COMMENTS ON TRAI CONSULTATTION PAPER No 13/2013 ON MONOPOLY/MARKET DOMINANCE IN CABLE TV SERVICES

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This consultation paper, in spirit, refers more to dominance of Members of MSO Alliance in urban conglomerates, wherein many Cable Operators (generally refered as LCOs) have sold off their networks to such MSOs. The connectivity in such acquired networks is referred to as Direct Points.

Some state level apparent monopolies need to be viewed as corporatization, vision on long haul, better transport techniques and provision of cable modem based broadband. Further a peep into management spectrum would also indicate strong political standing of owners. All of them generate some content too. They have established state wide optical fibre highways to to convert QAM signals into IP and re-convert IP to QAM at edge delivery points, distributed all over the state. This can also be viewed as first mover advantage. Their coverage has become a dis-incentive for a competitor to wrest the initiative.

Aam admi complains of monopoly in the sense that in every cable TV fed area, generally, there is only one Cable Operator and hence the subscriber cannot change the service provider for alternatives. The only choice they have now is DTH, which is not covered under Cable TV Act. There is an alternative in IPTV, opertated by TELCOs, requiring new CAT5e cabling from their DLCs to the subscriber home and suffers from severe attenuation in signal strength as more TV sets are connected. Hence this has NOT picked up.

The comments submitted are more from the point of view of the Cable TV subscribers i.e. AAM ADMI.

Issues for Consultation

Q 1. Do you agree that there is a need to address the issue of monopoly/market dominance in cable TV distribution? In case the answer is in the negative, please elaborate with justification as to how the ill effects of monopoly/market dominance can be addressed ?

No ! not at present.

It may be recalled that Cable TV networking, prior to promulgation of Cable TV Networks Regulation Ordinance 1994, which in 1995 was converted into an Act, was started by the present version of Cable Operator with a 6-12 channels network. Even today, that network, or similar to those are existing as last mile. At that time Cable TV networking was NOT legal. Coaxial cables were laid over electricity or telephone poles or building to building streches tanatamounting to encroachment of a 12-20 ft space in the air. After promulgation of the ordinance, the presently known MSO organization emerged since those networks were legalized with Post Office registration. MSOs represented deeper pockets capacity to acquire better hardware and influenced the Cable Operators to close down their Headends and hook on to MSOs networks fed from their Headends.

Initially this led to network disruptions by cutting cables or theft of amplifiers ending some times in violent street fights. However, that last mile continued to be in possession of Cable Operators from inception to date, unless acquired by the MSOs as their direct points. Later a concept of networking truce appeared with an understanding that cable opertors will neither compete in an existing Cable Operator nor give connection to subscribers should they want to disconnect and join any other cable operator. This truce forms the basis of the so called monopoly, as experienced by the AAM ADMI..

Technically these aerial networks are nothing but electronic slums without proper design or conformity to any standards. One reason for that state of affairs was non-existance of RoW for the cable networks.

Multi program TV content delivery constitutes broadcasting, a Central Govt subject, but not recognized till date as wireline broadcasting. This is left to the control of State Govts, whose sole interest in this business is levy and collection of taxes.

Now RoW has been provisioned, in the Cable Act as amended in 2011, but there is no mention of this provision in the Cable TV Rules amended in 2012, by way of uniformized procedures, rates chargeable or directive to state Govts to enable authorized technically sound cable layouts underground or overheads. In fact, any attempt to seek RoW at State levels has resulted in very heavy levys which are beyond the paying capacity of Cable Operators. Hence the basic brick, the air space encroached networks remains in control of last mile operator and hence the so-called monopoly.

If the Govt really wants to end monopoly, the following actions would be required :-

(a) Auction the areas, for say five years, to at least three operators.

(b) Allow them to lay cables underground imposing the condition that surface will be restored to national level after burrying the cables.

(c) Approve erection of Distribution Enclosures wherein cables of all three licensees will terminate with passives wherein input will be RF signal from service provider and output will be a properly laid drop to subscriber's home. When such an arrangement materializes, change of service provider sought by subscriber will only involve connecting Subscriber's drop to the alternate service providers tap. This will NOT take more than 10 minutes.

