

By E-mail

03rd September, 2013

Mr. Wasi Ahmad,
Advisor (B & CS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
New Delhi – 110002

Dear Sir,

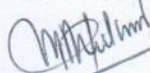
Sub: Response to Consultation Paper No. 8/2013 on "Distribution of TV Channels from Broadcasters to Platform Operators".

At the outset we wish to thank the Telecom Regulatory Authority of India (**Authority**) for issuing and inviting stakeholder comments on Consultation Paper No. 08/2013 titled "Distribution of TV Channels from Broadcasters to Platform Operators" (**Consultation Paper**).

We enclose our comments on the various key issues raised in the Consultation Paper. Should you require any clarifications / elucidations, please do let us know and we would be glad to assist.

Thanking you

Yours faithfully,



Shaji Mathews
Chief Operating Officer

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GTPL HATHWAY'S PVT LTD COMMENTS ON CONSULTATION PAPER NO. 8/2013

1. This has reference to the Consultation Paper on '**Distribution of TV Channels from Broadcasters to Platform Operators**' dated 06.08.2013 (hereinafter referred to as the Distribution Consultation) issued by the Telecom Regulatory Authority of India (TRAI) on its website (www.trai.gov.in) and asking for written comments of the stakeholders on the said Consultation Paper by 27.08.2013, which was further extended by one week i.e. 3.9.2013, which is a prelude to the recommendation to be made by TRAI.
2. **MSOs Complaints-Modus Operandi of Broadcasters/ADAs/Aggregators**
Several complaints were made by independent Multi System Operators (MSOs), who are not related to the broadcasters and LCOs, about the *modus operandi* of broadcasters through their Authorised Distribution Agencies(ADA)/Content Aggregator, who are also acting on behalf of other broadcasters and having a control over popular TV channels, forcing other distribution platforms including MSOs subscribe to certain bouquets of TV channels. As a result of the anti-competitive and monopolistic practices indulged in by ADA / Aggregators, there is urgent need to amend the present regulatory regime to address these issues. During this period, reference was also sent by the Ministry of Information and Broadcasting (MIB) for reviewing the regulatory framework in this regard.

Functions of TRAI

3. The TRAI regulatory regime has to keep pace with the developments taking place and to keep reviewing it so as to, regulate the functioning of the different players in the industry and to address the shortcomings so that there transparency about the functioning of the players in the industry, a clear cut demarcation is made between the 'broadcaster', 'aggregator' and the 'authorized distribution agency' and their respective roles in accordance with the regulatory regime so that the overall objectives are achieved and none of the players are able to circumvent the regulatory process. There is also need for transparent functioning of broadcasters and their respective aggregators and authorized distribution agencies and no overlap of their functions in order to circumvent the regulatory regime. There is also need for the different broadcasters functioning in an independent manner competing with each other and not eliminating inter-channel competition and inter-bouquet competition amongst the broadcasters by creating a new tier of distribution namely, the aggregator who not only deals with the competing channels/bouquets of different broadcasters but also offers the bouquets/channels of different broadcasters in a different configuration of bouquets consisting of channels of different and competing broadcasters in one single integrated bouquet. We wish to state that the sanctity and purity of the channels and bouquets offered by a broadcaster needs to be preserved right through the distribution chain till it reaches the ultimate consumer and the channels/bouquets of broadcaster cannot be mixed up with the channels/bouquets of another broadcaster. This amounts to making a mockery of the regulatory regime.

Advent of Content Aggregator

4. At present, the broadcaster has introduced a new tier in the distribution chain namely, the content aggregator, who deals with one or more broadcasters and controls popular channels, pollutes the sanctity and purity of the channels and bouquets by changing the composition of the bouquets of channels offered by breaking up the bouquet of channels of one broadcaster and mixing up the same with the bouquet of another broadcaster and offering the hybrid bouquet consisting of channels of competing broadcasters so that the MSO and others are forced to and coerced into accepting the hybrid bouquets thereby eliminating the competition between broadcasters and right of the MSO to individually negotiate with different broadcasters and the right to choose the channels as per its requirements.

Economic Clout of the Broadcasters/ADA/Aggregators

5. The distribution of around 73% of the total pay TV market, including High Definition TV Channels is at present controlled by a few ADA / Aggregators. The ADA / Aggregators wield substantial negotiating power, which can be, and is, often misused leading to several market distortions. Out of 223 TV Pay channels in the country, 170 are distributed by the four main and leading aggregators.. However, the draft memorandum has perhaps overlooked that **the leading aggregators are the very creation of the leading broadcasters and the other related industry players such as the national level MSOs and/or DTH service providers, who are interested in the aggregators, and owing to which certain anti-competitive practices are being witnessed in the relevant market.** This shall be dealt with later.

