WITHOUT PREJUDICE

Date: 03/09/2013

To

Mr. Wasi Ahmad

Advisor, B&CS

Telecom Regulatory Authority Of India

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Dear Sir

Sub:Consultation Paper on "Distribution of TV Channels from Broadcasters to Platform Operators" ("Draft Regulations")

Re: Star India's Submissions to the aforesaid

At the outset, we cannot but help express our deep anguish and heart felt distress at both the timing and content of the draft regulations.

The industry and the TRAI have common aspirational goals namely - balanced and orderly development, inclusive growth and effective competition in the broadcasting sector. We at Star have always been a firm believer that the Industry should be working closely with the Regulator on policy issues to tap the full potential of the sector and unlock the dividends that would resultantly accrue to the entire nation.

It is therefore imperative that the Industry and the TRAI draw upon their respective reservoirs of strength and mutually cooperate to script an enabling policy framework that would serve as a roadmap to encourage investments, spur employment, raise living standards and reduce disparities. In these times when technology out paces ground rules and thereby compels corporates to rapidly alter business models, it is all the more necessary that underpinning regulations - facilitate more than restrict, incentivize rather than discourage, inspire more than delude and liberate instead of protect.

Our considered views are given herein as Annexure A alongwith Annexure B and C; Trust the same shall be found useful by your kindself.

We earnestly request the Authority to kindly consider our submissions in the intended spirit of cooperation and information sharing. We also request that our submissions be read in the light of present day ground realities on both the economic and business fronts.

Kindly revert for any clarification.

Yours Truly

For

Star India Private Limited,

SD/- Pulak Bagchi

Senior Vice President – Legal and Regulatory

Encl:

Annexure A

Annexure B

Annexure C

ANNEXURE A

I N D E X

I. **INTRODUCTION**:

We have been completely taken by surprise by the Authority's unilateral and unsubstantiated assertions that[1]:

" 3. ………… As on date, the distribution business of around 73% of the total pay TV market, including high definition (HD) TV channels, is controlled by a few authorised distribution agencies. These channels include almost all the popular pay TV channels. ***These authorised distribution agencies wield substantial negotiating power which can be, and is, often misused leading to several market distortions.***

4. ***The current regulatory stipulation for broadcasters and their authorized agencies and the current role and activities of authorised distribution agencies, prompts the need to review the present regulatory framework. While this was under examination, the Ministry of Information and Broadcasting (MIB) also sent a reference to TRAI stating that there have been several complaints from Multi system operators (MSOs) about the modus operandi of such entities, e.g. it has been highlighted that MSOs are forced to subscribe to certain packages. Concerns have been vehemently voiced by various MSOs and LCOs regarding the monopolistic practices of such major authorised distribution agencies of broadcasters, in view of their control over a large number of popular channels****.*

5. To address the issues that have arisen out of the present role assumed by the authorised distribution agencies of the broadcasters, ***it is essential to amend the regulatory framework by adding provisions that clearly demarcate the role and responsibilities that can be assigned by the broadcasters to their authorized its Reference Interconnect Offer (RIO) and enter into Interconnection Agreements with the distribution platform operators."***

II. **NO ENQUIRY OR ANALYSIS BY TRAI:**

It is submitted that there is not even a jot of data, much less an analysis that could have served as a basis for such sweeping assertions made by the Authority. The TRAI has not even adduced an iota of evidence to support its broad brush allegations against content aggregators. The entire paper appears to have been put together in a hurry at the behest of some disgruntled Multi

[1]P 1 of 25 of Draft Regulations

System Operators who in order to stall and stonewall the mandate of digitalization have been fighting shy of entering into transparent deals and instead have been going around making wild, baseless and false allegations against content aggregators before the Regulator and the Ministry.

The single premise on which the entire paper is based is as follows[2]:

"*around 73% of the total pay TV market, including high definition (HD) TV channels, is controlled by a few authorised distribution agencies…*"

It is submitted that just because some entities have substantial market share in any given sector, does not per se lead to the conclusion that there is dominance much less abuse of such dominance.

In almost all industries, the major market share is invariably held by one or few players, that does not set regulatory bells ringing unless there is proven evidence of abuse. TRAI already has ex ante regulations in place and the Competition Commission also has powers for ex post intervention;there are also elaborate appellate frameworks; however in no industry is a particular stakeholderin the value chain singled out for regulatory intervention just because few players within that stakeholder have substantial market share.Microsoft commands the lion's share in the Indian software market; Google is the most dominant player in Internet search, the Big Four Accounting firms rule the roost when it comes to taxation and advisory services yet hardly do we see the government or the regulator stepping in with regulations to curb their purported dominance.

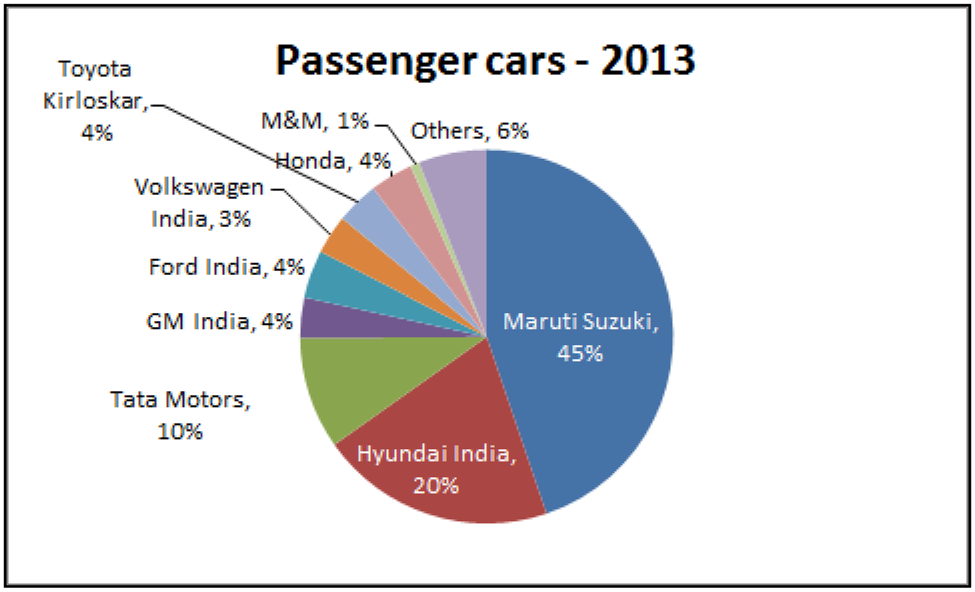
Following are some of the instances where a major chunk of the market share is held by one or few players which however has not resulted in any form of ex ante regulatory intervention; Figures I to V illustrate the proposition:

[2]ibid

Passenger cars

FIGURE I

Top 4 companies market share = 78%



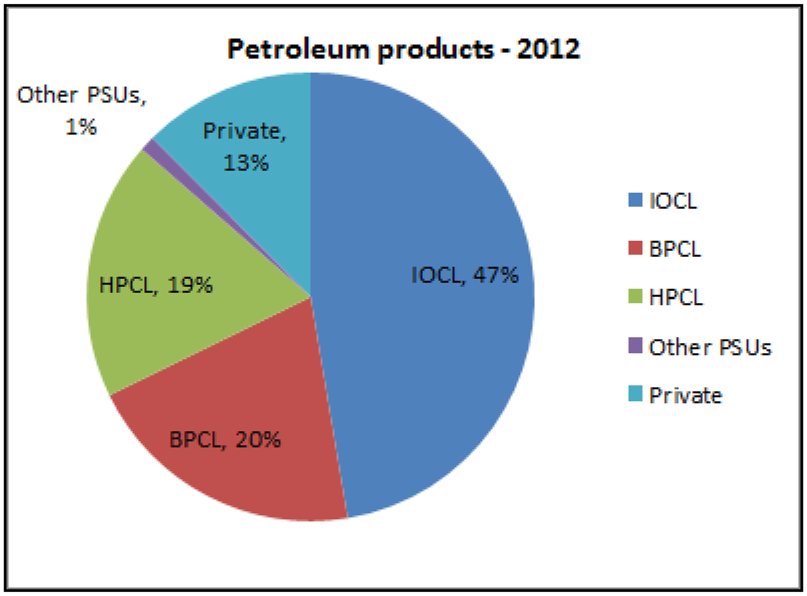
Note:
1. M&M includes only Mahindra Verito (Logan)
2. Volkswagen commenced sales in FY10
3. Data is for FY13 (based on numbers for April to Feb only)

Source:
http://www.rushlane.com/maruti-suzuki-to-launch-new-cars-1273381.html (the link mentions that this data is sourced from ET)

Petroleum products

FIGURE II

Top 3 companies market share = 86%

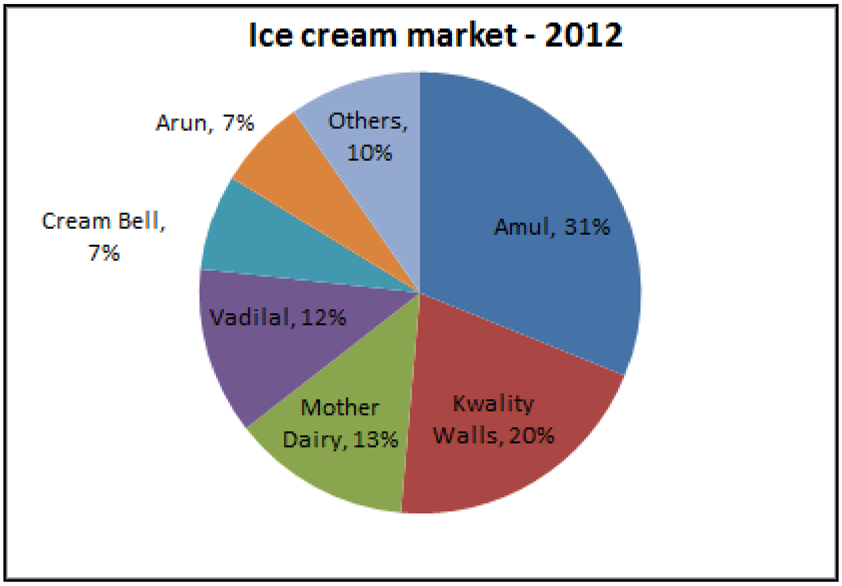


Source:
Ministry of Petroleum and Natural Gas

Ice-creams

FIGURE III

Top 4 companies market share = 77%

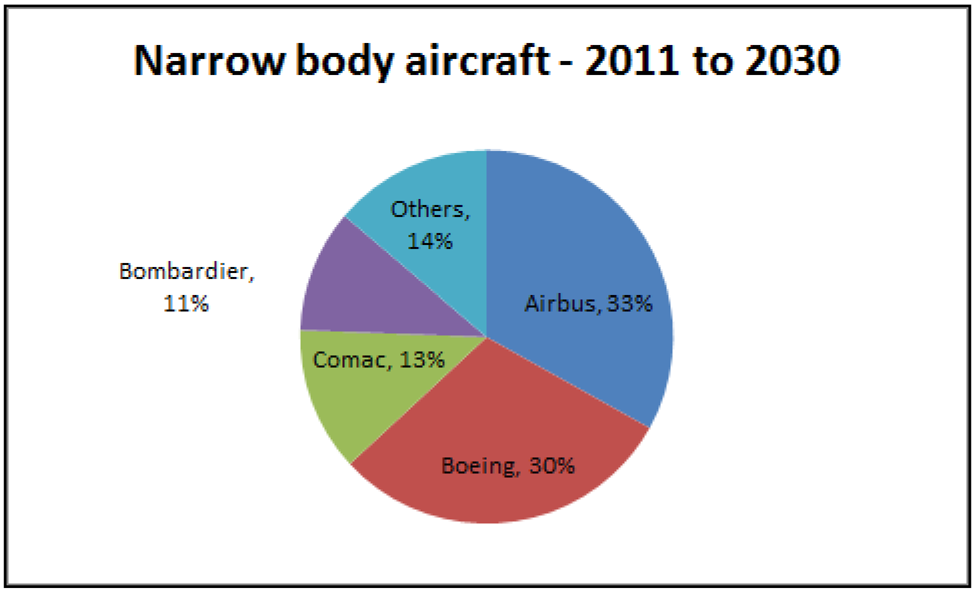


Source:
Euromonitor

Narrowbody aircraft

FIGURE IV

Top 4 companies market share (expected) = 86%

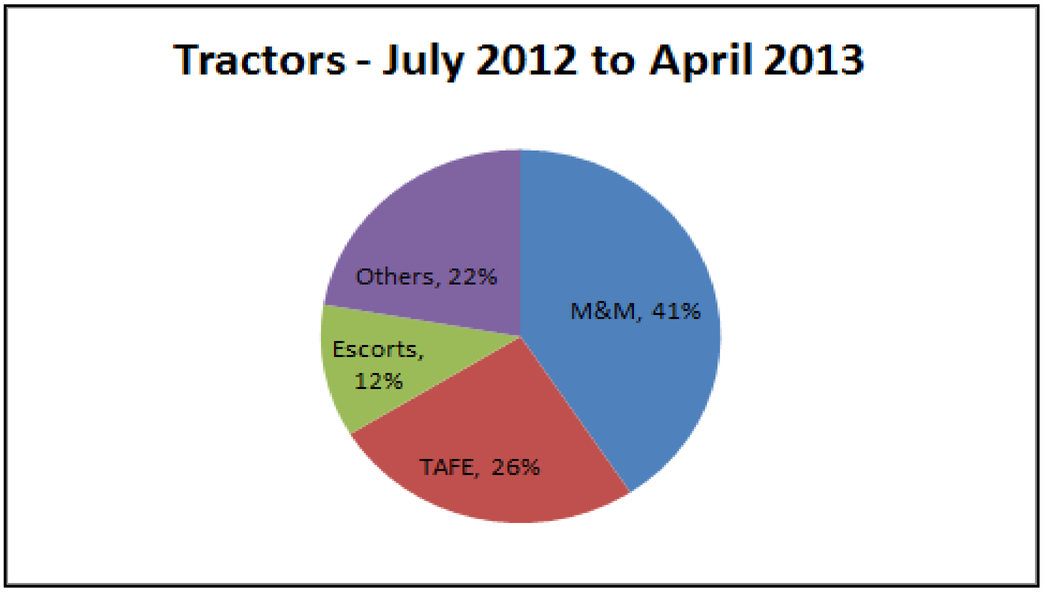


Source:
Estimates/analysis by seekingalpha (http://seekingalpha.com/article/276439-airbus-has-boeings-back-against-the-wall-seek-opportunities-in-supply-chain)
Note:
1. SeekingAlpha is a platform for investment research. It provides insights through articles/opinions of industry experts and investors rather than sell-side analysts

Tractors

FIGURE V

Top 3 companies market share = 78%



Note:
1. Data is the based on the average market share observed in the July 2012 – April 2013 period
Source:
http://www.financialexpress.com/news/buy-mahindra-mahindra-shares-target-price-rs-1000-kotak-institutional-equities/1159931

III. NO INDEPENDENT APPLICATION OF MIND BY TRAI:

It is also submitted with utmost respect that it is highly unbecoming of a sectoral regulator like TRAI to all of a sudden come up with a draft regulation at the bidding of a few Multi System Operators or merely because it is in receipt of a Ministerial reference. The TRAI is an independent and statutory Authority and is expected to suitably calibrate its regulatory formulations with sufficient data and reasoning. The TRAI is statutorily bound to act in a transparent and judicious manner and apply its own independent mind and judgment without being influenced by any third party not even the Ministry of Information and Broadcasting much lesssome isolated, recalcitrantand disgruntled MSOs.

