Telecom Regulatory Authority of India

Consultation Paper

on

“Market Structure/Competition in cable TV services”

New Delhi, India

25 October 2021

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Written comments on the consultation paper are invited from the stakeholders by 22.11.2021. Counter-comments, if any, may be submitted by 06.12.2021. The comments and counter-comments will be posted on TRAI's website www.trai.gov.in .

The comments and counter-comments may be sent, preferably in electronic form to Shri Anil Kumar Bhardwaj, Advisor (B&CS), Telecom Regulatory Authority of India, on advbcs-2@trai.gov.in and jtadv-bcs@trai.gov.in.
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CHAPTER 1

INTRODUCTION

1.1 Television is one of the most prominent mediums in India for the transmission of information, news, entertainment, etc. The television broadcasting and distribution services in India mainly comprises of Cable Television Services (Cable TV), 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. The value chain of TV channel distribution through Cable, DTH, IPTV, and HITS platforms is depicted in Figure 1.1.

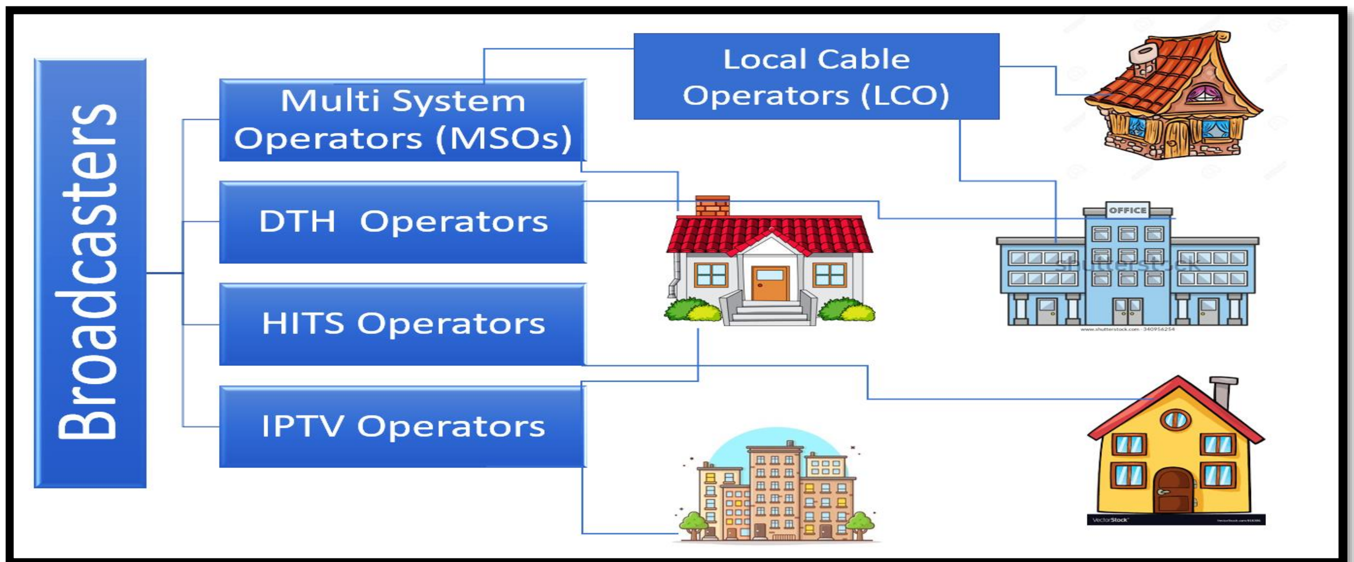

Figure 1.1: Broadcasting and Distribution Value Chain

1.2 Ministry of Information and Broadcasting (MIB) vide its letter dated 12th December 2012 (**Annexure 1)** had sought recommendations of the Authority (TRAI) under Section 11(1)(a) of the TRAI Act, 1997, on the issues related to monopoly/market dominance in the cable TV services. The reference states that in view of the fact that the cable TV distribution is virtually monopolized by a single entity in some states, it has become necessary to examine whether there is a need to bring in certain reasonable restrictions on Multi System Operators (MSOs) and Local Cable operators (LCOs), including restricting their area of operation or restricting the subscriber base to prevent

monopoly. TRAI had, therefore, been requested to provide its recommendations under Section 11(1)(a) of the TRAI Act on the following:

> *"In order to ensure fair competition, improved quality of service, and equity, should any restriction be imposed on MSOs/LCOs to prevent monopolies/accumulation of interest? If yes, what restrictions should be imposed and what should be the form, nature, and scope of such restrictions? Accordingly, amendments required in the Cable Television Networks (Regulation) 1995 Act and Rules framed thereunder may also be suggested."*

1.3 After following a due consultation process, the Authority issued its recommendations on Monopoly/Market dominance in the cable TV services on 26th November 2013 (Recommendations are available on www.trai.gov.in).

1.4 TRAI has now received a back reference dated 19th February 2021 from MIB **(Annexure 2)** mentioning therein that a considerable time has passed since the recommendations were made and that the media and entertainment (M&E) landscape has changed drastically, particularly with the advent of new digital technologies in this sector, and, therefore, MIB felt that some of the issues need further consideration by the Authority and it may provide a fresh set of recommendations in the matter looking at the subsequent developments/expansion in the M&E sector.

1.5 Accordingly, TRAI issues this Consultation paper to seek the comments/views of the stakeholders on monopoly/market dominance/ competition issues in cable TV services. Chapter 2 discusses overview of broadcasting sector in India and the level of competition in television distribution. Chapter 3 discusses monopoly/market dominance/competition issues in the cable TV industry. Summary of the issues for consultation has been provided in Chapter 4. Measures used to assess market concentration have been explained in Appendix I. International experience on cable TV distribution and guidelines on mergers and acquisitions are appended as Appendix II and Appendix III respectively.

CHAPTER 2

OVERVIEW OF BROADCASTING SECTOR AND THE LEVEL OF COMPETITION IN TELEVISION DISTRIBUTION

2.1 The Indian Media & Entertainment (M&E) industry is a sunrise sector for the economy. It has shown tremendous growth over the years. The sector grew from INR 1.026 trillion in 2014[1] to INR 1.38 trillion[2] in 2020. Further, with digitization and evolution of broadband networks, the sector offers huge potential for increased demand and business revenues.

2.2 Television continues to be the major contributor to the revenue of M&E sector. As per FICCI EY report published in March 2021[2] television registered a revenue of INR 685 billion in 2020. Figure 2.1 reflects the contribution of all segments in total M&E sector revenue:

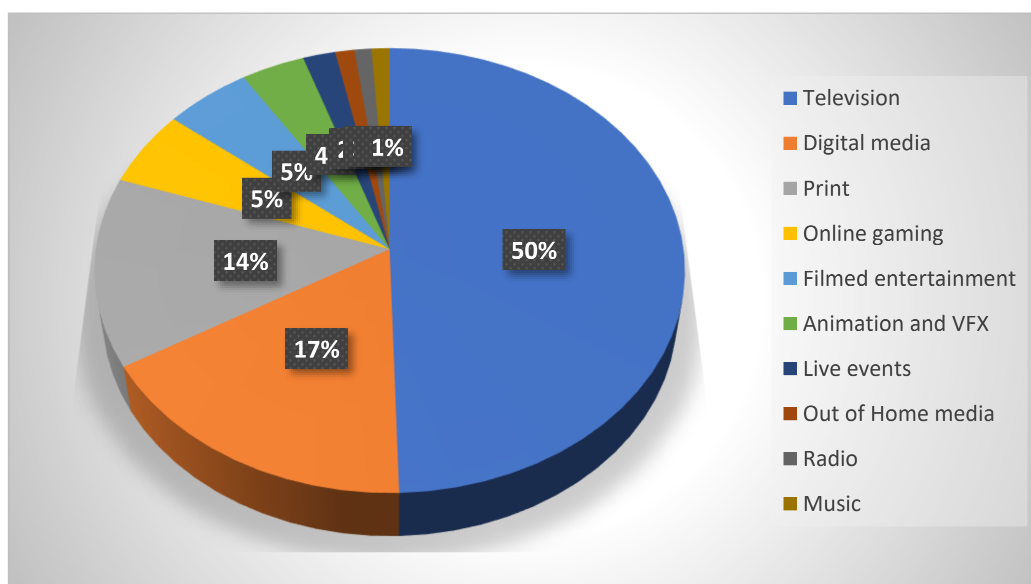

Figure 2.1: Segment wise Revenue of M&E industry (2020)[2]

(All figures are gross of taxes (INR in billion) for calendar years | EY estimates)

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[1] Source: FICCI-KPMG Indian Media and Entertainment Industry Report 2015

[2] Source: FICCI EY report March 2021 (India Media & Entertainment Sector Reboots on 2020)

2.3 The broadcasting sector in the country has witnessed significant growth over the last two decades. Both the Government and the Telecom Regulatory Authority of India (TRAI) have been steadfast in promoting plurality of broadcasting channels and multiple distribution platforms to ensure that consumers have a choice of services. The multiple platforms have also ensured competitive market leading to affordability. At an average price of $~5.5[3], Indian consumer pays around 20 to 25% as compared to a TV consumer in UK, USA, Thailand, or Malaysia.

2.4 India's television industry stands at INR 68,500[2] crores in 2020 as compared to INR 78,800[2] crores in 2019. Subscription revenues account for around 60-65% of the overall industry revenue. Subscription revenues has fallen from INR 46,800[2] crores in 2019 to INR 43,400[2] crores in 2020. On a similar note, advertisement revenue during 2020 was INR 25,100[2] crores as compared to INR 32,000[2] crores in 2019. The decline is mainly attributable to the COVID 19. However, as the spread of coronavirus is reducing, the television industry is registering an upward movement and the situation is improving. As per a latest report issued by the Broadcast Audience Research Council, India (BARC) in June 2021, in the first half of 2021, weekly TV Viewership stood at an average of 921 billion viewing minutes.

2.5 The traditional broadcasting and cable TV sector comprise of broadcasters, cable TV services (MSO and LCO), DTH services, terrestrial TV services, HITS services, IPTV services, and broadcast radio services. Commensurate with the growth in the subscriber base, the number of platforms and service providers have increased.

2.6 Since the advent of the regulatory regime in 2004, the technology and ecosystem has evolved from analogue in 2004 to the digital mode by March 2017. The quality of analogue transmission was poor; hence consumers did not receive high quality services. Various stakeholders, especially the broadcasters, had serious concerns as the number of viewers could not be correctly ascertained in the analogue network. To

[3] Comparison of packages across countries, Page 15 of ICRIER Report titled 'An Analysis of Competition and Regulatory Intervention in India's Television Distribution and Broadcasting Services'. Available at https://icrier.org/pdf/An_Analysis_of_Competition_and_Regulatory_Interventions.pdf

address these issues, MIB, pursuant to the recommendation of TRAI, amended the Cable Television Regulation Act (1995) in 2011 to enforce implementation of Digital Addressable System (DAS). Digitization of Cable TV means that cable network delivers digital signal to consumers' doorstep. With this technology subscribers get superior picture and sound quality, a large bouquet of channels and choice of channel. DAS also opens possibilities of introducing other services such as games and movies on demand. The process of digitization started in India in 2012 and culminated in March 2017.

2.7 In the DAS-based TV services value chain, a broadcaster uplinks signals of the television channel to a satellite in encrypted form. The distributor receives the signals from the satellite and decodes them using the decoder provided by the broadcaster. After processing and merging the TV Channel signals of multiple broadcasters and platform services, the distributor encrypts the combined signals and retransmits it further, either directly or through the local cable operator, to the customer. The distributor could be a MSO, a DTH operator, a HITS operator, or an IPTV operator.

2.8 To enable the Indian broadcasting sector to realize the gains of digitization, TRAI, after due consultation process, published a comprehensive regulatory framework for DAS on 3rd March 2017. This framework comprised of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017, the Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017, and the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017, for providing broadcasting services. This framework was notified in March 2017. However, it came into effect from 29th December 2018 after satisfying legal challenges / pronouncements.

Present status of the Indian Cable TV industry

2.9 The cable TV operations are governed by the Cable Television Networks (Regulation) Act, 1995, (hereinafter referred to as the Cable TV Act) and the Cable Television Networks Rules, 1994 (hereinafter referred to as the Cable TV Rules).

2.10 The Cable Television business observed hyper-growth in 1990 with the demand for foreign channels during the Gulf war. The economic liberalization in 1991 that simplified the process to procure and install satellite antenna further fueled the growth. The launch of Star TV and Zee TV in 1992 further fueled the spread of cable TV. According to a study conducted by the market research firm, Frank Small (study conducted for Star TV), from a mere 412,000 cable TV homes in January 1992, the number of cable homes went up to 1.2 million by November 1992. Subsequently, as the demand and supply for television channels increased significantly, many cable operators came together and joined hands to reap benefits from economies of scale and attain a better negotiating power.

2.11 With the introduction of DAS, Government has amended the Cable Television Networks Rules by issuing the Cable Television Networks (Amendment) Rules, 2012 on 28th April 2012, according to which a MSO operating in DAS notified areas is required to obtain necessary permission from MIB in addition to registering as a cable operator. Under sub-section (1) of section 4 of the Cable TV Act, for operating a cable television network, a person is required to register as a cable operator with the registering authority. The Head Postmaster of the Head Post Office of the local area has been notified as the registering authority for local cable operators.

2.12 The Cable TV Act and the Cable TV Rules do not restrict the number of MSOs/LCOs operating in any specific area. There are a few large MSOs which operate in multiple states/Union territories, while other MSOs operate either on a regional level or in a smaller area. In the initial stages of digitization, MSO registrations were given for specific city, town, state, or PAN India, in DAS notified areas as mentioned by the applicant MSO. However, vide a circular dated 27th January 2017[4], MIB conveyed that all registered MSOs are free to operate in any part of the country.

2.13 With the implementation of DAS, the business model of MSOs has undergone a change. Earlier, Local Cable Operators could insert local television channels/ platform channels. However, pursuant to implementation of DAS, all the channels received from

[4] MIB Circular no 2/108/ 2015-DAS dated 27th January 2017

the broadcasters, or the platform channels are to be encrypted together by the MSO before transmission to the LCO of the consumers. The MSO maintains a Subscriber Management System (SMS) where details about each customer and his/her channel preferences are stored. All the channels are now decrypted at the customer end through a set top box (STB) configured by the MSO, as per the authorisation via CAS/SMS. Therefore, in the DAS environment, MSOs maintain the record of consumers and their preferences.