6. The ADA / Aggregators at present is distributing TV Channels of more than one broadcaster to the distribution platforms and hence several channels in the same genre are sold together. In the past, there was competition between the broadcasters since their respective TV Channels of different genres like Family, Sports, General Entertainment, Movies, News and Information were competing with each other on the parameters of quality and price. However, with the present practice indulged in by ADA / Aggregators of acting on behalf of more than one broadcaster the same distorts, restricts and prevents competition amongst the Broadcasters who are all distributing their competing TV Channels through a common ADA / Aggregators thereby eliminating inter-TV Channels competition at both the Broadcaster level and also at the ADA / Aggregators level.

7. The present response/comments are being filed for and behalf of GTPL Hathway Pvt Ltd (GTPL), who is a Multi-System Operator (MSO) and therefore a stakeholder and is entitled to furnish its response/comments to Consultation Paper.

Inter Broadcaster Competition in the past

8. In the past, each and every broadcaster was competing with each other of the genre of TV channels offered by them and the rates quoted. For instance, the TV channels included family drama series, music programmes, Hindi films, English films, general knowledge programmes, sports events etc. For the past

4-5 years the IPL cricket tournament was extremely popular and there was a considerable public demand for the same. The broadcaster was offering the TV channels individually or in a bouquet of channels to different distribution platforms including MSOs at the rates fixed by them and therefore competing with other broadcasters on the basis of the content and the rates. The process of negotiation between the broadcaster and the distribution platform including the MSOs was to decide amount payable. GTPL was negotiating separately with individual broadcasters and was entering into agreements with them directly.

Distribution Modes

9. There are different modes of distribution of TV channels which are as follows:
 - (i) Multi-system Operator
 - (ii) Direct to Home DTH
 - (iii) Terrestrial (Internet)
 - (iv) Internet Protocol Television
 - (v) HITS (Headends in the Sky)
10. A graphic depiction of the distribution of TV channels from the broadcaster to ADA to MSO to LCO to consumer is given below:

Broadcaster → ADA(Aggregator) → MSO → LCO → Consumer

ADA/Content Aggregator - Common Platform for Broadcasters

11. In the past, the sanctity of the TV Channels and the bouquet of TV Channels offered by a broadcaster was preserved and protected through the chain of distribution till the ultimate TV consumer. At present, the ADA is authorized to not only modify and change the bouquet of TV Channels of a single broadcaster but to include the TV channels of one broadcaster with the TV channels of another broadcaster in a bouquet offering of TV channels of multiple broadcasters to the different distribution platforms.

No Negotiation but forced by Economic & Quantity Clout of Aggregator

12. From the view point of the different distribution platforms including the MSOs, who used to in the past negotiate directly with each individual broadcaster for supply of TV channels and / or bouquet of TV Channels, the introduction of the Aggregator (not ADA) has resulted in different bouquets of multiple broadcasters being forced on the MSO, who is unable to negotiate with the Aggregator thereby eliminating competition amongst Broadcasters and ensuring that the bouquet of TV Channels of different Broadcasters have to be taken by the MSOs. In the light of the above practices indulged in by ADA and / or Aggregator, there is an urgent need to review the present regulatory framework.

TRAI REGULATORY REGIME

13. It may be mentioned that the Telecom Regulatory Authority of India by Notification dated 10.12.2004 made the Telecommunication (Broadcasting & Cable Services) Interconnection Regulation, 2004 and defined 'broadcaster' under Regulation 2(e), 'agent or intermediary' under Regulation 2(b),

'distributor' under regulation 2(j), 'multi system operator' under regulation 2(m), 'cable operator' under regulation 2(g) and 'service provider' under Regulation 2(n) of the said Regulation.

14. Regulation 3.1 of the aforesaid Regulation of 2004 prohibits the Broadcaster from engaging in any practice or activity or enter into any understanding or arrangement including exclusive contracts with any distributor of TV Channels that prevents any other distributor from obtaining such TV Channels for distribution.
15. Regulation 3.2 of the aforesaid Regulation of 2004 mandates the broadcaster to provide signals of TV channels on non-discriminatory terms to all distributors of TV Channels who shall also re-transmit on a non-discriminatory basis to cable operators.
16. It is significant to note that there is a negative mandate of prohibition on the broadcaster under Regulation 3.1 restraining them from any arrangement or understanding, including exclusive contracts, to prevent other distributors from obtaining TV channels for distribution whereas Regulation 3.2 has positive mandate to supply signals of TV channels on a non discriminate basis to distributors and subsequently to cable operators.

14

The Hon'ble Supreme Court in **Star India Pvt. Ltd. v/s Sea T.V. Network Ltd. & Another 2007-4-SCC-656** had affirmed the decision of the Hon'ble TDSAT and held that the Broadcaster providing TV signals to a distributor through an agent who is also in turn a distributor is per se discriminatory (**Para15.1**). The object of Interconnection Regulations is to eliminate monopoly (**Para15.6**).

17. It may be brought to your kind attention as to the manner in which certain broadcasters tried to circumvent the aforesaid decision of the Hon'ble Supreme Court which is final and binding under Article 141 of the Constitution of India.

