CONSUMER PROTECTION ASSOCIATION
HIMMATNAGAR
DIST. : SABARKANTHA
GUJARAT

Comments on Consultation paper
On
"Market Structure/Competition in cable TV services"

Introduction :

Technology and content innovation have led to robust growth in India's TV broadcasting and distribution industry. Regulatory interventions such as implementation of the digital addressable systems have enabled the growth of a diverse and rapidly evolving multi-platform industry with cable, DTH, IPTV and OTT operators.

The television (TV) industry in India is undergoing a digital transformation, as are most other Information Technology (IT) sectors in the economy. While cable television is likely to dominate the market over the next few years, satellite television and online video are the current growth drivers. There has been significant growth of subscribers, industry revenue and availability of services. Much of this growth has been driven by digitization of cable, higher uptake of High Definition (HD) channels and the increase in smart device penetration resulting in increased consumption through alternate platforms.

India is the second largest television market in the world, next only to China. The industry has made significant direct and indirect contributions to the economy. The industry today boasts of more than 800 channels across various genres. Out of the total revenue, about 40 per cent is attributable to advertising and 60 per cent to distribution and subscription services. For broadcasters, however, subscription revenues (including international subscription) account for only about 28 per cent of the total revenue, and the remaining share comes from advertisements. The share of advertisements is expected to increase to 75 per cent in near future. This trend is sharply different from most other countries, where the share of subscription revenue is higher than advertisement revenue.

A technology neutral approach should be central importance in the design of regulation and in its application. It implies the need to maintain a level-playing field with regard to the entire value chain of TV broadcasting.

ISSUES FOR CONSULTATION

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

Comments : No.

Competition in cable TV services, however, 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.

Consumer's preferences are based on the quality of service, affordability, breadth of content and the convenience of customer service. For instance, DTH subscribers can relocate across India without any significant switching costs, but a cable TV operator may not be able to provide services across the country.

1.1 Whether cable TV and DTH belong to the same market or not, analysis of data shows that DTH by itself is a competitive market. The market structure for DTH using HHIs reveals as much. Inadequate data and the degree of fragmentation in India's cable TV market make a corresponding analysis for cable TV services impossible. If both markets are combined, the extent of competition will increase.

1.2 The recent surge in OTT platforms adds to the competitive pressure. It is disruptive for both cable and DTH operators. According to KPMG Media and Entertainment Report 2018, the Indian OTT market is expected to grow 45 percent to reach **₹138 billion by the end of fiscal 2023**. Given the rising number of internet users in India, the OTT video market is gradually becoming a source of mainstream entertainment. As per the BCG report titled " Entertainment Goes Online ", about 81 per cent of consumers in India have up to three video/OTT apps on their smart phones. The average time spent by Indians (especially millennial) watching videos online has grown to 92 minutes per day from a mere two minutes per day in 2012.

1.3 Some constraints on competition remain in TV broadcasting, and that they vary between geographic markets. Most importantly, access to premium content has become a bottleneck in the broadcasting market. This problem concerns content that is time critical, for which there are no substitutes, and content that is demanded by a mass audience, for which traditional broadcasting technologies have a competitive advantage. In the first place, like, sport events, such as the FIFA World Cup or the Olympic Games. Second, first releases of blockbuster movies etc. also fit these criteria.

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.

Comments : **Yes**

2.1 Why Media monopoly flourished in India :

(i) There is no law regulating horizontal monopolies specific to the media Industry :

We have competition laws in the country which regulate specific markets for competition. But we have no laws regulating media firms specifically to ensure diversity in media ownership. Horizontal monopolies (i.e. monopolies in the same segment of media, eg. monopoly in TV channels, monopoly in newspapers etc.) have very visibly appeared in TV news channels. A handful of people control the entire gamut of English news we watch on TV. True, competition law exists to promote competition in all kinds of markets including media markets, but it is a general law which cannot take into account the particular problem of media monopolies.

