Comments of Reliance Big Broadcasting Private Limited on Consultation Paper on Monopoly/Market dominance in Cable TV services

1. The Telecom Regulatory Authority of India has issued Consultation Paper on Monopoly / Market dominance in cable TV Services to frame its recommendations on placing limits on Cable Operators/MSOs including restricting their area of operation or restricting subscriber base to prevent monopolization of the Cable TV services.

2. Reliance Big Broadcasting Private Limited(Reliance) welcomes the opportunity extended to comment on this important issue. Reliance fully agrees that Cable Operators and MSOs have monopolized the Cable TV sector and abusing their dominance in the market to unfairly impede the free flow of TV channels to the public. Niche and smaller broadcasters are finding it extremely difficult if not impossible to gain carriage on any major cable networks. We have noticed year-after-year that MSOs/Cable Operators only favour affiliatiated or popular channels. As a result the same set of broadcasters completely dominates the TV market.

3. The anti competition behavior of demanding carriage fee or placement fee or putting onerous conditions on broadcasters not only impacts programming diversity but also seriously undermines the consumer’s choice and their interest. Reliance believes that unethical and unreasonable demands of carriage fee must be addressed so that anti consumer and anti competition practices do not persist in the sector.

4. With the exception of large broadcast TV channels, whose transmission rights give them guaranteed access, smaller and niche TV channels are faced with a simple take it or leave it proposition. These small and niche broadcasters acquiesce to the MSO’s demands in order to gain carriage on their networks or else starve in the market.

5. Even the Authority has noted in the Consultation Paper that abuse of dominance is common and quoted a case wherein Competition Commission of India (CCI) investigated anti competition practice and imposed penalties of Rs. 8.04 Crore on the MSOs for violating the provisions of sections 4(2)(c) of the Competition Act 2002. This clause states that if an enterprise or a group indulges in a practice or practices resulting in denial of market access in any manner shall be considered as abuse of dominance.

6. The MSO's/Cable operators ability to control smaller and niche broadcaster's access to the consumer is increasing as they are growing. Once Cable Operator/ MSO become large, the refusal to carry TV channels, or the imposition of onerous conditions of carriage and placement on smaller broadcasters is increasing which undermine the ability of the broadcaster to succeed.

7. The Authority has correctly noted that there are innumerable instances where the dominant MSOs have misused 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 are leveraging their scale of operations to bargain with broadcasters for content at a lower price and also demand higher carriage and placement fees. Such MSOs are in a position to exercise market power in negotiations with the LCOs on the one hand, and with the broadcasters on the other.

8. It may also be noted that competition between MSOs/cable operators is almost nonexistent. Although there are large numbers of operators but generally only one cable company serves in an area. Thus there is established case of abuse of dominance by MSOs. The anticompetitive behavior which has potential to harm consumers and other stakeholders like broadcasters must be curbed.

9. Reliance does not support breaking monopolies based on subscriber base or revenue as that would not truly address the issue of dominance as larger operations bring in efficiency of scale and economy and therefore also in consumer's interest.

10. Reliance submits that anti competition and issue of abuse of dominance must be addressed by checking anti competiton practices. Reliance suggests following restrictions be imposed on cable Operators/MSOs:

    i. The question of any carriage fee, by whatsoever name called, being payable to an MSO must not arise and this is even more so with the advent of digital technology. Carriage fee may be payable only for the limited period until digitalization is complete in a given area ; and once digitalization is complete, no carriage fee shall be chargeable at any time, at all.

    ii. The mandate for MSOs to upgrade to a head-end capacity of at least 500 channels must be enforced regardless of the city, town or area of operation. The limited capacity with MSOs deprive the consumers of real choice everywhere in the country and in fact defeats the very fundamental purpose of Digitalization, which is now mandated under the law.

iii. No placement fee, by whatever name called, should be payable especially due to the effective roll-out of digitalization. Digitization in fact does not support placement of channels and considering that the mandate of law is genre wise placement, there is no place for placing channels.

The above mentioned conditions should be part of the Cable TV Networks(Regulation) Act, 1990, as well as TRAI's interconnection Regulations.