Impact of new regulatory framework on Market Structure

2.14 Previously (prior to 2017), many MSOs faced serious competitive pressure due to discriminatory pricing and discounting strategies adapted by the broadcasters. It was very hard for small- and medium-sized MSOs to negotiate competitive deals with broadcasters. Though the then extant regulations provided for Reference Interconnect Offer (RIO) based pricing mechanism, the same was made infructuous through negotiated fixed fee deals. Widespread discrimination prevailed in the market. Several other malpractices prevailed in the market like tax avoidance and poor tax compliance, non-provisioning of consumer choice, discriminatory demands for carriage fee, etc., in the old framework.

2.15 TRAI issued the new regulatory framework for the broadcasting sector on 3rd March 2017, which was implemented in December 2018. This new regulatory framework has been quite effective in maintaining level-playing-field, reducing litigations among stakeholders, and providing fair opportunities to smaller MSOs. As per the 2017 regulatory framework, broadcasters have been mandated to publish an RIO giving transparent and non-discriminatory terms, including discounts (if any) based on measurable parameters. This enables every distributor in getting non-discriminatory deals on a transparent basis. Broadcasters are mandated to enter into agreements with the distributors based on RIO.

2.16 Distributors are empowered as under the ‘must provide’ provision. They can now sign and send the RIO published by any broadcaster and it is treated as a binding agreement.

The framework provides for Network Capacity fee (NCF) as the subscription revenue. Such revenue accrues to the MSO for its own efforts/service rendered.

2.17 The TV broadcasting sector encompasses 357 broadcasters[5] as on 31st August 2021. Further, there are 1733 registered MSOs[6] as on 1st September 2021, approximately 1,55,303 cable operators as on March 2021[7], 1 HITS operator[7], 4 pay DTH operators[7] and few IPTV operators[7], in addition to the public service broadcaster –Doordarshan– providing a free-to-air DTH service in India.

2.18 The Government has adopted a transparent licensing framework for private satellite channels. As a result, the number of satellite TV channels grew exponentially during the last two decades. There are 912[5] private satellite TV channels as on 31st August 2021 permitted by the MIB. These channels comprise of Three hundred & Eighty-Eight[5] (388) news and current affairs channels and Five Hundred and Twenty-Four[5] (524) non-news and current affairs channels.

2.19 At the end of March 2021, there are estimated 184.14 million TV households which are being served by the cable TV services, DTH services, HITS services, IPTV services in addition to a terrestrial TV network of Doordarshan. The pay TV universe consists of around 73 million Cable TV subscribers[2], 70.99 million total active DTH subscribers[7] and 2.15 million HITS subscribers[7]. In addition, there are 38 million subscribers[2] of Free-to-Air DTH Service and terrestrial TV services provided by Doordarshan. Further, as per the data shared by the service providers with TRAI in May 2021, top 14 MSOs of the sector serve approximately 45.7 million customers.

2.20 It is pertinent to note that the number of registered MSOs has increased significantly from around 160 at the beginning of 2015[8] to 1733 in September 2021. Figure 2.2 shows the pattern of increase in the number of registered MSOs:

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[5] Source: http://broadcastseva.gov.in/webpage-User-tvchannels
[6] Source: https://digitalindiamib.com/Registered_MSO_01Sep2021.pdf
[7] As reported to TRAI
[8] As reported by MIB

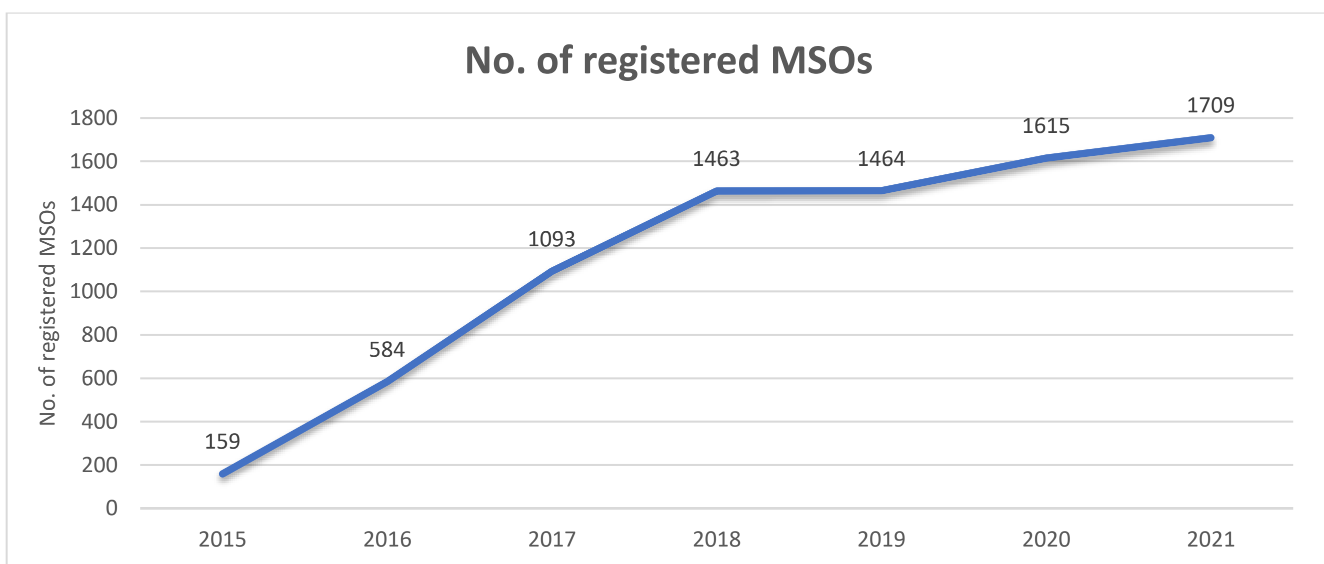

Figure 2.2: Rapidly increasing number of registered MSO[8]

2.21 Further, Table 2.1 below lists some of the major MSOs along with areas of their operation having a subscriber base of more than one million at the end of March 2021.

Table 2.1: Subscriber base of major MSOs/HITS operators at the end of June 2021 (More than one million subscribers)

Sl. No.	Name of the operator	Total Active Subscriber Base[9]	Area of Operation
1.	Siti Networks	7861314	Andhra Pradesh, Assam, BH, Chhattisgarh, GUJ, HAR, Jharkhand, KTK, KER, MP, MH, Manipur, Meghalaya, Delhi, Orissa, RAJ, Telangana, UP, Uttaranchal, WB
2.	GTPL Hathway	7833694	Andhra Pradesh, Assam, BH, Goa, GUJ, Jharkhand, MH, Manipur, Meghalaya,

[9] Includes subscribers who have been inactive or temporarily suspended for not more than last 90 days

			Pondicherry, Orissa, RAJ, TN, Telangana, Tripura, WB
3.	Hathway Digital	5603942	Andhra Pradesh, Assam, Chhattisgarh, Delhi, HAR, KTK, MP, MH, Orissa, RAJ, SIKKIM, Telangana, UP, WB
4.	DEN Networks	4862741	BH, Delhi, GUJ, HAR, Jharkhand, KTK, KER, MP, MH, RAJ, UP, Uttaranchal, WB
5.	Thamizhaga Cable TV Communication Pvt Ltd	3693943	Andhra Pradesh, KTK, Pondicherry, TN
6.	Kerala Communicators Cable Ltd	2889439	Kerala
7.	Tamil Nadu Arasu Cable TV	2885583	TN
8.	Fastway Transmissions Pvt Ltd	2195619	Chandigarh, Delhi, HP, Har, Punjab, Rajasthan, UP, Uttaranchal
9.	NXTDIGITAL Ltd (HITS)	2025202	All States except Daman & DIU
10.	KAL Cables	2081801	Andhra Pradesh, KTK, TN
11.	VK Digital	1845823	KTK, Puducherry, TN
12.	Asianet Digital Network	1208681	Andhra Pradesh, KTK, KER, Orissa, Telangana
13.	NXT DIGITAL Ltd (Cable TV)	1105650	Delhi, GUJ, HAR, KTK, MH, UP

2.22 In addition, there are 4 pay DTH operators offering DTH service in India. Table 2.2 below lists out these DTH operators along with their total active subscriber base and the areas of their operation:

Table 2.2: Subscriber base of DTH operators at the end of June 2021

Sl. No.	Name of the DTH operators	Total Active Subscriber Base	Area of Operation
1.	Dish TV India Ltd	16,386,112	PAN India
2.	Tata Sky Ltd	23,313,414	PAN India
3.	Sun Direct TV Pvt Ltd.	12,164,149	PAN India
4.	Bharti Telemedia Ltd	17,998,950	PAN India

2.23 From Table 2.1 and Table 2.2, one may aver that as multiple distribution platforms are available, the potential monopoly of a single service provider like a MSO is unlikely.

2.24 One may also refer to the entry level requirements for registration as MSO. MIB vide its letter no. 2/31/2016- DAS dated 16th May 2018 had requested TRAI to give its recommendations on the appropriate entry level net worth for the MSOs. In response, the Authority in its Recommendations on Entry Level Net worth requirement of Multi-system Operators in Cable TV services dated 22nd July 2019 had recommended that there is no necessity for fixation of a minimum entry level net worth for MSO registration. As prevalent, any individual, company, corporate firm, or LLP that fulfils provisions of the Cable TV Rules, may be granted MSO registration. The recommendation has been duly accepted by the government. Therefore, there is hardly any entry barrier in permission/ registration of a new business entity to become a service provider.

2.25 Moreover, the regulatory framework provides for time-bound provisioning of signals by the broadcasters to new MSOs. Furthermore, the new regulatory regime enables even the smallest of the MSOs to get non-discriminatory interconnection terms based on reference interconnect offer.

2.26 Further, as per the MIB guidelines even an individual can get itself registered as a MSO by submitting a processing fee of mere INR One lakh (Rs. 1,00,000/-). Also, the estimated cost of setting up a 250-channel headend is approximately INR 2.75 million[10]. The application procedure has been simplified to a great extent. One can now apply online on the Broadcast Seva portal of MIB. There are quite a few instances where LCOs have come together and started operating as MSOs. Such LCO groupings have a definite business advantage as they understand the business from the grassroot levels.

2.27 As per the data of subscriber base of top 15 DPOs (MSOs and HITS) (as reported to TRAI), a large percentage of a MSOs subscriber base comes through LCOs. The following data (Table 2.3) reveals that out of the total number of subscribers of a MSO, approximately 97.5% of the subscribers are secondary subscribers (through LCOs):

Table 2.3: Primary and Secondary Number of Subscriber base of major MSOs (as reported to TRAI for the month of May 2021)

Sl. No.	Name of the DPO	Total number of subscribers[11]			
		Primary Subscriber	Secondary Subscriber	Percentage share of subscribers that comes through LCOs	Total No. of Subscribers
1	Siti Networks	34353	8085838	**99.58**	8120191
2	Den Networks	19215	4898281	**99.61**	4917496
3	Tamil Nadu Arasu Cable TV	0	2892121	**100.00**	2892121
4	VK Digital	0	1825044	**100.00**	1825044
5	KAL Cables	0	2058797	**100.00**	2058797
6	GTPL Hathway	150689	7667851	**98.07**	7818540

[10] Cost Estimates from Broadcast Engineering Consultants India Ltd. (BECIL)
[11] Includes number of temporarily suspended subscribers who have been inactive 90 days or less.

7	Fastway Transmissions Pvt Ltd	0	2207377	**100.00**	2207377
8	Asianet Digital Network	550397	658067	**54.45**	1208464
9	UCN Cable Network	0	642268	**100.00**	642268
10	Hathway Digital	262104	5395621	**95.37**	5657725
11	Kerala Communicators Cable Ltd (KCCL)	289	2927331	**99.99**	2927620
12	TCCL	0	3671748	**100.00**	3671748
13	Act Digital Home Entertainment Pvt Ltd	45564	568227	**92.58**	613791
14	Indusind Media And Communication Ltd (HITS)	15302	2005686	**99.24**	2020988
15	Indusind Media And Communication Ltd (CATV)	49832	1074298	**95.57**	1124130
	Total	1127745	46578555	**97.64**	47706300

One important parameter in the above table is percentage of consumers being served through LCOs. Furthermore, LCOs are not dependent on any single MSO. LCOs have the flexibility to shift to another MSO seeking additional profit or in case of any unfavourable circumstances. In addition, LCOs can also reach remote far-flung areas through HITS operators as telecom bandwidth has become far more economical in the recent few years.

2.28 One may therefore consider that through the timely policy and regulatory intervention by TRAI and the Government, the broadcasting sector of the economy have engendered

all round growth. The sector presents a vibrant scenario with the presence of varied distribution platform operators such as MSO, DTH, HITS, and IPTV. Furthermore, the new regulatory framework has enabled more growth as it restricts distortionary and discriminatory practices. It is due to the new framework, the total number of MSOs in the country have been consistently growing in recent years. Such developments augur well for the competition. One may opine that there is already enough competition in the market and there is no need to regulate the issue of monopoly/market dominance in the cable services at present.

2.29 A counterpoint can be that the level of competition in the MSOs' business is not uniform across the country (looking at Table 2.1). Certain States (e.g., Delhi, Karnataka, Rajasthan, West Bengal, and Maharashtra) have many MSOs providing their services. Whereas in certain other states like Tamil Nadu, Punjab, Orissa, Kerala, Uttar Pradesh, and Andhra Pradesh the cable television market is dominated by one or two MSOs. DTH service providers do offer an alternate option for consumers. However, one may opine that DTH services are not perfectly substitutable, as certain factors are unique to cable industry. Cable TV operators can provide broadband and voice services in addition to the distribution of TV channels, which DTH operators cannot. Furthermore, even for the distribution of TV channels, competition within the cable TV sector is essential as cable TV networks operate on a State/regional basis and can choose specific channels to be supplied according to the demand in a particular area whereas DTH services operate on a national basis and transmit the same channels throughout the country irrespective of variations in demand of channels in different markets.

Recent Trends and Technological Developments in Cable TV Services

2.30 With the rapid pace of technological advancements, it is possible to provide internet and telephone services over cable TV networks. The cable TV networks have already expanded and cover a large proportion of the country. Therefore, many cable operators have started offering broadband services by taking feeds from the Internet service providers (ISPs) and Telecom service providers (TSPs).