16

18. That it is further pertinent to point out that Regulation 3 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 mandates that channels shall be offered by the broadcaster or its authorised distribution agent on a "non-discriminatory basis" and "in a manner which is not prejudicial to competition" and that "no broadcaster shall engage into any practice or activity or enter into understanding or arrangement, including exclusive contracts with any distributor of TV channels from obtaining such TV channels for distribution."
19. Similarly, Regulation 3 of the Telecommunication (Broadcasting and the Cable Services) (Digital Addressable Cable Television Systems) Interconnection Regulations, 2012 mandates that every broadcaster or its authorized distribution agent shall provide television channels to multi-system operators on "non-discriminatory" basis and "no broadcaster of TV channels shall engage in any practice or activity or enter into understanding or arrangement, including

exclusive contracts with any multi-system operator from obtaining such TV channels for distribution."

20. Further, regulation 3(9) of the 2012 Interconnect Regulations provides that "no multi-system operator shall enter into any understanding or arrangement with the broadcaster that may prevent any other broadcaster from obtaining access to the cable network of such multi-system operator."
21. Previously, the Broadcaster was directly distributing TV Channels to different distribution platforms. The role of ADA was defined as collection of payment in the name of the Broadcaster from different MSOs and facilitating and assisting the Broadcaster. It is significant to note that the Broadcaster was formulating the list of TV Channels / Bouquet to be offered in the market, fixing the price of the individual TV Channels and bouquet of TV Channels, negotiating directly with different MSOs and entering into Interconnection Agreements with them and was subject to Regulation by Telecom Regulatory Authority of India whereas, the ADA was not.
22. This was followed by a single Broadcaster distributing TV Channels / Bouquets through a single ADA, who was exclusively dealing with the Broadcaster and distributing the TV Channels / Bouquets to different distribution platforms.

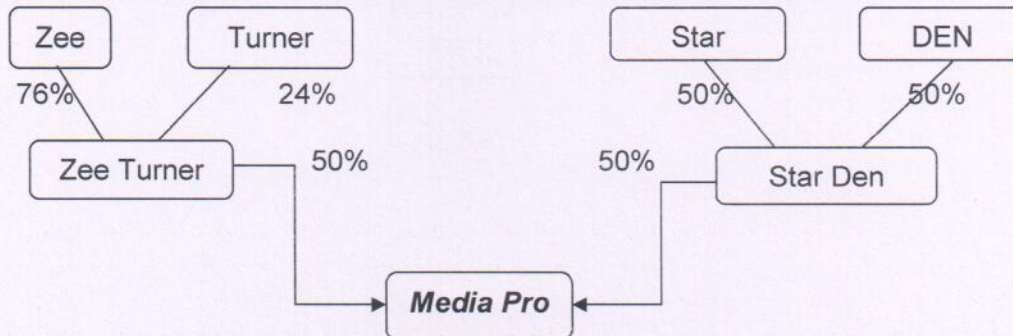
It is significant to note that in the year 2008, DEN Networks Ltd., a leading MSO in the country collaborated with Star India, a leading broadcaster, to form a 50:50 joint venture under the name of 'Star Den', for the 'exclusive distribution' of pay channels belonging to Star India and certain other broadcasters. This was clearly contrary to the aforesaid decision of the Hon'ble Supreme Court. Further, the exclusive distribution joint venture between a leading broadcaster and a leading MSO amounted to anti-competitive agreement and abuse of dominant position under the Competition Act. TV 18, Times Now were some of the other channels that were a part of Star Den.

23. It is significant to note that in the year 2002, two broadcasters namely, Zee Entertainment Enterprises Ltd and Turner International Private Limited, who were competing with each other for the English Movies genre, established a joint venture under the name of 'Zee Turner Ltd' with a stake-holding pattern of 76:24 (Zee:Turner) for the purpose of distribution of channels belonging to the Zee group and the Turner group in India, Nepal and Bhutan. The distribution joint venture between two competing broadcasters namely, Zee and Turner resulted in elimination of Competition between them **and** was also contrary to the aforesaid decision of the Hon'ble Supreme Court, which clearly provides that *although a broadcaster is free to appoint a distribution agent, such a distribution agent cannot be a competitor or a part in the network.* TCM, Boomerang, HBO Hits & HBO define are some of the channels that are part of Turner but are currently sold directly to MSOs and not through Mediapro.
24. Thereafter, in May 2011, Zee Turner Ltd. and Star Den Media Services, who were the two leading distributors in the Pay TV channel market and who should have been competing with each other, entered into a 50:50 joint

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venture to form 'Media Pro Enterprise India Pvt. Ltd.' which as on date acts as the exclusive distribution agent of about 80 pay channels belonging to the Star DEN and Zee Turner bouquets. This is blatant exercise of anti-competitive agreement and abuse of dominant position falling under the Competition Act. This was also contrary to the aforesaid decision of the Hon'ble Supreme Court in the case of Star India Vs Sea TV Network, which clearly provides that *although a broadcaster is free to appoint a distribution agent, such a distribution agent cannot be a competitor or a part in the network.*

