

**TRAI Consultation Paper on
'Distribution of TV Channels from Broadcasters to Platform Operators'**

At the outset, we welcome TRAI's initiative and timely intervention to review the present regulatory framework pertaining to the modus operandi of the authorized distribution agencies of broadcasters. We also support TRAI's views to check arm-twisting tactics and examine the negotiating power being misused by these agencies leading to market distortions and monopolistic practices. It may be of interest to the Authority that in advanced country like Germany, Aggregators have been abolished. Germany is one of the very few developed markets where even small operators have survived because of progressive nature of regulatory regime.

A. GENERAL COMMENTS

1. Most of the time, when the broadcasters are approached, they direct the seeker towards these aggregators. The hapless distributor, when he approaches these aggregators, is like an unwelcome guest at a house. Instead of treating the distributor as an affiliate or partner, he is made to wait and literally pushed to the wall till such time that the distributor agrees to all of the aggregator's demands, whether valid or not. It is essential to know that for the distributor, signing with those few aggregators is essential as they control more than 70% of popular market & without aggregator providing the content, the distributor can't distribute anything in the market. The aggregators, well aware of this fact, exploit this resource – the content. This has been explicitly brought out by TRAI also in their paper. We have been involved in several discussions for over a year with various content aggregators. Various technical and commercial discussions as well as technical audits of the NSTPL HITS platform have been conducted. A myriad of arbitrary requirements without judicial or regulatory backing, are being imposed by these aggregators for provision of content and execution of interconnect agreement. These neither form part of the Interconnect Regulations nor are included in the Broadcaster's Reference Interconnect offers nor are these a pre-requisite for signing the Interconnect Agreement. The aggregators use discriminatory tactics with the

NSTPL's comments on Consultation Paper :

"Distribution of TV Channels from Broadcasters to Platform Operators" Page 1 of 15

distributors justifying the same under the garb of 'requirement' for delaying provision of content.

2. The aggregators in the garb of technical audit raise such demands that are much beyond the regulations issued by TRAI. Even the BECIL certification done is not accepted clearly showing their disregard to statute & regulations.

By forcing such incongruous demands on the distribution partners the aggregators who should generally act as a front man of one aggregator push bouquets consisting of channels from other broadcasters & force even unpopular channels on the distributor. These aggregators are also broadcasters as well as distributors (as MSO's & DTH) & are trying to gain maximum market share and is one of the reasons by them for delaying content to others.

When the Aggregators or their principals are required to provide content on non-discriminating basis as per clause 3.2 of The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004" (13 of 2004) , principals should be asked to declare that their dealings with related party, i.e. any MSO/ DTH provider in which their principals have stake, have been given content at such rates that are within 20% of RIO rates. 20% variance should be allowed for volume / long term business relationship and other discounts etc. This in our view is a vital and indispensable requirement for ensuring level playing field and to ensure fair competition in the market dominated by Broadcaster cum distributor (MSO/DTH) cum aggregator .

3. In today's DAS Broadcasting environment wherein the relevant statutes have either been already implemented or will be implemented in near future, these ought to be the primary, basic and principal regulation governing all operating platforms like multi system operators, DTH, IPTV, HITS etc.. **All these platforms, being primarily digital, could be addressed by single DAS regulation.**

NSTPL's comments on Consultation Paper :

"Distribution of TV Channels from Broadcasters to Platform Operators" Page 2 of 15

In our case, some of the specific technical requirements being demanded by the Aggregators are beyond the Schedule I of DAS regulations. An instance is referred to below where the dates on which the requirements were raised are indicated in brackets:

AGGREGATOR	TECHNICAL REQUIREMENTS (Not part of ScheduleI/ScheduleIV)				
<i>MEDIA PRO</i>	GEO FENCING of footprint (29 April 2013)	GPS Tagging of Headend (29 April 2013)	Covert Fingerprinting (29 April 2013)	Pairing of Transmodulator & STB (29 April 2013)	
<i>SUN DISTRIBUTION NETWORK</i>	GEO FENCING of footprint (8 Aug 2013)		Covert Fingerprinting (8 Aug 2013)		Reboot STB from Headend (8 Aug 2013)
<i>IC MEDIA</i>	GEO FENCING of footprint (29 July 2013)	GPS Tagging of Headend (29 July 2013)	Covert Fingerprinting (29 July 2013)	Pairing of Transmodulator & STB (29 July 2013)	
<i>MSMD</i>	GEO FENCING of footprint (4 May 2013)		Covert Fingerprinting (4 May 2013)	Pairing of Transmodulator & STB (4 May 2013)	