2.31 In recent years another technological advancement has taken place in the form of "Over the Top" or "OTT" service providers providing video streaming services. There may not be a recognized definition of the OTT services. The Authority in its consultation paper on Regulatory Framework[12] for OTT services defined "OTT provider" as *a service provider which offers Information and Communications Technology (ICT) services, but neither operates a network nor leases network capacity from a network operator. Instead, OTT providers rely on the global internet and access network speeds (speeds in the range of Megabits [0.5 to 3] for video streaming) to reach the user, hence going "over-the-top" of a TSP's network*. The prominence of traditional cable TV services is being challenged by the latest technological innovations in the form of OTT services.

2.32 In the financial year (FY) 2019-20, digital and OTT sector registered a growth of 26%, the highest growth amongst other segments of the M&E sector[13]. To derive benefit from OTT platforms, many Internet Service Providers (ISPs) across the country are bundling subscription-based video streaming OTT platforms to allure new subscribers. For example, Jio Fiber, started to bundle varied OTT platforms like Disney+Hotstar, Zee5, Amazon Prime Video, etc. Reliance Jio also launched JioTV+ in July 2020 which enables consumers to access over 12 OTT platforms via its Set Top Box. Similarly, Airtel has launched its Airtel Xstream box with Netflix, Amazon Prime Video and Zee5 bundled for its broadband subscribers according to their plans. This pattern of bundling OTT services in their offerings is used by almost all the telecom service providers. For example, Airtel launched monthly pre-paid plans that bundle services of certain OTT platforms. Smart TVs that enable consumers to connect to the internet and other OTT platforms, besides providing access to the regular cable TV channels, are gaining market share, and are enabling increasing traction to OTT based video streaming services. Thus, with the convergence of technologies, broadband and telecom service providers are also providing alternate to broadcasting services, thereby providing consumers another avenue/ option.

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[12] TRAI Consultation Paper is accessible at the following weblink: https://www.trai.gov.in/sites/default/files/OTT-CP-27032015.pdf

[13] Source: KPMG: A year off Script, Time for resilience, KPMG in India's Media and Entertainment Report 2020

2.33 Therefore, one may consider that the consumers have sufficient options to avail television broadcasting services. Further as highlighted in the current reference of MIB, considerable time has elapsed since TRAI's previous Recommendations in November 2013. Meanwhile, with the advent of digital technologies the television services landscape has changed substantially. Technological developments especially the IP technology and increasing use of packet switched digital communications have made converged services possible. The telecom networks can provide access to the broadcast content in addition to telecommunication services. Similarly with digitization, cable TV networks can also provide Internet access as well as telephone services. Market related convergence also occurs as consumers desire one-stop services. Therefore, it is important to examine the subject of monopoly of cable services in-toto, keeping all alternative options into consideration.

Issues for consultation:

Q1: 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.

Q2: 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.

2.34 Chapter 3 discusses various issues related to market dominance in the cable industry and raise certain questions for consultation with the stakeholders.

CHAPTER 3

MONOPOLY/MARKET DOMINANCE/COMPETITION ISSUES IN THE CABLE TV INDUSTRY

Regulating monopoly/market dominance/competition in Cable Services

3.1 The regulatory framework has improved the level-playing field as every distributor gets the broadcasters' signals in a non-discriminatory manner. Furthermore, with the improving technologies and easy access to bandwidth, it is possible for any MSO to expand services in different cities/regions. The MSO registration has been kept simple with any entity, including a proprietorship can register as MSO. Therefore, there are no entry barriers in the cable television distribution market. However, if it is felt that there could be a possibility of market dominance by few selected players, then there may be a case for specific rules/regulations to address the same. Then, the issue for consideration will be on the methodology and prescribed threshold/ benchmarks to identify and address the issues. Same are discussed in subsequent section.

3.2 It is pertinent to note that the Department of Telecommunications (DoT) from time to time has issued Guidelines for Merger and Acquisitions for the telecom sector. The summary of guidelines released by DoT in 2004, 2008, and 2014, include the following:

- **2004 Guidelines:** These guidelines provided that prior approval of DoT shall be necessary for any merger of licences. Further, merger of licences was permitted subject to the condition that there are at least three operators in that service area for that service, consequent upon such merger. In addition to that, no merger was allowed when market share of service providers was crossing 67% in the given service area.
- **2008 Guidelines:** The condition of market share was brought down from 67% to 40% . However, these guidelines provided that there shall be at least 4 service providers in the service area consequent upon that merger. Guidelines also provided that in case consequent to merger of licences in a service area, the licensee becomes

a "Significant Market Power" (SMP) post-merger, then the extant rules and regulations applicable to SMPs would also apply to the merged entity.

- **2014 Guidelines (refer Appendix III):** These guidelines provided that service providers need to notify the Central Government for any proposal of M&A which has been filed before National Company Law Tribunal (NCLT). There were no provision relating to maximum market share of service provider or minimum number of service provider which needs to be there in any service area post M&A. However, limits on the subscriber base, AGR and spectrum holding were put on the resultant entity.

3.3 Further, as per the provisions of section 11 (1)(a)(iv) of the TRAI Act 1997 (as amended) the Authority's functions include making recommendations, either *suo motu* or on a request from the licensor, on the following:

> *"…(iv) measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services…"*

3.4 In view of the above, one may opine that there should be similar guidelines in the Cable TV sector as well, so as to regulate monopoly/market dominance by service providers.

3.5 It can be argued that because of a larger size, a MSO is able to reap the benefits of economies of scale and pass on the benefits to the customers. In practice such dominance in certain markets may lead to non-competitive practices. In such scenario, it is necessary to compare the loss in consumer welfare due to inadequate competition with the gains accrued from the economies of scale. If the consumer loss outweighs the economic benefits, regulatory measures will be necessary to maintain and promote competition. In this backdrop the question arises whether there is a need for imposing restrictions on MSOs to prevent monopolies/market dominance with an aim to ensure fair competition? In a well-functioning competitive market, where firms are competing on fair terms and there are no artificially erected barriers of entry, there is no need to impose restrictions. However, if there is little or no competition or in case where barriers

to entry exist, there is the distinct possibility of the abuse of dominance by the existing service provider(s).

3.6 As discussed in Chapter 1, TRAI sent its recommendations to MIB on Monopoly/Market dominance in the cable TV services on 26th November 2013. The Authority assessed the scenario prevailing in the cable TV distribution market at that time and observed the following:

- The size of markets catered to (across States, cities and even localities) by a MSO determines its market power and influence. One of the ways in which MSOs have tried to expand and increase their size (and influence) was by buying out LCOs and smaller MSOs. The joint venture/subsidiary model had emerged as a result of mergers and acquisitions (M&A) of LCOs/MSOs by large MSOs. The MSOs had varying levels of ownership interest in these LCOs. Typically, MSOs provided more favorable terms and financial assistance to joint venture companies and subsidiaries. By way of acquisition, joint venture or subsidiary, some MSOs had been increasing their presence and size leading to a situation of market dominance.
- There were cases where the dominant MSOs are misusing their market power to create barriers of entry for new players, providing unfair terms to other stakeholders in the value chain and distorting the competition. MSOs with significant reach (i.e., a large network and customer base) were leveraging their scale of operations to bargain with broadcasters for higher discount on content price and were also demanding higher carriage and placement fees. Such MSOs were able to exercise market power in negotiations with the LCOs on the one hand, and with the broadcasters on the other.
- Large MSOs, by virtue of better negotiating power with broadcasters and charging higher carriage and placement fee from broadcasters, were in a position to offer better revenue share to LCOs. They, therefore, could incentivize LCOs to move away from smaller MSOs and align with them. Such MSOs used their market power to provide unfavorable terms or made it difficult for the broadcasters to gain access to the distribution network for reaching the customers. There were instances where a

dominant MSO made it difficult for some broadcasters to have access to its distribution network for carrying content to consumers. Blocking content selectively also became an obstacle to promoting plurality of viewpoint.

- In a growing TV channel distribution market, if Mergers and Acquisitions (M&A) among competing MSOs were left un-regulated by the sector regulator, then there was a distinct possibility that such M&A might transform even competitive markets into monopolistic or oligopolistic market structures, where only a few firms dominate and markets become highly concentrated. In such cases, dominant MSOs might misuse their market power to create barriers of entry for new players, provide unfair terms to other stakeholders in the value chain and distort competition. Further, it might also lead to selective blocking of content and become an obstacle to promoting plurality of viewpoints.

In view of above, the Authority in its recommendations dated 26th November 2013 concluded that for facilitating competition, promoting efficiency in the operation of the TV channel distribution market and protecting the interests of consumers, the issue of monopoly/market dominance in the television distribution sector need to be addressed.

3.7 It is worth noting that as per the policy guidelines for downlinking of television channels issued by MIB, a broadcaster cannot provide its television channels directly to consumers. Any broadcaster seeking downlinking permission from MIB, must provide Satellite TV Channel signal reception decoders either to MSOs or a DTH operator or to IPTV Service Provider or to a HITS operator.

3.8 Even with the presence of other mediums of distribution, MSOs play a significant role in the television channel distribution because of its uniqueness in offering local channels. Therefore, one may opine that the issue of monopoly/market dominance in cable TV services has significance.

3.9 Because of the market structure and non-availability of multiple cable services in one area, MSOs may have control over certain areas and form monopoly. In general, high-

rise residential buildings or gated communities in urban areas are controlled by local resident welfare associations or the builders. Most of the times, these associations or builders do not allow multiple cable service providers to access the building or residential communities. In any case, the business model of cable services has evolved in such a way that most of the areas are served by a single service provider. Therefore, in many areas, LCOs enjoy market power and independently control the market.

3.10 It is worth noting that TRAI in its Recommendations on 'Delivering Broadband Quickly: What do we need to do?' dated 17th April 2015 recommended to allow cable operators to function as resellers of ISP licensees. This would enable LCOs to take advantage of their existing cable network and Broadband services, thereby enhancing their earnings. The optic fiber of LCOs can also be used to provide high speed broadband services in addition to traditional cable TV services. There can be a scenario wherein a LCO is linked to a MSO and may together abuse their dominant position. In such a scenario, consumers in that area/region will only be able to avail the services from that MSO/LCO group. Such situation may distort the market. Hence, there is a need to ensure that a wide variety of services are available to consumers through disparate service providers. Therefore, for such areas, enabling policy and regulatory measures may be necessary to promote infrastructure sharing in the last mile to safeguard the consumer interest. Infrastructure sharing will enable consumers to obtain wide range of services at affordable prices. Further, Telecom Service Providers (TSPs) can also acquire ownership of LCOs and may abuse the pre-existing dominant position in the market. In this scenario, there may be a need to review regulations/rules to oversee any distortion of market by LCOs who have market power.

3.11 The new regulatory framework (notified in March 2017 and implemented in December 2018) has, to a certain extent, curbed the tendency of MSOs to form monopolies or abuse their dominance. The framework put an end to the earlier practice of discriminatory pricing by broadcasters. Such discriminatory pricing almost always worked to the disadvantage of small MSOs. Thus, the framework has helped establish

level-playing field between large and small MSOs. The recent spurt in new registrations of MSOs (see Figure 2.2) is attributable to it.

3.12 The regulatory framework also includes the Quality of Service and Consumer Complaint Redressal mechanism. These regulations cover provisions for connection, disconnection, transfer and shifting of cable TV services. It also prescribes the procedure for billing and handling of subscribers' complaints. These provisions enable the consumers and curb discriminatory practices.

3.13 However, MIB in its reference back dated 19th February 2021 has mentioned that during the examination of the recommendations, some of the issues need further consideration by TRAI. Therefore, it is important to identify the possible scenarios of occurrence of monopoly/ market dominance and the suggested regulatory/ policy measures to curb the same.

Issues for consultation

Q 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.

Q4. 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.

Q 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.

Q6. 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.

Relevant Market for Measuring Monopoly/Market Dominance

3.14 It is essential that the market power is assessed with respect to relevant market. The relevant market means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogeneous and can be distinguished from the conditions prevailing in the neighboring areas.

3.15 The concept of relevant market is very important in competition law. Section 2(r) of the Competition Act 2002 defines relevant market:

"relevant market means the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets;"

3.16 Further, relevant geographical market has been defined under Sec. 2(s) of Competition Act 2002:

"relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring areas;"

3.17 Competition Act 2002 only provides the reference definition of relevant market without any straight-jacket definition for all cases. The Competition Commission of India determines what constitutes the relevant market distinctly for each case after due

investigation. Section 19 of the Competition Act 2002 provides the guiding principles in this regard as follows:

"(5) For determining whether a market constitutes a "relevant market" for the purposes of this Act, the Commission shall have due regard to the "relevant geographic market'' and "relevant product market".

(6) The Commission shall, while determining the "relevant geographic market", have due regard to all or any of the following factors, namely:—

(a) regulatory trade barriers;

(b) local specification requirements;

(c) national procurement policies;

(d) adequate distribution facilities;

(e) transport costs;

(f) language;

(g) consumer preferences;

(h) need for secure or regular supplies or rapid after-sales services.

(7) The Commission shall, while determining the "relevant product market", have due regard to all or any of the following factors, namely:—

(a) physical characteristics or end-use of goods;

(b) price of goods or service;

(c) consumer preferences;

(d) exclusion of in-house production;

(e) existence of specialised producers;

(f) classification of industrial products."

3.18 Considering these provisions, relevant market for the cable TV could be the entire market, i.e., the whole country or a State or a district. It may be argued that defining the whole country may not be appropriate as India is a large country with diverse cultures and socio-economic variations. Many States have a local language (e.g., Tamil, Malayalam, Kannada, Telugu, Marathi, Gujarati, Bengali, etc.). There is a strong presence of quite-a-few regional channels based on local languages. Obviously, the predominant customer base for the regional channels will be in the concerned State especially where state boundaries are according to the regional language. In such cases the demand and the supply of various channels will vary by State. Furthermore, administrative set-up and transport infrastructure tend to support common mechanism within a state. This results in businesses harmonizing their area of operations on state-to-state basis.

3.19 The purpose of defining relevant market is to measure the competition in that market. Some of the MSOs have significant presence in multiple States. While some MSOs with large scale of operations have acquired many smaller MSOs and formed Joint ventures (JV). It is pertinent to note that although these MSOs are registered as separate entities with MIB, they operate as a single entity and have the potential to dominate the cable TV market. There are other MSOs also who primarily operate in respective regional market. Such MSOs have significant market share in their area of operation.