It is common knowledge that these very MSOs have been all along diverting the attention of the Ministry and the Regulator from their own violations of the law in not having deployed addressability at the last mile. These MSOs have been trying their very best to scuttle digitalization at all costs in order to perpetuate their vested interests by continuing with the lack of transparency in the cable sector.

It is indeed unfortunate and incredulous that the TRAI has chosen to rely upon the false, unilateral and uncorroborated allegations made by such unscrupulous MSOs. It is altogether unthinkable and bewildering that the TRAI could allow itself to be misguided and waylaid by such vituperative, pretentious and diversionary campaign launched and initiated by a section within the MSO community which has now culminated in the issuance of such Draft regulations specifically targeting content aggregators.

Neither did TRAI reach out to content aggregators to find out their side of the story nor did it ask MSOs to provide evidence to substantiate their allegations of improper conduct on the part of aggregators. This paper therefore is premature in timing. We implore upon the Authority to independently enquire into the allegations of the MSOs and only after ascertaining the veracity of such allegations on objective evidentiary parameters - proceed to seek targeted answers from content aggregators before even taking a view on whether such draft regulation is required at all in the first place. We submit that if the Authority indeed finds irregularities it can step in to correct market anomalies by targeting specific unconscionable behavior or illegal conduct if any, rather than marking out content aggregators as a class unto itself by destroying their business model entirely as the draft regulations propose.

IV. <u>DRAFT REGULATIONS BASED ON FALSE ASSUMPTIONS LEADING TO FLAWED CONCLUSIONS: IGNORES ECONOMIC AND BUSINESS REALITIES OF CONTENT AGGREGATION NOR AUGMENTS CONSUMER WELFARE</u>

The Draft regulations regrettably attribute motive to content aggregators where admittedly none exist in the first place.

"This also raises doubts as to why the broadcasters want to act as aggregators. Certainly it cannot be for helping the broadcaster to deal with the fragmented analog cable TV market."[3]

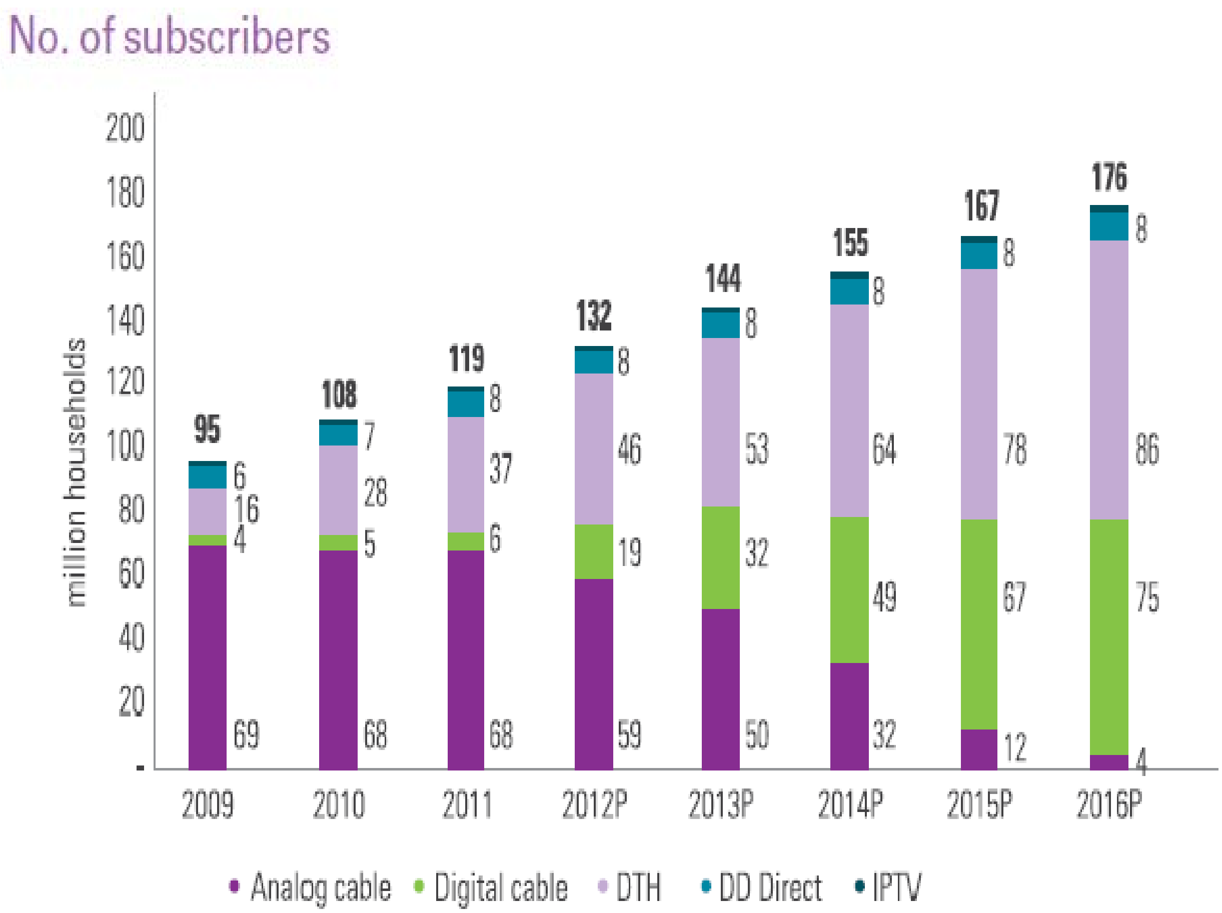
The entire draft regulation is redolent with conjectures, surmises and doubts and is indicative of the deep rooted prejudice and malaise harbored by the TRAI against the Content Aggregators.

On the face of it, the pay TV marketplace appears to be functioning efficiently. By any conceivable statistical measure, consumers today have access to more content, platforms and options than at any time in history. Certainly there is no shortage of programming. Indeed, the long-heralded "500-channel" cable universe is now a reality. The overall number of channels available in India has skyrocketed, from just a few Doordarshan channels in 1990 to over 800 channels in 2013. The resulting diversity "on the dial" has been astounding. There is hardly any human interest or hobby that is not covered by some TV Channel network. Not only is programming diverse, so, too, is the universe of programmers.

Competition is alsogrowing on the Channel delivery ie platform front. While localcable operators were oncemonopolies, competition from satellite is cutting deeplyinto cable's market share. Asshown in Exhibit 1, competition in the TV channeldelivery market is increasingrapidly.

[3] P 19 of 25

EXHIBIT I



Source: *Indian Media and Entertainment Industry Report,* FICCI-KPMG, 2012, p. 19

Growing competition isnot only offering consumersmore choice, but also increased quality. Cable and satellite companies haveinvested millions of rupees in recent years toprovide more channels, digital delivery, video-on-demand, and, most recently, high-definition offerings. TRAI itself has repeatedly held on numerous occasions that competition in the delivery of television channels has provided consumers with increased choice, better picturequality, and greater technological innovation.

Further it is TRAI's own findings that Cable ARPU in India are the lowest.[4]

"India's monthly ARPU (International $11) is lower than the average across developing countries (around International $ 22). This highlights the vast

[4] TRAI CP 5/2010 dated 25/03/2010,Tariff Issues related to Cable TV Services in Non-CAS Areas, P 162

difference in India's current retail pricing to international benchmarks. o If India was to increase its retail price to the average of International $ 22, then it would come to about INR 325, which is close to the all-India average of INR 313 that was established through Option 2 of the retail affordability methodology as well."

Given these results, one cannot help but question the very issuance of the draft regulations. Particularly when cable prices - looked at in terms of the price per channel, has been falling throughout the past decade after duly factoring in inflation. Further television viewing overall is increasing, and cable's share of viewing hours is also going up (relative to Doordarshan's terrestrial TV) accordingly the price paid per viewing hour has actually declined.

Most people would agree, of course, that rising prices— even if they were rising—would not by themselves constitute a basis for regulation. Rather, regulation should be considered only if a case can be established for market failure—in which case it might be possible, at least in theory, for regulation toimprove on the market outcome and lead to lower prices in the long run. But the draft regulations have failed to demonstrate that aggregation constitutes a market failure of any sort.

Bundling or aggregation is, pervasive throughout the economy, and while the economics of aggregation are complex, economists universally agree that it is generally efficient and beneficial to consumers. Aggregation improves economic efficiency in a variety of situations, including when there are economies of scope and scale.

Examples of aggregation include round trip airline flights with hotel bookings by travel agents, "triple-play" voice/video/data packages, automobiles with radios, shoes with laces, and computers with software. The greatest example of aggregation as an industry practice is our Music industry where there are societies that collect royalties for multiple music labels and distribute the same to its members. While these societies populate the Music market, it hasn't stopped players like T series or Super Cassettes becoming dominant players. However absent such societies, small/regional/niche music labels would have found it impossible to monetize their music content.

One particularly significant and relevant efficiency motivation, advanced many years ago by NobelPrize winner George Stigler, occurs when there are high fixed costs of production and consumers have differing preferences for various "flavors" of a product.

A simple example illustrates the point.

- Suppose there are two TV Broadcasting Networks Fox and Star having their respective bouquets, “Fox Bouquet” and “Star Bouquet,” each of which costs Rs100 to produce and distribute.

- Suppose further that there are two consumers, one of whom is willing to pay Rs 70 for the Fox Bouquet and Rs 40 for the Star Bouquet, while the other is willing to pay only Rs. 40 for Fox Bouquet, but will pay Rs 70 for Star Bouquet.

- If the two bouquets are offered separately, thereis no price at which demand will be sufficient to cover cost, this is because if each is offered for Rs100 (its cost), no one buys either bouquet;

- if each is offered at Rs 70 and is purchased by one consumer ie there is one buy for the Fox Bouquet and one buy for the Star Bouquet, each bouquet collectsRs 70 but loses Rs 30;

- and, if each is offered at Rs 40then both bouquets will be purchased by both consumers, total collection would be Rs 160 ie each bouquet will collect Rs.80 and total loss would be Rs. 40 ie each bouquet loses Rs. 20. In short, in aworld where each broadcaster is left to fend for themselves neither broadcaster’s bouquet gets produced.

- If bundling of both the bouquets is permitted, on the other hand, the two bouquets can be offered together for Rs. 100, and both consumers (each of whom values the two bouquets together at a total of Rs. 110) will purchase. Total collection is now Rs. 200, covering the costs of both bouquets, and each consumer receives Rs. 10 in consumer surplus thereby augmenting consumer welfare.

This argument is only one of several that explain why bundling of TV bouquets is economically efficient. Bouquets of multiple broadcasters also provides a means for the channels comprised therein to expand their distribution, thereby increasing advertising revenues (and defraying costs that would otherwise be passed on to consumers in the form of higher subscription fees); it allows consumers to sample TV channels, thereby reducing marketing costs; and, it reduces transactions costs by avoiding the need for cable operators to constantly add and subtract channels from individual consumers’ feeds.

Accordingly we call upon the Authority in right earnest to appreciate that:

(1) mandatory disaggregation whereby each broadcaster (either through itself or through its appointed aggregator) will have to distribute its own bouquet would very likely raise overall prices;

(2) consumers' viewing decisions would very likely be distorted and their ability to sample alternative networks and shows would very likely be suppressed; and

(3) mandatory disaggregation whereby each broadcaster (either through itself or through its appointed aggregator) will have to distribute its own bouquet would very likely harm small, new and niche networks, as they would never have the necessary wherewithal, scale or bargaining power to negotiate distribution with over 6000 MSOs and 6 DTH Operators, which would result in fewer viewing options for consumers.

The Draft Regulation threatens the wonderful diversity of programming on television today. That also explains why TRAI is mistaken when it suggests that it would enable consumer choice. As consumer choice is not likely to survive in a world of mandatory disaggregation. Most family-focused/children's channel broadcasters, Travel or Food oriented channel broadcasters, and documentary and animal lifebroadcasters oppose disaggregation mandates for this reason. They understand that their channels attract only a small subset of the overall universe of viewers. Iftheir channels are not aggregated alongside other channels, theymight disappear entirely. The draft regulation would be a daggeraimed at the heart of small, niche and regional broadcasters in India,andit would decimate 'special interest or niche broadcasting andthe wholesome, family-oriented channels carried on by small and regional broadcasters.

