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September 3, 2013

Mr. Wasi Ahmed
Advisor (B&CS)
The Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg (Old Minto Road)
New Delhi – 110 002

Dear Sir,

This has reference to (i) the Consultation Paper dated August 6, 2013 released by the Telecom Regulatory Authority of India (“TRAI”) on ‘Distribution of TV Channels from Broadcasters to Platform Operators’ enclosing draft amendments to tariff orders, interconnection and register of interconnect regulations applicable for both addressable and non-addressable broadcasting and cable TV services (“**Consultation Paper**”), and (ii) the press release issued on August 27, 2013 extending the time for submissions of comments on the Consultation Paper till September 3, 2013.

Without prejudice to our rights and contentions under law, attached is our comments to the Consultation Paper (refer Annexure A).

Yours sincerely,
For Sun Distribution Services Private Limited


Authorized Signatory





Annexure A

RESPONSE TO THE CONSULTATION PAPER ON DISTRIBUTION OF TV CHANNELS FROM BROADCASTERS TO PLATFORM OPERATORS

Introduction

1. The Consultation Paper dated August 6, 2013 on 'Distribution of TV Channels from Broadcasters to Platform Operators' enclosing draft amendments to tariff orders, interconnection and register of interconnect regulations applicable for both addressable and non-addressable broadcasting and cable TV services ("**Consultation Paper**") appears to be released by the Telecom Regulatory Authority of India ("**TRAI**") basis complaints made by the multi system operators ("**MSOs**") to the Ministry of Information and Broadcasting ("**MIB**") and TRAI against authorised distribution agencies of the broadcasters ("**Aggregators**") for their alleged involvement in monopolistic practices and misuse of its dominant position.
2. At the outset, we deny all allegations made in the Consultation Paper against the Aggregators. It is stated that nothing has been placed on record or discussed in the Consultation Paper to suggest, leave aside to establish, any kind of alleged monopolistic practice and misuse of its dominant position by the Aggregators. It is rather surprising that radical changes to the existing regulatory framework is being proposed basis complaints made by the MSOs; without giving the opportunity to the broadcasters and Aggregators to be heard and without substantial analysis.

Monopolistic Practices / Misuse of Dominant Position

3. It is stated that the Competition Commission of India ("**Commission**") established under the Competition Act, 2002 (as amended) ("**Competition Act**") is the right forum to adjudicate any complaints relating to alleged monopolistic practices and/or misuse of its dominant position. It is stated that the MSOs had in fact filed a complaint with the Commission against one such Aggregator on the same grounds and, post investigation, the Commission held that such Aggregator did not abuse its dominance, instead brought efficiency in broadcasting and cable TV industry. It is important to note that in another matter the Commission had actually pulled up one MSO for monopolistic practices and misuse of its dominant position, thereby establishing the monopolistic practices and misuse of its dominant position are more prevalent at the retail level.
4. It appears that after failing to corner the Aggregator before the competent authority, i.e. the Commission, the MSOs have approached the MIB and the TRAI and made false representations against the Aggregators concealing the facts. Such misrepresentation must not be taken on face value and forum shopping by the MSOs must not be permitted.

Misrepresentations by MSOs – Counter

5. The Consultation Paper suggests that in the complaints filed by the MSOs against the Aggregators with the MIB and the TRAI, the MSOs have alleged that the Aggregators force the MSOs to (i) accept all channels of the Aggregators, and/or (ii) execute fixed fee deals,





and/or (iii) make payments based on entire subscriber base and not as per actual uptake of channels, and/or (iv) make payments on minimum guarantee, and/or (v) accept any other unreasonable terms and conditions. We deny all such allegations. Such unsubstantiated sweeping statements by the MSOs must not be permitted. If analysed prudently, it will be apparent that the deals presently done by the Aggregators with the MSOs are pursuant to the requests made by the MSOs and with an intention to support digitalization. Our counter to each of such allegations are as under:

- (i) It is denied that the Aggregators force MSOs to accept all channels of the Aggregators. If the Aggregators wanted to force the MSOs to accept all channels of the Aggregators, it would have created one single bouquet comprising of all channels. On the contrary, the Aggregators offer several bouquets to the MSOs largely addressing regional markets. However, in view of the competition, *inter se*, amongst the distributor of TV Channels (with other MSOs in the relevant area, DTH operators and IPTV operators), the MSOs themselves subscribe to all/majority of bouquets offered by the Aggregators.
- (ii) It is denied that the Aggregators force the MSOs to execute fixed fee deals. The Aggregators will be happy to execute cost per subscriber deal. In fact all Aggregators, by way of their respective Reference Interconnect Offers, have made open offer to the MSOs to execute cost per subscriber deal. The MSOs themselves insist for fixed fee deals, as it works in their favour (as is reflective in the quarterly results of the listed MSOs). If the TRAI was to access the audited subscriber base of the MSOs, it would note that the MSOs pay outs towards a fixed fee is far less than the pay outs that the MSOs would have otherwise paid under the RIOs.
- (iii) It is denied that the Aggregators force the MSOs to make payments based on entire subscriber base and not as per actual uptake of channels. As discussed in point (ii) above, by and large, fixed fee deals are executed between the Aggregators and MSOs. Under such circumstances, charging of subscription fees basis subscriber bases does not arise. In case of RIO deals, the payments are demanded by the Aggregators basis the subscriber reports provided by the MSOs. However, it has been noticed that in many cases the MSOs have not been providing the subscriber reports and the Aggregators have not been billed for several months. The Aggregators have filed several complaints in this regard with the MIB/TRAI but no action has been taken by the TRAI against such defaulting MSOs.
- (iv) As discussed in point no. (iii) above, if the MSOs fail to provide addressability, the Aggregators, in order to protect its commercial interest, are well within their rights to seek for minimum guarantee, which are also acceptable to the MSOs, as they know very well that such pay outs are well within the pay outs that the MSOs would otherwise have paid under the RIOs.
- (v) It is denied that the MSOs were forced to accept unreasonable terms and conditions to obtain signals of the broadcasters at the fag end of the implementation of digital addressable cable TV systems (DAS), Phase I and Phase II. The existing regulatory framework prohibits the Aggregators to execute interconnection agreement on a discriminatory basis and/or impose unreasonable terms and conditions. If any MSO was aggrieved by actions or inactions of any Aggregator, under the applicable law,





