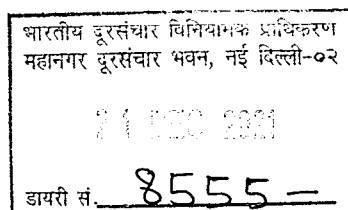




20 December 2021

Shri Anil Kumar Bhardwaj
Advisor (B&CS),
Telecom Regulatory Authority of India,
New Delhi



Sub: TRAI's Consultation Paper on "Market Structure/Competition in Cable TV services"
issued on 25 October 2021

Dear Shri Bhardwaj,

At the outset, we thank Telecom Regulatory Authority of India ("Authority" / "TRAI") for inviting comments of all stakeholders in respect of the present Consultation Paper on 'Market structure/competition in Cable TV Services' ("CP") that was introduced by the TRAI. TRAI received comments on the CP till December 6, 2021, and published comments by stakeholders. As IBDF, we are not providing issue-wise comments at this stage and making overarching comments.

On any specific issues, or additional issues that may be joined in any context, we reserve our rights to make detailed submissions on any issues that may be taken up at any stage hereafter (including as part of consultation process).

We are of the view that any entity doing business in India should enjoy rights, privileges and functions as determined in the context of market conditions, without any restrictions and curbs on the ownership and/or market concentration. It is important that plurality of mediums, choice to consumer and sufficient competition at the last mile facing the consumer should always remain paramount. We understand that the MIB follows a light touch regulatory approach in preference to any prescriptive measures or stipulations for cable TV services.

The cable TV distribution ecosystem includes the distribution platforms, viz., Multi System Operator ("MSO") and Local Cable Operator ("LCO"). MSOs primarily downlink content that comes in the form of linear satellite channels and transmits these channels using their own infrastructure/digital cable distribution platform or its affiliated/connected LCOs' digital cable distribution platforms to end-users/subscribers. Throughout India, out of an estimated 184.14 million TV households, cable TV universe comprises of around 73 million pay TV universe, i.e., about 39% of all TV viewing homes in the country. Generally, all stakeholders have an interest in delivering what the end-users/subscribers demand, i.e., a wide range of content.

We would like to state that there is sufficient competition in pan-India Cable Satellite Television Market, and such market would be best served by market enabled competition forces and a very light touch regulatory approach.

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Evidence from other countries, as mentioned in the CP, supports the thesis of light touch regulation, and forbearance. A forbearance approach may naturally nudge the industry towards an optimal equilibrium of competition across the media industry. Regulators must place trust in the invisible hand of the market for the industry to achieve its maximum potential.

As stated in the CP, today, television broadcasting and distribution services in India comprises of Cable Television ("Cable TV") services, Direct-to-Home ("DTH") services, Internet Protocol Television ("IPTV") services, Headend-in-the-Sky ("HITS") services and terrestrial TV services provided by Doordarshan, the public broadcaster ("DDTV"). There is no requirement to further regulate the Cable TV services market.

It is relevant to reiterate that, as reported by TRAI and MIB, the TV broadcasting sector encompasses 357 broadcasters as on 31st August 2021. Further, there are 1,733 registered MSOs as on 1st September 2021, approximately 1,55,303 cable operators as on March 2021, 1 HITS operator, 4 pay DTH operators and few IPTV operators, in addition to the public service broadcaster – Doordarshan – providing a free-to-air DTH service in India.

The Indian Media & Entertainment ("M&E") industry is a sunrise sector for the Indian economy. It has shown tremendous growth over the years. The M&E sector has grown from INR 1.026 trillion in 2014 to INR 1.38 trillion in 2020. There is sufficient competition in the market and the M&E industry would be best served by allowing market forces to determine the nuances of the sector.

State owned cable operators and entities ought not be encouraged (including for reason of maintaining the competition and/or avoiding any last mile monopoly of the cable services) since, doing so can result in disastrous consequences. Necessary steps should be taken by the MIB/Central Government to prohibit State owned and/or 'controlled' undertakings/joint ventures, or by persons with government interests, from getting registration as cable operators, or for providing cable services. We request that the TRAI reiterate to the MIB its recommendations (2008 and 2012) on whether Central Government State Government and/or their respective Ministries / Departments or their owned companies, undertakings, joint ventures, or other state funded entities may be allowed to enter into the business of broadcasting and/or distribution of TV channels.