NSTPL's comments on Consultation Paper :

BECIL's observations on the above requirements are as under:

GEO FENCING of footprint	GPS Tagging of Headend	Covert Fingerprinting	Pairing of Transmodulator & STB
<p>TRAI regulation fully met, no regulation on geo fencing even in DTH cases, Primary uplink by Broadcasters also reaches beyond domestic borders. Encryption and authorised decryption is deployed.</p>	<p>Issue not raised with BECIL</p>	<p>Overt fingerprinting available</p>	<p>Issue is part of geo fencing. This issue not raised with BECIL and are not required as per regulations.</p>

B. COMMENTS ON THE PRECARIOUS STATUS OF THE CONTENT AGGREGATOR IN THE BROADCASTING SECTOR

It is submitted that the term “content aggregator” is not defined anywhere in the TRAI Act or the Regulations framed thereunder. However the Hon’ble TDSAT has interpreted a content aggregator to be an agent of the broadcaster, thereby having the same responsibilities as those of a broadcaster.

1. Furthermore, the 2004 Interconnect Regulations, in clause 3.4 specifically require an agent to act in consonance with the obligations in the Regulations and in a manner not prejudicial to competition. This obligation on agents/broadcasters does not find a mention in the 2012 DAS Regulations. In fact the said Regulations do not even contemplate an agent or a content aggregator as playing any role in the broadcasting services distribution market.

NSTPL's comments on Consultation Paper :

“Distribution of TV Channels from Broadcasters to Platform Operators” Page 4 of 15

2. As has been astutely observed by the TRAI in the Consultation Paper, it appears that the content aggregators have been using the loopholes in the present regulatory framework to manipulate market conditions.
3. These content aggregators are firstly not the actual licensed broadcasters and secondly not principal players either, yet manage to enjoy substantial negotiating and bargaining power with distribution platforms to provide signals/content. For instance:
 - a. There have been instances currently under litigation before the Hon'ble TDSAT, where content aggregators have attempted to use the terms of their agreements with the broadcasters to impose unreasonable terms/delay/deny TV channel signals to distributors who are third parties to the said agreements.
 - b. More disturbingly, as has also been observed by the TRAI, since there is currently no restriction in cross media ownership as such in the broadcasting sector, there is rampant vertical integration between broadcasters, content aggregators and certain distributors. This vertical integration has led to the content aggregators engaging in anti-competitive behavior by imposing unreasonable terms/delaying/ denying signals to distributors who would be in direct competition with distributors who have a stake in the content aggregators.
 - c. It is submitted that the whole rationale for having content aggregators is to make the negotiation process easier for a distributor such that instead of approaching each individual broadcaster for obtaining the signals of their 800 plus channels, the distributor could approach one content aggregator in order to obtain the signals of a sizeable chunk of the TV channels. However as has been noted by TRAI, the content aggregators, instead of making the negotiation process easier for the distributor, engage in either dilatory tactics by imposing irrelevant stipulations to provide the TV channels signals or engage in anti-competitive/discriminatory behavior by insisting on supplying channels bundled together in bouquets.
4. Therefore, it is submitted that while NSTPL welcomes the amendments proposed by TRAI, there are certain other concerns that the TRAI has not considered in its consultation paper, such as:

NSTPL's comments on Consultation Paper :

- i. Content Aggregator being non-principal, non-licensed players in the broadcasting market should be prohibited.
- ii. Furthermore content aggregators should not be vertically integrated with either broadcasters or distributors so as to ensure that there is no anti-competitive conduct in the sector.

Specific comments to the proposed amendments follow hereinafter.