25. To illustrate the above mentioned, a diagrammatic representation is given:-

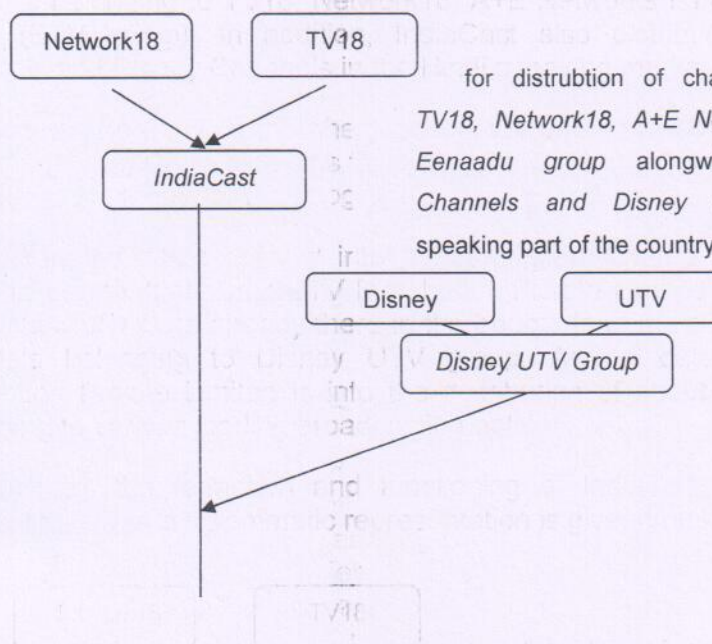


26. Further, as already stated in the draft memorandum, there are about 233 pay channels in India offered by 59 pay broadcasters. Therefore, if out of the 233 pay channels, 75 or 80 leading pay channels of different genres and belonging to three leading broadcasters viz. Zee, Star and Turner are being distributed by one common entity namely, Media Pro, it is indicative of the fact that 'Media Pro' is commanding a share of about 40% of the market and is in a 'dominant position' in the relevant market. It may be pointed out that less popular channels that are currently not a part of Media pro will also join them one by one and a situation can come when almost all channels are with a single Aggregator/ADA.
27. That the draft memorandum has already pointed out that the aggregators are accumulating more and more channels of different broadcasters and are strategically accommodating some of the 'lower demand channels' in the bouquets offered by them in order to push such channels alongwith the popular ones.
28. That in this respect it is pertinent to state that no aggregator including Media Pro has refrained itself from 'tying-in' the low demand channels alongwith the popular ones, which has left the MSOs and/or LCOs with no other alternative but to purchase the low value channels tied-in with the popular ones as otherwise the MSOs/LCOs will be denied of the popular pay channels. Further, the purchase of the popular channels on a-la-carte basis at the prevalent prices puts greater burden on the MSOs/LCOs which inevitably gets passed on to the end-consumers.
29. That the above stated practice of the aggregators such as Media Pro, is anti-competitive in nature and is in blatant violation of Section 4 of the Competition

Act, 2002 as aggregators such as Media Pro are abusing their 'dominant position' in the relevant market by inter alia imposing unfair conditions on-

- (i.) the purchase of channels by the MSOs/LCOs, by tying-up the low demand channels with the popular ones, and
- (ii.) the price at popular channels are purchased on a-la-carte basis.

30. As already indicated in the draft memorandum, the case of Media Pro is not an isolated one. Two of the leading broadcasters namely, Multi Screen Media Pvt. Ltd. (Sony Entertainment Network) and Discovery Communications formed the aggregator, 'MSM Discovery Private Ltd.' popularly referred to as 'The One Alliance', which as on date is the authorised distribution agent for about 30 pay channels including some of the most popular channels of different genres belonging to Sony, Discovery, TV Today Network (India Today Group) and Times Television Network (Bennett Colman Group).
31. Similarly, in 2012 two affiliated broadcasting entities, TV18 and Network18 (which earlier were a single entity i.e. Network18) strategically formed a joint venture, popularly referred to as 'IndiaCast' for distribution of about 26 pay channels belonging to TV18, Network18, A+E Networks I TV18 and Eenaadu group (ETV group). In addition, IndiaCast also distributes Sun Network Channels and Disney Channels in the Hindi speaking market.
32. It is pertinent to mention that the predecessor of IndiaCast was Sun18 Media Services (North) Co., which was the erstwhile alliance between Network18 and Sun Network Limited for the geographic area of north India.
33. Thereafter, IndiaCast entered into a further joint venture with Disney UTV group to create, 'IndiaCast UTV Distribution Private Limited' for distribution of channels which were already there in the bouquets of IndiaCast alongwith the channels belonging to Disney UTV group. As on date, IndiaCast UTV Distrubtion Private Limited is into the distribution of about 35 pay channels belonging to various leading broadcasting entities.
34. To illustrate, the formation and functioning of IndiaCast UTV Distribution Private Limited, a diagrammatic representation is given below:



**IndiaCast UTV Distribution
Private Limited**

for distribution of channels *already there in the bouquet of IndiaCast* alongwith the channels of *Disney UTV Group*. Total channels about 35.

