

IMCL's response to TRAI's Consultation Paper on Distribution of TV Channels from Broadcasters to Platform Operators

IMCL welcomes the new Consultation Paper issued on 6th August, 2013 with regard to distribution of TV channels from Broadcasters to platform operators.

When the first pay channel came to India around 1995, it came as encrypted to MSO but was free-to-air from the MSO to Operator and direct point customer. This system continues till date in analogue regime but wherever DAS has been introduced i.e. in Phase I and II and all channels are encrypted and are available either in bouquets or a la carte choice to customer. However, as far as the MSO is concerned the formation of four major broadcast aggregator cartels viz. Media Pro, I Cast, MSM Discovery and Sun TV have led to a situation where though the law and regulation provide for choice of bouquets and a la carte channels both to MSOs and customers, the muscle power exercised by the four aggregators has in effect negated the main purpose of DAS which was to offer the widest possible number of channel bouquets and a la carte choices but at sole option of the customer through the MSO and not that the broadcaster-aggregator would be in a position to force his bouquets on the MSO and hence the customer.

Though as per TRAI regulation there is a price differential cap between the analogue subscription rates of pay channels and DAS areas in effect the cartel of four major aggregators has followed a take it or leave it approach whereby in case the MSO wishes to exercise genuine choice of bouquet or take channels on a la carte basis, the economic burden increases on the MSO making it unviable to offer the same to the subscriber. Besides the price charged by the Aggregator for the same content varies from one MSO to another depending on the subscriber base, geographic location and alliance. At present, DAS is nothing but **"Digital Analogue System"** where distribution service providers are still paying a minimum guarantee on a negotiated subscriber base to avail of competitive prices from the various aggregators. This is resulting in confusion and distress among the subscribers as the same product is being offered to the consumer at different prices depending on the service provider's (independent MSO, broadcaster invested MSO, DTH, IPTV etc.) relationship with the aggregator. The subscriber is still getting bouquets as per the choice of the service provider and not to his taste as his preference will be more expensive.

The terms and conditions on which these bouquets are offered are completely one-sided in favour of the aggregator and are meant to regulate the MSO market to favour MSOs owned by the aggregators either directly or indirectly and in case of non acceptance of the terms and conditions, to also impose such technical conditions of transmission delivery which go much beyond the technical requirements laid down by the Regulator in Annexure I of the regulations of April 30, 2012.

The A la Carte and bouquet prices of channels should be the same for all players in the Digital space, i.e. MSOs, DTH, IPTV and HITS. This price should be fixed by the Broadcaster and should be uniform to all subscribers, irrespective of their distribution service provider. There should be a fixed revenue

share on the MRP given by the Broadcaster with no ceiling on the MRP. The Broadcaster is the manufacturer or producer of the product and he should fix the price of the product depending on Market forces. With no Aggregator, this can easily be done.

In these circumstances, IMCL fully supports the avowed objective of the Regulator to break the cartel of the aggregators and create genuine level playing field conditions for MSOs who have independent shareholding with no broadcast ownership. It is pertinent to note that in the balance two Phases of DAS covering nearly 77 million homes, there are approximately 5000-6000 independent cable operators (ICOs) who will not be able to stand up to the muscle power that the cartel of aggregators currently has and who will by imposing unreasonable tariff and interconnect terms ensure that these ICOs cannot cope with the cost of delivery of pay channels making them to either leave the trade or sell out to cartel owned MSOs at bargain prices which is unconstitutional and amounts to restriction on right to do business under Article 14 of the Constitution.

In the light of this, our specific responses to the observations of the Regulator on page 2 of the Consultation note are given below.

(1) The Broadcaster (and not the authorised distribution agency) shall publish its Reference Interconnect Offer (RIO) and enter into Interconnection

Response: IMCL is in full agreement with this requirement that the Broadcaster and not the aggregator shall publish the RIO and enter into interconnection agreements with the distribution platform operators. However, IMCL strongly urges the Regulator to bring in simultaneous regulation whereby the RIO to be signed by the distribution platform operator will require to be filed with the regulator at least 30 days prior to its promulgation so as to enable the Regulator to examine the details of the RIO and direct amendments if any, to the same so as to ensure that equities for both contracting parties are clearly established before the RIO comes into effect. While doing so the broadcaster and the regulator must put up the draft RIO on its website so that the distribution platform operators can also contribute to the process of examination of the draft RIO and give their suggestions to the Regulator whose directions would be final and binding on both parties.

Agreements with the distribution platform operators.

(2) If a broadcaster appoints a person as its authorised distribution agent, it shall ensure that----

(a) the authorised distribution agent does not change the composition of the bouquet formed by the broadcaster while providing it to the distributors of TV channels;

Response: An authorized distribution agent cannot be treated in law as a Broadcaster as he is only the agent of the broadcaster. His role should be limited to collect payments and facilitate other functions that may assist the broadcaster. He cannot modify and change the bouquet of TV channels of the broadcaster he represents. For this purpose, TRAI may consider proposing to MIB amendment of section 2 of the Cable Act which by virtue of the 2012 amendment has granted such status to the content aggregator which was never the intention of DAS. Secondly, the broadcasters RIO subject to pre-verification by TRAI as suggested above, must also be equally

applicable to all seekers of signal as per the principal interconnect regulations of December 10, 2004 as this equal and universal applicability has been challenged and has been upheld by the judicial authorities.

(b) the authorised distribution agent does not bundle bouquet or channels of the broadcaster with the bouquet or channels of other broadcasters. In other words, in case the authorised distribution agency represents more than one broadcaster, they shall not link offerings of the broadcasters they represent.

Response: The definition of Broadcaster cannot include bundling of channels or bouquet of other broadcasters as rightly observed by the Regulator in this sub para. The Broadcaster should only distribute and bundle his channels in case of owning a number of channels across genres.

The authorised distribution agency cannot represent more than one broadcaster as it is bound to give the agency an unfair economic clout even if he does not resort to changing the bouquets or bundling individual channels.

(c) while acting as an authorised distribution agent, such person acts for, on behalf and in the name of the broadcaster.

Response: As stated earlier, the role of the authorized distribution agent must be limited that of distribution of their own authorized channels and cannot replace the broadcaster and hence the stipulation in this sub para that the authorized distribution agent can act for and on behalf and only in the name of the broadcaster is perfectly valid and fully supported by IMCL.

In view of the uncertainty caused by the issuance of certain Press Notes regulating FDI and the recent RBI notifications and the fresh recommendations of TRAI issued last week, the large broadcasters must reveal their entire direct and indirect holding in such channels for which they have secured down linking permission and that such holding must be declared annually to the Regulator on the 1st April, at the end of every financial year so that the Regulator would be in a position to verify the bonafides of the channels being distributed by an authorized distribution agent of the broadcaster.