In short, when it comes to aggregation, the economics of cable TV are clear: Rather than reducing prices and increasing choice, as the draft regulation hopes, it would do precisely the opposite.The draft regulation does not state that provisions envisaged therein shall result in actually benefitting consumers or increasing economic welfare nor does the draft regulation provide support for such a conclusion.

Therefore the Draft Regulation clearly:

i. fails to describe the market failure or any other basisthatTRAI'sdraft regulation would address;

ii. fails to present a systematic assessment, let alone a quantification, of either the benefits and costs of regulatory intervention;

iii. does not attempt to reconcile the overall benefits of regulatory intervention with the overall costs

iv. indicates that the hypothesized benefits would instead of representing a welfare gain would actually result in a transfer payment. Regulatory best practices around the world specifically prohibit counting transfers from one economic group to another as a benefit or cost of a regulatory intervention. The draft regulation in its present shape and form is clearly designed to benefit MSOs at the cost of content aggregators thereby not auguring any net welfare gain nor consumer surplus but in effect securing a transfer payment for MSOs as broadcasters shall lose their bargaining power and MSOs shall be in a position to extract disproportionate value to the utter detriment of broadcasters.

v. falls far short of concluding, as it must in order to justify the regulatory intervention, that such intervention "*is likely to do more good than harm.*"

vi. mischaracterizes the economic literature on aggregation by impliedly suggesting altogether unwarrantedly that such aggregation is generally in efficient and anti consumer when the available literature clearly demonstrates that generally bundling/aggregation is efficient and pro consumer.

vii. derecognizes the efficiency aspect of aggregation. Aggregation or Bundling is pro-consumer because of the efficiency benefits the practice provides. These benefits can take several forms. In some cases distribution costs are lowered, through economies of scope between the bundled bouquets of different broadcasters when distributed jointly. Costs are also avoided through more efficient transactions and provision of information, as when joint purchases are more convenient and less costly to process, and as consumers learn about the benefits of product combinations.

viii. does not acknowledge that in all cases, aggregation enables more vigorous competition. For example, a firm may find it easier to enter a new market, in so doing increasing competition, if a content aggregator aggregates such firm's bouquet with an existing bouquet which already has a reputation. Price discounts in channel/bouquet aggregation act as a type of competitive advertising, which enhances competition.

ix. disregards that the 200-channel pay TV universe would not survive in case content aggregators are disaggregated ie they are prohibited to carry channels of multiple broadcasters.The average person watches about 17 channel, despite the number of available channels and bouqets tripling. That's 183 channels each customer would no longer subsidize or watch. The reason pay TV prices are the lowest in India is that advertising revenue also covers much of the cost of programming, which would be at risk for those channels no longer with broad distribution. Disaggregation would absolutely crush diversity of programming.

And its failure can be accounted for the misplaced assumptions as follows:

False Assumption #1: *Content Aggregators are monopolists:*

The Draft Regulations assume falsely that the Content Aggregator is a monopolist, or that they have market power and use it to impose inefficient bundling compelling operators and thereby consumers to subscribe to all channels. This assumption is crucial to all of the results: In a regulated market, Aggregators cannot set monopoly prices simply owing to regulated tariffs that are frozen since 2004, the Must provide provision, bouquet freeze, ala carte pricing, and requirements of non-discriminatory and non exclusive inter alia.

False Assumption #2: *There is no advertising on television.*

Advertising is a central feature of the C&S market, with profound implications for analyses of competition and economic welfare. By ignoring advertising, the draft regulations fail to account for the lost revenues caused by reduced viewership or the effects of the associated need to increase subscription fees as a result of channel wise disaggregation which would be tough to realize as Operators would gain greater bargaining power. The revenue pressures will then have a telling effect on quality of content.

False Assumption #3: *Implementation of a la carte is costless.*

The draft regulation does not presuppose any cost element to the disaggregation. In fact, even if mandatory disaggregation is restricted to only addressable MSOs, as the Draft Regulation suggests, its implementation will generate significantly higher operating costs from more complex billing systems, greater customer service demands and increased marketing costs. Adding these costs to the examples would reduce or eliminate whatever advantages disaggregation provides relative to bundling. Many broadcasters would find it unsustainable and exit the market place.

False Assumption #4: *Consumers don't channel surf.*

The draft regulation is also silent on inherent consumer tendencies or even operators to channel surf in order to appraise strength of content and sample new offerings. The draft regulations fail to account for the benefits of channel surfing, both in terms of dissemination of information (channel surfing allows operators to sample new channels) and casual viewing (the ability to monetise a particular show on a network that the operator's consumer does not usually watch regularly). Channel surfing also saves costs on marketing that the broadcaster would have to otherwise incur if its offerings were not aggregated with other offerings.

False Assumption #5*: Disaggregation would enable consumer choice at the last mile and lesser cash out go for subscribers*

If at all the proposed measures enshrined in the draft regulations come into play it shall only lead to greater costs or reduced viewing options at earlier costs.Proposals to bar aggregators from offering bundles of multiple broadcasters will harm many operators who currently benefit from buying a bundle of programming networks. That is, in the name of providing choice to some operators or consumers, the regulator runs the risk of harming the vast majority of operators or consumers who value the benefits of receiving a diverse choice of bundled high-quality programming.

V. DRAFT REGULATION - UNPRECEDENTED AND DEPARTS FROM ESTABLISHED PRACTICE:

Never in the living past has a particular stakeholder in the value chain been so specifically identified, targeted and singled out to be meted out and subjected to such regulatory humiliation as is being done through this current exercise. As is beingseen, proven and demonstrated through this instant response - the accusations hurled in the Draft Regulations against the Content Aggregators are altogether misconceived, misplaced and unwarranted. In all humility we respectfully submit that the TRAI should seriously reconsider its position in the matter and forthwith proceed to withdraw the draft regulations or atleast not pursue the same any further for the sake of maintaining its own credibility.

In all prior occasions the TRAI generally would first issue a consultation paper without taking or revealing any definitive stand or position. After having received comments from stakeholders, TRAI would come up with a draft regulation incorporating the various views and also inviting further comments. TRAI would also conduct open house sessions in order to elicit concrete suggestions. Only after stakeholders having provided their further views on the draft, would the Authority move towards formally promulgating the same after making suitable changes. This time however we are compelled to notice a curious departure from established practice. The Authority this time, in a clear variation from precedent has straightaway proceeded to circulate a draft regulation and that too after having fully revealed its preconceived thoughts and predetermined notions. There is no doubt whatsoever that the TRAI instead of approaching the issue with an open mind has instead prejudged the matter.

There is thus widespread apprehension in the industry that this consultation process has been reduced and relegated to a mechanical exercise with the TRAI just going through the motions having already made up its mind - discarding and disregarding any contrarian view from other stakeholders.

VI. INCONSISTENT AND CONTRADICTORY TO TRAI'S OWN FINDINGS ON CONTENT AGGREGATORS

It is submitted that in all the years since the TRAI has been regulating the broadcasting space, it has never targeted content aggregators alleging that they have been anti-competitive or for that matter,them abusing their purported dominant position. Never in any Consultation Paper, nor in any recommendation, nor in any regulation nor tariff order has the TRAI ever made a whisper much less a case of content aggregators being in the wrong. In fact, to the contrary the TRAI has extolled the virtues of content aggregators and have acknowledged their vital role in the value chain.

(a) TRAI's Consultation Paper No. 5 of 2010; Tariff Issues related to Cable TV Services in Non-CAS Areas; dated 5th March 2010 deals at length with the role of Content Aggregators:

"2.2.9 While the number of channels available in India has increased rapidly,the content of these channels is skewed in favor of advertiser-friendly markets. ***Asthe demands on broadcasters to invest in content and be present across multipleplatforms increase, their operating cost base is increasing in proportion. To drive profitability and growth simultaneously, companies are looking at innovative waysof reducing their costs.***

Aggregator

2.2.10 The role of the aggregator in the value chain is to provide bundling and negotiation services for subscription revenue on behalf of the broadcasters. However, not all broadcasters distribute through aggregators. (These broadcasters undertake distribution on a standalone basis.)

2.2.11 ***The sale of channels by the broadcaster/ aggregator to the distributor can take two forms a) A la carte: one channel is sold as***

a single unit and b) Bouquet: two or more channels are bundled and sold as a single unit.

2.2.12 There are 24 aggregators/ agents of broadcasters who distribute the 129 pay channels available in the country. Of these, the main aggregators are Zee Turner (33 channels), Star DEN (19 channels), MSM Discovery (18 channels) and Sun Group's Channel Plus (15 channels).

2.2.13 The business model of an aggregator is largely commission-driven. They charge the broadcaster commissions in the range of 5%-10% for distributing these channels across different platforms.

2.2.14 These entities have a relatively small cost base, comprising salaries, travel and other operating costs. ***The key drivers of the aggregator business are a) Economies of scale i.e. large number of channels, b) Competitive offerings i.e. popular channels and innovative packaging and c) Market knowledge i.e. strong understanding of the market, both in terms of the subscriber base and their willingness and ability to pay for different channels.***

2.2.15 A key trend observed in this market is the entry of large broadcasting alliances in aggregation. This may be attributed to the market environment in which pay channels operate, which is characterized by lack of addressability."

(b) The same Paper continues:

"2.4.12 The distribution of subscription revenue across the value chain in India is different from the distribution observed in international markets. This is illustrated below:

Stakeholder	***Broadcaster/ Aggregator***	***Distributor (MSO + LCO)***
India	***~20%***	***~80%***
Analog cable – international markets	***50%***	***50% - LCO acts as agent of MSO***
Digital cable – international markets	***60%***	***40% - MSO services subscriber directly***

***Figure 2.12: Share of subscription revenue retained by stakeholders in the cable supply chain – comparison of India and international markets*.”**

(c) The same paper concludes that Aggregators end up with a negative EBITDA of (9%)[5] which flies in the face of any allegation that content aggregators are perpetuating monopolistic practices.

(d) The said Paper had further pointed out:

"3.2.2 The sector is large, complex and fragmented – and the starting point for this analysis is the concerns put forth by stakeholders. A list of representations and key concerns are provided in Annexure C. Based on these concerns, six business issues are:

1. Lack of visibility on the subscriber base

2. Lack of transparency in business and transaction models

3. Differential pricing at the retail level

4. Incidence of carriage and placement fee

5. Incidence of regional and state based monopoly

6. Frequent disputes and lack of collaboration among stakeholders.”

It may be pertinent to note that nowhere had content aggregators been highlighted as an issue in that Paper.

(e) The Draft Regulations also find misplaced faults with contracts entered into with addressable platforms in that it accuses content aggregators of driving fixed fee deals etc:

"15. A scrutiny of the interconnection agreements for the DAS areas filed with the Authority by the broadcasters, reveals that fixed fee deals have been made by the aggregators with most of the leading MSOs. In such deals, the MSO is required to pay a fixed fee per month as the license fee, irrespective of the subscriber base of the MSO or the uptake of channels offered by the aggregator. In some cases, agreements have also been entered into on Charge per Subscriber (CPS) basis, based on the total number of active STBs and not on the actual uptake of the individual channels. In a few

[5] Page 38 para 3.1.14 Figure 3.4

other cases, a minimum guarantee money is charged, up to a certain subscriber base, beyond which, an additional license fee per subscriber is charged by the aggregator.” [6]

The said earlier CP no. 5 of 2010 had not found any fault in fixed fee deals, etc and had instead recognized the freedom to contract and reality of market based negotiations:[7]

“3.2.5 Today, the subscriber base is a derived number based on a predefined content cost and the reported/ ceiling wholesale price. The price of a channel cannot be effectively negotiated using subscriber uptake numbers as a measure of the channel’s strength/ popularity. ***Pricing decisions are thus made in the absence of data. This has led to a dependence on intermediaries (such as aggregators and distribution agents) to guarantee revenue.*** *Inputs from the industry suggest that the industry’s subscription revenue is further fragmented by payouts and commissions to these intermediaries. There is the lack of trust and transparency amongst stakeholders. This makes the lump sum deals in-efficient as the quantum is decided in the absence of relevant business information.* ***This is in contrast to the DTH sector in India and international cable markets, where content deals may be in the form of a fixed fee (lump sum) but are supported by information sharing and full addressability across the supply chain****.”*

VII. HARDLY ANY CHANGE IN GROUND SITUATION IN SO FAR AS CONTENT AGGREGATION IS CONCERNED

There is no discussion in the instant Draft Regulations of whether the aforesaid findings of the Authority have changed with the onset of DAS which has not even completed a year and where 2 more phases are yet to even commence. Also it is common knowledge that the first two phases have only yielded mixed results with Operators yet to form packages, collect CAFs or even map consumer choices in their respective CAS and SMS and do not part with subscriber reports.Further, in DAS, Operators have been insisting on negotiating deals on the basis of subscription fees that used to be payable during the analog regime. Accordingly it is clear that nothing has fundamentally changed on the ground. If any alteration in the ground situation would have been notable or visible TRAI would have surely identified the same, which clearly it has not. Accordingly there is nothing to suggest on record

[6] P 20 of 25
[7] P 49

thatmarkets have changed or thatchangesin the market place have been so drastic so as to warrant such draconian provisions as enshrined in the Draft Regulations under consultations.