such MSO must ideally have approached the Telecom Dispute Settlement and Appellate Tribunal (“TDSAT”). It is stated that the DAS has still not been implemented properly due to the inability of the MSOs to close commercial agreements with the LCOs.

Need for Aggregators

6. Admittedly, the the prime drivers for the emergence of the Aggregators are the fact that the analog Cable TV distribution market is too fragmented with the presence of a very large number of MSOs and LCOs thereby, posing practical difficulties for the broadcasters to deal with them individually. As per TRAI Recommendation, India has 6,000 major MSOs, around 60,000 LCOs, 7 DTH/satellite operators and several IPTV service provides. Even after 2nd phase DAS implementation, the numbers of distributor of TV channels have not substantially decreased.
7. The Aggregators have always been an integral part of the value chain in the distribution of TV channels from broadcasters to platform operators (including MSOs). The Aggregators are specialist in the distribution business and are able to handle complexities, which the broadcasters will not be able to manage. The Aggregators have played a huge role in (i) growth of cable and satellite television subscriber base, (ii) creating efficiency by optimizing distribution costs, (iii) ensuring that broadcasters get at least some share of subscription revenues, (iv) reduction in multiplicity of deals, and (v) reducing the number of litigations in the TSDAT. It is not always possible or feasible for broadcasters to deal with thousands of platform operators across India. As per the TRAI Recommendations, there were around 550 channels and 200 broadcasters (which obviously has increased by now). If the proposed amendments were to be implemented, each operator platform would need to execute at least 200 interconnection agreements. The TRAI is aware that execution of one agreement itself takes many months. If, as per the proposed amendments, the Broadcasters / Aggregators cumulatively were to execute 200 interconnections agreements each with 6000 MSOs, cumulatively 12,00,000 (12 Lakhs) interconnection agreements in a year, majority of such interconnection agreements will not get concluded and the TDSAT will be flooded with litigations.
8. Moreover, the broadcasters’ reliance on advertising revenues, which was about Rs. 8,800 Crores (75%) in 2010 vis-a-vis about Rs. 2,900 Crores (25%) from subscription fees, as per the TRAI Recommendation, has not decreased even pursuant to 2nd phase DAS implementation. Under the circumstances, there are reasons for the broadcasters to continue its focus on content and advertising revenues, and outsource the subscription business to the Aggregators. The addressable market needs to be substantially mature for the broadcasters to even consider doing the subscription business on its own.

Role of Aggregators

9. It is denied that in the absence of any regulatory framework for the Aggregators, they started to bundle channels of more than one broadcaster and form bouquets. It is stated that the Aggregators always formed part of the definition of ‘broadcaster’ and therefore part of the regulatory framework. The definition of ‘broadcaster’ as per the Cable Television





Regulations Act, 1995 (as amended) and the interconnection regulations/tariff orders are extracted below:

Cable Television Regulations Act, 1995 (as amended)

“broadcaster” means any person including an individual, group of persons, public or body corporate, firm or any organization or body who/which is providing satellite television channels, which have been registered by the Ministry of Information & Broadcasting under the Downlinking Guidelines and permitted to be downlinked / received / transmitted and re-transmitted in India for public viewing and includes his / her authorised distribution agencies;

Interconnection Regulations/Tariff Orders

“broadcaster” means any person including an individual, group of persons, public or body corporate, firm or any organization or body who/which is providing broadcasting service and includes his / her authorised distribution agencies”

10. In the TRAI Recommendations, the TRAI has itself described the role of the Aggregator in the following manner:

“1.14 TV channels can be distributed by the broadcaster himself or through authorized distribution agencies to the distribution platforms. An aggregator is a distribution agent who undertakes the distribution of TV channels for one or more broadcasters. The role of the aggregator in the value chain is to provide bundling and negotiation services for subscription revenue on behalf of the broadcasters. The sale of channels by the broadcaster/aggregator to the distributor can take two forms a) A-la-carte: one channel is sold as a single unit and b) Bouquet: two or more channels are bundled and sold as a single unit.”

11. The TRAI have always interacted with the Aggregators (including issuing directives against the Aggregators) in the capacity of the broadcasters’ authorized distribution agencies. Moreover, by virtue of the definition of ‘broadcaster’ in the existing statute, the TDSAT also admits matters by and against Aggregators in its capacity as ‘authorised distribution agencies of broadcasters’.



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Conclusion

12. In view thereof, it may not be appropriate for the TRAI to (i) change the definition of 'definition of broadcaster' in a manner that it conflicts with the existing statute, and (ii) make any amendments to tariff orders, interconnection and register of interconnect regulations applicable for both addressable and non-addressable broadcasting and cable TV services. The proposed amendments are regressive in nature. The existing regulatory framework (with clauses like must provide, tariff ceiling, etc.) are robust enough to protect the interests of the MSOs.

13. At best, the TRAI may consider formally defining "Aggregator", and imposing all obligations of the broadcasters under the tariff orders, interconnection regulations and register of interconnect regulations on the "Aggregators", if the broadcasters appoint authorized distribution agencies.