To monitor the TV channel distribution market effectively, there remains the basic need to ensure comprehensive registration and collection of information from MSOs on a periodic basis. Broadcast licenses are renewed periodically, and likewise, MSO registration must be periodically verified and updated. Mandatory disclosure of all relevant details by MSOs not only ensures transparency but also helps to facilitate compliance with the prescribed contractual stipulations, regulations, etc. As mentioned above, in India, there are estimated 1,733 MSOs and approximately 1,55,303 LCOs. These numbers themselves show that there is sufficient competition in view of the sheer number of players providing cable services within the country. However, while there is sufficient competition, fruits of choice of service provider as well as choice of services/channels, as contemplated in various notifications of TRAI, are not percolating

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to the end-users/subscribers. As such, the focus of the Authority ought to be to verify and enforce compliance of notifications already issued, instead of bringing additional changes with little or no implementation on the ground. One way of bringing in transparency and giving choice to subscribers, so that they get freedom to migrate from one LCO to another and for improving quality of service, is by compelling compliance of provisions of tariff orders, interconnection regulations and quality of service regulations between MSOs and LCOs. Further, there is a need to put a process in place whereby, the Authority can verify whether intended benefits of TRAI's various notifications are being passed on to all stakeholders in the value chain specially the end-users/subscribers.

We also take this opportunity to bring it to the Authority's notice that:

- (i) For a clear and better understanding of the issues for consultation under the CP, it would be appropriate for the Authority to share the data on which certain industry hypothesis is based and align the same to a market study for a white paper on the TV channel distribution sector. It is observed that even in comparing the universe count for large MSOs and DTH players with MSR reports, substantive variances are obvious. It would be valuable to understand the methodology adopted and the data arrived at by TRAI. It would be beneficial for the Authority to conduct the market study to ascertain the relevant data, based on which queries can be addressed. Such study would foster credible economic analysis and baseline industry findings to form the basis of an exercise to appreciate the landscape and support a consultation with the stakeholders. Such a consultation exercise may be useful to assist stakeholders and regulators to mutually understand the sectoral landscape, to analyse the data or make any recommendations. The queries that are posed as opinions, would yield more constructive solutions when they are posed as queries that are supported by data and clearly identified principles. We welcome a consultation that is premised on objective criterion and objectively determined data, as opposed to an opinion-based framework to discuss the necessity or extent, if any, of ex-ante regulation of the industry and TV channel distribution sector.
- (ii) Principally, there is no reason for ex-ante regulations on competition. It is our submission that ex-ante competition regulation without a market assessment throttles innovation instead of promoting competition. Fundamentally market enabled competition forces should prevail. For the purpose of conducting any economic-legal analysis on anti-trust issues, the parameters to define the relevant market would depend on the context and are best reviewed as such.

Ex-ante restrictions in a competitive market may obviate benefits from being delivered to consumers. TRAI must engage in an outcome analysis of such policy interventions that capture consumer preferences.

When, and if, it is necessary or relevant to determine the impact of dominance or significant market power that is causing an appreciable adverse effect or harm in the

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relevant market, the regulatory authority may be addressed on the matter. The restrictions prescribed in the Authority's previous recommendations are over-prescriptive and not felt to be totally relevant. The parameters to define the relevant market would depend on the context and are best reviewed as such.

- (iii) There is no cause for introducing regulatory approval from the TRAI for the merger and/or acquisition of a stakeholder in the broadcasting sector, and the same can be left to market forces with stakeholders being allowed to have suitable provisions in their commercial arrangements for protection of their interests in case of merger and/or acquisition of LCOs/MSOs.
- (iv) TRAI has not shared any analysis or survey, or report or data collected by it to form the basis for any of its queries, or the relevant parameters considered around the differentiated services, that set out any rationale and framework to determine substitutability. It is arbitrary and unreasonable to bring disparate services, also being subject to varying service terms and conditions, under the same lens without consideration of the various relevant constituents and aspects of the respective services. Furthermore, an analogy of the characteristics of different services and service providers would only be relevant in the face of the purpose and circumstances of the exercise.

The CCI has distinguished between DTH, cable, and IPTV based on their varied mode of distribution even though the intended use for the three is the same, while noting that pricing for the three were different and cable TV had infrastructure constraints. On the demand side, the CCI found that cable TV did not offer the quality of service or number of channels that could be offered through DTH and concluded that DTH as a service is distinct from IPTV and cable.