(d) In DAS environment only Set Top Boxes would have to be changed and integrated into the alternate service provider's SMS.

(e) Such a distribution system will end up with bi-directionality in networking and higher pnetration of broadband andvoice over cable, i.e. convergence of services.

This approach demands convergence of minds before provision of convergence of services. State Govt's could construct fibre highways and lease the same to service providers.

Availability of alternatives can minimise monpoly.

Q 2. Do you agree that the State should be the relevent market for measuring market power iln the cable sector? If the answer is in the negative, please suggest what should be the relevant market for measuring market power? Please elaborate your response wioth justifications.

No!
Broadcasting is a Central Govt Subject. Hence Ministry of Broadcasting does not exist in State Govt and hence data on Cable TV, which is nothing but wireline broadcasting, will seldom be available. At best State Govt may be able to provide statistics on Tax remittance based No of STBs. State Govts, except for tax recoveries, have done nothing to facilitate Cable TV networking. Hence any measurements based upon formulae will NOT yield the desired results.
On Question of monopolistic dominance and Power, it may be appreciated that MSO Alliance does not control more than 1000 Headends, out of 6000. Hence these few MSOs cannot be deemed to have true monopoly. They have no influence on Semi-urban, Urbanized Rural and Rural networks
Monopoly, in the sense of subscriber having no option but to remain hooked on existing Cable operators network, due to Market forces, is to be solved One such suggestion is in the reply above.

Q.3 To curb market dominance and monopolistic trends, should restrictions in relevant cable TV market be :

(i) Based on area of operation?
(ii) Based on market share?
(iii) Any other ?

Please elaborate response with justifications.

Q.4 In case your response to Q 3 is (i), please comment on how the area of relevant market ought to be divided amongst MSOs for providing cable TV services. Please elaborate your response with justifications.

Q.5 In case your response to Q 3 is (ii), please comment on what should be the threshold value of market share beyond which an MSO is not allowed to build market share on his own? How could be achieved in markets where an MSO already possesses market share beyond the threshold value? Please elaborate your response with elaborations?

Q.6 In case your response to Q 3 is (iii), please comment on suitability of rules defined in para 2.26 for imposing restrictions on M&A. Do you agree that threshold values of HHI and increase in HHI (X, Y and Delta) indicated in this para. If the answer is in the negative, what threshold value in HHI and delta could be prescribed for defining restrictions? Please elaborate your response with justifications.

Answers to Question 3,4,5 &6

This paper in letter and spirit appears to be looking at the value chain in top down approach whereas the alleged monopoly originates from the inability of the subscriber to be enabled to change their service provider. Hence a bottoms up approach may be more appropriate.

Reason why subscriber cannot change his service provider is that cable networks have made networking truce arrangements within various cable operators in that they will not enter each other's area of operation and that if a subscriber wishes to terminate services the other operator will NOT give a connection to the subscriber.

With 120 million cable homes average subscribers per cable operator, for 60000 cable operators, works out to approx 2000 subs per operator and 20000 subs per headend.

In DAS environment this figure of 20000 subscribers per headend may NOT meet the economy of scale. Hence mergers and acquisitions will take place to reach an average of 100000 subscribers per headend,

Choice to subscribers would be possible if feeds from at least three headends are terminated into a common distribution console in proximity of the buildings, with nodes to convert optical signal to electrical signal. From the same console coax drops should be run to subscribers. If subscriber wants to change the service, only tap change at the console and STB change in the home would be required.
This entails auctioning the area to three Service providers with obligation to lay underground optical fiber in a finite time as a permanent fiber high way. The period of auctioned licence could be five years. At the end of five years, if none of

the allotees win the renewal, the new encumbant could take over the highway on payment of a book value.

Alternatively State Govts could construct fiber highways and lease them to service providers

Such practices prevail in US.

Subscribers wanting change in service provider can do so in a time NOT exceeding one hour.