3.20 Now, as an example, if regulations are framed taking the whole country as a relevant market, then cases where market players dominate smaller market/ states will escape scrutiny. For instance, if a restriction of say 25% of market share is applied on a national basis, the MSO and its JVs could still monopolize/dominate multiple State markets. Another important factor is the reach of cable television homes across various states. While the same is very high in some states like Tamil Nādu or Maharashtra[14], it is abysmally low is hilly/ north-eastern states. As per a BARC TV Universe Estimate 2020, TV owning households in the country represent about 2/3rd of all households. However, as per the estimates, there are 25.5 million TV homes in Maharashtra and Goa and 22.6 million TV homes in Tamil Nadu and Pondicherry while on the other hand

[14] Source: BARC- TV Universe Estimates 2020

there are only 6.8 million TV homes in Assam, Nagaland and Sikkim. Moreover, a dominant player in one state may have insignificant market share at national level. Therefore, defining pan-India as a relevant market may not serve the cause.

3.21 Alternatively, the unit for measurement of the relevant market could be either the State or the district. Setting up of independent operations at each district level may not be cost efficient for MSOs. With the spread of optical fiber network across the country, it will be easier to distribute content across the State through a centralized head end(s) in the State leading to reduced CapEx and OpEx. Centralized operations at State level will also lead to benefits of economies of scale. Therefore, MSOs in coordination with its JVs are more likely to compete at the State level than the district level. Further, in terms of language and supply of channels there may not be significant differences between individual districts and the State as a whole. The areas served by the channels which are based on the local language generally span the State. Defining the district as the relevant market requires much higher capacity for regulation/ oversight. Therefore, a pre-defined relevant market requires a balancing between the necessity of intervention and the oversight capacity of regulatory institution. Previously (2013 recommendations), the Authority considered that a State may be preferred over a district for defining the dominance in cable TV services, the State could be considered as a unit of operation.

3.22 The Authority in its Recommendations dated 26th November 2013 recommended that the State, with certain exceptions as mentioned in Table 3.1, should be considered as the relevant market for assessing monopoly/market dominance of MSOs in the TV channel distribution market.

Table 3.1: Relevant markets for TV channel distribution

Sl. No.	State/Union Territory
1	Andhra Pradesh
2	Arunachal Pradesh

3	Assam
4	Bihar
5	Chhattisgarh
6	Delhi
7	Goa
8	Gujarat, including UT of Dadra and Nagar Haveli
9	Haryana
10	Himachal Pradesh
11	UTs of Jammu and Kashmir, and Ladakh
12	Jharkhand
13	Karnataka
14	Kerala, including UT of Lakshadweep
15	Madhya Pradesh
16	Maharashtra
17	Manipur
18	Meghalaya
19	Mizoram
20	Nagaland
21	Odisha
22	Punjab, including UT of Chandigarh

23	Rajasthan
24	Sikkim
25	Tamil Nadu, including UT of Puducherry
26	Tripura
27	Uttar Pradesh
28	Uttarakhand
29	West Bengal, including UT of Andaman and Nicobar Islands

3.23 However, one may opine that this decision of TRAI to define relevant market as a 'State' amounts to defining 'relevant geographical market'. In broadcasting space, relevant market can also be 'relevant product market'. For example, Assamese channels primarily cater to Assam, whereas Hindi or English channels may cater to specific audiences across the country. Therefore, the question may arise as to whether the concept of pre-defined relevant geographic market only needs to be applied or it has to be assessed on case-to-case basis.

Issues for consultation

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

Q 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.

Q 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.

Quantifying competition

3.24 Establishing market dominance requires an assessment of relevant market and market power. However, there are several problems with establishing these parameters for any industry. Commonly the following three methods are used to assess market concentration:

a. Concentration Ratio: It compares the revenues of the top four or eight companies to the total revenues of that industry. If the top four is higher than 50% or the top eight is higher than 75% of total revenues, then concentration may be considered high. This can be also applied to cross-communication industry ownership by including all the cross-industry revenues and comparing individual conglomerates' revenue to the whole.

b. Lerner's Index: Another method to analyze market concentration is the Lerner's index, which recognizes how the industry is structured and its effect on the market power. It is defined as:

$$Lerner's\ index = \frac{p - c}{p}$$

where p is the selling price of good and c is the marginal cost required to produce that good.

c. Herfindahl-Hirschman Index: Third and the most widely used tool is the Herfindahl-Hirschman Index (HHI). It is the sum of squares of market shares (%) of all firms in the identified market. It is more definitive than Concentration ratios but can be tedious in a multiple company market in that each company's revenue needs to be accounted for and totaled for the total market revenue.

Please refer to Appendix I for more details on these three measures.

3.25 To ascertain whether a firm operating in a market is in a dominant position, metrics have to be used to measure market power. Each of the above-mentioned measures, in its own way, correlates market power with market characteristics; the characteristic varies from measure to measure.

3.26 The Authority had also noted that internationally, HHI is commonly used for measuring the level of competition or market concentration in a relevant market. HHI is calculated based on the market shares of different firms operating in the relevant market. The HHI reflects both the distribution of the market shares of the top firms and the composition of the market outside the top firms.

3.27 In view of the above, the Authority recommended that for measuring the level of competition or market concentration in a relevant market, HHI should be used. However, MIB has suggested that the applicability of other methods may be explored.

3.28 Some scholars are shifting away from the HHI and are emphasizing the need of adopting an alternative and holistic tool of measurement. Prof. Eli M. Noam expressed his reservations against the HHI and stated that HHI only considers market power and not makes allowance for pluralism. He theorized an alternative index called "Media Ownership Concentration and Diversity Index", which is an extension of the HHI only. In light of MIB's reference regarding the relevance of HHI, opinions of the stakeholders are desired on any other new/alternative tool of measurement of market concentration of an entity.

3.29 MIB in its reference back dated 19th February 2021 has asked whether HHI holds well even now as it was suggested in 2013 and also if any other index has developed since then. Accordingly, stakeholders are requested to suggest the appropriate metric for measuring the level of competition or market concentration in a relevant market.

Issue for consultation

Q 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.**

Threshold value of market share

3.30 In the earlier consultation process, the Authority also deliberated on the threshold value of market share beyond which a MSO should not be allowed to build market share, for facilitating competition and promoting efficiency in a relevant market. After receiving a wide range of comments from various stakeholders, the Authority in the recommendations dated 26th November 2013 noted that a 60–80% market share of any particular entity in a relevant market would result in a market HHI of more than 4000. Markets with such a large HHI value are considered highly concentrated and result in restricting competition in the market. The Authority also noted that a very low threshold value for market share of an individual or 'group' entity may not help in reaping the benefits of economies of scale. For ensuring that a minimum of three MSOs of comparable size operate in a relevant market, the Authority decided to restrict the building up of market share up to 50%, which corresponds to individual contribution of 2500 to market HHI, by any individual/ 'group' entity through M&A/ 'control' of an entity over many MSOs/ LCOs.

3.31 Further the market keeps evolving. The emerging trends reflect the importance of Local Network to expand broadband services. There can be cases where a large Broadband/ Telecom Service Provider acquire MSO or multiple LCOs to gain access/ control over local distribution. Such developments may cause considerable effect on proliferation of broadband services and negatively impact consumer interest.

Issue for Consultation:

Q 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.

Q 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.

Monopoly/market dominance by single entity

3.32 A single or individual entity can dominate the market all by itself through natural growth. This issue was also deliberated in the last consultation process. The Authority also noted the challenge for a MSO, which already possesses market share beyond a stipulated threshold, to ask its consumers to leave its network so as to meet the restrictions on market share. Concern was also raised that imposing a restriction on market share may hurt efficient operators, who gain market share based on better service, innovative packaging, etc. Further, consumers' choice would also be constrained if availing services of an operator is restricted on account of market share restrictions. However, the Authority noted that market dominance cannot be encouraged as it could lead to noncompetitive practices and accordingly, the Authority recommended the following:

> *"Any MSO which by itself contributes to more than 2500 HHI in a relevant market should not be permitted to merge with or acquire the 'control' of any other MSO/ LCO in that relevant market. Also, the tariff offerings, interconnect agreements, must carry provisions and quality of service of such MSO would be closely monitored by TRAI for any anti-competitive practices."*

3.33 MIB in its back reference dated 19th February 2021 has mentioned that if the groups' HHI contribution to market is more than 2500, it shall take remedial measures within 12 months from issue of guidelines to limit its control in MSOs/LCOs in such a way that HHI reduces to less than or equal to 2500 and asked TRAI to suggest modalities for implementing the same and its effects in respect of ownership. Relevant para for MIB reference back is reproduced below:

> *"(iii) TRAI has recommended that if the groups' HHI contribution to market is more than 2500, it shall take remedial measures within 12 months from issue of guidelines to limit its control in MSOs/LCOs in such a way that HHI reduces to less than or equal to 2500. ln this regard TRAI may suggest modalities for implementing the same and its effects in respect of ownership;*
> *(iv) Part (a) of the dispensation proposed in para 1.57 of TRAI recommendations states that an entity is said to control an MSO/LCO, and the business decisions thereby taken, if it owns at least twenty per cent of total share capital of that MSO/LCO. There can be scenario, where an entity has more than twenty percent stake in an MSO/LCO, yet may not control it owing to other majority shareholders. Further there can be scenario where more than one entity has stake exceeding twenty percent in an MSO/LCO. The dispensation for defining control may be clarified by TRAI in such scenarios;"*

Issues for consultation

Q 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

Basis for determination of market dominance

3.34 With respect to market dominance, it may be noted that Section 4 of the Competition Act 2002 prohibits any enterprise or group to abuse its dominant position. Dominant position has been defined in the explanation to the aforesaid section as follows: *"dominant position means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—*

(i) operate independently of competitive forces prevailing in the relevant market;
or
(ii) affect its competitors or consumers or the relevant market in its favour"

Further, Section 6 prohibits any combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India.

3.35 The Authority in the earlier consultation also deliberated on the types of restrictions to be used for determining market dominance. The Authority mainly deliberated on two criteria; (A) Area-based Restrictions; (B) Market-Based Restrictions. Under area-based restrictions, the Authority deliberated on restrictions prescribed on the geographical area served by an individual MSO. By restricting the area of operation for a MSO in the relevant market, a greater number of MSOs will be required to serve the entire market leading to a reduction in the concentration level in the market. The other method to reduce concentration was to prescribe reasonable limits on market share in the relevant market. This can be as a result a merger or acquisition. It was discussed that restrictions on accumulation of market share will ensure that multiple MSOs provide their services in the relevant market.

3.36 In previous Recommendations, the Authority had also observed that DTH services are not perfect substitutes of cable TV services. The Authority noted the certain factors that are unique to cable industry. The Authority recommended that market dominance should be determined based on market share in terms of the number of active subscribers of MSOs in the relevant market.

3.37 Further, the Authority recommended that the market dominance should be determined based on the market share in terms of number of active subscribers of MSOs in the

relevant market. As mentioned above, for measuring the level of competition or market concentration in a relevant market, it was recommended that the Herfindahl–Hirschman Index (HHI) should be used.

3.38 The emergence of broadband technology started a fresh academic debate on structural regulations of media and communications. One of the central arguments of the debate was if companies would use their monopoly power at one level of production to affect competition at some other competitive level.

3.39 As mentioned in the last chapter to derive benefit from this growth in OTT platforms, many Internet Service Providers (ISPs) across the country are bundling OTT video platforms as part of their offerings to incentivise users into subscribing to their services. The emergence of Smart TVs that enable consumers to connect to internet and other OTT platforms, besides providing access to the regular cable TV channels, are also expected to grow substantially in the future. Thus, with the convergence of technologies, broadband and telecom service providers are also tapping into the unprecedented growth of OTT services.

3.40 These operators are providing attractive pricing by bundling their services with free subscriptions of prominent OTT platforms. Further, it can be said that they are equipped to serve the preferential demands of consumers from across the country since the consumers have the facility of choosing regional channels that they wish to watch and pay for those only. However, these developments are at a nascent stage as of now but growing at a very fast pace. On the other hand, Cable TV services have the widest reach since these services are available even in the remotest corners of the country.

Issue for consultation

Q 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.

Q 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.

Q 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.

Monopoly/market dominance through M&A among MSOs/ LCOs

3.41 In the last consultation process, the Authority deliberated on the restrictions need to be framed for regulating the M&A/'control' of an entity over many MSOs/LCOs in a relevant market to address concerns of monopoly/market dominance based on market share. It was brought out that monopoly/market dominance can be an outcome of a merger amongst competing entities in the market, acquisition of 'control' over competing entities by a dominant entity, or natural growth based on services offered at lower prices, better service, innovative packaging, etc. The aspects related to the 'control' of an entity over many MSOs and formation of the 'group' through 'control' of an entity over many MSOs was also deliberated.

3.42 TRAI has noted that all merger and acquisitions are required to comply with the provisions of the Companies Act, 2013, except where separate procedure has been given under any special enactment for certain types of companies. Section 230 to Section 234 of the Competition Act 2013 provides the procedure for M&A. Section 230 provides the following procedure of holding meeting for the purpose of M&A:

"230. Power to compromise or make arrangements with creditors and members.—*(1) Where a compromise or arrangement is proposed—*

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them, the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, appointed under this Act or under the Insolvency and Bankruptcy Code, 2016 (31 of 2016), as the case may be, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Explanation.— For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

(2) The company or any other person, by whom an application is made under sub-section (1), shall disclose to the Tribunal by affidavit—

(a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;

(b) reduction of share capital of the company, if any, included in the compromise or arrangement;

(c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of the secured creditors in value, including— (i) a creditor's responsibility statement in the prescribed form; (ii) safeguards for the protection of other secured and unsecured creditors; (iii) report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board; (iv) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and (v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

(3) Where a meeting is proposed to be called in pursuance of an order of the Tribunal under subsection (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed: Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed: Provided further that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.

(4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice:

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement.

(5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India

established under sub-section (1) of section 7 of the Competition Act, 2002 (12 of 2003), if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

(6) Where, at a meeting held in pursuance of sub-section (1), majority of persons representing three fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator 1 [appointed under this act or under the Insolvency and Bankruptcy Code, 2016 (31 of 2016), as the case may be,] and the contributories of the company…"

3.43 Thus, in terms of section 230 (5) of Competition Act 2013, for any M&A, companies are required to send a notice to Central Government, CCI, RBI, SEBI and such other sectoral regulators which might be affected by the said M&A, to give their representation for the proposed M&A.