Media serves the valuable task of shaping public opinion. Competition in media markets then, while necessary, is just not a sufficient enough condition to ensure diversity of media ownership. We need more media-specific regulatory mechanisms which can prevent horizontal media monopolies across languages, states, and varying kinds of content, and prevent rise of horizontal monopolies.

(ii) There is no law regulating cross-media ownership and vertical integration in the media:

Cross-media ownership (ownership of media in different segments, eg. ownership of a newspaper, a TV channel, and an internet news website), and vertical integration (ownership of media at different levels of production, eg. control over news channel content as well as the DTH network which supplies that news channel) are two other sub-problems giving rise to the big media monopolies problem in India. Cable operators also often act as local monopolies in distribution, while consistently under-reporting their subscriber base. There are no regulations in place currently to prevent either cross-media ownership or vertical integration. Competition law is not applicable in these cases because it seeks to prevent monopolies within a single market, but cross-media ownership and vertical integration by their very definition concern monopolies across multiple markets.

Governmental policy might lead to distortions of competition in the broadcasting market. Regulatory or administrative measures that pursue concerns in the national interest or take into account economic as well as cultural and social factors might affect the level of competition.

TRAI must examine and purge monopoly abuse of any form, including bundling, ex ante restrictions on bundling in a competitive market may obviate benefits from being delivered to consumers. Economic theory has established the use of price discrimination strategies such as bundling as efficiency enhancing in competitive markets. TRAI must engage in an outcome analysis of such policy interventions that capture consumer preferences and measure welfare.

Evidence from other countries also supports the light touch regulation. Interestingly, online streaming services are rapidly replacing TV viewership in some of the developed countries. Instead of endless browsing through channels, users of online streaming services can now pick what they want to watch, and when they want it adding to competitive pressures on the traditional TV market. OTT is growing rapidly in India.

TV market in India currently offers multiple choices to consumers. A light touch regulation approach may naturally nudge the industry towards the optimal equilibrium. Over regulation in a competitive market may force consumer choices towards a particular technology. TRAI should place trust in the invisible hand for the industry to achieve its maximum potential.

There is also a problem of vertical integration in TV and video markets, there are several vertically integrated firms,. Among the many issues that arise from vertical integration in this sector. The foreclosure of competing content providers, the foreclosure of channels to downstream competitors and the exclusivity deals or monopsony in content acquisition, in particular for sports and movies. Specific challenges can be also identified for acquiring content for LCOs and online Video Provider (OVD). Finally, in some cases it has proven difficult to monitor commitments made by merging entities.

Bundling issues :

The challenges of bundling concern consumer lock in or obligations to purchase services that a customer may not value. Therefore, the competition implications of bundling should be carefully assessed.

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Q 3. 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.

Comments :

3.1 There is an issue of interoperability of the STBs. Allowing technical interoperability may benefit the subscribers by enabling them to shift from one operator to another without having to buy a new STB. This may lead to stop monopoly/market dominance and increase competition in the market and possibly lower price.

3.2 Abuse of dominance in television viewership Rating :

The Broadcast Audience Research Council (BARC) India, the viewership measurement body for television was alleged television rating point (TRP) Scam since October, is still not out of the woods.

TV rating are the only currency on the basis of which advertising worth Rs. 30,000 crore per year decided. About 85% of trading in TV is still happening on the basis of this. So it's business as usual. Without BARC's integrity being restored, it cannot be business as usual. Entertainment channels also cannot be exonerated from using their influence and pressure over BARC from time to time.

To prevent such type of incidences :

BARC's ownership structure should be reform because :

It is 60% held by broadcasters and 20% each by advertisers and advertising agencies. This gives broadcasters an undue advantage and influence over the body.

It is imperative for the biggest stakeholder to defend and maintain the integrity of BARC, build in transparency and institute checks and for things to fall in place.

