Times Network's Comments on

Consultation Paper

on

Market Structure / Competition in Cable TV Services

Issued by Telecom Regulatory Authority of India

On

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TIMES NETWORK'S RESPONSE TO THE TRAI CONSULTATION PAPER ON "MARKET STRUCTURE/COMPETITION IN CABLE TV SERVICES" ISSUED ON 25 OCTOBER 2021

We are of the view that any entity doing business in India should enjoy equal rights and privileges as much as its peers, without any restrictions and curbs on ownership and/ or market concentration. However, we say the above with the keeping in mind that the plurality of mediums, choice to consumer and ample competition at the last mile should always remain paramount.

The cable TV distribution ecosystem includes the distribution intermediaries, viz. Multi System Operator ("MSO") and Local Cable Operator ("LCO"). The MSOs primarily downlink the content that comes in the form of linear satellite channels and transmits these channels using their own or LCOs digital cable distribution platforms to the end users/ subscribers. Throughout India, total cable & satellite homes serviced constitutes about 50% of all TV viewing homes in the country. The distribution intermediaries or the platform owners are important as they bridge the gap between channels and the viewers. Generally, intermediaries have an interest in delivering what their users demand — a wide range of 'relevant' content.

In India, 90% of the cable homes have only one cable operator providing cable services in their area.

The present issue envisaged in the present Consultation Paper on 'Monopoly/Market Dominance in Cable TV Services' ("CP"), therefore, has a significant and demonstrable bearing on the cable TV distribution in India the real challenge is the monopoly of 'last mile distribution ownership'

We are giving herein below our issue wise submissions:

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.

Yes, it cannot be said that there are lack of choices with the consumer for availing television services. The DTH services are available all across the country even in the remotest and difficult terrains. Hence, if a consumer has an option to switch from Cable to DTH television service. But, having said that it may be said that DTH services are not truly comparable with Cable Services for various reasons.

In addition to the DTH, there are options in terms of HITS and IPTV services, however in HITS the last mile connectivity is provided by the cable operator and for IPTV there are other issues such as the reach and availability apart from pricing.

The regulatory framework 2017 has placed all the television service platforms on the same footing with respect to aspects like Maximum Retail Price (MRP), Distribution fee, network capacity of Distribution Platform Operator (DPO) etc.

While there is sufficient competition in the cable TV and the DTH segments, however, the HITS and IPTV services are still way behind .

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.

Yes, we agree that there is a need to regulate the issue of monopoly/oligopoly/market dominance in the Cable TV Services.

As suggested by us in our response to TRAI CP dated 03 June, 2013 on 'Monopoly/Market dominance in Cable TV Services', we are of the view that following measures can be considered relevant to address the said issue:

1. Check on Vertical & Horizontal Integration: Vertical Integration is wherein certain broadcasters have significant holdings either directly or indirectly, in the downstream distribution entities like aggregators, DTH, MSOs, etc.

   Though, the stipulations relating to shareholdings of broadcasters in the DTH sector are existing, however, no such stipulations find mention with respect to MSOs and LCOs. There a need to recommend cross-holding restrictions amongst various categories of DPOs/ service providers.

   Presently, with a number of regulations and statutes in place, the mode and manner of carrying content on television is mostly streamlined. However, it is felt that strict rules and regulations relating to Vertical Integration need to be effectively put in place to safeguard and ensure transparency and fair play amongst players and to ensure that there exists no opportunity for vertically integrated groups to treat other constituents including consumers in an unfair manner using the advantage they hold in the segment.

Any direct or indirect ownership, whatsoever, of broadcasters in cable distributor network, or vice versa should be scrutinized by the regulator for misuse of market dominance and should also be brought in the public domain by way of mandatory disclosures.

Similarly, there should be express provisions barring an MSO to exercise its control over the operations of another MSO in the same relevant market and the Authority should prescribe strict measures against 'Horizontal Integration' between MSOs in the same relevant market.

