

September 4, 2013

Submissions of ESPN Software India Pvt. Ltd. ("ESI") to Telecom Regulatory Authority of India ("Authority") in response to the consultation paper on 'Distribution of TV Channels from Broadcasters to Platform Operators' ("Consultation Paper")

Submissions

At the outset, we state that the Authority has not given any empirical data to substantiate the necessity of the proposed changes in the regulatory framework. We state that at this juncture there is not imminent need for the changes proposed in the Consultation Paper. Our broad submissions on the Consultation Papers are as under:

- I. We state that no data has been made available to the stakeholders for analysis. Resultantly, in absence of any data or complete information, we are at a loss to comprehend as to how the Authority has arrived at the conclusions on which the present Consultation Paper is based.
- II. We also wish to point out no independent analysis has been undertaken by the Authority to assess the situation. TRAI is the sectorial regulator and it is essential that it collects sufficient empirical data before coming out with proposed draft regulations. The Authority has to take inputs from various stakeholders before determining the necessity of change in regulatory framework. From a bare perusal of the proposed regulations it appears that these regulations target the content aggregators and shall negatively impact the sectorial growth in long run.
- III. We submit that if the Authority should have conducted an indepth analysis and evaluated the business model of the content regulators before directly proposing the draft regulations.
- IV. The propose regulations appear to be based upon alleged ill motive of the broadcasters in making available their channels through distribution platforms. We state that such an assumption by the Authority is absolutely unfounded and baseless.

- V. It is noteworthy to point out that the Authority or the TDSAT has not found the content aggregators in any violation of the existing regulatory regime and no concerns have been raised in this regard any time before issuance of this Consultation Paper. There is not a single direction by the Authority or any observation the TDSAT which may necessitate the drafting of proposed regulations by the Authority.
- VI. The proposed regulation as contained in the Consultation Paper will adversely impact the bargaining power of the broadcasters of new, niche and regional channels in favour of the MSOs. Due to digitization market consolidation is already seen amongst the various digital cable TV platform operators. The proposed regulations will completely disturb the market equilibrium and will place some of the broadcasters on a disadvantageous position.
- VII. In this context it is also pertinent to mention that there is already a regulator, namely, Competition Commission of India, which examines all the issues of abuse of market dominance, consolidation, dominant position, etc which may have adverse impact on the growth of the any sector. Therefore, there is no plausible reason or imminent necessity for the Authority to frame the proposed regulations.
- VIII. Furthermore, the Competition Commission of India and the Authority can always look into any instance of abuse of dominant position, if any, by any player in the sector including the content aggregators.

Therefore, the move of the Authority to only aim at content aggregators and prohibit them from distributing channels of multiple broadcasters when other stakeholders like the operators of distribution platforms have been given a free hand to aggregate and sell offerings to customers. In view of the existing regulatory framework and in the absence of any finding that content aggregators are violating laws it would be completely unjustified to restrain aggregators from offering channels from multiple broadcasters. Also, the regulatory framework with ‘must provide’ price freeze at wholesale level, etc is already skewed in favour of the operators rather than the broadcasters. There is nothing wrong in broadcasters assigning their distribution activity to content aggregators. So far there has been no reported instance of any malpractice by the content aggregators for the Authority to take such a drastic step resulting in framing of proposed regulations.

These proposed regulations will only act as a deterrent to the sectorial growth. Given that the Authority and the Competition Commission of India in any event has the power to intervene in cases of proven misconduct, it should therefore withdraw the proposed regulations as contained in the Consultation Paper.