To mitigate some of this influence, Board and other committee positions should be on a rotation basis so that the seats are not occupied only by large broadcasters. When big broadcasters who pay the most occupy important positions it gives rise to conflict of interest.

3.3 Is of doing business in this sector should be improved.

3.4 Technology trends affect competition in the broadcasting markets. Technological developments alter: the range and quality of services; the underlying costs; the extent of barriers to entry (new technologies provide new means by which the market is contested); the ability of customers to switch suppliers; and pricing mechanisms (digitization allows for provision of pay per view services). Therefore, digitization generally reduces barriers to entry.

3.5 Among the economic considerations of competition in broadcasting, market structure analysis is critical. A key issue is that a downstream broadcasting service provider may be able to leverage its market position to gain power in an upstream market for content. Hence, it would be able to corner an upstream market for content and this upstream buyer's power would enable the exercise of additional market power in the downstream market. In the scenario of a competitive downstream market, it turns out that the structure of the upstream market has an important impact on market outcomes. When upstream markets are structurally competitive and supply is elastic, then it is impossible to corner upstream output. Alternatively, if upstream supply is competitive but less responsive to price, then a downstream firm must pay a high price to corner the market. Finally, if upstream supply is monopolized it is very difficult for a downstream firm to profitably corner all output.

3.6 Vertical integration across the functions necessary to provide retail pay TV services has also been of significant concern to TRAI. Functions necessary for the supply of retail pay TV include: the production of content, the supplying of programming, the broadcasting of programming and the use of the physical infrastructure for disseminating programming (cable networks, DSL networks, satellite facilities, etc). Potential competition issues arising from vertical integration include:

(i) refusals to supply essential inputs to rival downstream firms,

(ii) margin squeezes, raising rivals'

(iii) costs or other discriminatory practices.

3.7 As traditional operators begin to compete more directly with OTT video providers, some competition concerns may arise where the former control the broadband infrastructure. For this reason, network neutrality is essential and TRAI should ensure that owners of infrastructure do not block or degrade traffic in favour of their own services and that these providers do not adopt discriminatory data caps. Moreover, last mile interconnection of broadband networks has to be secured. The future of broadcasting is tied up with the future of the Internet and all players will leverage the Internet to compete.

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.

Comments :

4.1 The barrier to entry might concern the market power and advantage of an incumbent player.

4.2 High investment costs, regarding infrastructure, technology.

4.3 The initial distribution infrastructure may also be a source of concern.

4.4 Negative experiences of consumers with new entrants and for this reason they may be reluctant to switch to another new player in the market.

4.5 Barriers to entry can arise from content fragmentation.

4.6 Even though the pay TV market is liberalized, access to content may constitutes a barrier to entry. This is because licensees tend to adopt an exclusive content strategy. This has led to a high level of content fragmentation. Content fragmentation brought about increased inconvenience and attendant costs for consumers, as well as creating significant barriers to entry. Furthermore, the attention and resources of subscription TV licensees were diverted from other aspects of competition, such as service and content innovation.

To rectify the situation, Cross-Carriage Measure can be applied. Under this measure, a subscription TV licensee that has acquired exclusive content would need to ensure that it is cross-carried on the other subscription TV licensee's platform in its entirety and in an unmodified and unedited form, and that it is made available at the same price, terms and conditions to any subscriber. The measure does not require the subscription TV licensees to share the content, and the contractual relationship remains between the subscription TV licensee with the exclusive rights and the consumer. The other subscription TV licensee is only required to provide its platform to cross-carry the content to the consumer. Since the introduction of the measure, there should new subscription options from the subscription TV licensees and the nationwide licensees should introduced service differentiation and innovation as more and more content can become non-exclusive.

The removal of barriers to entry and of the imbalance that results from the presence of state owned or state sponsored TV networks. Hence, TRAI should consider the extent to which state owned enterprises and restrictive regulations create such barriers.

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.

