



06 December, 2021

By Email/By Hand

The Advisor (B&CS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan (next to Zakir Hussain College)
Jawaharlal Nehru Marg, New Delhi- 110002

Kind Attn: Shri Anil Kumar Bhardwaj, Advisor (B&CS)

Subject: Tata Sky's comments on TRAI'S Consultation Paper Dated 25th October 2021 on 'Market Structure/Competition in Cable TV Services'

Dear Sir,

We thank you for the opportunity to express our views on the above captioned Consultation Paper. Tata Sky's response to the same is enclosed for your ready reference.

Thanking you.

Yours sincerely,

Harit Nagpal
Managing Director and CEO

Enclosed: As above

Tata Sky Ltd.

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TATA SKY'S COMMENTS DATED 06TH DECEMBER 2021 TO TRAI'S CONSULTATION PAPER DATED 25TH OCTOBER 2021 ON 'MARKET STRUCTURE/COMPETITION IN CABLE TV SERVICES'

1. **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.**

TS Comment:

- Consumer today has multiple content viewing platforms to choose from. They range from DD Free Dish, Cable, MSOs, HITs, DTH to OTT.
 - Therefore, there is adequate competition in the sector. However, the regulations are asymmetrical. While the DTH sector is micro regulated, made to pay License Fee, there is minimal scrutiny for Cable while DD Free Dish and OTT have no regulation.
 - It is incomprehensible, that when the services being provided and the target audience is the same, with OTT having the capability to relay content exactly in the same manner as is being done by the Distribution Platform Operators, the regulatory and pricing restrictions are only applicable to Distribution Platform Operators.
 - Any Regulatory and Government policy framework should ensure non-discriminatory approach and level playing field amongst all stakeholders to promote fair competition and provide equal business opportunity to all.
2. **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.**

TS Comments:

- Cable TV Services shares almost equal strength in terms of households as DTH, despite this cable is not as closely monitored as the DTH leading to unhealthy competition and insecurity in market.
 - There are no eligibility criteria for Cable Operators while for DTH there are too many.
 - DTH platforms, which distribute both Pay and FTA channels, just as MSOs and Cable platforms do, pay License Fee @ 8% of AGR, while the Cable and MSOs platform do not, despite being licensed by the MIB.
 - DTH platforms even have to pay License Fee for Broadcasters share of revenue. License fee should be applicable to revenue generated by services provided under the scope of the license. This would avoid creation of multiple companies to save double Licence Fee and will also enable DTH Operators to issue a single bill to their subscribers, availing more than one service.
 - Infact, the DTH Operators are also facing gross discrimination in terms cap on crossholding, while Broadcasters are carrying their own OTT platforms.
 - There is thus a significant disparity between the treatment meted out to the DTH operators as against other operators, despite offering the same service.
 - Restrictions for DTH should either be done away or must be made applicable for all.
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.**

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TS Comments:

- It is incomprehensible, that when the services being provided and the target audience is the same, the regulatory compliance and licensing restrictions are asymmetrical and not applicable on Cable TV platforms.
- There are no cross-holding restrictions on Cable sector while the DTH sector is burdened with 20% cap on shareholding by broadcasting sector. This restriction must either be extended to Cable, OTT and DPOs or must be done away for DTH as well.
- There should be equal monitoring of compliances for all and License Fee of 4% may be imposed on Cable TV platforms and equally 4% License Fee may be put on DTH Sector too. If not being imposed on Cable and OTT, it should be removed for DTH.

- 4. 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.**

TS Comments:

- No, we do not think that there is any entry barrier in the Indian Cable Television Sector.

- 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.**

TS Comments:

- Yes, there is an urgent need to regulate LCOs to protect the interests of consumers and ensure growth in the cable TV sector.
- There should criteria for LCOs to get license from the Authority such as:
 - a. check of criminal background
 - b. declaration to not to indulge in unethical practice etc.
 - c. minimum net worth
 - d. payment of License Fee like DTH
 - e. cross holding restrictions like DTH or removal of cross holding restrictions of DTH as well
- Also, there needs to be close monitoring of Cable sector for regulatory compliances.