Cable Operators should be licensed, instead of registrations, declaring details of feeding Headends and area of operation with planned connectivity and EoL compliance.

Headends should also be licensed in categories say, Municipal limits, District, State or National level.

All this will be possible in DAS environment.

Q 7. Should control on entity of an entity over other MSOs/LCOs be decided as per the conditions mentioned in in para 2.29? In case the answer is in the negative, what measures should be used to define control? Please elaborate your response with justifications.

Q 8. Please comment on suitability of rules defined in para 2.31 for imposing restrictions on control. Do you agree with the threshold values of HHI(X, Y and Delta) indicated in this para. If the answer is in the negative

Q 9. In case your response to Q 3 is (iii), you may support your view with a fully developed methodology indicating a measure arrived at to determine market power and proposed restrictions to prevent monopoly/ market dominance in the relevant market.

No comments on Q7,8 and 9

Q 10. In case rules defined in para 2.31 are laid down, how much time should be given to existing entities in the cable TV sector(which are in breach of these rules as on date) for complying with the prescribed rules by diluting their control? Please elaborate your response with justifications.

At least one year.

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Q 11. Whether the parameters listed in para 2.33 are adequate with respect to mandatory disclosures for effective monitoring and compliance of restrictions on market dominance in Cable TV sector?

Regression correlation formulae may NOT work in the un-organized sector.

Q 12. What should be the periodicity of such disclosures ?

Disclosures, if any, should be on quarterly basis.

Q 13. Which of the disclosures made by Cable TV entities should be made available in public domain? Please elaborate your answers with justification.

(a) Total Connectivity.
(b) Total billing
(c) Average ARPU
(d) Taxes remitted
(e) No of subscribers ordering particular programs PAY or basic tier.

Q 14. What according to you are the amendments, if any, to be made in the statutory rules/executive orders for implementing the restrictions suggested by you to curb market dominance in cable TV sector?

Present rules seem to be Broadcaster beneficiary. Cable TV rules should be Cable Services Provider friendly

Other Issues

Q 15. Stake holders may also provide their comments on any other issues relevant to the present consultation

If there is serious concern about ending monopoly, the contributing elements and road blocks have to be identified. It may be appreciated that :-

- Cabled Broadcast is severely dependent upon PAY TV content delivery as prime drivers and other services as layers.
- PAY TV content is delivered to Headends.
- PAY TV Broadcasters are reluctant in signing ICOs to New Headend Service providers. Many because of cross business interest in ownership of distribution networks, denying content to new Headends and creating

conditions for headends to close/not start so that cable operators either sell their networks to those entities or sign up as JV.

- MIB should lay down a charter for issue of DAS Headend registration.
- Rules should be framed for 'MUST PROVIDE' PAY TV content to every DAS Headend permission holder and provision made for MIB to cancel their downlinking permission on complaint by such permission holders.
- Cable TV should be accorded the status of wireline broadcasting and taken out of State Govt Controls, since Broadcasting is a Central Govt subject.
- Entertainment Tax on Cable TV should be abolished. Instead new 'CABLE TV TAX' be introduced with rates to be decided by the MIB. These tax collections could be credited to the Consolidated Fund Of India to be re-appropriated in proportion of aggregate cable connectivity within States.
- A department of Wireline Broadcasting should be created under the MIB to administer Cable TV Networking. This department should either employ or associate engineers who have designed and established addressable Headends and networks. Preference should be given to those with experience in Satellite Uplinking Earth Stations. People from Prasar Bharati cannot be expected to be subscriber empathetic in guiding practices because in their career profile they neither dealt with PAY TV content nor 500 programs wireline broadcasting.
- EoL specifications in QoS, as per IS 13420 will only be met if the networks are given RoW as provided in the Cable Act but omitted in Cable TV rules as per designs to be approved by accredited design agencies or such a department established in the MIB. Networks erected as per approved designs would require as built completion report checks and annual checks.
- These actions if implemented will corporatize the Cable TV networking and pave the way for broadband penetration and other value added services.