Comments :

5.1 The Indian broadcasting sector requires a " Light Touch " regulatory regime for orderly growth. Nowadays, many consumers at the top end of the pay-tv spectrum opt for video streaming services, while those at the bottom move to free to air platform.

5.2 Future technological changes are difficult to predict, which implies a need for a more cautious regulatory approach.

5.3 The regulatory approach and decisional practice of TRAI should take into account both technological changes and the fact that the sector is evolving very quickly.

5.4. One must proceed with caution regarding whether market changes require new regulations. Since it is difficult to predict developments in this market, the approach should be flexible to ensure that innovation continues.

5.5 Content producers, broadcasters, delivery platform operators (DPOs) and end consumers are constituents of the industry. Content producers develop content for broadcasters, who "up-link" to satellites for distribution to end consumers through DPOs. DPOs include multi-system operators (MSO), local cable operators (LCO) or direct to home (DTH) operators. LCO is the small part of the broadcasting services with no power. LCOs are the face of cable TV industry. Apart from this after digitization the number of LCOs are decreased. To regulate them will not serve any aim.

Share of revenue collection before and after digitisation of cable TV

	Before Digitization	After Digitization
Consumer ARPUs	100%	100%
LCOs	65%-80%	45%-55%
MSOs	10%-20%	15%-25%
Broadcaster	10%-20%	20%-30%

Source: FICCI-EY, 2018 report

There energy should be utilize positively by motivating them to form their co-operative and become MSOs. They should take initiative to invest and participate in such type of 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.. The new framework in conjunction with TRAI recommendations on infrastructure sharing have bought down the business risks.

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.

Comments :

TRAI should encourage sharing of infrastructure, wherever technically feasible in TV broadcasting distribution network services on voluntary basis.

6.1 Different approaches of sharing of infrastructure :

(i) One approach could be, where two or more LCOs join hands on voluntary basis to provide TV Broadcasting services to subscribers using common infrastructure.

(ii) Another approach could be where distribution network is established, operated and maintained by one LCO, and other LCOs delivers services to their subscribers by using the network of earlier LCO on Pay and use basis.

6.2 Sharing the infrastructure with another LCO, the responsibility of compliance to the relevant Acts/rules/regulations/license/orders/directions/guidelines should continue to be of each LCO independently.

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

Comments :

Market definition is the most essential analytical tool for TRAI to analyze competition concerns. An inaccurate market definition would entail incorrect market share computations – the primary and most commonly relied on indicator of a firm's market power. Given the significance of market shares in a competitive analysis, particularly for merger control notifications and analysis, it becomes all the more critical to ensure an accurate market definition. For this purpose, TRAI should construct a systematic conceptual framework that must be followed while determining the relevant market.

With advances in information and communication technology (ICT), digital convergence has broken industry boundaries. It has led to triple play, with telecommunications, cable TV and the Internet, or quadruple play, with telecommunications, cable TV, Internet and mobile industry. Hence, market definition can no longer be limited to the market boundaries conventionally used to classify the businesses. Digital convergence is characterized by two sided or multi-sided markets. The differences between single-sided markets and two-sided or multi-sided markets concern network effects and feedback effects.

In defining the product market, the TRAI should referred to the range in which the demand substitutability or supply substitutability of a product or service is high in terms of its functionality, characteristic, use or price. In the end, the cable TV market was considered as the product market (excluding TV, satellite broadcasting and MOD), due to the lack of demand and supply substitutability between video service providers in terms of the numbers of channels, content, regulations and demand of subscribers.

The market definition should have been extended to incorporate IP TV into cable TV's relevant markets. The TRAI should constantly reviews important parameters of the horizontal merger framework and revises its policy in line with the digital convergence trend.

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.

Comments : Yes.

The factors :

(i) In cable TV, provisions and demand of services may vary from state to state. Further conditions prevailing in a particular state may not necessarily be distinctly homogeneous and distinct conditions may be prevailing within a particular state itself. Also, conditions prevailing in a state may or may not be distinguished from the conditions prevailing in neighboring states.