35. Further, as already mentioned in the draft memorandum, there is another leading aggregator i.e. 'Sun Distributors Services Private Limited', which is the successor of Sun18 Media Services (South) Co., which as mentioned earlier was the erstwhile alliance between Network18 and Sun Network Limited for the geographic area of south India.
36. It is pertinent to point out that 'Sun Distributors Services Private Limited' belongs to the media conglomerate, Sun TV Group which is also in the business of providing DTH services under the brand Sun DTH.
37. It may be noted that the components of Media Pro itself are themselves smaller aggregators who merged to form a larger Aggregator ie. Zee with Turner forming Zee Turner & Star with an MSO DEN forming Star Den and then Zee Turner joining with Star Den to form Media Pro. The day is not far when Media pro & MSM can merge to form XYZ and then XYZ joining with Indiacast to form ABC.

Competition Act, 2002 to be considered

38. At the very outset, we wish to state and submit that the process of Distribution Consultation undertaken by TRAI cannot be viewed in isolation but has to necessarily be viewed in the background of the provisions of the Competition Act, 2002, which deals with anti-competitive agreements as set out in Section 3, abuse of dominant position as set out in Section 4 and Regulation of Combinations as set out in Section 5 of the Competition Act, 2002.

Preamble to Competition Act

39. We wish to bring to your kind attention the preamble to the Competition Act, 2002, which reads as under:

"An Act to provide, keeping in view the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on Competition, to promote and sustain Competition in market, to protect interests of consumers and to ensure freedom of trade carried on by other participants in markets in India, and for matters connected therewith and incidental thereto."

40. The preamble to the Competition Act makes it clear that the purpose of the statute is to prevent practices having an adverse effect on competition and to also promote and sustain competition in the market besides protecting

interests of consumers and ensuring freedom of trade to other participants in market.

41. The above stated practice of the broadcasters of forming cartels in the guise of 'aggregators/joint ventures' is in blatant violation of Section 3 of the Competition Act, 2002 which provides:-

"3. Anti-competitive agreements.- (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

(2) Any agreement entered into in contravention of the provisions contained in subsection (1) shall be void.

(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

(a) directly or indirectly determines purchase or sale prices;

(b) limits or controls production, supply, markets, technical development, investment or provision of services;

(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

.....
Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

.....
(4) Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

(a) tie-in arrangement;

.....
(b) exclusive distribution agreement;

.....
Explanation.—For the purposes of this sub-section,—

(a) "tie-in arrangement" includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;

.....

(b) "exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods;
....."

42. The definition of cartel is given in Section 2(c) of the Competition Act and reads as under:

"(c) **"cartel"** includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;"

43. Admittedly, the broadcasters who can be regarded as service providers have entered into an agreement amongst themselves in writing to control or attempt to control the distribution and price of their services. Some of the broadcasters have entered into an agreement with each another and sought to provide their services in an integrated manner by a common bouquet, which is patently contrary to the letter and spirit of the Competition Act, 2002. These broadcasters have agreed not to compete with each other in relation to the provision of their services, whether in a bouquet of channels or on an A-la-carte basis, not to compete on pricing of their channels and to ensure that their respective channels, which are competing with each other are forced on the distribution platform. By their arrangement, the broadcasters eliminate completely the competition amongst themselves and ensure that distribution platforms are forced to carry their channels irrespective of the quality or price of their channels and the corresponding consumer demand.

44. That a perusal of the above cited legal text will also indicate that the 'exclusive distribution agreement' between the broadcaster(s) and the aggregators are also in blatant violation of Section 3 of the Competition Act, 2002.

45. Similarly, the agreements whereby the MSOs/LCOs are compelled to purchase the low demand channels in bouquets alongwith the popular channels, are also in violation of Section 3 in view of explanation of 'tie-in arrangements' given thereunder.

46. Section 4 of the Competition Act provides that no enterprise or group shall abuse their dominant position. Section 4(2) provides that imposition of unfair or discriminatory conditions in the sale or purchase of goods or price in the purchase or sale of goods or services and indulging in practices resulting in denial of market access in any manner amounts to abuse of dominant position.

47. We are in complete agreement with the suggestions made by TRAI in this Consultation Paper to address the issues that have arisen out of the present role assumed by the content aggregators of the broadcasters including the suggestion that it is essential to amend the regulatory framework by adding

provisions that clearly demarcate the role and responsibilities that can be assigned to the broadcasters and the authorised distribution agencies for distribution of TV channels to various platform operators. At present, we have 378 entities/companies who have down linking license for 800+ channels and that before we get down to regulate distribution agent ,we need to define /redefine the role and responsibilities of a pay broadcaster in today's scenario as in real terms it is the pay broadcasters who have come together and have appointed & given the powers/authority to the intermediaries and hence the problems being faced at large.

48. The roles and responsibilities can be summarised as under:

- a. The Broadcaster (and not the authorised distribution agency/aggregator) shall publish its Reference Interconnect Offer (RIO) and enter into Interconnection Agreements with the distribution platform operators. Very clearly the ADA has no control over the content or composition of any channel and cannot be considered as holding the right to enter into agreements with Distribution platforms that have responsibility to consumers.