- (v) In so far as the issues of impact of video streaming services on cable services as well as substitutability of video streaming services with cable services and *vice versa* are concerned, we state that *de hors* video streaming services, sufficient competition exists in Cable TV services, which does not call for introduction of any specific measures. There is no evidence or market-based study to suggest that services like video-based streaming or any new technology-based services are alternate services or to assume substitutability. Further, the key for unlocking value and providing choice of television services to end-users/subscribers lies in verifiably implementing quality of service regulations already issued by TRAI. In this regard, submissions made above are reiterated and that the same are not being repeated for the sake of brevity. Furthermore, there is ample evidence to suggest that different services co-exist across consumer base, suggesting that they operate in different markets and offer complementary services. The CP also *inter-alia* acknowledges that cable operators with internet service provider ("ISP") licenses are building their Cable TV services with subscriptions-based over the top ("OTT") services to allure end-users/subscribers, hence complementing each other to drive subscriber growth. There is no economic

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legal rationale or data to suggest that services like video streaming services are alternate services, or that they are in the same relevant market.

- (vi) Over the Top services cannot be said to be substitutable with DPOs, aside from wide divergence in both the product and the service, prima face they are based on differentiated technology and deploy different technology. Even when we assess them against the parameters evolved through CCI jurisprudence, they are a distinct market from TV distribution. OTT, and internet-based applications, are predominantly content service providers unlike DPOs, who are carriage service providers.

The CCI in its Order related to combinations while considering the acquisition of two large Cable Platform Operators, clearly delineated the relevant market as the market for retail supply of AV content through OTT in India, distinctly from the market to consider distribution services. The regulator clearly stated that OTT applications are NOT substitutable with DTH and/or Cable TV services, for various reasons.

- (vii) Article 14 of the constitution underlines the fundamental doctrine of treating dissimilar entities differently. There are several content and delivery services that enable consumers to have access to a variety of content services and are at varying format and stages for distributing different media content and video services by diverse service providers. Diverse content services (may) have different capabilities to inter alia, relay content in differing manner, providing differing customer experiences as from that by any of the carriage service providers (Distribution Platform Operators). Discrimination also occurs when persons who are in unequal position are being treated in the same (equal) way. Any framework facilitating non-discrimination and enabling a level playing field to promote fair competition would necessarily need to identify all the relevant parameters and aspects for classification and categorisation as similar, or equal, or within the same relevant market. In any event, the possibility of competition concerns in one market cannot be the cause for regulation in another market.

- (viii) The right and the ability to exploit content is not limited by the medium and the person having copyright over content (through ownership or rights under license) cannot be restricted from making it available on any platform. Putting any fetters on the ability to make content created / licensed by any broadcaster, available on other platforms, including and not limited to OTT platform(s), would be against the letter and spirit of freedom and speech and expression guaranteed under Article 19(1)(a) of the constitution which safeguards the ability to make widest possible dissemination of content (being an important facet of speech and expression). Evidently, any such restraint or treatment would also be incongruous with the Copyright Act, 1957 which envisages copyright as a bundle of rights and recognizes *content* as a work protected thereunder. Accordingly, the ability to exploit content across different mediums is in-

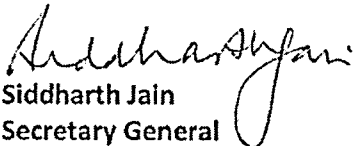
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built in copyright and alleging competition issues principally / primarily at the back of the copyright owner making its content available on different mediums is not in consonance with the established legal principles which hold the field in the subject matter.

In view of the broad submissions made above wherein we have inter-alia requested the Authority to consider adopting forbearance in preference to any prescriptive measures or stipulations in respect of the cable TV market, we are presently not providing issue-wise comments or counter comments at this stage. We reserve our rights to make detailed submissions on any issues that may be taken up at any stage hereafter (including as part of consultation process).

This preliminary response to the disassociated issues posed in the CP is without prejudice to the submissions of the IBDF and/or of its members inter alia on the issue of TRAI's lack of jurisdiction over OTT. Such submissions have been made and objections have been taken, including before the TDSAT, the TRAI, or any other court and authorities. We reserve our right to make submissions, without prejudice, to the TDSAT's Interim Order restraining the TRAI in the broadcaster's challenge of TRAI's directions to attempt extending its oversight over OTT without jurisdiction.

Yours sincerely,


Siddharth Jain
Secretary General