VIII. EMERGING EVIDENCE OF MONOPOLISTIC TENDENCIES IN OPERATORS

In stark contrast to the instant draft regulations, the Consultation Paper no. 5/2013 dated 3rd June 2013 on "Monopoly/Market dominance in Cable TV services"; actually revealed that the TRAI had conducted a detailed investigation in that it had come up with actual data and analysis that unequivocally concluded that:

".....Thus, with the changed scenario in DAS, the issue of dominance in the cable TV sector needs to be addressed at the MSO level." [8]

The Paper further goes on to add:

"1.13 ***There are instances where the dominant MSOs are misusing their market power to create barriers of entry for new players, providing unfair terms to other stakeholders in the value chain and distorting the competition. MSOs with significant reach (i.e. a large network and customer base) 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.***

1.14 Large MSOs, by virtue of securing content at a lower price and charging higher carriage and placement fee from broadcasters, are in a position to offer better revenue share to LCOs. *They, therefore, can incentivize LCOs to move away from smaller MSOs and align with them.* ***Such MSOs use their market power to provide unfavourable terms or make it difficult for the broadcasters to gain access to the distribution network for reaching the customers. There are instances where a dominant MSO has made it difficult for some broadcasters to have access to its distribution network for carrying content to consumers. Blocking content selectively can also become an obstacle to promoting plurality of viewpoints***.

....

[8] P 6-7, Para 1.9

1.15 ***One such case of denial of market access was also brought to the notice of Competition Commission of India (CCI) in 2011, when a broadcaster M/s Kansans News Private Limited alleged that a group of MSOs, operating in the State of Punjab, in which M/s Fastway Transmission Pvt. Ltd. holds majority shares, had acquired substantial market share in the cable TV distribution and denied market access to its channel.*** *The CCI investigated the case 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, which states that there shall be an abuse of dominant position if an enterprise or a group indulges in a practice or practices resulting in denial of market access in any manner.*

1.16 ***CCI, during investigation, also gathered information regarding the market share of the group and noted that the number of subscribers of the group is more than 85% of the total subscribers in the relevant market of Punjab and Chandigarh. It was also noted that no competitor of this group in the State of Punjab has more than 10,000 subscribers whereas the subscriber base of the group is about 40 lakh. CCI observed that the group held a dominant position in the relevant market of Punjab and Chandigarh****."*

The TRAI had in that paper also deliberated at length on "market power" among MSOs. No efforts have been made to arrive at similar findings pertaining to market power of content aggregators by utilizing the HHI or any other credible index. On the contrary the Draft Regulations only clarify:

"11. As on date there are around 233 pay channels (including HD and advertisement-free channels) offered by 59 pay broadcasters. These channels are distributed by 30 broadcasters/aggregators/ agents of broadcasters. Of these, the four main aggregators and the number of TV channels they distribute are: Media Pro Enterprise India Private Limited – around 75 channels, IndiaCast UTV Media Distribution Private Limited – around 35 channels, M/s Sun Distribution Services Private Limited – around 30 channels and MSM Discovery Private Limited – around 30 channels." [9]

Accordingly it is submitted that the TRAI needs to conclusively decide as to where exactly it wants to attribute monopolistic tendencies ie whether it wants to conclude that MSOs have been exhibiting anti competitive behavior (on the basis of its CP dated 3rd June 2013) or is it the Aggregators who are guilty of

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abusing dominance (on the basis of the instant draft regulations). Surely it cannot be the Authority's case that both MSOs as well as Aggregators have been exhibiting monopolistic traits, abuse of dominance or anti-competitive tendencies, simultaneously at the same point in time.

IX. NO CONSIDERATION OF CCI'S CLEAR FINDINGS ON CONTENT AGGREGATORS

Given that the relevant market for a content aggregator is the entire country ie India and further there being no evidence of any barriers to entry or exit for any content aggregators, it can very safely be argued that no monopolistic tendencies or abuse of dominance can be attributed to content aggregators at all. In fact recent times have witnessed new aggregators like India Cast joining the fray and also some players like Prime Connect leaving the market. Further the reliance by TRAI on findings of the CCI in the Fast Way matter is ingratiating. However it is baffling to note that the TRAI has not considered even one judgment of the Competition Commission out of a plethora of cases where the CCI has time and again held that there is effective competition on the broadcasting side of the business in general and Content Aggregation in particular. It is surprising that while the CCI relied upon the extant TRAI regulations on Tariff and Interconnection and found them to be working well to prevent any anti-competitive maneuver by aggregators or broadcasters, the regulator however has chosen to be conspicuously silent about the efficaciousness of its own regulations. Accordingly in the absence of a clear empirical finding by the TRAI itself that its regulations on Tariff or Interconnect are not subserving the purpose for which the same had been promulgated, it does not lie with the Authority to now suddenly shift goal posts by unilaterally blaming content aggregators for no fault of theirs. Nowhere in the paper has the Authority come up with any findings that content aggregators are flouting existing regulations. In fact, if at all, it is the aggregators who have been at the forefront of driving compliance in the sector by diligently and consistently filing particulars of their interconnection agreements, their ala carte and bouquet tariffs and their reported subscriber base. It is a travesty of justice that they are now being hauled up for no rhyme or reason. Some of the cases in the Competition Commission that unequivocally held that there is effective competition in so far as broadcasters and content aggregators are concerned, are described as follows:

Sr No	**Name of case, and relevant provision of the Competition Act**	**Findings of the CCI**
1.	Combination Registration No. C-2013/01/107 dated 19th Feb 2013 ("India Cast") The notice was filed pursuant to the execution of a Joint Venture Agreement between IndiaCast, UGBL and IC on 19th January, 2013 pursuant to which it had been proposed that UGBL and IndiaCast shall subscribe to the shares of IC such that theshareholdings of UGBL and IndiaCast in IC would be twenty six percent and seventyfour percent respectively.	12. ....Further, the broadcasters enter into aggregation tie-ups to correct the market imbalances created on account of information asymmetry/non-transparency regarding subscriber base. An aggregator offering bouquets consisting of television channels of different broadcasters makes the offering attractive and consequentially places the aggregator in a better position to negotiate subscriber numbers and placement/carriage fees. 13. It is noted that the broadcasting sector in India is regulated by the TRAI, which has framed various regulations which, inter-alia, make it obligatory for a broadcaster to provide signals of its television channels on a non-discriminatory basis to every DTHO/MSO and not to enter into exclusive agreements with any MSO/distributor that prevents others from obtaining such television channels for distribution. Further, the regulations and tariff orders issued by TRAI, from time to time, stipulate that broadcasters/ aggregators cannot deviate from the pricing methodology mentioned in those regulations/tariff orders. It is observed that the market for providing the service of aggregation is competitive with a number of players operating therein. Even after the combination there will be 24 (twenty-four) aggregators in the market which would

		provide enough competition in the market. As per the details provided in the notice, it is also observed that the market share, based on the estimation of TAM for the period 2010-2012, of six television channels aggregated by UGBL along with three other television channels of Disney Group is around 4 percent only. Further, as a result of theproposed combination, IndiaCast would discontinue its aggregation tie-up with Sun Distribution Services Private Limited and accordingly the market share of channels which would be aggregated by IC would be less than that of IndiaCast.(A full copy of the text of the Order is being provided herein as **ANNEXURE "B")**
2.	Case No. 31/2011 Dated: - 21.03.2013 An information was filed on 17.06.2011 under Section 19 (1) (a) of the Competition Act, 2002 by Shri Yogesh Ganeshlaji Somani against Zee Turner Ltd and Star Den Media Services Pvt for formation of Media Pro	3.5 ……………It may be noted that MSO s earn more from placement fees rather than subscription revenue. This enables the MSOs to exercise greater bargaining power over the broadcasters/broadcasting alliances,which have no option but to pay such carriage fees in order to gain access to important subscription markets. 3.6 Keeping in view the aforesaid factual position of the TV industry, DG has reported that the services and activities of the Opposite Parties through their JV or other aggregator are a specialized area of service which involves important responsibilities of "content aggregator in the broadcasting industry. To this effect the aggregator bundles a number of channels licensed to it by broadcaster and sells

		them to MSOs, DTHOs, and IPTVOs on behalf of the broadcaster. It distributes channels in two ways: - either on a-la-carte basis where a channel is sold individually or in the form of a bouquet where two or more channels are bundled. There are also many broadcasters who do not engage any aggregator for distribution of their channels and directly deal with the distribution platforms. Out of about 800 channels only about 175 channels are distributed through aggregators. Thus, as per the DG report, the services of aggregators are generally used by those broadcasters who have many channels for distribution. 3.7 As per DG report, an aggregator is engaged in activities of aggregation and distribution of any television channel via liner and / or non-liner means, arranging carriage, band placements, setting up of set top boxes, etc. within India and to collect subscription revenue for the broadcasters either in form of bouquet of channels or individual via all modes of distribution including but not limited to cable, digital or analog, direct-to-home (DTH), head end in the sky (HITS), MMDS, SMATV, internet protocol television (IPTV), terrestrial satellite or any other emerging mode. Thus, as per the DG report, from the supply side, the aggregators can only substitute distribution of channel from cable to DTH and thus, the services of television channels through cable or DTH by the broadcaster is substitutable

		with the services of aggregators. 3.12 Thus, as per DG report, on the basis of the objective clause of the JV, it is clear that the obvious purpose behind this JV is to create efficiencies by optimum utilization of resources and cost reduction; promote digitization and addressability; and curb piracy of channel signals. 3.13 As per DG report, in the relevant market there are about 24 aggregators who distribute the channels on various distribution platforms on behalf of broadcasters. Prior to formation of Media Pro Enterprise India Private Limited there were four main sizeable Aggregators, namely, Zee Turner Limited ("Zee Turner") [33 channels – 19 All India Channel and 14 Regional Channels], Star Den Media Service Private Limited ("Star Den") [26 channels and 5 Regional Channels],MSM Discovery Private Limited ("MSMD") [18 Pay channels 17 All India Channels and 1 Regional Channel] and Sun 18 [35 pay channels – 14 All India Channels and 21 Regional Channels]. 3.14 After the formation of JV, it has 60 channels for distribution, Sun 18 has 33, MSM Discovery has 19, Usha Ushodaya Enterprises Pvt. Ltd., has 12, Raj TV has 6 and others have 2 to 5 channels for distribution. On the basis of the aforesaid data, DG has reported that after the JV agreement, it has less than 40% of the market share in terms of the number of channels distributed by the aggregators

		in the market. If we also take into account all the channels distributed by individual broadcasters then the share of JV would be about 10% only. However, considering the popularity of the channels under the belt of JV, its share on analogue cable distribution network is much more than 10% and varies between20 to 40% depending on the preference of the viewers. Therefore, DG is of theview that the agreement between two players who control less than 40% marketcannot result in fixing of price in the market or control the supply, unless all theplayers or at least all the major players simultaneously join their hands together with such intent in the market. 3.15 DG has further reported in the broadcasting and distribution of TV channels in India, each stakeholder like broadcasters aggregators, MSOs, LCOs, DTHOs and IPTVOs has a major role to play in the industry and exerts significant countervailing power on the others in the value chain. It needs to be noted that it is not the JV that controls or determines the choice of television channels where the distribution of television channels takes place on a non-- addressable system, it is the MSO that decides the channels that would finally be made available to the subscriber, whereas on an addressable system, DTHOs and IPTVs, it is the end consumer who decides the channels it wants to view.

		3.16 DG has further reported that TRAI has issued various Rules and Regulations to monitor and regulate the Cable TV broadcasting industry and in its Telecommunication (B&C) Service Inter Connection Regulation 2004, in Clause 3.2, 3.3, 3.4 and 3.5, specific directives have been issued with regard to distribution of channels on Non-discriminatory terms; Pricing of channels and limiting downstream investments. The broadcasters are under obligation to file Reference Inter Connect Offer (RIO) under Clause 13.2 of TRAI Regulation, the charges from the Broadcaster or the Content Aggregator are governed by the Reference Interconnect regulations of the TRAI. The rates charged by the Broadcaster or the Content Aggregator are same for all the service providers under the RIO regime. The Interconnect Regulations of the TRAI mandates that all broadcasters/ aggregators are required to provide TV signals to MSOs/LCOs/DTH service providers on request on non-discriminatory terms. All broadcasters/aggregators to whom a request is made for TV signals by a distributor are required to negotiate with such distributor within a 60 day period. In the event of disconnection of signals, a broadcaster/aggregator is required to provide 3 weeks prior notice to the distributors providing reasons as to why the channels are being disconnected. Further, broadcasters are also not allowed to enter into an agreement with any

		distributor, including exclusive contracts in manner so as to preclude other distributors from obtaining access to TV signals of their channels. As per the Interconnect Regulations, any person may approach the broadcaster directly to obtain channels if an agent or any other intermediary of a broadcaster or MSO does not respond to a request for provision of TV signals. 3.17 As per DG report, formation of joint ventures and alliances is a common trend as observed by the TRAI in the Consultation Paper on Tariff Issues along with the underlying reason(s). The relevant question to be examined in this regard is whether, the formation of the JV has resulted in the parties to the JV being in the position to gain substantial market power to control the supply in the market or not. Due to the various regulations framed by the TRAI, it does not appear that after the creation of JV, the supply in the market has been affected at all. 3.18 DG has also reported that the investigation has indicated that the formation of the JV does not create a foreclosure effect on the Distributors of television channels given that the regulatory regime would force the JV to supply channels and consequently, JV will not be able to deny its channel signals to any Distributor of television channels as per TRAI mandate. Further, the Distributors have sufficient countervailing power to match any

		bargaining power exerted by the JV by charging carriage and placement fees. As per DG report, the data collected during the course of investigation shows that there is no supply constraint createdby the JV in the relevant market. The number of Bouquets for distribution by the JV in the relevant market has increased to 16, which was only 9 (6 of Opposite Party No. 1 and 3 of Opposite Party No 2) before the formation of JV. Thus, the creation of JV has resulted in the better product mix to allow better choice of combination of channels for the subscribers. Further, the MSOs are also free to subscribe channels on a-la- carte basis as earlier on the same prices. It shows that the JV has not resulted in any anti-competitive restraint either at horizontal level or at vertical level in the relevant market. (A full copy of the text of the Order is being provided herein as **ANNEXURE "C")**
3	Acquisition by The Walt Disney Company (Southeast Asia) Pte. Limited of UTV Software Communications Limited*;* a combination case involving *ex-ante* assessment	Markets analysed – a) broadcasting of television channels; b) motion pictures; c) interactive media and related services. The CCI held that "*each of these markets were characterized by factors such as the presence of a large number of players (intense competition), availability of ample choice to the customers, demand driven nature of the business, relative ease of entry and exit, lower possibility of any coordinated or exclusionary behaviour, regulatory oversight and future growth potential.*"