It is only a Broadcaster who can provide content and price it to the distribution platform. It may also be noted that there have been abuse of position by Aggregator who have in a discriminatory manner put On Screen Disruptions (OSD) with messages to consumers that are derogatory to distribution platforms who are not a part of the Broadcaster's vertical integration.

- b. The Broadcaster must ensure that ADA does not change composition of bouquet formed by the Broadcaster while providing it to the distributors of TV Channels; ADA does not bundle bouquet or channels of broadcasters with those of other broadcasters; while acting as ADA, such person acts for, on behalf of and in the name of the broadcaster.
- c. Pay Broadcaster is responsible to announce/inform rates to customer for eg: Ten Golf @ Rs 200/- pm, HBO Defined & HBO Hits @ Rs 89/- pm along with select few are other examples also.
- d. Pay Broadcaster is responsible to sign agreements with platforms both in DAS & Non-DAS. Current practices of signing negotiated amount may continue in analog mode as the restricted technology of analog gives limited options to customer and has a shelf life of only one year from now.
- e. Pay Broadcaster is responsible for bundling its own channels/products and informing the customer of the rates. One of the big advantages of announcing of rates applicable for customers will be an incentive for customer to accept/drive early DAS in phase 3 & 4 markets.

- f. Pay Broadcaster is responsible for ensuring that the customer is informed about availability of its channels on various platforms and its price to the consumers.

49. It is suggested that the definition of a 'Broadcaster' in sub-clause (f) of Clause 2 of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 be amended from a regulatory point of view to make the definition of broadcaster more precise and specific in a positive and meaningful manner and to exclude its ADA in clear and precise terms. The Authority has suggested the following definition of broadcaster:

"(f) "broadcaster" means any person including an individual, group of persons, public or private body corporate, firm or any organization or body who is providing broadcasting services."

However, it is our respectful submission that the above definition of broadcaster could include in its fold the ADA and the content aggregator and consequently, the very object of the amendment of the definition of broadcaster would be frustrated in the event of ADA/Content Aggregator seeking to be covered thereunder. The regulation of broadcaster, who has been granted Uplinking/Downlinking Permission from the Ministry of Information and Broadcasting would be frustrated if the broadcaster is permitted to circumvent the regulation and to introduce the advent of ADA/Content Aggregator in substitution of the real broadcaster.

Consequently, a more precise definition of "broadcaster" in sub-clause (f) of Clause 2 of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010, sub-clause (aaa) of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004, sub-clause (g) of Regulation 2 of the Telecommunication (Broadcasting and Cable) Services Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 and sub-clauses (iii) of Regulation 2 of the Register of Interconnect Agreements (broadcasting and Cable Services) Regulation 2004 would be substituted as under:

"broadcaster" means each person including an individual, group of persons, public or private body corporate, firm or any organization or body who has Uplinking/Downlinking Permission from the Ministry of Information and Broadcasting for its TV channel or TV channels and is alone entitled to distribute its TV channel individually or as part of a bouquet of its other TV channels to different distribution platforms including to Multi-System operator, Direct to Home DTH, Terrestrial (Internet) or Internet Protocol Television at prices or rates fixed independently and in competition to TV channels of other broadcasters."

50. It is suggested that 'Authorized Distribution Agencies' included in the definition of 'broadcaster' in sub-clause (ee) of Clause 2 of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 be excluded and removed therefrom from a regulatory point of view to make the definition of broadcaster more precise and specific in a positive and meaningful manner and to exclude its ADA in clear and precise terms. The role of the authorised distribution agency is to collect payments and do other functions to assist the broadcaster. However, the authorised distribution agency will not play any role in entering into agreements with the distribution platform operators. The following functions should be made clear so that the demarcation between the broadcaster and the ADA/Content Aggregator is maintained:

- (i) The broadcaster will directly negotiate the price for the bouquet of its channels and the a-la-carte rate for individual channels.
- (ii) The broadcaster will not permit its bouquet of channels and/or channels to be offered as part of the bouquet of channels, which includes the bouquet and / or channels of a competing broadcaster.
- (iii) The broadcaster will ensure that a realistic a-la-carte rate is quoted for individual channels to the distribution platform operators.
- (iv) The content aggregator, who is dealing with different broadcasters, must be eliminated.

51. For the distributing agency:

- a) We have suggested the role & responsibilities of the distributing agency should be in the similar lines limited to the one of an existing ADA.
- b) We have suggested that in addition to the above a clause be included that ADA has no integration in MSO business to disallow multi-level integration.
- c) ADA contracts should be submitted to the TRAI like other contracts are a must for submission to them.

52. The following needs to be achieved:

- a) That we suggest to TRAI that ' they need to define role & responsibilities' rather than saying what aggregator/distributing agent 'cannot do' . Rather our submission is on the lines that ' what they are supposed to do'. Hence define 'roles & responsibilities'. This also would be true for pay broadcaster.
- b) Bring in the much needed transparency in the supply chain so that the customer is benefitted by free & fair competition and is able to make choice
- b) by valuing content v price which is the essence of DAS. That is what we all do in our daily lives.