C. SPECIFIC COMMENTS ON THE PROPOSED AMENDMENTS TO THE CONSULATION PAPER

Sir, we appreciate the efforts being put up by the Authority to regulate this sector. However, some serious anomalies do remain.

While we understand that revision of The Cable Television Network (Regulation) Act 1995 and Cable Television Networks Rules 1994 is an activity which is to be done by the Licensor, still the Licensor will require TRAI's recommendation for the same. We therefore, request TRAI to also suggest changes to the Licensor in The Cable Television Network (Regulation) Act 1995 and The Cable Television Networks Rules 1994 to bring proper perspective wherein the onus lies on Licensor. To our understanding, a non-licensed entity cannot indulge in activities granted to a licensee if the same is not provided in the License. TV Broadcasting is a licensed activity under The Cable Television Network (Regulation) Act 1995 and Cable Television Networks Rules 1994, and uplink / downlink guidelines. There is no mention in uplink / downlink guidelines of such entities as agents of broadcasters. Therefore, the Hon'ble authority may consider our suggestions for changes in these ACTS & RULES, as suggested below.

Similarly there is a need to make suitable changes in HIYTS guidelines. Para 3 of Annexure to guidelines issued on 26th Nov, 2009 states "*Headend in the sky (HITS) Broadcasting Service, refers to multichannel downlinking & distribution of TV programs in C & Ku band, wherein all the pay channels are downlinked at a central facility (Hub/Teleport) & are uplinked to satellite after encryption of channels. At the cable headend these encrypted pay channels are downlinked using a single satellite antenna, transmodulated and sent to*"

In order for these guidelines to be in line with DAS environment, the guidelines in this para need to be reworded as;

NSTPL's comments on Consultation Paper :

"Distribution of TV Channels from Broadcasters to Platform Operators" Page 6 of 15

“Headend in the sky (HITS) Broadcasting Service, refers to multichannel downlinking & distribution of TV programs in C & Ku band, wherein all the pay-channels are downlinked at a central facility (Hub/Teleport) & are uplinked to satellite after encryption of channels. At the cable headend these encrypted pay channels are downlinked using a single satellite antenna, transmodulated and sent to”

I. Issues not considered in Consultation paper

In order to give complete meaning to the amendments as suggested in the Consultation Paper herein, certain amendments to The Cable Television Network (Regulation) Act 1995 and Cable Television Networks Rules 1994 will be required.

- 1. The definition of **‘Broadcaster’** as defined in the Clause 2 sub-clause (a)ii) of the amending **The Cable Television Network (Regulation) Act 1995** needs to be amendment to remove the words **‘and includes his or its authorized distribution agencies’**.

The amended definition of **the Cable Television Network Regulation Amendment Act Clause 2** will read as follows:

“2.....

(a)ii) "Broadcaster" means a person or a group of persons, or body corporate, or any organisation or body providing programming services;”

- 2. Similarly, the definition of **“Broadcaster”** will be required to be amended in **Rule 2** of the **Cable TV Network Rules 1994**. The definition will read as follows:

“2. Definitions

.....

(a)iii) "Broadcaster" means any person including an individual, group of persons, public or body corporate, firm or any organisation or body who or which is providing programming services;”

NSTPL’s comments on Consultation Paper :

3. The definition of **“Broadcaster”** in **“The Standards of Quality of Service (Broadcasting and Cable Services) (Cable Television – CAS Areas) Regulation, 2006”** will require amendment to the following effect:

“2. Definitions

.....

(e) “Broadcaster” means any person including an individual, group of persons, public or body corporate, firm or any organisation or body who or which is providing programming services;”

4. The definition of **“Broadcaster”** in **“The Standards of Quality of Service (Digital Addressable Cable TV Systems) Regulations, 2012 (12 of 2012)”** will require amendment to the following effect:

“2. Definitions

.....