4	Acquisition by Independent Media Trust of NW18: A combination case involving *ex-ante* assessment	Markets analysed – a) broadcasting of television channels; b) event management services; c) Web portals The CCI "*observed that the business of supply of television channels in India is featured by the presence of significant number of broadcasters operating across various genres targeting national and regional audience/viewership.* *"It is apparent from the above that new television channels can be started with ease in India with sufficient scope for innovation and competition, both in terms of technology and content."*
5	Acquisition by STAR-ATC (a Newscorp group entity) of 50% stake held by Disney group in sports broadcaster, ESS; a combination case involving *ex-ante* assessment	Markets analysed – a) broadcasting of television channels; b) web portals. The CCI observed that *"It is further observed that the broadcasting sector in India is regulated by the Telecom Regulatory Authority of India(TRAI), which has framed various regulations which, inter-alia, make it obligatory for a broadcaster to provide signals of television channels on a non-discriminatory basis to every DTH operator /MSO and not enter into exclusive agreements with any MSO/distributor....."*

X. RISING CARRIAGE COSTS INDICATIVE OF AGGREGATOR'S LACK OF BARGAINING POWER

TRAI's CP no 5/2010 had also found:[10]

"3.2.9 Broadcasters have raised concerns over a sharp rise in their distribution costs over the last 2-3 years, led largely by an increase in carriage and placement related outflows. **Data received from certain channels shows that these costs have increased in the range of 25%-60% per annum over the last three years**."

The findings of the Competition Commission as aforesaid have also relied upon increasing carriage costs as a measure of MSO's comparatively stronger bargaining power vis a vis aggregators.

Given that carriage costs have been rising over the years, the fact that MSOs are on terra firma leave very little doubt as to where the actual monopoly power resides in today's market place. In addition if the draft regulations are implemented in its current form , it would sound a death knell to small, niche and new broadcasters as in the absence of being aggregated with channels of other (say established) broadcasters, these companies would then have to negotiate individually for carriage which would be a herculean task given the disproportionate enormity of bargaining power a section of the cable community would enjoy as a result of this draft regulation.

XI. CONCLUSION/RECOMMENDATIONS

In Conclusion we submit that it is against the principles of justice, equity, good conscience and fair play to single out content aggregators and prohibit them from distributing channels of multiple broadcasters when other stakeholders in the value chain viz distribution platforms have been given a free hand to aggregate and sell offerings to customers. Given the extensive regulatory framework and in the absence of any finding that content aggregators are violating laws it would be completely unjustified to cast an embargo upon aggregators restraining them from offering channels from multiple broadcasters. In fact historically, the very emergence of MSOs was actuated by the fact that it was economically unviable for LCOs to negotiate individually with broadcasters. Accordingly there is no basis to ignore or turn a blind eye to the basic economic realities that justify aggregation. As illustrated it will be an operational nightmare for the entire value chain to calibrate offerings with

[10] P 50 - 51

viewer expecations owing to issues in billing, marketing , etc . Further operators are not enjoined with a Must Carry unlike aggregators who abide by the Must Provide, accordingly the relative bargaining powers are already skewed in favour of Platforms owing to the existing regulations of frozen tariffs, bouquets, etc and the proposed draft regulation shall only help in skewing level playing fields further. New, small and niche channels will be the worst affected even established broadcasters will be caught up with a regulatory headwind that they will be unable to recover from as they will be completely losing out in negotiations. Content aggregators have been historically recognized as agents of licensed broadcasters and accordingly have acted within the remit of the licensing conditions of their principals by adhering to all regulations of TRAI and even otherwise. These entities do not deserve to thrown into a cauldron of identity crises and that too in the formative years of DAS. The draft regulations are also fraught with legal risks given that the CCI has exclusive jurisdiction on competition related matters and the constitutional mandate under Article 19 is unequivocal. Nothing has been made out in the draft regulations that could even be remotely treated as an intelligible differentia that would justify treating content aggregators as a class unto itself for such kind of intrusive regulations. There is nothing wrong in broadcasters hiving off their distribution activity to content aggregators. Outsourcing is common place in the Indian economy and there is no reason to treat aggregators otherwise. Numerous examples have been proffered in the response above , suffice it to say that aggregation is common place in the Music industry and bundling has always been considered favorably by economists and businesses. Given that the TRAI in any event has the power to intervene in cases of proven misconduct, it should therefore suspend the instant exercise and gather evidence to see if MSOs have even an iota of truth in their allegations against aggregators or whether such imputations are purely motivated and purposive to show aggregators in poor light. Given that there is no finding on the failure of existing regulations it would be in the fitness of things to discard this instant paper and instead strengthen existing regulations that would usher in greater transparency in DAS. Steps like mandatory subscriber reporting by everyone in the value chain and its compulsory publication by TRAI and reporting the retail tariffs (both rate and composition of channels) by platformsand their publication by TRAI would help go a long way in facilitating deals and mitigating disputes in the sector.

However in the alternative if at all the regulator wishes to pursue the draft regulations (a position we would strongly recommend against) we suggest that at the very least the provisions debarring aggregators from carrying channels of other broadcasters be suitably altered to at least allow an aggregator to be appointed by broadcasters that come within a particular group. For this purpose the term “Group” could be interpreted as defined in the Competition Act 2002 as amended from time to time. Accordingly all broadcasting companies coming under the same group should be allowed to permit an aggregator of their choice to distribute all their channels. The disaggregation if at all should occur at the group level and not at the individual broadcaster company level. This would provide much needed succor to broadcasters and would give them some respite from the economic risks and uncertainty that the country finds itself in.

Also with the onset of DAS it is necessary that bouquets that have been frozen from time to time since 2004 to 2007 be allowed to be unlocked so that broadcasters have the requisite flexibity to package their offerings in terms of contemporary realities whereby both channels (numerically as well as qualitatively) are allowed to reconcile with the prevailing economic situation and the emergence of new set of regulations in order to enable broadcasters to optimise their offerings in such challenging times.

END

COMPETITION COMMISSION OF INDIA

19th February, 2013

Combination Registration No. C-2013/01/107

Order under Section 31 (1) of the Competition Act, 2002

1. On 24th January, 2013, the Competition Commission of India (hereinafter referred to as the "**Commission**") received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (hereinafter referred to as the "**Act**") given by UTV Global Broadcasting Limited (hereinafter referred to as "**UGBL**").

2. In terms of sub-regulation (4) of Regulation 5 and sub-regulation (2) of Regulation 19 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (hereinafter referred to as the "**Combination Regulations**"), vide letter dated 1st February, 2013, UGBL was required to furnish additional information. UGBL filed its response on 7th February, 2013.

3. The proposed combination relates to the acquisition of twenty six percent of the equity shareholding in IC Media Distribution Services Private Limited (hereinafter referred to as "**IC**"), currently a wholly owned subsidiary of IndiaCast Media Distribution Private Limited (hereinafter referred to as "**IndiaCast**"). The notice was filed pursuant to the execution of a Joint Venture Agreement between IndiaCast, UGBL and IC on 19th January, 2013 (hereinafter referred to as the "**JVA**") pursuant to which it has been proposed that UGBL and IndiaCast shall subscribe to the shares of IC such that the shareholdings of UGBL and IndiaCast in IC would be twenty six percent and seventy four percent respectively.

4. UGBL, a company incorporated under the provisions of the Companies Act, 1956, is engaged in the business of aggregation and sub-licencing of pay television channels for its two subsidiaries viz. UTV Entertainment Television Limited and Genex Entertainment Limited. UGBL is stated to be an indirect subsidiary of The Walt Disney Company which is a part of the Disney Group that operates across the world in the business segments of media networks, parks and resorts, studio entertainment, consumer products and interactive media. As per the details provided in the notice, the Disney Group broadcasts nine television channels in India.

5. IndiaCast, a company incorporated under the provisions of the Companies Act, 1956, is engaged in the business of aggregation of television channels broadcast by TV18 Broadcast Limited (hereinafter referred to as "**TV18**"), Viacom18 Media Private Limited (hereinafter referred to as "**Viacom18**") and certain other broadcasters. IndiaCast is currently a subsidiary of TV18. It has been stated in the notice that TV18 is a subsidiary of Network18 Media and Investments Limited (hereinafter referred to as

"**Network18**"), which also holds fifty percent of the shareholding in Viacom18. Network18 with its subsidiaries and affiliates (hereinafter referred to as the "**IndiaCast Group**") operates in the media and entertainment sector, with interests in television, internet, film entertainment, digital content, e-commerce, magazines, mobile content, event management services and other allied businesses.

6. It has been stated in the notice that the Disney Group and the IndiaCast Group shall grant exclusive licence to IC to distribute their television channel(s). It has also been stated in the notice that post-combination, UGBL and IndiaCast would cease their aggregation business in India as they now propose to carry out the business of providing the service of aggregation in India through IC by way of the proposed combination.

7. Since the business of aggregation of the television channels offered/broadcast by the Disney Group and the IndiaCast Group, in India, is proposed to be transferred to IC by way of issuance of exclusive licenses, in terms of sub-regulation (9) of Regulation 5 of the Combination Regulations, the value of assets and turnover of the respective licensors is attributed to IC. The proposed combination falls under Section 5 (a) of the Act.

8. It is observed that the proposed combination relates to the supply of television channels in India. Conventionally, the television channels were broadcast through terrestrial and analog cable platforms. The digital transmission of television channels, which is of recent origin, comprises transmission through digital cable, Direct to Home (DTH) and Internet Protocol Television (IPTV). Though the subscriber base for platforms using digital transmission of television channels has been growing rapidly, analog cable network continues to be a significant distribution platform for transmission of the television channels.

9. As stated in one of the earlier orders of the Commission, the supply chain for broadcasting of television channels through analog cable network comprises the following: (i) Companies operating the television channels (broadcasters); (ii) Aggregators; (iii) Multi System Operators (MSOs); and (iv) Local Cable Operators (LCOs). The *broadcaster* owns the content that is transmitted to the end consumers. The broadcaster may either produce its own content or source content from a third party. The broadcaster uplinks the content signal to the satellite which is in turn downlinked by the distributors. The broadcaster may transmit its content either directly or through an aggregator. An *aggregator* is a distribution agent who undertakes the distribution of television channels for one or more broadcasters. The aggregator also does bundling of the television channels of different broadcasters and negotiates on their behalf with the MSOs regarding subscription revenues. The sale of television channels to the MSOs by the broadcasters or the aggregators may be on *a-la-carte* basis (each channel sold as a single unit) or as a bouquet (two or more channels bundled and sold as a single unit). The MSOs downlink the content signals of the broadcaster and further distribute the same to LCOs for retail distribution to the end consumer. As per the Telecom Regulatory Authority of India (TRAI) estimates, India is stated to have around 200 broadcasters, 24 aggregators, 6000 MSOs and around 60,000 LCOs (Source: TRAI

Consultation Paper on *Implementation of Digital Addressable Cable TV Systems in India* dated 5th August, 2010).

10. It has been stated in the notice that the sharing of subscription revenue between the broadcasters and its downstream intermediaries is skewed in favour of the group that controls the information regarding the subscriber base i.e., the MSOs/LCOs. However, recently, measures have been taken by the Government of India towards digitization of the cable television system to have an addressable system that enables identification of subscriber base. These measures are primarily with a view to overcome the limitations of analog cable systems including the lack of clarity on the subscriber base and the limitations on transmitting more number of channels to the end consumers.

11. Similar to the analog cable distribution system, in DTH distribution system, the broadcasters/aggregators sell their television channels to DTH Operators (DTHOs) for onward transmission to the end consumer. It is observed that DTH distribution system has gained significance in recent times and is likely to be a preferred choice of new subscribers in near future. As regards the IPTV distribution system, it is observed that the subscriber base in this system is comparatively insignificant.

12. As already observed that both UGBL and IndiaCast are engaged in the business of aggregation of television channels operated/ broadcasted by their respective group companies. As a result of the proposed combination, the aggregation business of both the entities would be combined and carried out by IC. It is also proposed that exclusive distribution licenses would be granted to IC for aggregation of the television channels operated by the Disney Group and the IndiaCast Group. It has been stated in the notice that IC could provide aggregation services to other broadcasters also. Further, the broadcasters enter into aggregation tie-ups to correct the market imbalances created on account of information asymmetry/non-transparency regarding subscriber base. An aggregator offering bouquets consisting of television channels of different broadcasters makes the offering attractive and consequentially places the aggregator in a better position to negotiate subscriber numbers and placement/carriage fees.

13. It is noted that the broadcasting sector in India is regulated by the TRAI, which has framed various regulations which, *inter-alia*, make it obligatory for a broadcaster to provide signals of its television channels on a non-discriminatory basis to every DTHO/MSO and not to enter into exclusive agreements with any MSO/distributor that prevents others from obtaining such television channels for distribution. Further, the regulations and tariff orders issued by TRAI, from time to time, stipulate that broadcasters/ aggregators cannot deviate from the pricing methodology mentioned in those regulations/tariff orders. It is observed that the market for providing the service of aggregation is competitive with a number of players operating therein. Even after the combination there will be 24 (twenty-four) aggregators in the market which would provide enough competition in the market. As per the details provided in the notice, it is also observed that the market share, based on the estimation of TAM for the period 2010-2012, of six television channels aggregated by UGBL along with three other television channels of Disney Group is around 4 percent only. Further, as a result of the

proposed combination, IndiaCast would discontinue its aggregation tie-up with Sun Distribution Services Private Limited and accordingly the market share of channels which would be aggregated by IC would be less than that of IndiaCast.