(ii) In small cities it might not be substitutable as it is not penetrated by high end technology but in bigger cities especially cosmopolitan cities, cable TV might easily be substitutable with several other technologies.

(iii) Cable TV services might be substitutable with different television services in different states, depending on consumer tastes, preferences and availability of technology.

(iv) Conditions of competition for demand/supply of television services may not be distinctly homogenous within a particular state and such conditions might not be easily distinguishable from the conditions prevailing in the neighboring states.

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.

Comments : Yes.

A **joint venture** (JV) is a business entity created by two or more parties, generally characterized by shared ownership, shared returns and risks, and shared governance. Companies typically pursue joint ventures for one of four reasons:

(i) to access a new market, particularly emerging markets;

(ii) to gain scale efficiencies by combining assets and operations;

(iii) to share risk for major investments or projects; or

(iv) to access skills and capabilities.

JV companies are the preferred form of corporate investment but there are no separate laws for joint ventures. Companies which are incorporated in India are treated on par as domestic companies.

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.

Comments :

HHI is the appropriate to measure market concentration of MSOs in the relevant market. The primary advantage of the Herfindahl-Hirschman Index (HHI) is the simplicity of the calculation necessary to determine it and the small amount of data required for the calculation. The primary disadvantage of the HHI stems from the fact that it is such a simple measure that it fails to take into account the complexities of various markets in a way that allows for a genuinely accurate assessment of competitive or monopolistic market conditions.

Limitations of the Herfindahl-Hirschman Index (HHI)

The basic simplicity of the HHI carries some inherent disadvantages, primarily in terms of failing to define the specific market that is being examined in a proper, realistic manner. For example, consider a situation in which the HHI is used to evaluate an industry determined to have 10 active companies, and each company has about a 10% market share. Using the basic HHI calculation, the industry would appear highly competitive.

However, within the marketplace, one company might have as much as 80% to 90% of the business for a specific segment of the market, such as the sale of one specific item. That firm would thus have nearly a total monopoly for the production and sale of that product.

Another problem in defining a market and considering market share can arise from geographic factors. This problem can occur when there are companies within an industry that have roughly equal market share, but they each operate only in specific areas of the country, so that each firm, in effect, has a monopoly within the specific marketplace in which it does business.

A sound approach therefore needs to be developed in order to assess dominance and measure competition. TRAI should rely on several tools and types of indicators to identify evidence of market dominance, as set out below:

- **Price level observations**. TRAI should look for a sustained increase in price level. An increase in price level alone is not a sign of market power, however: it could be related to an increase towards cost-recovery tariffs.
- **Market share observations**. Market shares are often used as a proxy for market power. Although a high market share alone is not sufficient to establish the possession of significant market power, it is unlikely that a firm without a significant share would be in a dominant

position. TRAI or competition authorities then should set different thresholds to determine when a market share should raise concerns about market power issues. The European Commission, for instance, sets the following criteria to assess dominance: a firm with a market share of no more than 25% is not likely to enjoy a dominant position; a firm with market shares of over 40% raises concerns, and over 50% is said to have a dominant position if its market share has remained stable for a long time. The criteria to be used will depend on the characteristics of the relevant market and the availability of information.

- **Collusive activities**. The TRAI should watch whether firms collude to limit competition, by fixing prices and dividing markets.
- **Analysis of the firm's strengths**. The European Commission, for example, takes into account additional factors to measure the extent to which a firm acts independently of its competitors and customers. These factors include the overall size of the firm, control of the infrastructure that is not easily duplicated, technological advantages, absence of buying power, privileged access to capital markets / financial resources, product diversification, economies of scale, economies of scope, vertical integration, a highly developed distribution network, absence of potential competition and barriers to expansion.
- **Analysis of barriers to entry**. Market dominance also depends on the assessment of ease of market entry. Barriers to entry are costs that new entrants incur but that an incumbent firm avoids. This cost asymmetry may reveal dominance, as it may prevent new entrants from competing with the incumbent. Barriers to entry may arise due to high fixed or sunk costs (costs that a new entrant must absorb, while the incumbent operator does not

incur the same risks and costs), or restricted access to essential facilities (a new entrant must incur the costs of purchasing access to a network, costs that the firm who owns the facility does not have).

