Shri Rajkumar Upadhyay,
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Mahanagar Doorsanchar Bhawan,
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New Delhi - 110002

RE: TRAI Consultation Paper dated 03.06.2013 on Monopoly/Market Dominance in Cable TV Services.

<u>RESPONSE ON BEHALF OF FASTWAY TRANSMISSION PVT. LTD.</u>

There is no need or requirement for any regulatory intervention to prevent alleged monopolies or accumulation of interests on MSO's or LCO's.

<u>REASONS:</u>

It may be noted that TRAI has no complaints before it regarding any adverse effect, of any kind, on consumers (be it pricing or QoS) on account, allegedly, of existing or likely monopolies in the business of MSOs; nor has TRAI any internal study on this subject, pointing to an irretrievable conclusion that monopolies need regulation. Indeed, the substantial impetus of the instant consultation process seems only to be Ministry of Information & Broadcasting

(MIB) letter dated 12.12.2012 to the Chairman, TRAI, pointing out various “issues” which have made it “necessary to examine” the issues involving the “derelictious effect” of the existing or impending monopolies of MSO/LCO’s. In order, therefore, to examine and analyse the very basis and genesis of the consultation process, it would be imperative to study and understand the context and intent of the aforesaid letter of the MIB.

The letter of the Ministry of Information and Broadcasting (MIB) notices and comments upon: -

A. So called “accumulation of interests” in terms of market share by MSO/LCO’s, such as the one prevented by the regulatory regime in case of FM Radio, in case of which regulations ensured equality, fair play and restricted monopolies and ensured adequate competition.

B. The virtual monopolization of TV distribution in some states which **MAY NOT** (emphasis supplied) be in consumer interest and have serious implications in terms of competition, pricing and healthy growth of the sector.

C. The Competition Commission of India (CCI) having recently passed an order with regard to monopolistic practices adopted by a MSO and also imposed certain penalties.

This, in sum and substance, has apparently impelled the MIB to seek the recommendations of the TRAI, which, by itself, being the sector regulator, never independently felt the need of examining.

Answer to the issues raised by the MIB will, in turn, answer the consultation paper floated. On behalf of M/s Fastway Transmission Pvt. Ltd, the issues raised by the MIB are dealt with, in seriatim, as follows: -

1. Both the MIB and the TRAI are, undoubtedly, aware that the business of broadcasting is differentiated into three broad segments- a)Broadcasters, b) MSO’s and c) LCO’s, (if the signal is carried by wire) and a) Broadcaster and b) DTH operators (if the signals are carried wirelessly).

2. There is already existing regulation of prices at the wholesale (broadcaster –MSO) and retail ends of the

stream (LCO- consumer) end of the broadcasters and also LCO's. The revenue shares between the three entities are also, in a DAS environment, provided. Besides, content is available to end customer by DTH, etc. also. In this scenario whether or not an MSO is a monopoly is entirely irrelevant. Nevertheless, let us examine the effect of (say) a 100% monopoly, for sake of an academic study. Even a 100% monopolistic entity cannot violate the tariff prescribed by TRAI. Violation, if reported (and none have been) are actionable at various forums. Besides, pro-consumer pricing is ensured by a healthy competitive pressure exerted by alternate delivery platforms like DTH, which is expending at a far higher speed than Cable TV. There is, therefore, no scope of effecting consumers either on pricing or QoS, even assuming 100% monopoly. If a consumer feels short changed the consumer will switch to DTH etc. The MIB's theorization is actually just that and has no bearing in reality. It is only mouthing pious platitudes, in general and vague consumer interest. No concrete example of how consumer interest is actually effected in pricing on QoS has been furnished or shown.

3. Further, the facile nature of the exercise got undertaken by MIB is clear in that, again assuming a 100% monopoly, what is proposed to be done if monopoly is to be curtailed or reduced? Suppose a 100% monopolistic MSO in a state is broken into smaller entities (even assuming that can be done - though only CIC can so do, not MIB or TRAI), each entity, in its area will be 100% monopolistic! The other way a "break down" a monopoly is to ensure that another MSO provides service in the state and set up its own cable network by digging up roads etc. How will other MSO's be forced into doing business? There are many entities which have taken licenses from MIB to operate as MSO's and then failed to set up business or roll out a network even in states where there is no monopoly by a rival MSO. The reason is simple. The business of an MSO is a difficult one and, in future, consolidation is the way forward; and here MIB and TRAI are contemplating breaking down bigger players. Even if "managing" MSO's was possible, last mile connectivity (i.e. LCO) would still remain monopolistic. Lastly, even if a 100% monopoly was ordered to withdraw service to say, 60% of its consumers, what would be the fate of those consumers? The consumer

would be forced to either be without cable TV or to switch over to DTH!? None of these are viable or practical solutions.

In any event, there is no problem, in the first place, to which solutions are being sought.