14. Considering the facts on record and the details provided in the notice given under sub-section (2) of Section 6 of the Act and the assessment of the proposed combination after considering the relevant factors mentioned in sub-section (4) of Section 20 of the Act, the Commission is of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission hereby approves the proposed combination under sub-section (1) of Section 31 of the Act.

15. This approval is without prejudice to any other legal/statutory obligations as applicable.

16. This order shall stand revoked if, at any time, the information provided by the parties to the combination is found to be incorrect.

17. The Secretary is directed to communicate to the UGBL accordingly.

COMPETITION COMMISSION OF INDIA

Case No. 31/2011

Dated: -21.03.2013

Information filed by:-

Shri Yogesh Ganeshlaji Somani

R/o Marwari Gali, District –Jalna (Maharashtra)

Through --- None

-- Informant

Against:-

1. Zee Turner Ltd.,

Plot No. 9, Film City, Sector- 16A, Noida,

Through --- None

2. Star Den Media Services Pvt. Ltd

7th Floor, Bule Wave, Link Road, Andheri (W), Mumbai

Through --- None

-- Opposite Parties

Order under Section 26(6) of the Competition Act, 2002

In the present matter, the information was filed on 17.06.2011 under Section 19 (1) (a) of the Competition Act, 2002 (hereinafter referred to as "the Act") by Shri Yogesh Ganeshlaji Somani (hereinafter referred to as "Informant") against Zee Turner Ltd (hereinafter referred to as "Opposite Party No. 1") and Star Den Media Services Pvt.

Ltd. (hereinafter referred to as “Opposite Party No. 2”) alleging that the proposed joint venture (“JV”) of Opposite Parties No. 1 & 2 in the sale and distribution of channels will strengthen their position by adversely affecting the competition in the relevant market. The Commission vide its order dated 27.09.2011 under section 26(1) of the Act directed the Director General (DG) to conduct an investigation into the matter and submit his investigation report.

2. The brief facts and allegations in the matter, as stated by the Informant, are as under;-

2.1 The Informant is a subscriber of satellite television channels who receives various channels from the local cable operator of his area. The Opposite Parties No. 1 & 2 are the companies registered under the provisions of the Companies Act, 1956. Opposite Party No. 1 is a joint venture between Zee Entertainment Enterprises Ltd and Turner International India Pvt. Ltd. and is an exclusive agent of various broadcasters or channel owners whose channels it is authorised to sell to various distributors of channels like Multi-system operators (MSO), Direct to Home Operators (DTHO) and the Internet Protocol Television Operators (IPTVO). Similar functions are performed by Opposite Party No. 2 also. Further, Opposite Party No. 2 is also a 50-50% JV of STAR and DEN. Opposite Party No. 1 is also a 74:26% JV of Zee and Turner.

2.2 The Informant had come to know from the newspapers and other news items that Opposite Parties No. 1 & 2 were forming a 50:50 joint venture company, namely, Media Pro Enterprise India Pvt. Ltd. (JV) to combine distribution of their respective channel bouquets following which JV would jointly aggregate and distribute channels licensed to Opposite Parties No. 1 & 2 and collect the subscription revenue of the combined entity.

2.3 The Informant has brought out that the relevant market for the purposes of the instant case is whole of India as both Opposite Parties No. 1 & 2 are leaders in distribution of channels in India. Opposite Party No. 1 & 2 offer channels in more than 17 genres including general entertainment, news, kids and reality shows etc. It has been alleged by Informant that both Opposite Parties are being market leaders and also being pioneers in India have better bargaining power due to acceptability of content by viewers across India.

2.4 The Informant has furnished the list of channels offered by Opposite Parties No. 1 and 2 to say that while 34 channels were offered by Opposite Party No. 1, 29 channels were offered by Opposite Party No. 2. Thus, in total 63 channels were offered by both the Opposite Parties in different languages and genres.

2.5 As per the Informant, the news article published in the Financial Express, New Delhi Edition dated 26.05.2011 had brought out that channel distribution industries was worth Rs.2500 crore of which share of Opposite Party No.1 was about Rs. 800 crore and share of Opposite Party No. 2 was about Rs. 1000 crore which is 70% of the market in total. The Informant has alleged that the creation of JV between Opposite Parties No. 1 & 2 would strengthen their position by adversely affecting the competition in the market. The proposed JV would force the small players to shut down or to join hands with each other. The JV in the market would not only adversely affect the competition among the broadcasters/channel owners but also would adversely affect the interests of distributors like MSO, DTH operators and IPTV operators which in turn would adversely affect the interests of end subscribers/consumers.

2.6 The Informant has further stated that the said JV would be much stronger intermediary in the market which would be able to kill the competition as after subscribing channels out of 63 channels offered by the JV, the MSOs, LCOs, DTHOs & IPTVOs would not be having enough financial capacity to subscribe channels of other broadcasters. The Informant has also stated that due to the monopoly of the JV in the satellite TV market, channels like Colors & Sony (not distributed by OP 1 and OP 2) would not be able to fully exploit the market and lag behind the channels of Opposite Party No. 1 and 2 irrespective of being popular among the end subscribers.

2.7 The Informant has submitted that Star Network, through its Dubai Subsidiary namely Network Digital Distribution Services, already had 20% shareholding in Tata Sky Ltd., a DTH operating in India. Zee Group had 64.78% shareholding interest in Dish TV India Ltd (DTHO) and it also had 63.26% shareholding interest in Wire and Wireless India Ltd (MSO).The Informant has further stated that considering vested interest of Opposite Parties in the JV, it was most likely that distributors namely Dish TV India Ltd. (DTHO), Tata Sky Ltd. (DTHO) and Wire & Wireless India Ltd (MSO) and their related LCOs would be getting preferential rates for the channels of JV and packaging treatment in comparison to other distributors in the market. In turn, these DTHOs/MSOs who got cheaper and preferential deals would deliberately offer the unmatchable rates to the LCOs/end subscribers and would drive away the competition.

2.8 According to the Informant, players in the market would suffer due to undue advantage available to the JV and the consumers' interest would also suffer as the consumers would be deprived of the prices available in the market and also would not be able to get competitive rates for the channels subscribed by them.

3. The Commission considered the present matter in its meetings held on 28.06.2011, 08.07.2011, 10.08.2011, 25.08.2011 and 27.09.2011. The Commission, after considering the information and the material available on record, found that there existed a prima facie case in the matter and therefore, directed the DG under section 26(1) of the Act to conduct an investigation into the matter and submit an investigation report. Accordingly, on completion of the investigation, the Office of the DG submitted its investigations report dated 15.10.2012 to the Commission. The findings and analysis in the DG report, in brief, are as under:-

3.1 For the purpose of the investigation, information from the OPs and 3rd party stakeholders i.e. broadcasters, MSOs DTH Operators were collected, statements of the representatives of the OPs and the 3rd parties were recorded, and the regulatory framework of TV Industry and TRAI was also analysed by the DG.

3.2 For the purpose of delineating the relevant market, DG has assessed the broadcasting industry and reported that the supply chain of the Indian broadcasting industry is comprised of broadcasters, content aggregators and service providers. DG has reported that the cable TV segment in India, although fragmented, has shown tremendous growth. In the last few years, the number of satellite television channels has increased from 136 channels in year 2005 to more than 800 channels today. The large distribution sector now comprises of 6000 Multi System Operators (MSOs), around 60,000 Local Cable Operators (LCOs), 7 DTH/ satellite TV operators and several IPTV service providers. Television is the largest medium for media delivery in India in terms of revenue, representing around 45 percent of the total media industry.

3.3 DG has also examined the structure of the cable Industry in India, structure of the Analogue / Digital Cable Distribution, structure of the Direct to Home (DTH) and structure of IPTV. DG has further highlighted in his report, the major broadcasting and distribution technologies (Broadcasters, Content Aggregator, DTH Operator, Internet Protocol Television (IPTV), Multi System Operator (MSO), Local Cable Operator (LCO) and Terrestrial) present in India. DG has further reported that as per the uplinking/downlinking guidelines framed by the Central Government, channels are registered in two categories - News & current affairs; and Non-news and current affairs (General entertainment--GEC).

3.4 As per DG report, the broadcasting business in India is primarily driven by two sources of revenue – advertising and subscription. There are two main types of broadcasting business models: Free to Air (FTA) channels and Pay television channels. In India television channels are distributed either through a digital addressable analogue or non-addressable system/platforms.

3.5 DG has also reported about the concept of carriage and placement fee in the cable TV distribution industry. As per the DG report traditionally, cable services comprised signals being carried in analog mode, thereby significantly restricting the carrying capacity of such networks to carry only a maximum of 70-80 channels. Over 70% of cable and satellite homes are serviced by analog cable networks. This has led to a demand-supply mismatch and "auctioning" of frequencies by MSOs to channels who are willing to pay more to be carried in such cable networks. Therefore, MSOs have devised carriage fees as essentially a strategy, where such 'scarce' frequency for carrying the channel is sold at a premium by the MSO/LCO to the broadcaster/intermediary. Further, MSOs also charge placement fees from the broadcasters/distribution alliances for placing their channels in a particular frequency. It may be noted that MSO's earn more from placement fees rather than subscription revenue. This enables the MSOs to exercise greater bargaining power over the broadcasters/broadcasting alliances, which have no option but to pay such carriage fees in order to gain access to important subscription markets.

3.6 Keeping in view the aforesaid factual position of the TV industry, DG has reported that the services and activities of the Opposite Parties through their JV or other aggregator are a specialized area of service which involves important responsibilities of 'content aggregator' in the broadcasting industry. To this effect the aggregator bundles a number of channels licensed to it by broadcaster and sells them to MSOs, DTHOs, and IPTVOs on behalf of the broadcaster. It distributes channels in two ways: - either on a-la-carte basis where a channel is sold individually or in the form of a bouquet where two or more channels are bundled. There are also many broadcasters who do not engage any aggregator for distribution of their channels and directly deal with the distribution platforms. Out of about 800 channels only about 175 channels are distributed through aggregators. Thus, as per the DG report, the services of aggregators are generally used by those broadcasters who have many channels for distribution.

3.7 As per DG report, an aggregator is engaged in activities of aggregation and distribution of any television channel via liner and / or non-liner means, arranging carriage, band placements, setting up of set top boxes, etc. within India and to collect subscription revenue for the broadcasters either in form of bouquet of channels or individual via all modes of distribution including but not limited to cable, digital or analog, direct-to-home (DTH), head end in the sky (HITS), MMDS, SMATV, internet protocol television (IPTV), terrestrial satellite or any other emerging mode. Thus, as per the DG report, from the supply side, the aggregators can only substitute distribution of channel from cable to DTH and thus, the services of television channels through cable or DTH by the broadcaster is substitutable with the services of aggregators.

3.8 DG has further reported that in the television industry channels can be classified according to genres such as: English New, Hindi News, General Entertainment Channel & Sports etc. and accordingly such channels may be somewhat substitutable within a genre but not between genres for example; a sport channel that broadcast cricket match cannot be substituted for by a Hindi new channel. However, the consumer can switch from different mode of transmission i.e. from cable to DTH. Thus, cable TV and DTH is interchangeable/ substitutable from the consumer side. For the operators of both the distribution platforms, be it MSO or DTH the agreement has to be entered with the aggregator or the broadcaster of channels and there is no other substitute of the service of distribution of channels for them.

3.9 In the light of the above, DG has delineated the relevant market as the market of aggregating and distribution of TV Channels to MSOs, DTHOs and IPTVOs in India.

3.10 As per DG report, on 26.05.2011, Opposite Party No. 1 and Opposite Party No. 2 announced a 50-50 joint venture to form Media Pro Enterprises that would jointly aggregate channels and services of both companies in India from 01.07.2011. In the proposed JV, Opposite Party No. 1 and 2 were to have 50:50% shareholdings.

3.11 DG has reported that it was claimed by the OPs before him that the proposed JV would increase efficiency in production, supply, distribution, storage and acquisition of control of goods or provision of services. DG has further reported that on perusal of JV agreement no provision regarding determination of purchase or sale prices, or limiting or controlling production, supply, market, technical development, investment or provision of services in the market have been noticed.

3.12 Thus, as per DG report, on the basis of the objective clause of the JV, it is clear that the obvious purpose behind this JV is to create efficiencies by optimum utilization of resources and cost reduction; promote digitization and addressability; and curb piracy of channel signals.

3.13 As per DG report, in the relevant market there are about 24 aggregators who distribute the channels on various distribution platforms on behalf of broadcasters. Prior to formation of Media Pro Enterprise India Private Limited there were four main sizeable Aggregators, namely, Zee Turner Limited ("Zee Turner") [33 channels – 19 All India Channel and 14 Regional Channels], Star Den Media Service Private Limited ("Star Den") [26 channels and 5 Regional Channels],MSM Discovery Private Limited ("MSMD") [18 Pay channels 17 All India Channels and 1 Regional Channel] and Sun 18 [35 pay channels – 14 All India Channels and 21 Regional Channels].