- **Quantitative measures of market dominance**. Several quantitative measures exist that can help assess whether a firm may have market power, such as the Herfindahl-Hirschman Index (HHI), which is an index of the number of firms in the market and their market shares, and the Lerner Index that measures the degree to which prices exceed marginal cost. Such concentration measures are rather imperfect measures of potential market power and an overreliance on them could lead to biased policy decisions. as this happened in the energy sector in the United States in the 1990s. Yet, the guidelines on mergers used by the US (and now EU) competition authorities contain explicit thresholds defined in terms of the HHI. A market with an HHI of below 1000 is regarded as 'unconcentrated', a market with an HHI of between 1000 and 1800 is regarded as 'moderately concentrated' whilst a market with an HHI of above 1800 is regarded as 'highly concentrated' (in which case a merger will be subject to further scrutiny).

In conclusion, TRAI may use a combination of such factors in order to assess market dominance in a given utility sector so as to avoid the potential pitfalls of using certain indicators in isolation.

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.

Commments : Yes. Mentioned above.

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.

Comments : No.

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

Comments :

Market power exercised by a dominant firm, insofar that it raises prices above competitive levels, may stifle consumer demand, generate efficiency losses and harm the public interest. In addition, firms with significant market power or dominance may implement strategies to further reduce competition and enhance their position in the market. The importance of assessing market power is also related to the future of regulation.

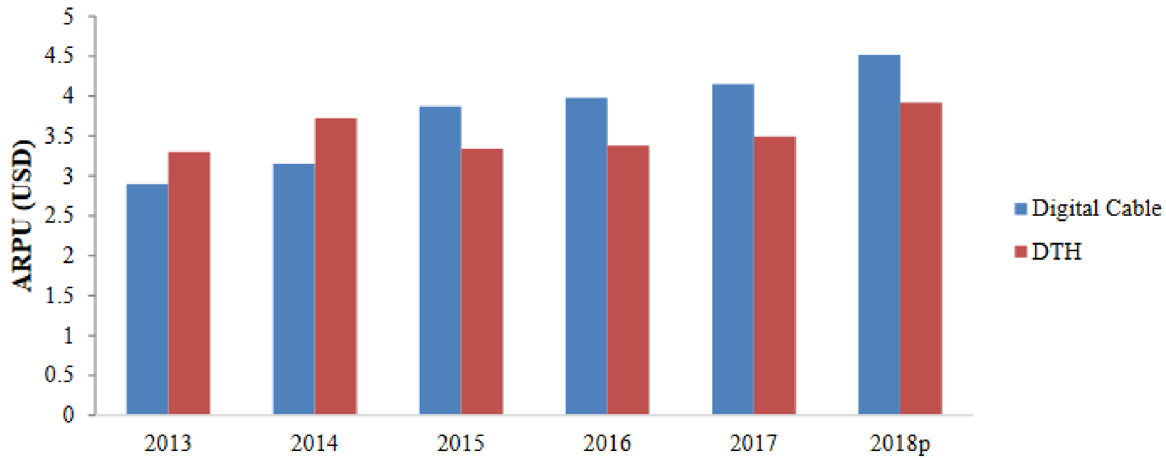
A complex web of actors regulates the broadcast ecosystem in India, including the MIB, TRAI, and self-regulatory bodies such as the Broadcasting Content Complaints Council and the News Broadcasting Standards Authority.