- 6. 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.**

TS Comments:

- Cable Operators have major control over their subscribers since they have direct connect and control over them.
- Therefore, if broadband services are enabled solely through the Cable Operators then the Cable Operators will for certain gain undue market control over broadband and other services within its area of operation.

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

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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.
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.
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.
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.
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.
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
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.

TS Comments:

- While DTH may not be perfect substitute of cable services, they deliver same content at different price points due to regulatory arbitrage.
 - While the DTH sector is micro regulated, there is minimal scrutiny for Cable sector stalling the growth of DTH sector
 - Moreover, additional burdens like License Fee and Cross Holding restrictions are imposed upon DTH.
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.

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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.

TS Comments:

- The convergence of technologies and rapid adoption of the internet has led to the emergence of Streaming / OTT services.
- Given the rising number of internet users in India, the OTT video market has become a source of mainstream entertainment. Broadcasters run their own OTT platforms which are now completely substituting the DTH services at an alarming pace.
- However, the OTT platforms enjoy an unfair competitive advantage as they do not require a license to operate nor are they regulated in any manner by TRAI as they are not categorised as DPOs or any other licensed operators either by the Ministry of Information and Broadcasting or the Department of Telecommunications.
- In terms of Clauses 5.6 and 5.7 of MIB's Downlinking Guidelines, a Broadcaster is not entitled to re-lay or transmit TV content/channels directly to the consumer and must do so only through a DPO, however the broadcasters relay their linear channels on their on OTT Platforms.
- The OTT platform either is not a DPO and cannot be allowed to distribute linear/ live channels or it is considered a DPO, in which case it ought to be bound by all regulations applicable to a DPO.
- Further while DTH platforms share 8% of their revenue on License Fee, OTT platforms, do not pay License Fee. This allows them to invest the surplus on content and customer acquisition.
- We urge TRAI to categorise Streaming services / OTT as a DPO and to regulate Streaming services/ OTT services on the same terms as the DTH operators are regulated.
- Any Regulatory & Government policy framework should ensure non-discriminatory approach and level playing field amongst all stakeholders to promote fair competition and provide equal business opportunity to all.

17. 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.

18. 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.

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.

TS Comments:

- Mergers & Acquisitions can lead to adoption of monopolistic practices by MSOs. If the MSO is able to cater a major portion of market in that case it can lead to adoption of monopolistic practices by the MSO as by mergers & acquisitions it can prevent small MSOs to enter the business and/or do the business on its own.

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- Cross holding restrictions that are currently applicable for DTH sector must be made applicable for all, else should be removed for the DTH sector.
 - Broadcasters today are running their own OTT Platforms and there are no crossholding restrictions on them.
 - This is leading to monopolistic market as the price at which the Broadcasters are offering content to DPOs and their subscribers are far higher than at what rate they run on their platforms.
 - Further, proper disclosures of ownership and shareholding needs to be ascertained while approving mergers & acquisitions in the Broadcast and Telecom Industry. This, in view of the fact that market share of merging entities evaluated in isolation may not show prima facie impact.
 - With the advent and convergence of technologies, there is a very thin line or in fact none at all, distinguishing the Broadcast from Telecom Industry. The two services invariably are now being provided to consumers as bundled services.
 - Even the applicable statute governing the two Industry is same i.e., the TRAI Act.
20. 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.
21. Do you think that there should be different definition of ‘control’ for different kinds of MSOs? Do explain with proper justification.
22. Should TRAI restrict the ambit of its recommendations only on certain kinds of MSOs? Do provide full justification for your answer.
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.
24. 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.
25. Is there a need to recommend cross-holding restrictions amongst various categories of DPOs/ service providers? Do give detailed justification supporting the comments.
- TS Comments:**
- No Cross-Media restrictions must be imposed on any Distribution platform
 - Any such restriction only stifles growth of the sector and,
 - Also, such restrictions work against convergence and economies of scale.
 - If no such restriction is being imposed on other platforms and OTT, then it ought to be removed for DTH as well.
26. Stakeholders may also provide their comments on any other issue relevant to the present consultation.

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