3.14 After the formation of JV, it has 60 channels for distribution, Sun 18 has 33, MSM Discovery has 19, Usha Ushodaya Enterprises Pvt. Ltd., has 12, Raj TV has 6 and others have 2 to 5 channels for distribution. On the basis of the aforesaid data, DG has reported that after the JV agreement, it has less than 40% of the market share in terms of the number of channels distributed by the aggregators in the market. If we also take into account all the channels distributed by individual broadcasters then the share of JV would be about 10% only. However, considering the popularity of the channels under the belt of JV, its share on analogue cable distribution network is much more than 10% and varies between 20 to 40% depending on the preference of the viewers. Therefore, DG is of the view that the agreement between two players who control less than 40% market cannot result in fixing of price in the market or control the supply, unless all the players or at least all the major players simultaneously join their hands together with such intent in the market.

3.15 DG has further reported in the broadcasting and distribution of TV channels in India, each stakeholder like broadcasters aggregators, MSOs, LCOs, DTHOs and IPTVOs has a major role to play in the industry and exerts significant countervailing power on the others in the value chain. It needs to be noted that it is not the JV that controls or determines the choice of television channels where the distribution of television channels takes place on a non-- addressable system, it is the MSO that decides the channels that would finally be made available to the subscriber, whereas on an addressable system, DTHOs and IPTVs, it is the end consumer who decides the channels it wants to view.

3.16 DG has further reported that TRAI has issued various Rules and Regulations to monitor and regulate the Cable TV broadcasting industry and in its Telecommunication (B&C) Service Inter Connection Regulation 2004, in Clause 3.2, 3.3, 3.4 and 3.5, specific directives have been issued with regard to distribution of channels on Non-discriminatory terms; Pricing of channels and limiting downstream investments. The broadcasters are under obligation to file Reference Inter Connect Offer (RIO) under Clause 13.2 of TRAI Regulation, the charges from the Broadcaster or the Content Aggregator are governed by the Reference Interconnect regulations of the TRAI. The rates charged by the Broadcaster or the Content Aggregator are same for all the service providers under the RIO regime. The Interconnect Regulations of the TRAI mandates that all broadcasters/ aggregators are required to provide TV signals to MSOs/LCOs/DTH service providers on request on non-discriminatory terms. All broadcasters/aggregators to whom a request is made for TV signals by a distributor are required to negotiate with such distributor within a 60 day period. In the event of disconnection of signals, a broadcaster/aggregator is required to provide 3 weeks prior notice to the distributors providing reasons as to why the channels are being disconnected. Further, broadcasters are also not allowed to enter into an agreement with any distributor, including exclusive contracts in manner so as to preclude other distributors from obtaining access to TV signals of their channels. As per the Interconnect Regulations, any person may approach the broadcaster directly to obtain channels if an agent or any other intermediary of a broadcaster or MSO does not respond to a request for provision of TV signals.

3.17 As per DG report, formation of joint ventures and alliances is a common trend as observed by the TRAI in the Consultation Paper on Tariff Issues along with the underlying reason(s). The relevant question to be examined in this regard is whether, the formation of the JV has resulted in the parties to the JV being in the position to gain substantial market power to control the supply in the market or not. Due to the various regulations framed by the TRAI, it does not appear that after the creation of JV, the supply in the market has been affected at all.

3.18 DG has also reported that the investigation has indicated that the formation of the JV does not create a foreclosure effect on the Distributors of television channels given that the regulatory regime would force the JV to supply channels and consequently, JV will not be able to deny its channel signals to any Distributor of television channels as per TRAI mandate. Further, the Distributors have sufficient countervailing power to match any bargaining power exerted by the JV by charging carriage and placement fees. As per DG report, the data collected during the course of investigation shows that there is no supply constraint created by the JV in the relevant market. The number of Bouquets for distribution by the JV in the relevant market has increased to 16, which was only 9 (6 of Opposite Party No. 1 and 3 of Opposite Party No 2) before the formation of JV. Thus, the creation of JV has resulted in the better product mix to allow better choice of combination of channels for the subscribers. Further, the MSOs are also free to subscribe channels on a-la- carte basis as earlier on the same prices. It shows that the JV has not resulted in any anti-competitive restraint either at horizontal level or at vertical level in the relevant market.

3.19 On the basis of said discussion, DG has reported that in view of the market conditions and TRAI Regulations, there is no scope for the aggregators or broadcasters in the market to indulge in the anti-competitive conduct of controlling the supply of their channels to MSOs or other distribution platforms. The analysis of the conduct of pre and post JV formation has not revealed any evidence to show that, it has indulged in violation of the provisions of section 3(3)(h) of the Act. Further, the Regulations and Tariff orders of TRAI, do not leave any possibility for any of the stakeholder including the OPs to deviate from the price range determined by TRAI and charge unfair prices in the market from consumers. On the basis of the comparison of the pricing of channels post and pre formation of JV, DG has reported that they have remained at pre JV level even after one year of the JV agreement. Hence by entering into JV agreement the OPs have not been able to fix or influence the price of their channels in violation of section 3(3) (a) of the Act.

3.20 As per DG report, the OPs have paid higher amount on account of the placement and carriage fee during the F.Y 2011-12 to the MSOs. The placement fee accruing to MSOs has not been impacted due to Mediapro's greater bargaining power vis-à-vis MSOs. On the industry level also, the placement &

carriage fee has been found to be increased about 20% in 2011-12, which indicates the countervailing power of the distributors (MSOs). During, the course of investigation, no empirical data/ evidence has been provided by the MSOs to show that there has been any impact of JV on the ability of MSOs/DTH to demand placement & carriage fee from the broadcasters. Thus, the DG reported that the allegation of Informant that the market power of JV will affect the ability of MSOs in bargaining has not been found to be true on this issue.

3.21 The investigation has therefore concluded that in view of the present regulatory framework, the formation of the JV has neither created any entry barriers for new broadcasters nor resulted in affecting the competition for existing broadcasters. There is significant competition in the market with more channels competing for the same set of eye-balls; MSOs are fee to carry only selected channels of JV. Thus, the investigation has found that the agreement between Opposite Party No. 1 and Opposite Party No. 2 to from a JV has not resulted in violation of section 3(3) of the Act to determine the purchase or sales price or to limit or control the supply of services in the market.

3.22 DG has further reported that at present there are more than 800 channels which have been granted permission by the government (reportedly more than 500 channels are active in India) of which JV is distributing only 63 channels. The presence of a number of significant players in this business offering a large number of channels, including for each of the genres, competing for viewership and prime time slots existence of regulatory oversight and overall growth in the last few years in the number of channels and option available to the viewers, make this industry highly competitive. DG has also reported that in view of the market dynamics and TRAI regulations, there is no entry barrier posed by the JV agreement in the market. Further, the DG has not found any evidence that any stakeholder in the industry has closed down their business due to the impact of the JV. As per TRAI regulations, there is no hindrance to the entry into the market. Therefore, on the basis of said discussion, DG has concluded that the formation of JV has not resulted in any appreciable adverse effect on competition in India what so ever at horizontal level or at vertical level.

3.23 DG has further reported that at present, on the basis of the information provided by the Opposite Party No. 1, JV distributes 61 numbers of channels which constitute 7.58% of the total TV channels. Similarly, on the basis of the TRAI report, there are 173 pay channels and the JV distributes only 55 number of pay channels which constitute 32% of the pay channels in the country. The investigation has shown that though the JV has apparently become a market leader in the relevant market, yet their position and strength cannot influence the other players in the relevant market as JV cannot work in isolation ignoring the available rules and regulations which mandates broadcasters/content aggregators to provides channels on non-discriminatory basis to the MSOs and DTHOs/IPTVOs.

3.24 As per DG report, the MSOs subscribe maximum number of channels of the JV either through bouquets or a-la-carte rate but they broadcast/show only those channels which are popular and having high demand in their area of operation through the analogue system. The capacity of analogue cable network is only about 90 channels; the broadcasters have to compete to distribute their channels on analogue network, especially those channels which are not very popular. This was precisely the objective of the entry of aggregators in the distribution as the demand and supply factor was heavily tilted in favour of the MSOs leading to unreasonable demand of carriage and placement fee. The aggregators have brought efficiency in the market as confirmed by various broadcasters during the course of investigation. The investigation has revealed that the share of JV on analogue network is presently between 20 to 35% depending on the preference of the consumers. Across the country the share of JV varies on the basis of factors like consumer's choice, network availability as well as on discretion of MSOs. Thus, the data gathered during the course of investigation does not indicate that the JV has become a dominant player on analogue network. Further, with the compulsory digitization of cable network this inefficiency in the market will be completely removed.

3.25 As per DG report, JV is having popular Hindi GEC Channels led among the genres with a 27.4% share of viewership, Regional channels have a viewership share of 33.4%, Hindi Movie comes next with a genres share of 11.9% while the kids genres remain stable at 6.3%.

3.26 DG has also reported that the analysis of factors mentioned under section 19(4) shows that the JV has advantage over other aggregators by commanding about 30% of the total space on analogue cable network and also in terms of popular channels it has maximum market share. So far as the issue of affecting the relevant market in its favour is concerned, it is reported by DG that in the analogue market MSOs/LCOs exercises greater bargaining power at the retail level. The attention may be drawn towards a report of Media Partners Asia (MPA), which analyses the data for the year 2010 and as per the report, the revenue share of the broadcasters in the cable and satellite is in the range of 11% to 12%. This represents the relative strength of the MSOs/LCOs as compared to the broadcasters/content aggregators. Moreover, MSOs/LCOs exert their bargaining powers by charging carriage fee from broadcasters/content aggregators.

3.27 As per the DG report, the allegation of the Informant that the competitors will be forced to shut down or will have to join-hands with the JV giving them greater monopoly in the market is also not substantiated as the TRAI Rules & Regulations mandate broadcasters / content aggregators to provide all the channel signals to every MSOs/ DTHOs under must provide obligation who asked for them. Conversely, there is no mandate on the MSOs to carry all channels sought for by them. Therefore, the apprehension of the Informant that the new JV Company will reduce the bargaining power of MSOs for negotiation of carriage and placement fee is not correct as the new JV has nothing to do with the carriage and placement fee and the same is still being carried out by the Opposite Party No. 1 and 2 as usual. Further, it is observed that there is no change in the market situation prior to the JV and after the JV with regard to purchase/sale price of the product, provisions of providing services, limit or control production & supply, since the aforesaid propositions are being well regulated by the TRAI through their various orders/notifications.

3.28 In view of the above discussion DG has reported that the allegation of the Informant that JV will become dominant in the relevant market on the basis of their market share is not substantiated. Investigation has found that in a market condition where the JV has neither the power to determine the price of its product nor has the capacity to refuse to supply or impose any condition in violation of TRAI regulations, its position cannot be termed to be a dominant enterprise within the meaning of section 4 of the Act.

3.29 On the issue of giving/granting preferential treatment to their subsidiaries by Opposite Party No.1 and2, DG has reported that in terms of Clause 3.2 of TRAI Regulation all the broadcasters have to deal on non-discrimination basis and to file RIO in terms of Regulation 13.2. Any person aggrieved on account of discrimination by the broadcaster or its agent can get its grievances redressed by approaching appropriate forum i.e. TDSAT for redressal of his grievances. Thus, the allegation of Informant of granting preferential treatment to its group of companies thereby forcing the small players to shut down their business or join hands with them does not hold good as there is an obligation on the part of JV to must provide all the channels to MSOs/ DTHOs, however, there is no must carry obligation for downstream players.

3.30 On the allegation of providing/giving less carriage fee to MSOs and DTHOs, DG has reported that the data gathered during the course of investigation has indicated that the figures of Carriage and placement fee paid during 2008-09 were to the extent of Rs.950- 1000 crore in the industry as a whole. In other words, the carriage fee constitutes about 25% of the total subscription revenue earned by the broadcasters at wholesale level. The entire concept of placement & carriage fee is originated from the inefficiencies in the distribution market. The concept of aggregators is precisely to deal with such inefficiencies in the market. The aggregators are meant to negotiate on behalf of the broadcasters with various distribution platform stakeholders which are more than 6000 at present. The aggregators thus facilitate the distribution of different channels through single negotiation with each operator. This helps in increasing the efficiency in the distribution market. It may be pointed out that the TRAI has not laid down any rule either on the method or price of carriage & placement fee. MSOs being dominant in their respective territory charge such fee as per their power and dependency of the broadcaster. There is no fixed or logical pricing pattern or industry norms found in determination of placement & carriage fee. Factors like cost or demand and supply have also not been found operating while determining these charges. With the advent of placement & carriage charges the model of revenue for MSOs has shifted from customer's subscription to placement & carriage fee. This has also reportedly resulted in inefficiencies like under reporting of subscription base. In the last few years market has also witnessed consolidation in the business of MSOs. Earlier there was hardly any major difference between LCOs and MSOs, now with the entry of big players like Hathway, Digicable, WWIL, Siticable etc. the business of cable distribution has become more organized leading to increase in their market power in the distribution network. The investigation has revealed that if a new channel wants to launch on the distribution network of analogue cable network, the demand by MSOs may be any amount for carriage and placement fee depending on the MSOs.

3.31 Thus, in view of the above and on the basis of information gathered during the course of Investigation and also after analysis of the facts and circumstances of the case, DG has reported that the O.P.s have not been found to be violating the provisions of section 4 of the Act. The entire case was based on the apprehension of the informant and no evidence or material has been found during the course of investigation to prove the allegations levelled in the information. The investigation has shown that though by forming the JV, Opposite Party No-1 and 2 have become a market leader with a combined market share of about 30% in terms of revenue as well as the number of channels, potentially competing in the market, yet the OPs cannot be held to be a dominant enterprise on account of its inability to act independently of the competitors or consumers.

The legal provisions in the market do not allow any player to affect the relevant market in any manner. Further, the analysis of the conduct of JV has also not indicated anti-competitive activities in violation of the provisions of the Act. The investigation has not resulted in detection of any evidence to show that the OPs have infringed the provisions of Section 3(3) and/or Section 4 of the Competition Act as alleged by the Informant.