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.

Comments :

Cable TV networks and DTH platforms are the two most widely used distribution channels in India's television viewing market, with cable currently being the dominant platform. While the platforms vary by technology and quality of service delivered, they are similar with respect to content delivered. Moreover, the average revenue per user (ARPU) collected by cable TV operators has increased over time while that for DTH operators is range bound. Payment cycles for the two sets of operators also differ – while most cable TV subscriptions are post-paid, DTH is largely a prepaid service.

Figure 2.4 Average revenue per user per month (USD)



Source: IBEF, Media and Entertainment 2018

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.

Comments : **Mentioned above.**

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.

Comments :

The evidence does not support the idea that technological changes plays the principal role in the decline of companies. Certainly, technology is important –one can't remain a laggard and hope to be great. But technology by itself is never a primary cause of either greatness or decline.

16.1 convergence has become central for competition issues in TV and broadcasting. It has changed the ways in which consumers access broadcasting content, as the latter is increasingly available over the Internet and on wireless portable devices. The effects of convergence are being felt in markets around the world, but to differing degrees. Technological evolution and the emergence of new products and services have increased the opportunities for competition.

16.2 Convergence is a global phenomenon that takes place at a different pace in different countries. The main driver towards convergence is the roll out of the broadband and the gradual increase of its speed. It is observed that it enhances competition between traditional broadcasters, either private or public, and new players that operate only in the Internet. Further, convergence has an impact on the proliferation of devices that are used to watch video and TV services, like tablets, smart phones or computers.

16.3 A broader set of concerns arises from the fact that the markets at issue are being reshaped by rapid technological change, which allows the delivery of multiple communications services through multiple technologies using common, or converged, digital platforms. A major impact that the convergence process and the associated technological changes have had, and will continue to have, is the dramatic level of uncertainty it has introduced into business planning. Thus, service providers face at least four types of uncertainties:

(i) demand uncertainty;

(ii) deployment of new technologies;

(iii) whether, and to what extent, a business model for a particular service might be profitable; and

(iv) potential sources of competitive products.

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.

Comments : Yes.

Vertical integration across the functions necessary to provide retail pay TV services has also been of significant concern to TRAI. Functions necessary for the supply of retail pay TV include: the production of content, the supplying of programming, the broadcasting of programming and the use of the physical infrastructure for disseminating programming (cable networks, DSL networks, satellite facilities, etc). Potential competition issues arising from vertical integration include: refusals to supply essential inputs to rival downstream firms, margin squeezes, raising rivals' costs or other discriminatory practices.

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.

Comments :

18.1 We observed that market power over the physical infrastructure used to supply programming to end users has traditionally also been of concern to regulators. However, the focus of TRAI has increasingly turned to content supply and how the sale and distribution of content affects competition in downstream markets. Examples include decision by the Competition Commission in the United Kingdom (the UK) on Sky Television and decision of the Australian Competition and Consumer Commission on the acquisition by Seven of Consolidated Media Holdings.

18.2 TRAI is most concerned when a merger between a downstream broadcaster and a provider of premium content threatens the availability of that content to competing broadcasters. This depends on the elasticity of supply of competing content. Where that supply is elastic, it is unlikely that it would be regarded as premium or "must have" but, even if the competing supply is inelastic, it does not follow that it is profitable for the merged entity to refuse to supply downstream competitors. Rather, it depends on the loss of profits from foregone sales to downstream competitors, compared to the increased profits from greater sales in the downstream market. Competition concerns in content markets cannot be ruled out, but any assessment of the likelihood of those issues arising depends on a complex, and often counterintuitive, analysis of market structure and conduct in both the upstream and downstream markets.

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.

Comments :

19.1 EU policymakers have focused on merger control, as part of the competition policy framework, to assess M&A activity on the level of competition in a particular market, and imposed behavioural, and to a lesser extent structural, remedies to regulate anti-competitive conduct by dominant parties.