3.44 Further, Section 6 of the Competition Act 2002 prohibits any combination (subject to thresholds as prescribed) which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India, unless the prior approval of the CCI is not obtained. Section 6(1) provides that no person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void. Section 6(2) provides for the approval of the CCI to proposed M&A and reads as under:

"(2) Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, shall give notice to the Commission, in the form as may be specified, and the fee which may be

determined, by regulations, disclosing the details of the proposed combination, within thirty days of—

(a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;

(b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section."

However, what constitutes combination for the purpose of Section 6 has been defined under Section 5. Section 5 of the Competition Act 2002 reads as under:

"5. Combination.—*The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if—*

(a) any acquisition where—

(i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,—

(A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or

(ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars; or

(b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if—

(i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,—

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or

(ii) the group, to which enterprise whose control has been acquired, or is being acquired, would belong after the acquisition, jointly have or would jointly have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars; or

(c) any merger or amalgamation in which—

(i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,—

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or

(ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,—

(A) either in India, the assets of the value of more than rupees four-thousand crores or turnover more than rupees twelve thousand crores; or

(B) in India or outside India, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars…"

3.45 CCI only regulates the M&A that are beyond the threshold prescribed under Section 5 of the Competition Act 2002. However, one may opine that in case of MSOs, most of the smaller MSOs may not have turnover/ profit above such thresholds. Thus, their M&A may not be covered by the provisions of Competition Act, 2002.

3.46 There can be an opinion that once the M & A are scrutinized under the Companies Act and the Competition Act, the oversight/ intervention of sector regulator may not be warranted. However, there are instances like telecom sector and insurance sector where sector regulator/ licensor has prescribed oversight provisions. Insurance Act 1938 provides for obtaining the prior approval of IRDAI when the insurance company transfers its shares to another company (which may or may not be insurance company). This transfer of shares may be in pursuance to M&A, or any other scheme or arrangement. Section 6A(4)(b) of the Act reads as under:

"(4) A public company as aforesaid which carries on life insurance business, general and health insurance business and re-insurance business—

…..

(b) shall not register any transfer of its shares—

(i) unless, in addition to compliance being made with the provisions of section 56 of the Companies Act, 2013 (18 of 2013), the transferee furnishes a declaration in the prescribed form as to whether he proposes to hold the shares for his own benefit or as a nominee, whether jointly or severally, on behalf of others and in the latter case giving the name, occupation and address of the beneficial owner or owners, and the extent of the beneficial interest of each;

(ii) <u>where, after the transfer, the total paid-up holding of the transferee in the shares of the company is likely to exceed five per cent. of its paid-up capital unless the previous approval of the Authority has been obtained to the transfer</u>;

(iii) <u>where, the nominal value of the shares intended to be transferred by any individual, firm, group, constituents of a group, or body corporate under the same management, jointly or severally exceeds one per cent. of the paid-up equity capital of the insurer, unless the previous approval of the Authority has been obtained for the transfer</u>."

3.47 Thus, the Insurance Act 1938 itself makes special provisions for obtaining the prior approval of IRDAI whenever shares of the insurance company crossing certain specified threshold are transferred to any other company. Pursuant to above provisions, the IRDAI issued the IRDAI (Transfer of Equity Shares of Insurance Companies) Regulations, 2015 which prescribe the procedure to be followed by Indian insurance companies for obtaining the approval of the IRDAI for a transfer of shares.

3.48 It may be noted that the Authority in its Recommendations dated 26th November 2013 noted that some MSOs had been acquiring market share and scaling up their operations through M&A with other MSOs/LCOs in the relevant market. A few of them had already acquired dominant positions in various States through this route. Restrictions were required to be framed to prevent an entity from building dominant positions in the TV channel distribution market through M&A among competing entities. The Authority also noted that the World over restrictions were imposed on M&A among competing entities to facilitate competition and promote efficiency. Internationally, restrictions on M&A have been prescribed based on the HHI value of

the relevant market and the impact M&A is likely to have on the level of competition in the market. In order to address the issue of monopoly/market dominance through M&A among MSOs, the Authority in its Recommendations dated 26th November 2013 had recommended the following:

(a) Any M&A among MSO(s) or between a MSO and LCO in a relevant market shall require the prior approval of the regulator. The decision on any proposal, complete in all aspects, shall be conveyed within 90 working days.

(b) Such proposals of M&A shall be approved, provided the following two conditions are satisfied:

1. *Post-M&A the contribution of resultant entity to the market HHI does not exceed 2500, and*
2. *Depending on the value of the post-M&A market HHI, any one of the following conditions are met:*
   - *(i) either the post-M&A HHI of that market is less than 2000, or*
   - *(ii) in cases where the post-M&A market HHI is between 2000 and 3300, the proposed M&A does not result in an increase in market HHI (delta) by more than 250 points, or*
   - *(iii) in cases where the post-M&A market HHI is beyond 3300, the proposed M&A does not result in an increase in market HHI (delta) by more than 100 points.*

3.49 In view of the provisions of the Companies Act 2013 and Insurance Act 1938 mentioned above, the following measures may help in controlling any monopolistic protectives that may result as a consequence of M&A:

1) Even though Companies Act 2013 provides for giving notice to the Central Government and concerned Regulators, it is applicable only when both entities are registered companies. So, for any M&A or scheme where both MSOs are not registered companies, Central Government and TRAI may not get any notice. Therefore, one may opine that a provision may be made which mandate all MSOs to give notice to Central Government and/or TRAI before any M&A, control or other similar transactions are affected.

Further, it may be noted that DoT Guidelines 2014 already provides for such prior notice in telecom space. This would give an opportunity to Central Government/TRAI to take necessary action, if need be. If it is seen that for M&As happening under Companies Act 2013, Central Government and TRAI is not receiving notices for their representation, Central Govt. may release a notification/press release that sending of such notices to Central Govt./TRAI is mandatory by MSOs under the provisions of the Companies Act 2013. This would allow Central Govt./TRAI to put forth their stance before National Company Law Tribunal (NCLT) prior to approval of any such scheme by NCLT.

2) Provisions may also be made which mandate a new MSO to be in service for minimum number of years/months before it can become eligible for M&A. This would allow new small MSOs to continue their operations and may act as a shield against the bigger and dominant MSOs which may try to acquire the new MSO at its beginning stage itself.
3) Restrictions can be placed on MSOs to acquire shares/voting rights/control in other MSOs. So, provisions can be made that one MSO can have stake in only three/four other MSOs or it can acquire stake in two (or any other number) other MSOs in a year, except with the approval of the Central Govt./TRAI. This would also act as a shield against bigger MSOs controlling all other MSOs in a given area.
4) Provisions, if necessary, can also be made which require that no M&A can take place without prior approval if number of MSOs in defined areas would go under certain threshold (say four MSOs). This provision is to ensure that minimum number of MSOs remain in an area to prevent monopolization.
5) Provisions may be made for clarifying that there shall be no automatic merger of licence/registration unless fresh application is made to MIB. A time period for taking such approvals may also be provided. Central Govt. may deny/regulate license given to the resulting entity after such M&A.

Issues for Consultation:

Q17. 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.

Q18. 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.

Effect of M&A on Ease of Doing Business:

3.50 It is critical to ensure that any policy initiative do not create unnecessary obstacles to trade, investments, and country's reputation on 'Ease of Doing Business'. More than ever before, now there is an abundant need for a multilateral approach on policies, building a stable and predictable regulatory regime to support the Government's vision to make India emerge as the most preferred country in the present geopolitical and geo-economic context. There has been a consistent demand from large global investors, who have made significant investments in India, and are committed towards long-term business, manufacturing, employment creation for regulatory reforms, reducing the compliance burden, and building a predictable and consistent regulatory regime in India besides ensuring ease of compliance.

3.51 MIB in its back reference dated 19th February 2021 has also shown concern that whether TRAI's recommendation on M&A would affect ease of doing business. Relevant text from MIB's back reference is reproduced below:

> *"In the TRAI recommendations it has not been stated that whether TRAI's recommendation on M&A would affect ease of doing business."*

Issues for consultation

Q 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.

Monopoly/market dominance through 'control' among MSOs/LCOs

Definition of 'Control'

3.52 During the last consultation process, the Authority also deliberated on the definition of Control. It was emerged that the definition of 'control' should be expanded by harmonizing the definition of the concept across the Competition Act and SEBI's takeover regulations.

3.53 The definitions of 'control' and 'group', as given in clauses (a) and (b) of Section 5 of the Competition Act 2002, are reproduced below:

"(a) 'control' includes controlling the affairs or management by— (i) one or more enterprises, either jointly or singly, over another enterprise or group;
(ii) one or more groups, either jointly or singly, over another group or enterprise;

(b) 'group' means two or more enterprises which, directly or indirectly, are in a position to –

(i) exercise twenty-six per cent or more of the voting rights in the other enterprise; or
(ii) appoint more than fifty per cent of the members of the board of directors in the other enterprise; or
(iii) control the management or affairs of the other enterprise;"

3.54 According to Notification 481 (E) passed on 4th March 2011, the following changes were made to the above-mentioned clauses:

> *"In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002 (12 of 2003), the Central Government, in public interest, hereby exempts the 'Group' exercising less than fifty per cent of voting rights in other enterprise from the provisions of Section 5 of the said Act for a period of five years."*

3.55 In this regard, it is also worth noting the definition of 'control' in Regulation 2(1)(e) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 ('Takeover Code'), which also emphasizes on the importance of agreements between parties that could significantly contribute to control:

> *"Control includes the right to appoint the majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner."*

3.56 In addition to considering the definition of 'control' given in the Competition Act and the SEBI takeover regulations, the definitions of 'associated company', 'control', 'subsidiary' and 'relatives' as given in the Companies Act 2013 are also relevant for regulating market dominance through 'control' of the competing entities. These are reproduced below:

"(6) "associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation.—For the purposes of this clause, "significant influence" means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;"

"(*27) "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;"*

"(77) ''relative'', with reference to any person, means anyone who is related to another, if—
(i) they are members of a Hindu Undivided Family;
(ii) they are husband and wife; or
(iii) one person is related to the other in such manner as may be prescribed;"

"(87) "subsidiary company" or "subsidiary", in relation to any other company
(that is to say the holding company), means a company in which the holding company—
(i) controls the composition of the Board of Directors; or
(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.—For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) *the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;*

(c) *the expression "company" includes anybody corporate;*

(d) *"layer" in relation to a holding company means its subsidiary or subsidiaries;"*

3.57 The definition for associate could be further extended by including one aspect of the Meaning of Associated Enterprise as given in Clause 2 (c) of Section 92A in Chapter X of the Income Tax Act 1961 as follows:

> *"Two enterprises shall be deemed to be associated enterprises if a loan advanced by one enterprise to the other enterprise constitutes not less than 51% of the book value of the total assets of the other enterprise."*

This suggests that if the loan advanced by an enterprise is a substantial amount (more than half of assets), then this can amount to exercise of significant influence over the other enterprise, sufficient enough for them to be termed associated enterprises.

3.58 Keeping in view the definition of 'control' and 'group' as defined in the Competition Act, 2002, SEBI regulations, Income Tax Act 1961 and the Companies Act 2013, the Authority in 2013 had recommended that an entity is said to 'control' a MSO/LCO and the business decisions thereby taken, if the entity, directly or indirectly through associate companies, subsidiaries and/or relatives:

(a) *Owns <u>at least twenty per cent of total share capital</u> of that MSO/LCO. In case of indirect shareholding by an entity in MSO(s), extent of ownership would be calculated using the <u>multiplicative rule.</u> <u>For example, an entity who owns, say, 30% equity in Company A, which in turn owns 20% equity in Company B, then the entity's indirect holding in Company B is calculated as 30% * 20%, which is 6%.;</u> Or*

(b) *exercises de jure control by means of:*

(i) *having not less than fifty per cent of voting rights in the MSO/LCO; or*

(ii) *appointing more than fifty per cent of the members of the board of directors in the MSO/LCO; or*

(iii) *controlling the management or affairs through decision making in strategic affairs of the MSO/LCO and appointment of key managerial personnel; or*

(c) exercises de facto control by means of being a party to agreements, contracts and/or understandings, overtly or covertly drafted, whether legally binding or not, that enable the entity to control the business decisions taken in the MSO/LCO, in ways as mentioned in (b) (i) (ii) and (iii) above.

For this purpose:

(i) *The definitions of 'associated company', 'subsidiary' and 'relatives' are as given in the Companies Act 2013.*

(ii) *An 'entity' means individuals, group of individuals, companies, firms, trusts, societies and undertakings.*

3.59 Previously, the Authority also recommended the following restrictions on 'control' by an entity over many MSOs/LCOs for gaining market dominance:

(a) If an entity 'control' many MSOs/LCOs simultaneously in the relevant market, these MSOs/LCOs shall be treated as interconnected entities and shall be treated as a single 'group'.

(b) Any arrangement that results in 'control' of MSO(s)/LCO(s) in a relevant market by an entity shall require the prior approval of the regulator. The decision on any proposal, complete in all aspects, shall be conveyed within 90 working days.

(c) Such arrangements shall be approved provided the following two conditions are satisfied:

1. Post acquiring 'control' the contribution of 'group' to the market HHI does not exceed 2500, and

2. Depending on the value of the market HHI post acquiring 'control', any one of the following conditions is met:

(i) either post acquiring 'control', HHI of that market is less than 2000, or

(ii) in cases where post acquiring 'control' market HHI is between 2000 and 3300, the proposed M&A does not result in an increase in market HHI (delta) by more than 250 points, or

(iii) in cases where post acquiring 'control' market HHI is beyond 3300, the proposed M&A does not result in an increase in market HHI (delta) by more than 100 points.

For calculating the increase in HHI (delta) as a result of formation or expansion of 'group' among MSO(s)/LCO(s) in the relevant market, the difference of the market HHI pre-'control' and post-'control' shall be taken. The combined market share of MSOs of a 'group' in the relevant market would be considered for calculating the HHI.