4. The Commission considered the investigation report submitted by the DG in its ordinary meeting held on 25.10.2012 and decided to send the copy of the investigation report to the Informant for filing is reply/objections to the DG report. The Commission also directed the Informant to appear before the Commission on 27.11.2012, if he so desired. On 27.11.2012, the Commission considered the matter again and found that the Informant neither filed his reply/objection to DG report nor appeared before the Commission. However, the Informant vide its application dated 14.01.2013 submitted that he did not want to proceed in the matter due to some personal reasons and therefore, he wanted to withdraw the information. The Commission considered the withdrawal application of the Informant in its meeting held on 20.02.2013 and decided to reject the same as there is no provision of withdrawal of information in the Act.

5. The Commission has carefully gone through the information, the report of the DG, the documents and evidence relied upon by the DG and the other relevant material available on record and is of the view that the following issue is for consideration before the Commission:-

> Whether the Opposite Parties have contravened the provisions of Section 3 or Section 4 of the Act?

6. For the proper disposal of the aforesaid issue, it is required to briefly discuss the supply chain and regulatory framework of the cable TV broadcasting industry in India. The supply chain for broadcasting of television channels through analog cable network comprises the following: - (i) companies operating the television channels (broadcasters): (ii) Aggregators; (iii) Multi System Operators (MSO); and (iv) Local Cable Operators (LCO). The broadcaster owns the contents that are transmitted to the end consumers. The broadcaster may either produce its own content or source content from 3rd party. The broadcaster uplinks the content signals to the satellites which are in turn downlinked by the distributors. The broadcaster may transmit its content either directly or through an aggregator. An aggregator is a distribution agent who undertakes the distribution of television channels for one or more broadcasters. Aggregator also does bundling of television channels of different broadcasters and negotiates on their behalf with the distributors viz MSOs/DTHOs/IPTVOs regarding subscription revenues. The sale of television channels to the distributors by the broadcasters or the aggregators may be on a-al-carte basis (one channel sold as a single unit) or as a bouquet (two or more channels bundled and sold as a single unit). The MSOs downlink the content signals of the broadcaster and further distribute the same to LCOs for retail distribution to the end consumer. Recently, measures have been taken by the Government of India towards digitization of the cable television system to have an addressable system that enables identification of subscriber base. These measures are primarily with a view to overcome the limitations of analog cable systems including the lack of clarity on the subscriber base and the limitations on transmitting more number of channels to the end consumers. In this system also, the distribution of TV channels to end consumer is done through MSOs and LCOs.

7. Similar to analogue cable distribution system, in DTH distribution system and IPTV distribution system, the broadcasters/aggregators sell their television channels to the

DTHOs and IPTVOs for onward transmission to the end consumer. It is observed that DTH distribution system has gained significance in recent times. However, IPTV distribution system's subscriber base is comparatively insignificant.

8. It is noted that the broadcasting sector in India is regulated by the TRAI, which has framed various regulations which, inter-alia, make it obligatory for a broadcaster to provide signals of its television channels on a non-discriminatory basis to every DTHO/MSO/IPTVO and not to enter into exclusive agreements with any distributor that prevents others from obtaining such television channels for distribution. Further, the regulations and tariff orders issued by TRAI, from time to time, stipulate that broadcasters/aggregators cannot deviate from the pricing methodology mentioned in those regulations/tariff orders. The relevant rules and regulations framed by the TRAI, in its Telecommunication (B&C) service inter connection Regulation 2004, are as under:-

> *3.2 Every broadcaster shall provide on request signals of its TV channels on non-- discriminatory terms to all distributors of TV channels, which may include, but be not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator; multi system operators shall also on request re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators. Provided that this provision shall not apply in the case of a distributor of TV channels having defaulted in payment.*
>
> *Provided further that any imposition of terms which are unreasonable shall be deemed to constitute a denial of request.*
>
> *3.3 A broadcaster or his/her authorized distribution agency would be free to provide signals of TV channels either directly or through a particular designated agent or any other intermediary. A broadcaster shall not be held to be in violation of clauses 3.1 and3.2 if it is ensured that the signals*

are provided through a particular designated agent or any other intermediary and not directly. Similarly a multi system operator shall not be held to be in violation of clause 3.1.and 3.2 if it is ensured that signals are provided through a particular designated agent or any other intermediary and not directly.

Provided that where the signals are provided through an agent or intermediary the broadcaster/multi system operator should ensure that the agent/intermediary acts in a manner that is (a) consistent with the obligations placed under this regulation and (b) not prejudicial to competition.

3.4 Any agent or any other intermediary of a broadcaster/multi system operator must respond to the request for providing signals of TV channel(s)in a reasonable time period but not exceeding thirty days of the request. If the request is denied, the applicant shall be free to approach the broadcaster/multi system operator to obtain signals directly for such channel(s).

3.5 The volume related scheme to establish price differentials based on number of subscribers shall not amount to discrimination if there is a standard scheme equally applicable to all similarly based distributors of TV channel(s).

Explanation.-'Similarly based distributor of TV channels' means distributors of TV channels operating under similar conditions. The analysis of whether distributors of TV channels are similarly based includes consideration of, but is not limited to, such factors as whether distributors of TV channels operate within a geographical region and neighbourhood, have roughly the same number of subscribers, purchase a similar service, use the same distribution technology. ")

3.6 "Any person aggrieved of discrimination shall report to the concerned broadcaster or multi system operator, as the case may be. If the *broadcaster or multi system operator does not respond in a satisfactory manner in a reasonable time period, but not exceeding thirty days, the aggrieved party can approach the appropriate forum. "*

9. The plain reading of the aforesaid regulations suggests that broadcasters are under an obligation to provide non-discriminatory access of their content to all distributors of TV channels and cannot refuse to deal with a distributor on unreasonable or discriminatory grounds such as discriminatory pricing etc. Therefore, in view of the present TRAI regulations, there is almost no scope for the aggregators / broadcasters to indulge into the restrictive activities of controlling the supply of their channels to MSOs or other distribution platforms. Further, the DG has reported that the number of bouquets for distribution by the JV has increased from 9 to 16 thus, it cannot be said that the end consumers or the MSOs/DTHOs/IPTVOs are given less choice in choosing the channels. During the course of the investigation, DG has not come across any evidence which hints towards the control on the supply of channels by the JV in the market.

10. It is also noted that TRAI has also issued various tariff orders from time to time and as per these tariff orders the broadcasters/aggregators are effectively prohibited from charging any price either from MSOs or DTH operators, which exceed the prescribed ceiling prices. Further, the investigation has also revealed that so far as the prices of channels are concerned, they have remained at pre JV level even after one year of JV agreement. Therefore, the Commission notes that there is no evidence which establishes that the OPs through their JV have influenced or fixed the prices of their channels in violation of section 3 (3) (a) of the Act.

11. It is further noted that due to the TRAI's Inter Connect Regulation clause 3.6, the broadcasters or the aggregators have to supply the channels on a non-discriminatory basis to all the distributors and in case of any discrimination the concerned aggrieved

party may approach to the TDSAT. Further, as per the said regulations, every broadcaster is required to file with TRAI its Reference Interconnect Offer (RIO) and interconnect agreement with MSOs / LCOs and the same are reviewed by the TRAI. Due to the said regulations, the distribution of the channels and their pricing by the broadcasters/aggregators is totally regulated. Therefore, the Commission notes that the apprehension of the Informant, regarding the preferential treatment to their own MSOs and LCOs by the Opposite Parties is not genuine.

12. The Commission also observed that the Informant had also apprehended that the carriage and placement fees of the MSOs will be reduced by the JV due to its increased bargaining power. On the said issue DG has reported that the OPs have paid higher amount on account of the placement and carriage fee during the F.Y. 2011-12. The placement fee accruing to MSOs has not been impacted due to JV's greater bargaining power vis-à-vis MSOs. On the industry level also the placement and carriage fee has been found to have been increased about 20% in 2011-12, which indicates the countervailing power of the distributors (MSOs). The investigation by the DG has also not revealed any evidence which suggests that any MSO or DTHO has shut down its business due to the greater bargaining power of the JV. There is also no evidence which suggests that entry of any MSO or DTHO has been restricted due to the greater bargaining power of the JV. Therefore, in view of the above facts and circumstances, the Commission finds that the allegations of the Informant that the market power of the JV will affect the ability of the MSOs in bargaining are not substantiated.

13. The Commission also notes that the JV cannot create any entry barriers for the new entrants in the market nor it can foreclose the competition by creating hindrance for new players to enter in the market due to the present market dynamics and TRAI regulations.

14. In view of the aforesaid discussion, the Commission is of the view that there is no evidence on record which can substantiate the allegations of the Informant that the Opposite Parties have violated provisions of section 3(3) (a) or 3(3) (b) of the Act in forming a JV which distribute their channels to the MSOs, DTHOs and IPTVOs.

15. The Commission also observes that for the examination of the allegations under Section 4 of the Act, DG has delineated the relevant market as the market of the services of aggregating and distribution of TV channels to MSOs, DTHOs and IPTVOs in India. The supply chain for broadcasting of television has already been discussed in para 6 above. On the basis of the features and technology used in the supply chain of broadcasting of TV channels, the Commission is of the view that in terms of factors mentioned under section 2(t) and 19(7) of the Act, the services of aggregating and distributing TV channels is a unique kind of service which at present cannot be substituted by any other kind of service hence, the Commission agrees with the relevant product market as defined by the DG. The Commission is also in agreement with the relevant geographical market delineation as "India" by the DG because the services of aggregation and distribution of channels are not specified for some particular geographical region and the licenses of uplinking and downlinking is also given for India by Ministry of Information and Broadcasting. Therefore, boundaries of India are considered to be the relevant geographical market for the purposes of this case.

16. The Commission has observed that as per the DG report, the Hindi TV channels control 50% of the total market of the TV channels available in India whereas English TV channels, Bengali, Telugu, Tamil, Marathi, Malayalam, Kannada and others have 10%, 4%, 8%, 10%, 5%, 2%, 4% and 7%market share respectively. As per the latest information available on the website of the Ministry of Information and Broadcasting,

the total numbers of permitted private satellite TV channels in India as on 20.12.2012 are 848. As per the information available in the website of TRAI, as on 06.03.2012, there are 184 pay TV channels in existence. As per the DG report, the JV distributes only 55 number of pay channels which constitute 32 % of the pay channels in India. DG has also reported that the JV formed by the Opposite Parties has 60 channels for distribution as an aggregator which is followed by other aggregators such as 33 channels of SUN 18 Media, 19 channels of MSM Discovery, 12 channels of Usha Ushodaya Enterprises Pvt. Ltd., 6 channels of Raj TV, 5 channels of Prime Connect, 5 channels of Abs Media, 4 channels of Mahuaa Media, 4 channels of Tej Television, 4 channels of Maa TV, 3 channels of Turner International India Pvt. Ltd., 3 channels of Udisha and 2 channels of 9XMedia Pvt. Ltd..On the basis of said data, it is noted that as an aggregator the JV formed by the Opposite Parties has largest number of channels in its kitty but when compared to the total number of channels available in the country its market share is approximately 10% only.

17. It has also been observed from the DG report that out of the total number of channels distributed by some major MSOs across the country, the share of JV on analog network is presently 20% to 35% depending on the preference of the consumers in their respective geographical areas. It is also pertinent to mention here that the analog cable network can carry only 80 to 90 channels therefore; the broadcasters have to compete with each other for distributing channels on the analog network, this led to demand of more carriage fee and placement fee by the MSOs which results into exercise of more bargaining power by the MSOs. Across the country, the share of JV varies on the basis of factors like consumer’s choice, network availability as well as discretion of MSOs.

18. The Commission further observes from the DG report that JV is having popular Hindi GEC Channels led among the genres with a 27.4% share of viewership, regional channels have a viewership share of 33.4%, Hindi Movie comes next with a genres share of 11.9% while the kids genres remain stable at 6.3%.The Commission also notes that there are already about 24 distribution alliances and broadcasters manage distribution in house, which are operating at the level at which JV operates. While testing the market position of the JV on the factors mentioned under section 19 (4) of the Act, the Commission notes that there is no evidence in the DG report to substantiate that the JV has affected the operations of other broadcasters or aggregators in any way or they were forced to close down their business. The DG has also not reported that due to formation of the JV, the entry of any new broadcasters, aggregators, MSOs, DTHOs and IPTVOs was restricted or hindered in any manner. Due to the present regulatory framework, it is mandatory upon a broadcaster/ content aggregator to provide its channels to all MSOs and other distribution platforms (including DTH) on a non-discriminatory basis and the broadcaster/ aggregator cannot enter into exclusive agreements with any distributor that prevents others from obtaining such television channels for distribution. There is no “Must Carry” obligation for MSOs and other distribution platforms rather MSOs are free to decide number of channels and contents which they wish to carry for onward transmission to end consumers.

19. In view of the aforesaid discussion, it cannot be concluded that the JV formed by the Opposite Parties is a dominant player in the relevant market of the services of aggregating and distribution of TV channels to, MSOs, DTHOs and IPTVOs in India.

20. Accordingly, the Commission notes that since, the JV formed by the Opposite Parties is not dominant in terms of section 19(4) of the Act in the relevant market; it cannot abuse its position.

21. In view of the above discussion, the Commission observes that the Opposite Parties have not contravened either the provisions of Section 3(3) or Section 4 of the Act. The Commission also notes that the Informant has also not placed any evidence or data which can contradict the findings of the DG report. Therefore, given the facts and circumstances of the case, the Commission is of the view that the proceedings in the instant case should be closed under section 26(6) of the Act as the Commission agrees with the recommendation of the DG in his report. Accordingly, the matter is hereby closed.

22. Secretary is directed to inform the Informant accordingly.

Sd/- Member (G)	Sd/- Member (GG)	Sd/- Member (AG)

Sd/- Member (T)	Sd/- Member (D)

Sd/-
Chairperson