Y and Delta) indicated in this para. If the answer is in the negative, what threshold values for HHI and delta could be prescribed for defining restrictions? Please elaborate your response with justifications.

We agree with the comments of Indusind Media & Communications. In Q3 we agree with comments (a) & (b) made by Incable on powerful broadcasters/ aggregators and their distributors creating monopolies.

Fix a Licensed Area We agree with Viacom 18 that under an MSO License there should be limited area of operation. Like we have circles in Telecom sector, we should have license area based on households present in an area. This can be revised every five years.

a) Depending on the home passed, there may be three types of licensed areas- Large, medium and small allotted through auctions. License fee should also be levied accordingly.

b) An MSO may bid for more than one area.

c) An area must have atleast four MSOs operating.

d) LCO may take signals from any MSO in the area.

e) Tariffs should be different for different areas depending upon the homes passed, demography, economic state and density of population. For example rates in Delhi cannot be made applicable in a village in Bihar.

20. <u>Control of an Entity over other MSOs/ LCOs</u>

Q 7. Should 'control' of an entity over other MSOs/LCOs be decided as per the conditions mentioned in para 2.29? In case the answer is in the negative, what measures should be used to define control? Please elaborate your response with justifications.

Q 8. Please comment on the suitability of the rules defined in para 2.31 for imposing restrictions on control. Do you agree with the threshold values of HHI and increase in HHI (X, Y and Delta) indicated in this para. If the answer is in the negative, what threshold values for HHI and delta could be prescribed for defining restrictions? Please elaborate your response with justifications.

Q 9. In case your response to Q3 is (iii), you may support your view with a fully developed methodology indicating a measure arrived at to determine market power and proposed restrictions to prevent monopoly/ market dominance in the relevant market.

Q 10. In case rules defined in para 2.31 are laid down, how much time should be given to existing entities in the cable TV sector (which are in breach of these rules as on date), for complying with the prescribed rules by diluting their control? Please elaborate your response with justifications.

We agree with this comment made by TNN for keeping a check on MSOs Controlling other MSO/LCO (TNN).

21. **Monitoring and Disclosure**

Q 11. Whether the parameters listed in para 2.33 are adequate with respect to mandatory disclosures for effective monitoring and compliance of restrictions on market dominance in Cable TV sector? What additional variables could be relevant? Please elaborate your response with justifications.

Q 12. What should be the periodicity of such disclosures?

Q 13. Which of the disclosures made by the Cable TV entities should be made available in the public domain? Please elaborate your response with justifications.

22. Counter Comments on Hathway comments in their Para 2.13.

It is known that the disclosure information about a company is available with many other organisations but it must be available on the Ministry and TRAI websites in a consolidated manner along with the other documents produced by a company before taking a license. Need of this information with license information is very essential as it helps the industry stake holders and the regulator to take instant decision on carrying out any dealing with the entity. Also the regulator will know the changes in the structure of the company instantly if need be.

Information on promoters and share holders of any foreign investor should also be disclosed in public domain.

Information of share holding/ investments in other ventures in India and abroad should also be revealed in public domain.

23. Counter on comments by Asianet Satellite Communications, SitiCable and other MSOs

Periodicity of Disclosure of information should **be quarterly** for transparency and public interest just like the LCOs are being asked to give monthly reports on area of operation, list of channels available, exact number of subscribers etc. (Viacom 18)

All information of broadcasters, MSOs and LCOs should be in public domain and under RTI ambit.

24. Amendments in Statutory rules/ executive orders

Q 14. What according to you are the amendments, if any, to be made in the statutory rules/ executive orders for implementing the restrictions suggested by you to curb market dominance in Cable TV sector?

(a) **Broadcasters must be brought into the ambit of laws/ RTI** and regulations meant to check monopolies in cable TV sector as they are also a stake-holder.

(b) There should be, **regulations for appointment of content aggregators MSO distributors, MSO JV Partners and Franchisee LCOs** to check on malpractices.

(c) **Formation of Cartels/ truce by MSOs** not to provide signal feed to any LCO/ consumer of other MSO should be a criminal offence.

(d) A distributor of an MSO should be restricted to distribute signals of only one MSO at a time.

(e) Prior approval of licensor should be made mandatory for any acquisition and merger of the license. Mergers of licensees shall be restricted to the same service area.

(f) Permission for the merger should be given only if the combined market share of the entities is less than 33%.

25. <u>Other Comments</u>

Q 15. Stakeholders may also provide their comments on any other issue relevant to the present consultation.

26. <u>Do not allow FDI and Global investments be used to increase Monopolies</u>

a) Only those stake holders demand more FDI who already enjoy large **horizontal and vertical monopolies. This must be checked.**

b) Because of **cartelisation** these companies do not let any small operator or broadcaster to grow, and compete with them.

c) Large MSOs do not own the last mile hence, ask for FDI so that they can buy-out last mile operators **depriving thousands of self employed persons of their livelihood**.

d) Such take-overs also **generate unemployment of lakhs of people** working in these networks.

e) **FDI in these companies does not help the economy** as most of the time investments come from their own subsidiaries or sister concerns abroad.

f) **Such FDI is never invested in infrastructure** in India but goes out to purchase equipment and services from abroad, helping these monopolies to grow more.

g) Some of these media groups are owned by companies like News Corp of Rupert Murdoch which are known for their **unethical ways of expansion, bribing the government officials and law making machinery in many countries**. A recent case of phone hacking scandal of a Rupert Murdoch company in UK had rocked the British Parliament. **Such companies use their money power and clout with the bureaucracy and politicians to increase their monopolies.**

27. <u>FTA Digital Headends should be encouraged</u>

Since a huge and varied market already exists in the country for many years, many consumers may be happy to have only FTA channels at a minimum cost. This can be achieved only if operators/ MSOs are permitted to operate only FTA channel Headends. This will automatically curb the monopolies of the pay TV broadcasters and large MSOs. Only the interested consumers will subscribe to them.

A minimum of 100 channels should be prescribed for these headends at a maximum cost of Rs 100.

28. Conclusion

To curb these malpractices leading to monopolies we need to empower small enterprises and create a level playing field to introduce fair competition. The Government should treat these practices especially in the media & broadcasting industry as anti national and a criminal offence because it destroys plurality of views so much essential for a democracy to survive. It also takes away the constitutional right of thousands of self-employed people to respectfully and peacefully earn their livelihood.

It is therefore very essential to have total transparency in the system and everything should be in the ambit of RTI.

Yours Faithfully,

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