(d) *In the cases where any group's contribution to market HHI is more than 2500 in a relevant market as on the date of issue of guidelines, such legal entity/'group' shall take necessary remedial measures, within 12 months from the date of issue of guidelines, so as to limit its 'control' in various MSO(s)/LCO(s) in such a way that the contribution to market HHI of that 'group' reduces to less than or equal to 2500.*

3.60 TRAI has observed that the definition of 'control' in the Companies Act, 2013, is the general definition applicable for all companies, whereas definition of control in SEBI regulations is similar to the definition given under the Companies Act, 2013, but it is applicable to only listed companies. Any divergence from the said definitions would create anomaly for the MSOs which are registered as companies under the Companies Act. For MSOs which are unlisted companies, they have to follow the definition of control given under the Companies Act, and for MSOs which are or which may later

become listed companies, they would be bound by the provisions of the Companies Act and SEBI regulations.

3.61 It is however important to mention that different authorities have different perspective of looking at various aspects. Therefore, any attempt of TRAI to define 'control' will not have any implication or effect on the definition of 'control' prescribed by CCI.

3.62 As mentioned earlier, in terms of MIB Guidelines for the registration of MSOs, a MSO can be an individual (proprietorship), or body/association of individuals (which can be a partnership, a registered company or a registered society). In such cases, definition of a definition providing for controlling stake, voting rights, etc., may not fit MSOs, which are proprietorship or partnership, etc. In this case, one may opine that there is a need to either give exhaustive guidelines for different kinds of MSOs or the authority may restrict the ambit of its recommendations to certain kinds of MSOs such as registered companies or partnerships, etc.

Issue for Consultation:

Q20. 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.

Q 21. Do you think that there should be different definition of 'control' for different kinds of MSOs? Do explain with proper justification.

Q 22. Should TRAI restrict the ambit of its recommendations only on certain kinds of MSOs? Do provide full justification for your answer.

Disclosure and reporting requirements

3.63 During the previous consultation process on this subject, the Authority also deliberated that what should be mandatorily disclosed by the MSO for effective monitoring and enforcing compliance of the restrictions with respect to market dominance, as well as

determining the 'control'/concentration of different entities/companies in cable TV market. The parameters which had been proposed for disclosure include equity structure, shareholding pattern, FDI, shareholders agreements, loan agreements, interest of the entity in other companies engaged in TV distribution, interest of other companies in the cable TV entity, details of board of directors and key executives, subscribers served, revenue earned and area of operation. After due deliberation, the Authority recommended that the following information shall be disclosed by the MSOs on their website:

a. *Ownership pattern including foreign investment/ joint venture details;*
b. *List of MSO(s)/LCOs, who are part of the 'group' in the relevant market;*
c. *Details of Chairman, Directors in the Board, CEO and CFO;*
d. *State-wise geographical area coverage details.*

I. *The following information shall be provided by the MSOs annually to MIB and TRAI:*
   a. *Share-holding pattern including foreign investment/ joint venture details as per instructions issued from time to time. Changes, if any, in the share-holding pattern during the reporting period, shall be reported within 30 days of such changes;*
   b. *Copy of shareholders agreements, loan agreements, contracts and/or understandings (once and subsequently for the changes);*
   c. *The details of MSO(s)/LCOs who are part of the 'group';*
   d. *Interests of the entity(ies) which controls the 'group' of MSOs/ LCOs in the relevant market;*
   e. *Details of Chairman, Directors in the Board, CEO and CFO;*
   f. *State-wise geographical area coverage details.*

II. *State-wise number of active subscribers will be provided by the MSOs to MIB and TRAI on quarterly basis.*

3.64 MIB in its back reference dated 19.02.2021 has asked TRAI about the competitive practices that would be monitored by TRAI and Government and how these should be monitored. Relevant para of the reference is reproduced below:

> *"It may be stated that what competitive practices would be monitored by TRAI and Government level and also how these will be monitored;"*

Issue for consultation

Q 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.

Q24. 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.

Restrictions on Vertical Integration:

3.65 The objective of TRAI is to ensure that the broadcast and distribution sector is free and able to provide, from a wide range of sources, factual news and information to the consumers. Ownership and control must not be allowed in any way to restrict this. Vertical integration of broadcasters with DPOs, can restrict horizontal competition.

3.66 TRAI had earlier in its recommendation on Issues related to New DTH Licenses dated 23rd July 2021[15] recommended that Broadcasters and DPOs should be separate legal entities and rationalized and regulated vertical integration may be permitted between broadcasters and DPOs. In addition, TRAI had also recommended that vertically

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[15] TRAI Recommendations are accessible at the following weblink: https://www.trai.gov.in/sites/default/files/DTH-Reco%28New-Licensing-Regime%29-uploaded.pdf

integrated broadcaster or DPO, as the case may be, shall be subjected to an additional set of regulations vis-à-vis the non-vertically integrated broadcasters and DPOs.

3.67 The issue of vertical integration may be discussed in detail by TRAI in a separate consultation paper.

Restrictions on Horizontal Integration:

3.68 As mentioned earlier also, in the TV channel distribution market, presently, the genuine competition is between the DTH and cable TV categories. In the existing DTH guidelines, restrictions have been prescribed for a licensee for not holding equity beyond the specified threshold in a cable network company (cable sector DPO) and vice versa. However, as these restrictions were placed on the companies, these were being circumvented. Similarly, in the HITS policy guidelines, restrictions have been specified for the HITS player for holding equity in a DTH company, beyond a threshold. Therefore, in order to make them effective, in letter and spirit, the restrictions should be prescribed based on entities controlling these operations. The meaning of an entity has already been defined in the definition of "control". There cannot be a common entity controlling a DTH operator and a MSO/HITS operator. However, as discussed earlier, MSO and HITS operators can have common control. Accordingly, the Authority recommended that any entity controlling a DPO or the DPO itself should not "control" any DPO of other category. However, MSOs and HITS operators can have cross-holding/"control" amongst them, subject to market share restrictions, as specified from time to time.

Issues for consultation:

Q 25. Is there a need to recommend cross-holding restrictions amongst various categories of DPOs/ service providers? Do give detailed justification supporting the comments.

Any Other Issues

Q 26. Stakeholders may also provide their comments on any other issue relevant to the present consultation.

CHAPTER 4

SUMMARY OF ISSUES FOR CONSULTATION

Q1: 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.

Q2: 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.

Q 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.

Q4. 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.

Q 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.

Q6. 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.

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

Q 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.

Q 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.

Q 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.**

Q 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.

Q 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.

Q 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

Q 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.

Q 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.

Q 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.

Q17. 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.

Q18. 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.

Q 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.

Q20. 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.

Q 21. Do you think that there should be different definition of 'control' for different kinds of MSOs? Do explain with proper justification.

Q 22. Should TRAI restrict the ambit of its recommendations only on certain kinds of MSOs? Do provide full justification for your answer.

Q 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.

Q24. 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.

Q 25. Is there a need to recommend cross-holding restrictions amongst various categories of DPOs/ service providers? Do give detailed justification supporting the comments.

Any Other Issues

Q 26. Stakeholders may also provide their comments on any other issue relevant to the present consultation.

Acronyms & Description

Acronyms	Description
BARC	Broadcast Audience Research Council
CapEx	Capital Expenditure
CCI	Competition Commission of India
DAS	Digital Addressable System
DD	Doordarshan
DoT	Department of Telecommunication
DTH	Direct to Home
FM	Frequency Modulated
FTA	Free to Air
GDP	Gross Domestic Product
HHI	Herfindahl-Hirschman Index
HITS	Headend in the sky
IPTV	Internet Protocol Television
IRDAI	Insurance Regulatory and Development Authority of India
ISP	Internet Service Provider
LCO	Local Cable Operator
M & A	Merger and Acquisition
M & E	Media and Entertainment Sector
MIB	Ministry of Information and Broadcasting
MSO	Multi-System Operator
OpEx	Operational Expenditure
RIO	Reference Interconnection Offer
SMS	Subscriber Management System
STB	Set Top Box
TACTV	Tamil Nadu Arasu Cable TV
TRAI	Telecom Regulatory Authority of India
TSP	Telecom Service Provider
TV	Television
UT	Union Territory
VoD	Video on Demand

Measures used to assess market concentration

a. Concentration Ratio:

i. It is usually represented as CR*n*. The *n* refers to the number of firms used to study the concentration. Concentration ratio is calculated by adding the market shares of the *n* largest firms in a relevant market. Four firm concentration ratio (CR4) and five-firm concentration ratio (CR5) are the two most widely used concentration ratios used in anti-trust cases. In broadcasting, there is significant variation in the number of firms considered for calculating concentration ratios, as well as what constitutes a concentrated market. The *Media and Internet Concentration in Canada Report 1984–2015* published by CMCRP, defines CR4 of more than 50% and a CR8 of more than 75% as indicators of media concentration. Netherlands's National Regulatory Authority (NRA) uses CR1, CR2, and CR3, but does not mention thresholds to establish concentrated market. According to the Group of Specialists on Media Diversity, Council of Europe, a CR3 between 0 and 35% is low concentration, a CR3 between 36 and 55% indicates moderate concentration and a CR3 above 56% reveals high concentration.

ii. Several academics have criticized the use of concentration ratio for assessing market power. A major point of criticism is that concentration ratios ignore smaller firms entirely and overestimate the effect of larger firms. Concentration ratios also fail to account for other determinants of competition — such as barriers to entry, economies of scale or scope, rapidly changing technology, or firm-specific characteristics — and over emphasize the impact of mergers and acquisitions.

b. Lerner's Index

i. Another method to analyze market concentration is the Lerner's index which recognizes how the industry is structured and its effect on market power. It is defined as:

$$Lerner's\ index = \frac{p - c}{p}$$

where *p* is the selling price of good and *c* is the marginal cost required to produce that good.

ii. There are several problems with this measure; for instance, it fails to account for demand shocks that might affect the price of good, keeping the monopoly power intact, and the marginal cost required for this index is extremely difficult to calculate. Further, Meschi, Mayal, and Mehrotra (2017) cite *complementarity, network effects, and learning curve* as factors adding inaccuracies to the index.

c. Herfindahl-Hirschman Index

i. The first significant mention of using HHI to assess market power in anti-trust cases appeared in the American Justice Department's Vertical Merger Guidelines of 1984, followed by the 1992 statement on Horizontal Merger Guidelines. HHI also finds its mention in European Commission's Merger Guidelines, Netherlands' NRA (Commissariaat voor de Media) in its yearly Mediamonitor publication, NRA of the Dutch-speaking Community of Belgium (Vlaamse Regulator voor de Media) in Media concentratie report, and the Canadian Media Concentration Research Project (CMCRP).

ii. This index was feasible for regulators since it only involved data concerning market share of firms. Despite its prevalence and popularity, it has been criticized for a number of reasons. HHI overstates the competitive impact of mergers and understates the value of fringe firms. Furthermore, measurement errors of large firms

drastically affect the HHI calculations. Like concentration ratios, HHI fails to identify nuances in the market structures, which include barriers to entry, economies of scale or scope, rapidly changing technology, or firm-specific characteristics.

International Experience on cable TV distribution

Experiences from UK, Canada, South Korea and US have been studied in respect of cable TV distribution. The provisions related to regulatory framework, distribution, competition and services offered by cable operators in these countries are discussed in subsequent paragraphs. The merger & acquisition guidelines prevailing in these countries have also been discussed.

A. UK

a. Regulatory Framework

The Office of Communications (Ofcom) is the UK's broadcasting, telecommunications and postal regulatory body[16]. The Ofcom Broadcasting Code ("the Code") covers all programmes broadcast on or after 23:00 on 31 December 2020. It is the responsibility of the broadcaster to comply with the code[17].

b. Distribution[18]

There are four major forms of digital television (DTV) broadcast in the United Kingdom: a direct-to-home satellite service from the Astra 28.2°E satellites provided by Sky UK, a cable television service provided by Virgin Media (known as Virgin TV); a free-to-air satellite service called Freesat; and a free-to-air digital terrestrial service called Freeview. In addition, an IPTV system known as BT Vision is provided by BT. Individual access methods vary throughout the country. 77% of the United Kingdom has access to HDTV via terrestrial digital television. Satellite is the only source of HDTV broadcast available for the remaining 23%.

c. Competition[19]

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[16] Source: https://www.bbc.com/aboutthebbc/governance/regulation
[17] Source: https://www.ofcom.org.uk/home
[18] Source: https://en.wikipedia.org/wiki/Digital_television_in_the_United_Kingdom
[19] Source: https://www.cable.co.uk/tv/cable-tv-deals/

Cable TV has yet to reach the levels of ubiquity in the UK that it has in the USA, although UK cable providers do have a lot to offer including over digital TV channels, HD channels plus access to a vast library of on-demand content – and all without the need for a satellite dish on the outside of your home. Currently there are only a handful of cable TV providers in the UK with their degree of availability being one of the main differences between them.

d. Services [19]

UK cable TV networks are not nearly as widespread as those in other parts of the world. Virgin Media is far and away number one amongst UK cable TV providers. Small World is a regional cable TV, broadband and phone provider which has a small fibre optic network localised to parts of south-western Scotland, the Borders, Cumbria and Lancashire. WightCable is a cable TV, broadband and phone provider with a fibre optic network that serves customers on the Isle of Wight. BT TV isn't a cable TV provider in the strictest sense of the term although all of BT Vision's on-demand content is delivered into consumers' homes via their broadband connection so this aspect is cable-related.

e. Merger and Acquisition Guidelines[20]

According to Merger Assessment Guidelines issued in September 2010 by the Competition Commission and Office of Fair Trading any market with a post-merger HHI exceeding 1,000 may be regarded as concentrated and any market with a post-merger HHI exceeding 2,000 as highly concentrated. In a concentrated market, a horizontal merger generating a delta of less than 250 is not likely to give cause for concern. In a highly concentrated market, a horizontal merger generating a delta of less than 150 is not likely to give cause for concern. These thresholds may be most informative for mergers in a market where

[20] Source: Source: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/284449/OFT1254.pdf

the product is undifferentiated and where competition between firms involves firms choosing what volume to supply to the market. In other cases the significance of these thresholds will be less.