2. 'Three MSO/ LCO Rule': As suggested in our earlier response of 2013 also, at any given time there must be minimum three MSOs operating in any relevant market and same number of last mile operators operating in sub-area of the relevant market, this would ensure that there is no last mile monopoly and subscriber would have choice of service providers. Further, atleast 70% of a relevant market should be concurrently catered to by all three last mile operators to edge any possibility of dominance and concentration in the subareas in a relevant market with mutual understanding amongst the MSOs operating in that market. We further recommend that the Authority also consider the possibility of the homes having a choice of more than one MSO service in the same area. As MSO in any local area uses the services of multiple LCOs to serve homes in that area, this option in the hands of the consumer to have more than one MSO service will ensure that there is no dominance of a single MSO in any local area and also ensure a fair market for all constituents to operate, thereby serving the consumer in the best and effective manner.

Regulating monopoly/market dominance/competition in Cable Services

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.

TRAI has prescribed the regulatory framework for "must provide", however, there is no effective "must carry" provisions and the cable operators still have wide discretion in carriage of channels, its placements, its packaging, non-carriage of channels due to “non-availability of frequency” etc. thereby negating to a large extent “”must carry” provision.

There are instances of many cable operators operating in tandem to create monopoly in television distribution business. TRAI should have a dedicated cell to check such practices.

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.

In our opinion, there are no entry barriers in the Indian cable television sector. The entities wishing to enter into the business are required to go through a simple license procedure and then the license is granted to enter into the business. There are no entry barriers in terms of regulatory provisions. However, there are other business considerations which may act as entry barriers, for example – in a well-connected area which is already being serviced by a cable operator, another entity may not like to invest in that area in terms of creating parallel infrastructure as acquisition of customers will be challenging and the business may not be viable.

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.

The LCOs are already required to register themselves with the concerned post office of the area they fall. This should be online on a common portal where the data of all LCOs is maintained centrally and MIB and TRAI to have access to the data. The need is to have an effective mechanism to ensure the compliance to the existing regulatory provisions. This itself will ensure fair play and protect consumer interests. The real challenge is the non-compliance of the extant regulatory provisions in its letter and spirit and the ability of the Authority to check on the violations effectively.

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.

There is a provision that to offer broadband services, the entity should have ISP license. Since the large telecom operators have already established their infrastructure in most of the areas, there is enough competition in broadband services with as many as 3-4 options available with the consumers atleast in major cities and towns. Hence, the question of market control in broadband services may not arise. The LCOs already connect their network with other ISP to provide last mile connectivity to their customers for not only the cable services but also the broadband services. Hence, regulatory intervention may not be required.

Relevant Market for Measuring Monopoly/Market Dominance

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.

As recommended by us in our earlier response of 2013, we are of the opinion that the 'State' should not be the relevant market for measuring market power in the cable TV sector for the reason that all areas in a State doesn't hold the same commercial & financial value for the MSOs. Where in a metro city falling under a state may ensure multiple revenue sources for the MSO, like subscription, carriage, ad-sales, better infrastructure, high consumer paying capacity, trained technicians, easier access to information and technology, etc., in the other non-metro cities of the same state, the MSO may be dependent mainly on subscription revenue only.

The market power should be measured by market share of cable operators/ DPOs in cities and towns classified on the basis of their commercial value. Based upon the commercial value of the relevant markets, in the descending order, broad categories of cities and towns/ relevant markets can be classified as under:

a) Metros- Delhi, Mumbai, Kolkata & Chennai;

b) 1 million plus towns & State Capitals [other than Metro cities];
c) District headquarters;
d) Semi Urban Areas;
e) Rural Areas; and
f) Far Flung & Remotely Accessed Areas.

Further, the Authority has rightly pointed out that 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) and 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. The same holds true for some regional MSOs also. Thus, we agree that an MSO and its Joint Ventures (JV) should be treated as a single entity, while considering their strength in the relevant market.

Joining of network of platforms owned by different MSOs may be one of the threshold which may be considered to define an MSO and its JV as a single entity.

<u>Quantifying competition</u>

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 be considered as a single entity for calculating their HHI? Do provide supporting data with proper justification for your response.