53. Consequently, a more precise definition of "Authorized Distribution Agencies" in sub-clause (ee) of Clause 2 of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010, sub-clause (aa) of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004, sub-clause (ff) of Regulation 2 of the Telecommunication (Broadcasting and Cable) Services Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 would be substituted as under:

"Authorized Distribution Agencies" means each person including an individual, group of persons, public or private body corporate, firm or any organization or body who by an agreement with the broadcaster is acting for and on behalf of the individual broadcaster for facilitating the collection of payment of the rates and charges for the supply of its TV channel or TV channels as part of a bouquet of its other TV channels to different distribution platforms including to Multi-System operator, Direct to Home DTH, Terrestrial (Internet) or Internet Protocol Television and for providing any other infrastructural support for which the ADA is paid a commission by the Broadcaster."

Fair Pricing of Pay Channels on a-la-carte basis

54. It is recommended that there should be delinking the pay channels of one broadcaster from that of the other broadcaster and reconstituting the whole bouquet so as to provide the pay channels of only broadcaster. That even in the case of a reconstituted bouquet where all channels belong to only one broadcaster, the broadcaster will have the leverage to club the 'lower demand channels' belonging to itself alongwith the popular ones. The MSOs/LCOs in such an event would again be compelled to purchase the lower value channels else they shall be denied of the popular pay channels of the broadcaster. This needs to be addressed by TRAI.
55. That thereby, the anti-competitive practice of 'tying-in' the lower demand channels with the popular ones shall remain prevalent even if the bouquets offered by the aggregators at present are reconstituted and bouquets having the channels of a single broadcaster are offered. Therefore, to remedy the situation it is inevitable that the offering of bouquets of pay channels is disallowed and it be made mandatory for the broadcasters to offer pay channels only on '*a-la-carte basis*'.
56. Further, in order to ensure that the broadcasters are restrained from demanding unreasonably exorbitant charges for the pay channels offered on a-la-carte basis, an '*upper ceiling limit per end-subscriber/consumer*' be prescribed as had been prescribed during the erstwhile CAS regime under Clause 6 of the Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff Order, 2006 (6 of 2006). The broadcasters be allowed to price a particular pay channel within the prescribed upper ceiling limit and, if there are two channels offered by the broadcaster belonging to the same

genre then both the channels be priced equally. For example, if a broadcaster has two channels 'A' and 'B', both belonging to the genre of General Entertainment then the price of both 'A' and 'B' has to be equal. This in turn will also curb the practice of shuffling of popular programmes by the broadcaster from its one pay channel to another.

57. Further, the fixing of an upper ceiling limit would not cause any undue prejudice to the revenue of the broadcaster as unlike some of the other countries where pay channels are advertisement-free; there is no bar in India for the broadcasters to have two parallel sources of revenue, one from the advertisers and second from the sub-scribers.
58. Further, it has been witnessed that some of the pay channels remain popular during a certain particular period of the year. However, the prices charged for such channels remains the same throughout the year.
59. For example, one of the film based channel offered by a leading broadcaster also broadcasts an annual major sporting event organized during April-May-June. This channel remains popular only during such period when the sporting event is broadcasted. However, during rest of the year its popularity remains below par. Now, because it is offered in bouquets alongwith other popular channels, the sub-scribers are compelled to continue subscribing it throughout the rest of the year as well. Though, the channel is also offered on a-la-carte basis, the a-la-carte price is such that it would be financially unviable for the sub-scriber to avail it on a-la-carte basis. Therefore, if an upper ceiling limit is prescribed on the a-la-carte price of this channel, the sub-scriber will have the flexibility to avail the subscription of the channel only for the period when the channel broadcasts the major sporting event and to pay the price accordingly.⁴⁴ That further, it is pertinent to state that although the upper ceiling limit on the a-la-carte prices of pay channels may be different for different media viz. DTH, HITS and IPTV, the price charged from one player should be the same as charged from another player in the same sphere irrespective of the size, sub-scriber base, geographic location of the player etc.
59. For example, Rs. 'X' may be charged from an MSO and Rs. 'Y' may be charged from a DTH service provider. However, Rs. 'X' will only be chargeable from another MSO and Rs. 'Y' from another DTH service provider.
60. Further, in the current scenario where digitization of the cable industry is to be implemented throughout the country by December 2014, the broadcaster will have all the pertinent information about the end-subscriber/consumer base of an MSO/LCO and the pay channels belonging to it subscribed by the end-subscribers/consumers and thereby transparency would be prevalent when the aggregate payment is made by the MSO/LCO to the broadcaster.

It may be noted here that consumer data individually for each channel is taken by a single Aggregator who then holds the information for all channels and misuses it to arm twist not only the MSOs but also the less popular broadcasters. The extra margin garnered by such Aggregators is an additional financial burden on MSOs and thereby on consumers.

60. Further, in the current scenario where digitization of the cable industry is to be implemented throughout the country by December 2014, the broadcaster will have all the pertinent information about the end-subscriber/consumer base of an MSO/LCO and the pay channels belonging to it subscribed by the end-subscribers/consumers and thereby transparency would be prevalent when the aggregate payment is made by the MSO/LCO to the broadcaster.