B. Canada

a. Regulatory Framework[21]

CRTC (Canadian Radio-Television and Telecommunications Commission/Conseil de la radiodiffusion et des télécommunications canadiennes). Established by the Broadcasting Act in 1968 it is an independent agency that regulates and supervises all sectors of the Canadian broadcasting system, including AM and FM radio, television, cable, pay-TV and specialty services. The CRTC grants, amends, or renews licences, monitors the performance of licensees and establishes broadcasting regulations and policies.

b. Distribution[22]

Cable television is a technique for transmitting information to and from the home. Although it has been in Canada since 1952, in the 1990s particularly it is helping to transform Canadian broadcasting, program production and important aspects of Canadian telecommunications. Across the country, the cable TV industry provides over 200 local community channels.

c. Competition[23]

Most Canadian cities are served by only one cable company per market; in the few cities that are served by more than one cable company, each company is restricted to a specific geographical division within the market. For instance, in Hamilton, Cogeco Cable, Rogers Cable and

[21] Source: https://www.thecanadianencyclopedia.ca/en/article/crtc-emc
[22] Source: https://www.thecanadianencyclopedia.ca/en/article/cable-television
[23] Source: https://en.wikipedia.org/wiki/Media_of_Canada#Cable_television

Source Cable are all licensed operators, but each has a monopoly in a specific area of the city.

d. Services[23]

Cable companies offer digital cable packages in most Canadian cities, including a number of channels which have been licensed exclusively for digital package distribution. Digital cable also typically includes a range of audio broadcast services. In some markets, digital cable service may also include local radio stations; where this is offered, it has largely replaced the availability of cable FM service. Many cable companies also offer high speed cable Internet service.

e. Merger and Acquisition Guidelines[24]

i. The Competition Bureau ("the Bureau") has issued **Merger Enforcement Guidelines** to provide general direction on its analytical approach to merger review.

ii. The Bureau has established the following thresholds to identify and distinguish mergers that are unlikely to have anti-competitive consequences from those that require a more detailed analysis:

- The Commissioner generally will not challenge a merger on the basis of a concern related to the unilateral exercise of market power when the post-merger market share of the merged firm would be less than 35 percent.

- The Commissioner generally will not challenge a merger on the basis of a concern related to a coordinated exercise of market power when:

    - the post-merger market share accounted for by the four largest firms in the market (known as the four-firm concentration ratio or CR4) would be less than 65 percent; or

[24] Source: https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03420.html#s5_0

- the post-merger market share of the merged firm would be less than 10 percent.

iii. Mergers that give rise to market shares or concentration that exceed these thresholds are not necessarily anti-competitive. Under these circumstances, the Bureau examines various factors to determine whether such mergers would likely create, maintain or enhance market power, and thereby prevent or lessen competition substantially.

iv. When other information suggests that current market shares do not reflect the competitive role of one of the merging parties relative to its rivals, the Bureau considers this information when determining whether a merger is likely to prevent or lessen competition substantially. In all cases, examining market shares and concentration is only one part of the Bureau's analysis of competitive effects.

v. In addition to the level of market shares or concentration in the relevant market, the Bureau examines the distribution of market shares across competitors and the extent to which market shares have changed or remained the same over a significant period of time.

vi. In addition to the CR4, the Bureau may examine changes in the Herfindahl-Hirschman Index ("HHI") (calculated by summing the squares of the individual market shares of all market participants) to observe the relative change in concentration before and after a merger. While the change in HHIs may provide useful information about changes in the market structure, the Bureau does not use HHI levels to delineate any safe harbour threshold.

C. Korea

a. Regulatory Framework[25]

[25] Source: https://www.oecd.org/daf/competition/TV-and-broadcasting2013.pdf

Korea's broadcasting-related Acts, together with the Fair Trade Act, regulate the following unfair trading practices: boycotts in relation to channels and programmes, contract dealings based on restrictive conditions, unfair transaction coercion and transaction discrimination. Other regulated practices include sales bundling to sell products combining TV and internet broadcastings and telecommunication services; limitations on or suspensions or rejections of access to essential facilities for broadcasting service provisions; and changes to channel arrangements. Attempts to delay or deny profit sharing, hinder viewing of other broadcasters' channels, or obstruct service contracting with other broadcasters are also punishable through these Acts.

Both the Korea Fair Trade Commission (KFTC) and the Korea Communication Commission (KCC) have jurisdiction over overlapping unfair trading practices.

b. Distribution[25]

Korean consumers can choose from a pool of TV/broadcasting choices offered by 5-6 pay-TV service operators, including cable TV operators, satellite broadcasters and IPTV operators. Previously, when only cable system operators (SOs) provided services, the market in the country was not very competitive. However, with the launch of satellite broadcasting in 2000 and IPTV in 2008, Korean consumers are now able to benefit from a true choice in the market. Currently, in each region of the country, people can choose from the services of at least 5 to 6 different providers, including one cable TV operator, three IPTV operators, and one satellite broadcaster.

c. Competition[25]

Each broadcasting operator must receive government approval to operate. Market entry regulations may exist in some broadcasting

areas where permission is required to launch a business such as news media, home-shopping, terrestrial broadcasting, and SOs, whereas in other areas, such as the case of programme providers, no such regulations exist. Korea has been deemed to have fewer competition-restrictive aspects in its TV/broadcasting entrance regulations and in its consumers' rights to choose service.

d. Services[26]

Some providers offer various packages which include Internet and an Internet telephone. Subscription charges differ according to the package, the length of time selected for a contract and the location.

e. Merger and Acquisition Guidelines[27]

i. The Korea Fair Trade Commission ("KFTC") is the relevant merger authority that enforces the Monopoly Regulation and Fair Trade Act of Korea ("MRFTA"), which is the primary competition law in Korea.

ii. According to the MRFTA, a horizontal merger between competitors is presumed to be anticompetitive when all of the following conditions are met: (i) the combined entity has a market share of 50% or more (or the top three market players, including the combined entity, have an aggregate market share of 75% or more); (ii) the collective market share of the combined entity is the largest in the relevant market; and (iii) the market share difference between the combined entity and the second largest company is equal to or greater than 25% of the collective market share of the combined entity. If a merger is presumed to be anticompetitive because all of the conditions above are met, the relevant parties must rebut the presumption and prove that the merger will in fact not be anticompetitive. If the KFTC does not accept such an argument, the KFTC will likely prohibit the merger or impose remedies on the parties.

[26] Source: https://www.angloinfo.com/how-to/south-korea/housing/setting-up-home/television

[27] Source: https://iclg.com/practice-areas/merger-control-laws-and-regulations/korea

iii. Pursuant to the Merger Review Guidelines, a horizontal merger between competitors is presumed not to be anticompetitive in any of the following cases: (i) the Herfindahl-Hirschman Index ("HHI") of the relevant market is less than 1,200; (ii) the HHI of the relevant market is 1,200 or more and less than 2,500 and the increase in such HHI as a result of the proposed merger is less than 250; or (iii) the HHI of the relevant market is 2,500 or more and the increase in such HHI as result of the proposed merger is less than 150. If a merger falls under a "safe harbour" based on its HHI value, the KFTC is highly likely to end its review without raising any particular anticompetitive concerns.

iv. If the question of whether a contemplated merger will be anticompetitive cannot be clearly determined based on the two types of analysis noted above, then, the KFTC will review and determine whether the merger is anticompetitive based primarily on the following factors: (i) whether the combined entity can unilaterally increase prices ("Unilateral Effects"); and (ii) whether a possibility of concerted practices will increase after the closing of the merger ("Coordinated Effects").

v. The KFTC determines whether a merger is presumed to be anticompetitive under the MRFTA upon the commencement of its merger review. Such presumption of anti-competitiveness may be rebutted if, upon review of other factors, it can be proved that the contemplated merger does not give rise to Unilateral Effects and Coordinated Effects in the relevant markets.

D. UNITED STATES of AMERICA (USA)

a. Regulatory Framework[28]

i. A variety of laws and regulations for cable television exist at the state and local level. Some states, such as Massachusetts, regulate cable television on a comprehensive basis through a state commission or

[28] Source: https://www.fcc.gov/media/engineering/cable-television

advisory board established for the sole purpose of cable television regulation. In Alaska, Connecticut, Delaware, New Jersey, Rhode Island, and Vermont, the agencies are state public utility commissions. In Hawaii, regulation of cable television is the responsibility of the Department of Commerce and Consumer Affairs. In other areas of the country, cable is regulated by local governments such as a city cable commission, city council, town council, or a board of supervisors. These regulatory entities are called "local franchising authorities." In addition, most states have one or more state laws specifically applicable to cable television, dealing most commonly with such subjects as franchising, theft of service, pole attachments, rate regulation and taxation.

ii. The 1992 Cable Act codified, and the Commission has adopted, a regulatory plan allowing local and/or state authorities to select a cable franchisee and to regulate in any areas that the Commission did not preempt. Local franchising authorities have adopted laws and/or regulations in areas such as subscriber service requirements, public access requirements and franchise renewal standards. Under the 1992 Cable Act, local franchising authorities have specific responsibility for regulating the rates for basic cable service and equipment.

iii. The Communications Act requires that no new cable operator may provide service without a franchise and establishes several policies relating to franchising requirements and franchise fees. The Communications Act authorizes local franchising authorities to grant one or more franchises within their jurisdiction. However, a local franchising authority may not grant an exclusive franchise, and may not unreasonably withhold its consent for new service. Included in the grant of a franchise to a cable system are rights relating to the construction of the system, including the local franchising authority's authorization to use public rights-of-way, easements, and to establish the areas to be served. In addition, the law requires just compensation

to property owners who have suffered damages as a result of a cable operator's construction, operation, installation, or removal of its cable television facilities. Moreover, franchising authorities are required to ensure that access to cable service is not denied to any group of potential residential cable subscribers on the basis of income class. Although the Communications Act also generally precludes the regulation of cable systems as common carriers, it authorizes the Commission, to require, if it chooses, the filing of informational tariffs for intrastate communications services, other than cable service, which are provided by a cable system.

iv. Franchising authorities may charge the cable operator a fee for the right to operate a cable system in that franchise area; however, the franchise fee paid by the cable system can be no more than five percent of its annual gross revenue. A franchising authority may use the money collected from this fee for any purpose. A cable operator may list any applicable franchise fee as a separate item on the subscriber's bill.

b. Distribution[29]

Multichannel television in the United States has been available since at least 1948. The United States is served by multichannel television through cable television systems, direct-broadcast satellite providers, and various other wireline video providers. The Telecommunications Act of 1996 defines a multichannel video programming distributor (MVPD) as "a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming", where a channel is defined as a "signaling path provided by a cable television system.

[29] Source: https://en.wikipedia.org/wiki/Multichannel_television_in_the_United_States

c. Competition[30]

Many cable systems operate as *de facto* monopolies in the United States. While exclusive franchises are currently prohibited by federal law, and relatively few franchises were ever expressly exclusive, frequently only one cable company offers cable service in a given community. The rise of direct broadcast satellite systems providing the same type of programming using small satellite receivers, and of Verizon FiOS and other recent ventures by incumbent local exchange carriers such as U-verse, have also provided competition to incumbent cable television systems.

d. Services[31]

i. In the past 65 years, cable has emerged from a fledgling novelty for a handful of households to the nation's preeminent provider of digital television, movies and state-of-the-art broadband Internet service available to millions of Americans.

ii. Today, cable provides video entertainment, Internet connectivity, and digital telephone service to millions of consumers. What began over a half century ago among a few visionary pioneers has led to the creation of approximately 800 programming networks viewed by over 93% of Americans. And they provide it incredible Internet Speeds of up to 2 GBPS, with those speeds continuing to climb. Cable Operators have provided more than $275 billion in infrastructure in the last 20 years and support over 2.9 million jobs.

e. Merger and Acquisition Guidelines[32]

i. Horizontal Merger Guidelines issued by U.S. Department of Justice and the Federal Trade Commission outline the principal analytical techniques, practices, and the enforcement policy of the Department of Justice and the Federal Trade Commission (the

[30] Source: https://en.wikipedia.org/wiki/Cable_television_in_the_United_States
[31] Source: https://calcable.org/learn/history-of-cable/
[32] Source: https://www.justice.gov/sites/default/files/atr/legacy/2010/08/19/hmg-2010.pdf

"Agencies") with respect to mergers and acquisitions involving actual or potential competitors ("horizontal mergers") under the federal antitrust laws.

ii. Market concentration is often one useful indicator of likely competitive effects of a merger. In evaluating market concentration, the Agencies consider both the post-merger level of market concentration and the change in concentration resulting from a merger.

iii. The Agencies often calculate the Herfindahl-Hirschman Index ("HHI") of market concentration. The HHI is calculated by summing the squares of the individual firms' market shares, and thus gives proportionately greater weight to the larger market shares. When using the HHI, the Agencies consider both the post-merger level of the HHI and the increase in the HHI resulting from the merger. The increase in the HHI is equal to twice the product of the market shares of the merging firms.

iv. Based on their experience, the Agencies generally classify markets into three types:

- Unconcentrated Markets: HHI below 1500
- Moderately Concentrated Markets: HHI between 1500 and 2500
- Highly Concentrated Markets: HHI above 2500

v. The Agencies employ the following general standards for the relevant markets they have defined:

- Small Change in Concentration: Mergers involving an increase in the HHI of less than 100 points are unlikely to have adverse competitive effects and ordinarily require no further analysis.
- Unconcentrated Markets: Mergers resulting in unconcentrated markets are unlikely to have adverse competitive effects and ordinarily require no further analysis.

- Moderately Concentrated Markets: Mergers resulting in moderately concentrated markets that involve an increase in the HHI of more than 100 points potentially raise significant competitive concerns and often warrant scrutiny.
- Highly Concentrated Markets: Mergers resulting in highly concentrated markets that involve an increase in the HHI of between 100 points and 200 points potentially raise significant competitive concerns and often warrant scrutiny. Mergers resulting in highly concentrated markets that involve an increase in the HHI of more than 200 points will be presumed to be likely to enhance market power. The presumption may be rebutted by persuasive evidence showing that the merger is unlikely to enhance market power.

Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
Sanchar Bhawan, 20, Ashok Road, New Delhi
(AS-I Division)

No.20-281/2010-AS-I (Volume-VII) Dated: 20th February, 2014

Subject: Guidelines for Transfer/Merger of various categories of Telecommunication service licences/authorisation under Unified Licence (UL) on compromises, arrangements and amalgamation of the companies.

1. National Telecom Policy -2012 envisages one of the strategy for the telecom sector to put in place simplified Merger & Acquisition regime in telecom service sector while ensuring adequate competition. This sector has been further liberalised by allowing 100% FDI. Further, it has been decided in-principle to allow trading of spectrum. The Companies Act of 1956 has also been amended by Companies Act of 2013 and the amendments have been made in reference to compromises/arrangements and amalgamations of companies. SEBI has also prescribed procedure for IPO.