(f) “broadcaster” means a person or a group of persons or body corporate, or any organisation or body providing programming services;”

5. Further, in **all the relevant Acts, regulations etc. and also the regulations wherein the amendments have been proposed in the Consultation Paper** where “Multi System Operator” is mentioned, an amendment is required to replace **“Multi System Operator”** with **“Authorised Distributor of Television Channels”**. The following definition will be required to be **inserted** as follows:

“

“Authorised Distributor of Television Channels” means any person including an individual, group of persons, public or private body corporate, firm or any organisation or body retransmitting TV channels through electromagnetic waves through cable or through space intended to be received by general public directly or indirectly and such person may include, but is not limited

NSTPL’s comments on Consultation Paper :

to, a cable operator, direct to home operator, multi system operator, head end in the sky operator and a service provider offering Internet Protocol television service;”

II. Our specific comments on the drafts as per the Consultation paper are below for your kind consideration.

1. Draft of “The Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (Third Amendment) Order, 2013”

NSTPL’s Response:

1.1 All the suggested changes are acceptable to us. In addition, we suggest the following correction :

1.2 Clause 2 of the Draft of Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 (1 of 2010), reads as follows:

*“In clause 2 of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (Third Amendment) Order, 2013 hereinafter referred to as the principal Tariff Order),-----
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For sub-clause (f), the following sub-clause shall be substituted, namely:---

“(f) “broadcaster” means any person including an individual, group of persons, public or private body corporate, firm or any organisation or body who or which is providing broadcasting services;”

NSTPL’s comments on Consultation Paper :

“Distribution of TV Channels from Broadcasters to Platform Operators” Page 9 of 15

This requires to be corrected to read as follows :

“In clause 3 of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (Third Amendment) Order, 2013 hereinafter referred to as the principal Tariff Order),-----

For sub-clause (f), the following sub-clause shall be substituted, namely:---

“(f) “broadcaster” means any person including an individual, group of persons, public or private body corporate, firm or any organisation or body who or which is providing broadcasting services;”

2. Draft of “The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Tenth Amendment) Order, 2013

NSTPL’s Response:

2.1 All the suggested changes are acceptable to us. In addition we suggest the following :

2.2 Definition of “*Authorised Distributor of Television Channels*” to be inserted in **The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 (6 of 2004)**” as follows:

“Authorised Distributor of Television Channels means any person including an individual, group of persons, public or private body corporate, firm or any organisation or body retransmitting TV channels through electromagnetic waves through cable or through space intended to be received by general public directly or indirectly and such person may include, but is not limited to, a cable operator direct to home operator, multi system operator, head end in the sky operator and a service provider offering Internet Protocol television service;”

And

2.3 Definition of “head end in the sky operator” or “HITS operator” to be inserted in **The Telecommunication**

NSTPL’s comments on Consultation Paper :

“Distribution of TV Channels from Broadcasters to Platform Operators” Page 10 of 15

(Broadcasting and Cable) Services (Second) Tariff Order 2004 (6 of 2004)” as follows:

“head end in the sky operator” means any person permitted by the Central Government to -----

(a) distribute multi channel TV programmes in C band or Ku band -----

(i) by using a satellite system, to intermediaries like cable operators and not directly to subscribers; and

(ii) by using its own cable network, if any, to the subscribers of such cable network through Quadrature Amplitude Modulation (QAM) set top boxes, after first down linking the signals at its terrestrial receiving station; and

(b) provide passive infrastructure facilities like transponder space on satellite, earth station facilities, etc. to one or more multi system operators or to any consortium of multi system operators or cable operators, for distribution of multi channel TV programmes, in C band or Ku band through QAM set top boxes, using such infrastructure facilities;

3. Draft of “The Telecommunication (Broadcasting and Cable) Interconnection (Seventh Amendment) Regulations, 2013

NSTPL’s Response:

3.1 All the suggested changes are acceptable to us. In addition we suggest the following :

3.2 The Clauses 3.3 and 3.4 of the Telecommunication (Broadcasting and Cable) Interconnection Regulation, 2004 (13 of 2004) will require **to be completely deleted.**

NSTPL’s comments on Consultation Paper :

“Distribution of TV Channels from Broadcasters to Platform Operators” Page 11 of 15

4. Draft of “The Telecommunication (Broadcasting and Cable) Interconnection (Digital Addressable Cable Television Systems) (Second Amendment) Regulations, 2013

NSTPL’s Response:

4.1 **All the suggested changes are acceptable to us.** In addition we suggest the following :

4.1 Clause 2 sub-clause (c) needs to be **inserted** in this draft to read as follows :

“(2) Every broadcaster shall ensure that the authorized distribution agent appointed by it under sub-regulation (1) shall----

(a) not publish Reference Interconnection Offer by itself or on the behalf of the broadcaster; and

(b) not enter into interconnection agreement with the distributor of TV channels.

