

SITI Cable Network Limited

Essel House, B-10, Lawrence Road,
Industrial Area, Delhi - 110 035, India

Tel. : +91-11-47502600

Fax : +91-11-27186561

Website : www.wwil.net



**RESPONSE BY SITI CABLE NETWORK LIMITED TO THE
CONSULTATION PAPER ON MONOPOLY/MARKET DOMINANCE IN
CABLE TV SERVICES**

INTRODUCTORY COMMENTS

1. At the outset, it is submitted that the consultation paper presumes that there exists monopoly/market dominance in the cable TV industry which is hampering public choice and proceeds with the said assumption so as to identify the measures which are required to be introduced to address the said perceived monopoly/market dominance.
- 1.1 SITI Cable Network Ltd. does not agree with the said fundamental presumption of the Authority as at present there is no such monopoly/market dominance in Cable TV distribution as alleged in the consultation paper. The Authority in its consultation paper itself has rightly stated that at present there are 6000 MSOs, approximately 60,000 LCOs, 7 DTH/satellite TV operators and few IPTV services providers and some of new entrants are planning to enter the cable TV market through HITS. With so many players in the market providing effective and alternate choices to the consumers at Competitive prices/tariffs, the Authority has erroneously concluded that there is monopoly/market dominance in the market.

1.2 In addition, it is submitted that the entire consultation exercise on the issue of monopoly/dominance in Cable TV sector is premature, particularly considering the fact that digitalization is still in its nascent phase and will be completed only by December 2014. Infact, in para 1.11 the Authority candidly admitted the fact that at present the exact market share of the MSOs are not available and the data and various other calculations given in the consultation paper are based on the share of STBs seeded in DAS market in the cities where the DAS has already been implemented and the same has been used as a proxy for market share for the entire state which cannot be accurate.

PRILIMINARY SUBMISSIONS:

2. Apart from the above fact, the following are the preliminary submissions elaborating the reasons/justification that there exists no monopoly in the Indian Cable TV industry and keeping in view the provisions of Competition Act, 2007 TRAI has no jurisdiction to recommend any Regulations to the Government and any such recommendations if made will be absolutely uncalled for, without jurisdiction and illegal.

2.1 There exists no monopoly in Indian Cable Industry:

To elaborate it further, we need to understand the concept of monopoly/market dominance and correlate to the present day situation in the cable TV industry.

What is monopoly?

Monopoly is a word derived from the Greek words – monos+polein meaning one seller. It is the polar opposite of perfect competition.

Monopoly is a market structure in which one firm makes up the entire market, Monopoly and competition are at the two extremes. **Monopoly refers to a market where there is a single seller for a product and there is no close substitute of the commodity that is offered by the sole supplier to the buyers. The firm constitutes the entire industry.** Monopoly, therefore, indicates a case where:

- (i) There is only a single seller of a product or service in the market.
- (ii) The goods produced by a sole seller has not close substitutes.
- (iii) The entry of new firms into the industry is effectively barred by legal or natural barriers.
- (iv) The firm being the sole supplier of a product constitutes industry. **Firm and industry thus have single identity** or we can say monopoly is single firm identity.

2.2 Keeping the above definition in view, we can compare the same to the present day situation prevailing in cable TV industry where already a stiff competition is in existence from alternate content distribution platforms viz. DTH operators, IPTV players and also through HITS where several new players have entered the market. The Authority is aware that almost all cities have more than two or more MSOs competing with each other. In 2 or 3 cities where only single MSO is operating, such MSO is either State run or State supported MSO. Even the examples given in the consultation paper of the so-called monopoly/dominant MSOs are that of either State run

MSOs or State supported MSOs. The TRAI has already given its recommendations to the Government that State/State run entities should not be allowed to enter into Cable TV business either directly or indirectly. It may be mentioned that in such cities also there are other competing substitutes in the form of DTH, IPTV and HITS which are giving stiff competition to such monopoly/dominant MSO. Furthermore, the provision of TRAI Act gives freedom to any MSO to come and start its business in any part of the country. Also, TRAI is keeping a tight check on the pricing charged by the MSOs as well as the offerings by way of bouquets/ala carte channels through regulations, thereby making it impossible for any MSO to exploit the consumers by charging exorbitant prices and/or restricting their choice.

2.3 There is no reason to wander away from economies of scale- which result in lower costs, higher quality and better sustainability over a long term rather than limiting by regulation the scope of networks. This will prematurely kill investments in this vital sector which is at a very critical stage having invested billions of Rupees in the process of Digitalization.