61. Furthermore, there should be a *'fixed revenue sharing model'* as per current das tariff order or as per market forces, where a certain percentage of the a-la-carte price paid by the end-subscriber/consumer will be shared between the broadcaster and the other players in the supply chain.
62. It is further pertinent to point out the fixation of upper ceiling limit on the price of pay channels and fixation of the revenue sharing model, shall do away with the situation where unfair and discriminatory charges could be demanded by the broadcasters from the other players in the supply chain.

Unlike the ADA, the Content Aggregators have started making packages of multi brand broadcasters, deciding the pricing of content, entering into contracts with platforms and above all abusing their power. Take all channels or sign RIO at unviable rates, Minimum guarantees, threshold limits, pay extra after threshold limits, blocking MSO from extending services beyond the area defined and thereby being the decision makers of which MSO does business in which city/area, insisting on minimum 80% viewership, misuse of technical requirements, On Screen Displays at the drop of a hat are some of methods used to make MSO succumb to their point of view. This gets compounded by the fact that there is vertical integration amongst some Broadcasters and cross holding exists leading to some players getting an undue advantage.

Hence in the overall context we are strongly in agreement with the Authority that the Content Aggregator needs to be regulated immediately.

63. In the case of Content Aggregators, there is total opaqueness and with 73% of the pay content being controlled by the top 4 aggregators they have the power to decide how the market shapes up by putting roadblocks to MSOs who wish to enter new markets in the light of digitalisation for DAS 3 & DAS 4.
64. We have witnessed that Content Aggregators have had the benefit of sprucing up revenues by unfairly using the data so procured. Assuming that the MSO had negotiated with Broadcaster A, a higher revenue but at lower RIO rate & Broadcaster B was paid a lower revenue but at higher RIO rate. Now using this information, the content Aggregator manages to arm twist on the lower declaration to Broadcaster B and increase revenues. How the increased revenue would be shared is not known.
65. The RIO rate published on websites may meet legal regulations as these Aggregators have rate cards that permit choice technically by allowing a platform to continue with the old Bouquets (prior to Aggregator formation) or to sign up for the new ones at revised terms. But we would like the Authority to check how many agreements have been made at fixed fee terms and what percentage have taken channels on A la carte basis.

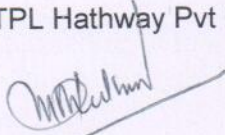
66. This is absolutely essential as one of the foremost benefits of DAS is that the consumer gets to choose their channels. They why is it that the consumer must choose most/all channels in packages. If the MSO has no choice and is forced to accept all channels, they will never be able to offer any choice to consumers and the benefits of digitalisation do not get passed on to consumers.
67. Now Content Aggregators are pushing all to sign up on a Cost Per STB (CPS) basis. So even if a consumer opts for a single channel the MSO is forced to pay the full CPS rate to the Broadcaster. To add insult to injury this CPS rate is defined in the agreement as a temporary and promotional rate. The next year with rate revision the Broadcaster will increase his revenue if the MSO is unable to pass this to consumers as now the under declaration excuse cannot be used any longer. To make matters worse, the CPS system is not transparent and not published on their website. This leads to different MSO getting preferential treatment over others who could it driven out of business over a period.
68. If CPS has to be established as a currency in a digital world, it should be transparent and volume discounts should be properly communicated to all. Also the Authority should ensure that wherever CPS/fixed fee deals have been signed, and if the agreement is split subsequently, channel wise/Broadcaster wise, then the tariff/fee should not add up to more than the tariff/fee before splitting. As per well informed sources in the industry, the Content Aggregator levy fees ranging from 15% to 25% to each Broadcaster. This is an additional expenditure that the distribution chain has to bear and pass on to consumers.
69. On a larger level, the Authority may also consider fixing the Retail tariff of Pay Channels which will spur the digitalisation effort. To do this the Authority needs to make a distinction as follows :
- a. FTA channels : channels that are free to air and may be encrypted but levy no charge to the MSO and where each subscriber pays for delivery costs only..
 - b. Subscription channels: These are encrypted channels that the Platforms needs to subscribe to and then formulate packaging and end subscriber pricing.
 - c. Pay channels: These are encrypted channels where the Broadcaster sets a uniform price across platforms and the distribution chain is provided a mutually agreed margin.

70. Launch of more & more pay channels should have brought increased competition for the benefit of the customers, but that is not the path which the broadcasters have taken. On the contrary they have chosen to introduce intermediaries to share the booty with various kinds of models suitable to them from time to time, having complete disregard for the customer.
71. In simple words, the 'PAY CHANNELS' have stopped competing with each other. 73 % of the pay channels are controlled by 3 intermediaries, a fact recognized by TRAI, thereby completely destroying the competition in the market.

If there are any clarifications required we would be happy to assist your office in providing the same.

Yours Faithfully,

For GTPL Hathway Pvt Ltd



Authorised Signatory