(c) shall not enter into discussions on behalf of more than one broadcaster with distributors of television channels.”

4.2 Definitions in Clause 2 sub-clause (q) of the **Telecommunication (Broadcasting and Cable) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 No. 9 of 2012** should read :

“ (q) distributor of TV channels” means any person including an individual, group of persons, public or body corporate, firm or any organization or body re-transmitting TV channels through electromagnetic waves through cable or through space intended to be received by general public directly or indirectly and such person may include, but is not limited to, a cable operator direct to home operator, multi system operator, head end in the sky operator and a service provider offering Internet Protocol television service;”

NSTPL’s comments on Consultation Paper :

“Distribution of TV Channels from Broadcasters to Platform Operators” Page 12 of 15

4.3 Reference to “Head end in the sky (HITS) operator is made obliquely in the **Telecommunication (Broadcasting and Cable) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012**. Since HITS operator has to reach end subscriber through MSO/Cable operator & is fully covered by DAS regulation we suggest that a sub-clause clearly and unambiguously defining “head end in the sky operator” in Clause (2) of the **Telecommunication (Broadcasting and Cable) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012** is required to be **inserted** to read as follows:

“head end in the sky operator” or “HITS operator” means any person permitted by the Central Government to -----

(a) distribute multi channel TV programmes in C band or Ku band -----

(i) by using a satellite system, to intermediaries like cable operators and not directly to subscribers; and

(ii) by using its own cable network, if any, to the subscribers of such cable network through Quadrature Amplitude Modulation (QAM) set top boxes, after first downlinking the signals at its terrestrial receiving station; and

(b) provide passive infrastructure facilities like transponder space on satellite, earth station facilities, etc. to one or more multi system operators or to any consortium of multi system operators or cable operators, for distribution of multi channel TV programmes, in C band or Ku band through QAM set top boxes, using such infrastructure facilities;”

4.4 The words “Authorized Agent” should be deleted from the Clauses 3(3) of the **Telecommunication (Broadcasting and Cable) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012** to read as follows :

“3. General Provisions relating to interconnection -
.....

NSTPL’s comments on Consultation Paper :

(3) Every broadcaster shall provide the signals of TV channels to a multi system operator, in accordance with its reference interconnect offer or as may be mutually agreed, within sixty days from the date of receipt of the request and in case the request for providing signals of TV Channels is not agreed to, the reasons for such refusal to provide signals shall be conveyed to the person making a request within sixty days from the date of request.”

5 Draft of “The Register of Interconnect Agreements (Broadcasting and Cable Services) (Fifth Amendment) Regulations, 2013

NSTPL’s Response:

- 5.1 **All the suggested changes are acceptable to us.** In addition we suggest the following :
- 5.2 Definition of “*head end in the sky operator*” in Clause (2) of the "**The Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004**". **(15 of 2004)** is required to be inserted to read as follows:

“2. Definitions

.....

“head end in the sky operator” or “HITS operator” means any person permitted by the Central Government to -----

(a) distribute multi channel TV programmes in C band or Ku band -----

(i) by using a satellite system, to intermediaries like cable operators and not directly to subscribers; and

(ii) by using its own cable network, if any, to the subscribers of such cable network through Quadrature Amplitude Modulation (QAM) set top boxes, after first downlinking the signals at its terrestrial receiving station; and

NSTPL’s comments on Consultation Paper :

(b) provide passive infrastructure facilities like transponder space on satellite, earth station facilities, etc. to one or more multi system operators or to any consortium of multi system operators or cable operators, for distribution of multi channel TV programmes, in C band or Ku band through QAM set top boxes, using such infrastructure facilities;”

NSTPL's comments on Consultation Paper :

“Distribution of TV Channels from Broadcasters to Platform Operators” Page 15 of 15