Yes, we think that HHI is appropriate to measure market concentration of MSOs in the relevant market and that the MSO and its JVs should be considered as a single entity for calculating their HHI. Further, we are agreeable to the idea of imposing restrictions on the basis of the threshold values of HHI to such entities taken together.

<u>Threshold value of market share</u>

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.

In our opinion the recommended threshold HHI value of 2500 does not needs revision as the same is at par with the globally accepted threshold values.

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.

The competition at LCOs level at district / town basis is not required to be done and only monitoring and required actions may be taken against specific instances of abuse of position or non-compliance of the regulations.

Monopoly/market dominance by single entity

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.

The Authority in its Recommendations on Monopoly/ Market dominance in cable TV services dated 26 November 2013 recommended that:

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.

Any MSO who 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.

The MSO/ Group may undertake the process of corporate restructuring like alter its equity pattern, debt-servicing schedule, equity holdings, and cross-holding pattern to regulate and bring the market share/HHI below the threshold level.

Basis for determination of market dominance

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.

The DTH services are not perfect substitute of cable television services. Infact, both services have their advantages as well as shortcomings. The DTH platform operators in view of the nature of service are not allowed to offer other services such as broadband, voice or data whereas the cable operators can provide such services by meeting additional conditions. The cable services are able to provide the relevant content for their areas of operations whereas the DTH content will be same for all subscribers in the country. In addition, Cable services are less prone to weather disturbances compared with DTH services whereas the DTH services reach most parts of the country even in secluded and difficult terrains.

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.

As mentioned in response to Q7, Q8 & Q9, we reiterate here that based upon the commercial value, in the descending order, broad categories of the relevant markets can be classified as under for all DPOs:

a) Metros- Delhi, Mumbai, Kolkata & Chennai;
b) 1 million plus towns & State Capitals [other than Metro cities];
c) District headquarters;
d) Semi Urban Areas;
e) Rural Areas; and
f) Far Flung & Remotely Accessed Areas.

We agree that the active subscriber base of JVs may also be considered while determining the market dominance of the MSOs. The JVs generally have the same management control and policies and hence can develop monopolistic tendencies and behaviours if not regulated or checked.

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.

The technological developments are in their initial stage and are evolving. This is too early to suggest which technology will ultimately be widely used or favoured by consumers for consuming the content. Hence, the new technological developments should not be taken into account for determining market dominance else they may become entangled in regulatory requirements which may hamper their growth prospects.

<u>Monopoly/market dominance through M&A among MSOs/ LCOs</u>

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.

We agree with the imposing of restrictions on the basis of the threshold values of HHI, as prescribed in TRAI's recommendations of 2013 however as stated in our earlier response of 2013, we feel that these values should be time tested and the Authority or any competent authority also should take up the cases of M&A and/ or exercise of control resulting in potential of abuse of market for regulatory scrutiny and restrictions, as and when reported.

<u>Effect of M&A on Ease of Doing Business:</u>

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.

In any business, mergers and acquisitions is the norm and this is not a new phenomenon. Hence, M&A activities should be permitted in the cable distribution business as well and this sector should not be denied the benefit of ease of doing business. Having said that there should be adequate measures to check that monopoly or oligopoly is not creating which can ultimately harm the interest of the entire broadcasting industry as well as the consumers.

<u>Monopoly/market dominance through 'control' among MSOs/LCOs</u>

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.

We agree with the definition of 'control' as provided in the Authority's recommendations of 2013. However, we also wish to add that this definition should, time and again, be revisited to let the same be in consonance with the definitions prescribed under the Competition Act & the prevailing SEBI Takeover Regulations.

<u>Disclosure and reporting requirements</u>

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.

We agree with the disclosure and monitoring requirements mentioned in the Authority's recommendations of 2013, to monitor the TV distribution market effectively from the perspective of monopoly/market dominance

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.

The dominant position and monopoly power in relevant market can result in form of a cable operator acquiring control of market through mergers and acquisitions. However, with MRP regime and the regulations on protection of consumers, the consumer interest will be largely protected.

Restrictions on Vertical & Horizontal Integration:

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.

Please refer to our response to Q2.

Any Other Issues

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

No Comments