2. The scheme of compromises, arrangements and amalgamation of companies is governed by the various provisions of the Companies Act, 2013 as amended from time to time. Such schemes is to be approved by National Company Law Tribunal to be constituted under the provisions of Companies Act, 2013. Consequently, the various licences granted under section 4 of Indian Telegraph Act, 1885 to such companies need to be transferred to the resultant entity (ies). It is also noted that such schemes may comprise of merger by formation or merger by absorbtion or arrangement or amalgamation etc. of company (ies) and thereafter merging/transferring such licences/authorisation subject to the condition that the resultant entity being eligible to acquire such licence/authorisation in terms of extant guidelines issued from time to time.

3. Earlier department has issued Guidelines for intra service area Merger of Cellular Mobile Telephone Service (CMTS)/ Unified Access Services (UAS)

Licences vide Office Memo No.20-232/2004-BS-III dated 22nd April 2008. Taking into consideration the above and taking into consideration the TRAI's Recommendations dated 11.05.2010 and 03.11.2011 and National Telecom Policy 2012, in supersession of these guidelines, it has been further decided that Transfer/ Merger of various categories of Telecom services licences/ authorisation under UL shall be permitted as per the guidelines mentioned below for proper conduct of Telegraphs and Telecommunication services, thereby serving the public interest in general and consumer interest in particular: -

a) The lisensor shall be notified for any proposal for compromise, arrangements and amalgamation of companies as filed before the Tribunal or the Company Judge. Further, representation/objection, if any, by the Licensor on such scheme has to be made and informed to all concerned within 30 days of receipt of such notice.

b) A time period of one year will be allowed for transfer/merger of various licences in different service areas in such cases subsequent to the appropriate approval of such scheme by the Tribunal/Company Judge.

c) If a licensee participates in an auction and is consequently subject to a lock-in condition, then if such a licensee propose to merge/compromise/arrange/amalgamate into another licensee as per the provisions of applicable Companies Act, the lock-in period would apply in respect of new shares which would be issued in respect of the resultant company (transferee company). The substantial Equity/ Cross Holding clause shall not be applicable during this period of one year unless extended otherwise.This period can be extended by the Licensor by recording reasons in writing.

d) The merger of licenses/authorisation shall be for respective service category. As access service licence/authorisation allows provision of

internet services, the merger of ISP licence/authorisation with access services licence/authorisation shall also be permitted.

e) Consequent to transfer of assets/ licences/authorisation held by transferor (acquired) company to the transferee (acquiring) company, the licences/authorisation of transferor (acquired) company will be subsumed in the resultant entity. Consequently, the date of validity of various licences/authorisation shall be as per licenses/authorisation and will be equal to the higher of the two periods on the date of merger subject to pro-rata payments, if any, for the extended period of the licence/authorisation for that service. However, the validity period of the spectrum shall remain unchanged subsequent to such transfer of asset/licences/authorisation held by the transferor (acquired) company.

f) For any additional service or any licence area/service area, Unified Licence with respective authorisation is to be obtained.

g) Taking into consideration the spectrum cap of 50% in a band for access services, transfer/merger of licences consequent to compromise, arrangements or amalgation of companies shall be allowed where market share for access services in respective service area of the resultant entity is upto 50%. In case the merger or acquisition or amalgamation proposals results in market share in any service area(s) exceeding 50%, the resultant entity should reduce its market share to the limit of 50% within a period of one year from the date of approval of merger or acquisition or amalgamation by the competent authority. If the resultant entity fails to reduce its market share to the limit of 50% within the specified period of one year, then suitable action shall be initiated by the licensor.

h) For determining the aforesaid market share, market share of both subscriber base and Adjusted Gross Revenue (AGR) of licensee in the relevant market shall be considered. The entire access market will be the relevant market for determining the market share which will include wireline as well as wireless subscribers. Exchange Data Records (EDR) shall be

used in the calculation of wireline subscribers and Visitor Location Register (VLR) data or equivalent, in the calculation of wireless subscribers for the purpose of computing market share based on subscriber base. The reference date for taking into account EDR/VLR data of equivalent shall be 31st December or 30th June of each year depending on the date of application. The duly audited AGR shall be the basis of computing revenue based market share for operators in the relevant market. The date for duly audited AGR would be 31st March of the preceding year.

i) If a transferor (acquired) company holds a part of spectrum, which (4.4 MHz/2.5 MHz) has been assigned against the entry fee paid, the transferee (acquiring) company (i.e. resultant merged entity), at the time of merger, shall pay to the Government, the differential between the entry fee and the market determined price of spectrum from the date of approval of such arrangements by the National Company Law Tribunal/Company Judge on a pro-rata basis for the remaining period of validity of the license(s). No separate charge shall be levied for spectrum acquired through auctions conducted from year 2010 onwards. Since auction determined price of the spectrum is valid for a period of one year, thereafter, PLR at State Bank of India rates shall be added to the last auction determined price to arrive at market determined price after a period of one year. In the event of judicial intervention in respect of the demands raised for one time spectrum charges in respect of the spectrum holding beyond 4.4 MHz in GSM band/2.5 MHz in CDMA band before merger in respect of transferee (i.e. acquiring entity) company, a bank guarantee for an amount equal to the demand raised by the department for one time spectrum charge shall be submitted pending final outcome of the court case.

j) The Spectrum Usage Charge (SUC) as prescribed by the Government from time to time, on the total spectrum holding of the resultant entity shall also be payable.

k) Consequent upon the implementation of scheme of compromises, arrangements or amalgation and merger of licenses in a service area thereupon, the total spectrum held by the Resultant entity shall not exceed 25% of the total spectrum assigned for access services and 50% of the spectrum assigned in a given band, by way of auction or otherwise, in the concerned service area. The bands will be as counted for such cap in respective NIAs for auction of spectrum. In respect of 800 MHz band, the ceiling will be 10 MHz. Moreover, the relevant conditions pertaining to auction of that spectrum shall apply. In case of future auctions, the relevant conditions prescribed for such auction shall be applicable. However, in case transferor and transferee company had been allocated one block of 3G spectrum through the auction conducted for 3G/BWA spectrum in 2010, the resultant entity shall also be allowed to retain two blocks of 3G spectrum in respective service areas as a result of compromises, arrangements and amalgamation of the companies and Transfer/Merger of various categories of Telecommunication service licences/authorisation under Unified Licence (UL), being within 50% of spectrum band cap.

l) If, as a result of merger, the total spectrum held by the relevant entity is beyond the limits prescribed, the excess spectrum must be surrendered within one year of the permission being granted. The applicable Spectrum Usage Charges on the total spectrum holding of the resultant entity shall be levied for such period. If the spectrum beyond prescribed limit is not surrendered by the merged entity within one year, then, separate action in such cases, under the respective licenses / statutory provisions, may be taken by the Government for non surrender of the excess spectrum. However no refund or set off of money paid and/or payable for excess spectrum will be made.

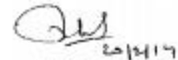
m) All demands, if any, relating to the licences of merging entities, will have to be cleared by either of the two licensees before issue of the permission for merger/ transfer of licenses/authorisation. This shall be as per demand

raised by the Government/ licensor based on the returns filed by the company notwithstanding any pending legal cases or disputes. An undertaking shall be submitted by the resultant entity to the effect that any demand raised for pre-merger period of transferor or transferee company shall be paid. However, the demands except for one time spectrum charges of transferor and transferee company, stayed by the Court of Law shall be subject to outcome of decision of such litigation. The one time spectrum charge shall be payable as per provisions in para 3(i) above of these guidelines.

n) If consequent to transfer/merger of licenses in a service area, the Resultant entity becomes a "Significant Market Power" (SMP), then the extant rules & regulations applicable to SMPs would also apply to the Resultant entity. *SMP in respect of access services is as defined in TRAI's "The Telecommunications Interconnect (Reference Interconnect Offer) Regulations, 2002 (2 of 2002)" as amended from time to time.*

4. The dispute resolution shall lie with Telecom Dispute Settlement and Appellate Tribunal as per TRAI Act 1997 as amended from time to time.

5. LICENSOR reserves the right to modify these guidelines or incorporate new guidelines considered necessary in the interest of national security, public interest and for proper conduct of telegraphs.



(R. K. Soni)
Director (AS-I)
For and on behalf of the President of India
Ph. 23036284

Annexure 1 (Chapter no. 1/Para no. 1.2)

MIB letter dated 12th December 2012

उदय कुमार वर्मा
सचिव
UDAY KUMAR VARMA
SECRETARY
Tel.: 011-23382639
Fax.: 011-23383513

भारत सरकार
सूचना और प्रसारण मंत्रालय
शास्त्री भवन, नई दिल्ली-110001
GOVERNMENT OF INDIA
MINISTRY OF INFORMATION & BROADCASTING
SHASTRI BHAWAN, NEW DELHI-110001

12.12.2012

Dear Dr. Khullar,

Multi System Operators (MSOs) and Local Cable Operators (LCOs) are required to be registered with local Post Offices to be able to operate in the permitted areas of registration. However as per recent amendments in the Cable Television Networks (Regulation) Amendment Rules 2012, it has become mandatory for MSOs to get themselves registered with the Ministry of Information and Broadcasting to operate in those areas which are notified for analogue switch off under Rule 11C of the said Rules. This provision is quoted as below:

On being satisfied that the applicant fulfils the eligibility criteria specified under rule 11B and the requirements of rule 11A, the registering authority shall, subject to the terms and conditions specified in rule 11D and the security clearance from the Central Government, issue certificate of registration.

2. There are no restrictions on the issue of accumulation of interest in terms of market share in a City, District, State or country by individual MSOs and LCOs in the Cable Sector. MSOs and LCOs are, therefore, free to operate in any area(s) of their choice after obtaining registration from the Ministry.

3. As TRAI is already aware, the accumulation of interest restrictions are applicable in case of FM Radios where no company or Group of companies can operate more than 40% of the total FM Radio channels in each city. Further, the total number of channels that a company or Group of Companies can operate cannot exceed 15% of the total number of channels allocated in the country. This stipulation was imposed to ensure equity, fair play and to restrict monopolies. This restriction also ensures that there will be adequate competition in the market and the same shall ensure diversity in content. However, no such restrictions exist for MSOs or LCOs in the extant Cable Rules.

4. It has been observed that the cable TV distribution is virtually monopolized in some States as operation of the entire cable TV network is dominated by a single entity in that State. It is felt that such monopolies may not be in the interest of consumers and may have serious implications in terms of competition, pricing and healthy growth of cable TV sector in that market. Competition is good for the consumers as it leads to better quality of service at reasonable prices. Competition also gives a choice of service provider to the consumer.

Contd. Page-2/-

5. TRAI may be aware that the Competition Commission of India has recently passed an order with regard to the monopolistic practices adopted by a Multi System Operator and three others operating in a particular State and has also imposed certain penalties.

6. In view of above, it has become necessary to examine whether there is a need to bring in certain reasonable restrictions on MSOs and LCOs including restricting their area of operation or restricting subscriber base to prevent monopoly. TRAI is, therefore, requested to provide its recommendations under Section 11(1) (a) on the following:

> "In order to ensure fair competition, improved quality of service, and equity, should any restriction be imposed on MSOs/LCOs to prevent monopolies/accumulation of interest? If yes, what restrictions should be imposed and what should be the form, nature and scope of such restrictions? Accordingly, amendments required in the Cable Television Networks (Regulation) 1995 Act and Rules framed thereunder may also be suggested."

Regards,

Yours sincerely,

Uday Kumar Varma

(Uday Kumar Varma)

Shri Rahul Khullar
Chairman
Telecom Regulatory Authority of India (TRAI)
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg (Old Minto Road)
New Delhi – 110 002.

Annexure II (Chapter no. 1/Para no.1.4)

MIB back reference letter dated 19th February 2021

No.9/115/2012-BP&L
Government of India
Ministry of Information and Broadcasting
(BP&L Division)

Shastri Bhawan, New Delhi-110001
New Delhi, the 19th February, 2021

To

Shri Sunil K Gupta
Secretary
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
New Delhi.

Subject: TRAI's recommendations on Monopoly/Market dominance in Cable TV Services-reg.

Sir,

I am directed to refer to TRAI's recommendations on "Monopoly/Market dominance in Cable TV Services" dated 26th November, 2013. In this connection, attention is also invited to TRAI's letter No.21-07/2019-B&CS dated 10.07.2020 regarding jurisdiction of TRAI and Competition Commission of India (CCI) relating to anit-competitive practices in Media and Broadcasting Sector.

2. In this regard, it is submitted that these TRAI recommendations have accordingly been considered in this Ministry. It may be noted that considerable time has passed since the recommendations were made and the media and entertainment (M&E) landscape has changed drastically, particularly with the advent of new digital technologies in this sector. Therefore, it has been felt during the examination of the recommendations, that some of the issues need further consideration by TRAI vis-à-vis the recommendations:

(i) As per the TRAI recommendations it is not clear whether these will be applicable only to MSOs or also to the LCOs;

(ii) Whether HHI holds well even now as it was suggested in 2013 and also any other index has developed since then;

(iii) TRAI has recommended that if the groups' HHI contribution to market is more than 2500, it shall take remedial measures within 12 months from issue of guidelines to limit its control in MSOs/LCOs in such a way that HHI reduces to less than or equal to 2500. In this regard TRAI may

suggest modalities for implementing the same and its effects in respect of ownership;

(iv) Part (a) of the dispensation proposed in para 1.57 of TRAI recommendations states that an entity is said to control an MSO/LCO, and the business decisions thereby taken, if it owns at least twenty per cent of total share capital of that MSO/ LCO. There can be scenario, where an entity has more than twenty percent stake in an MSO/LCO, yet may not control it owing to other majority shareholders. Further there can be scenario where more than one entity has stake exceeding twenty percent in an MSO/LCO.

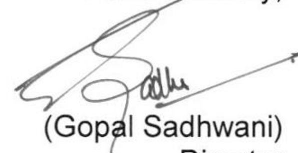
The dispensation for defining control may be clarified by TRAI in such scenarios;

(v) It may be stated that what competitive practices would be monitored by TRAI and Government level and also how these will be monitored; and

(vi) In the TRAI recommendations it has not been stated that whether TRAI's recommendation on M&A would affect ease of doing business.

3. TRAI is requested to have a fresh look on recommendation "Monopoly/Market dominance in Cable TV Services" dated 26th November, 2013 and provide a fresh set of recommendation in the matter looking at the subsequent developments/expansion in the M&E Sector.

Yours faithfully,



(Gopal Sadhwani)
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