19.2 Industrial and media-specific policies dealing with the creation of an economically and culturally sustainable broadcasting and distribution industry should virtually be established in both from I & B and TRAI policy agendas.

19.3 With regard to competition policy, a more dynamic analysis of M&A activity in media and related markets is necessary. We should have significant expertise in the area of horizontal mergers,

19.4 Assessments of vertical mergers do not sufficiently consider the adverse affects vertical integration might have on fair competition within the entire value chain and over-estimate the efficiencies resulting from M&A, or at least assume they exist.

19.5 Competition policy and industrial policy should go hand in hand. They eventually pursue complementary goals and should, hence, be considered more together.

19.6 The dominants can only gain competitive advantage with an effective merger control that seeks to promote fair competition in the market, and that prevents dominant parties from inefficient, monopoly rent-seeking behaviour.

19.7 TRAI have a complex relationship towards media pluralism and ownership transparency. There should be a wide ownership rules, in combination with taxation instruments to favour locally-created programming, could therefore strengthen the role of the Indian content creation and distribution sectors in this global economy.

19.8 The complexity of the current global ecosystem and the drastic impact of the on-going M&A activity on local markets definitely call for a more integrated policy approach towards M&A activity in broadcasting and distribution. However, we recognize the need to see these policy areas not as mutually exclusive, but as highly complementary.

19.9 Cross-fertilization and mutual support between competition, industrial and media policymakers, all relying on more complete and layered assessments of M&A, therefore become necessary to preserve Indian broadcasting and distribution industries as economically and culturally sustainable, and to retain a leading position in the international video landscape.

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.

Comments :

Yes. Some changes mentioned above.

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

Comments : No.

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

Comments : No.

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.

Comments : Yes.

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.

Comments :

24.1 Anybody having over a 30% share of the last mile linkage should be classified as a monopoly.

24.2 They intended to exploit their monopoly status for maximizing their subscription and advertisement revenue at the cost of consumers.

24.3 In broadcasting sector, once someone acquires the telecast rights not only will the market share in terms of viewership but in distribution platforms such as DTH and Multi System Operators will have no choice but to subscribe that event content.

24.4 out of the 270 cricket matches to be played in India (excluding ICC and Asia Cup) between 2012 and 2019, Star holds the broadcast rights to 191 matches. There should be level of playing field in such type of cases.

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.

Comments : Mentioned above.

Any Other Issues

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

Comments :

The uncertainties create dilemmas for regulators. On the one hand, the inherent uncertainty can make intervention dangerous, both as market circumstances are difficult to assess and as intervention may rule out otherwise desirable market development. On the other hand, the potential for innovation means it is crucial to keep opportunities open for future competition to develop. Generally speaking, this should cause regulators to be cautious, because regulatory ignorance is considerable in the presence of the uncertainty generated by the current forms of convergence. However, some regulatory risks are unavoidable and a policy of non-intervention can lead to the rapid emergence of new forms of market power. TRAI can prioritize ensuring that this process can continue, so that new generations of supply can displace the existing generation.

In nutshell the TV and broadcasting sector is sensitive in a number of ways. Its stakeholders are numerous and influence the functioning of the market to differing degrees.

- One aspect to note is the consumers' capacity to pay.

- Second, the sector has a firm socio-political dimension.
- Third, its regulation involves not only public policy interests, but also covers technical, social and economic issues.
- Next, the market is subject to upheaval due to technological change, which forces stakeholders to reassess major issues, like product market boundaries, access to content, access to transmission facilities or composition of the vertical chain.
- Furthermore, technology neutrality and the maintenance of a level-playing field become increasingly relevant.
- Finally, the competition policy paradigm is gaining in importance over public policy concerns, which brings a number of consequences relating to substantive provisions and institutional cooperation.

Thanks.

Yours faithfully,

(Dr. Kashyapnath)
President
Member organization : TRAI