4. Next, what happens to existing MSO's who may, in the wisdom of the MIB or TRAI be described as monopolistic? Many such MSO have borrowed money from public sector institutions, to set up their networks on strength of business plans made on basis of the existing order of things. These MSO's (and by implication, public money also) would be fact to severe jeopardy, again putting the sector in tumult. In the entire process of compulsory digitalization it is MSO who is making entire investment on STB, Digital headends, CRM systems, SMS and softwares etc. MSO has already given repayment/ growth commitment to their Bankers and Investors.

5. Lastly, the comparison of MSO's with FM broadcasters defies all logic. Infact, it is shocking. The nearest

comparison to FM broadcasters in the TV broadcasting business would be the channel broadcasters and not the carriers of signal of the broadcasters (i.e. MSO)! The naivety of the comparison vitiates the entire process of the consultation exercise.

Broadcasters are operating in the monopolistic environment and requires the regulatory of provisions of TRAI at par with the FM radio. Free hand provided to Broadcasters have resulted into the monopolistic practices and as per following points, extra advantageous position is being enjoyed by the Broadcasters.

a) At present there are no restrictions on the number of channels floated by a single promoter.

b) There are no restriction on alacarte/ bouquet rates as decided by the Broadcaster.

c) Few major Broadcasters have invested heavily in the MSO business just to consolidate their monopoly position and to ensure the customer have little say in their choice of programme.

d) Broadcasters have consolidated their monopoly position by vertical mergers and cartels to enforce and dictate their terms on MSO viz a viz on the customers.

e) TRAI or other regulatory/ Competition authorities have not taken conigence of the one of biggest merger of two major Broadcasters of India.

6. The CCI had passed an order against us i.e. M/s Fastway Transmission Pvt. Ltd on a complaint made by M/s Kansan News Pvt. Ltd. Though MIB does not name either us or M/s Kansan News Pvt. Ltd the reference is, very clearly to our case. What perhaps, has escaped the MIB's attention is that the order of CCI was, ex-facie, not sustainable and was stayed by the Hon'ble Competition Appellate Tribunal (COMPAT) vide orders dated 31-10-2012, enclosed for ready reference. To the extent that the order of CCI was a relevant consideration in the mind of the MIB in requisitioning the present consultation process the same is clearly based on half knowledge of the facts of that case and also that the order itself is not operative, having been stayed, in appeal, even on the date of the letter of the MIB.

7. In summation, all the general and vague terms, “pricing”, “healthy growth”, “interest of consumers”, “better quality of service”, “choice of service providers to consumer” appear to be a smoke screen for an oblique purpose. We can only hope that that purpose is not to take sides between us (of one alleged political persuasion) and M/s Kansan News Pvt. Ltd. (of another, antagonistic, political persuasion).

8. Even otherwise, we are advised that in matters of monopolies etc. the TRAI does not have the power to make recommendations. Regarding issues of monopoly neither TRAI nor TDSAT have any jurisdiction. This may also be examined by the TRAI Act (section 11 (1) (a) read with section 14 (a) provision).

9. Return on investments in Cable TV industry is much less as compare to the Capex involved. It is not practical possible for the cable companies to have investment in every territory so that every single subscriber shall have the multiple options. This business is comparable to the gas pipe line business in which CAPEX is more as compare to return. More over

this industry is prone to technological changes which in turn requires further investments and thus necessitates the consolidations and mergers as had been experienced in the foreign countries.

10. Cable industry world over had witness a natural growth in which with the increase of ARPU and change in the consumer habits regarding the cable TV have encouraged the more companies into the business of cable and after the arrival of new companies return on investments further diminished and weak companies shed their business. Thus business cycle continue world over with new companies join on the increase in the ROI and left when loss is being erupted due to over crowd of companies. Finally only a few companies are into cable TV business in every country and there is very less competition among them self as their area of operation is more or less divided.

11. In India there are seven DTH companies along with DD terrestrial signal, DD metro, DD direct (FTA DTH) and so many players in analogue and digital cable TV with few trying their hands in IPTV as well. So there is lot of competition in India as compared to the

World market. DTH is growing at faster speed as compare to diminishing and dyeing cable industry. After the compulsory digitalization the scales of market will heavily tilt in favor of DTH.

12. As, in our view, this aspect of the sector does not require any regulatory interferences, much less in the manner sought to have examined by the MIB. As we fail to understand what benefits we can drive for the consumers by De- Monopolizing only MSO where as the Broadcaster at one end of the cable Tv chain is in 100% monopoly and is further consolidating it and the LCO on the other end is not ready to invest and compete beyond his area of operation because in competition there is lesser money and more investments. So in our view this aspect of regulatory interference does not solve any purpose as far as the end consumer is concern.

Submitted

For Fastway Transmissions Private Limited

Authorised Signatory