2.4 It is pertinent to note that the subscriber base for DTH in 2008 was meagre 11.1 million as against total 126 million TV subscribers. In 2012, total DTH subscribers were close to 54.5 million. Thus, DTH has a market share of approximately 37% which is increasing day by day. The turnover of large six players in DTH in 2010 was 23 billion

which has grown to Rs.92 billion by 2012. Further, DTH players are rapidly expanding their operation even into rural areas, which MSOs find it difficult to reach. DTH players are aggressively promoting their services in rural India, customising their channel packages, prices and marketing strategies to appeal to small town TV viewers. It is estimated that rural areas and small towns accounted for around 76% of all DTH subscribers

- 2.5 With respect of the case titled *Kasan News Pvt Ltd. V/s Fastway Transmission Pvt. Ltd.* refereed by Authority, the Competition Commission of India (CCI) has held that cable television is a distinct product and in **analogue regime cable TV** cannot be perfect substitute and further held that as per the provisions of Section 19 (7) of the Competition (Amendment) Act, 2007 Punjab and Chandigarh were held as relevant markets.

As a matter of fact, the observations made by the Competition Commission of India have been challenged and still under appeal so the same cannot be treated as final. Even otherwise since now the digitalization is being implemented across various cities and towns in phases, the above mentioned case is no longer relevant in digital era as in the digital regime the DTH, IPTV have come up as perfect substitutes for Cable TV in the market and even in terms of pricing both DTH and cable TV are offering best schemes to the subscribers due to fierce competition in the market. In fact, recently one DTH operator floated a scheme to provide free 78 channels for life to its subscribers in DAS notified areas.

2.6 The fact that DTH is an alternative to Cable TV has been acknowledged by TRAI in para 1.21 of the present consultation paper wherein the Authority has agreed that DTH has emerged as an alternate to Cable TV and its subscriber base is growing at a faster rate compared to cable TV.

So far as technological advancement is concerned the Authority has already prescribed and set standards which every MSO/DTH operator is following and at present, all MSOs/DTH operators are complying the Quality of Service and Consumer Complaint Redressal framework standards as set by TRAI.

At present when there is ample competition and it will be wrong to say that there is any kind of monopoly in the cable market.

3. **Issues of Monopoly, Dominance etc. fall under the exclusive domain of the Competition Commission of India**

It is submitted that the preamble of the **Competition Act, 2002** reads as under:

“An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.”

The said Act empowers the Competition Commission of India to examine any alleged violations of the Competition Act which cause or are likely to cause adverse effect on competition in India.

3.1 Section 60 of the said Act provides for overriding effect on all other provisions contained in any other law for the time being in force and Section 62 of the said Act provides that all the provisions as given under the Act are in addition and not in derogation of any other law. So far as the TRAI Act, 2000 is concerned, Section 14(a) (iii) (A) provides that TDSAT will not have power to adjudicate the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) (the same was repealed by new Act named The Competition Act, 2000). Also, it is pertinent to mention that the Competition Act being enacted in the year 2002, the provisions of the same has overriding provisions over the TRAI Act which was enacted in 1997.

3.2 We do not believe that an independent regulator in India can make parallel regulations on what constitutes market dominance and therefore form the basis of licensing or revoking licenses as the CCI can have a different view on the matter rendering the whole exercise worthless.

In the facts as stated above, it is clarified beyond doubt that at present, the alleged reference by the Ministry of Information and Broadcasting to the Authority is in contradiction to the prevailing law of the land with respect of competition in the country.

4. The Consultation Paper is premature and based on assumptive figures:

It is submitted that the with the advent of Digital Addressable System (DAS) the process of digitalisation has begun in DAS notified cities in phased manner and as per the sun set clause the same is expected to be completed by 31st December 2014 all across India.

As per Authority's own candid admission in para 1.1 wherein it has been stated that the exact market share of the MSOs are not available and the data and various other calculations given in the consultation paper are based on the share of STBs seeded in DAS market in the cities where the DAS has already been implemented in the cities and the same has been used as a proxy for market share for the entire state which cannot be accurate and certainly cannot become the basis to calculate MSOs presence in the DAS notified markets.

- 4.1 DAS being in its nascent stage, where till date the subscribers have not entered and submitted the duly filed Subscriber Application Form (SAF) making the ascertainment of subscribers very difficult and thereby making the data as refereed by the Authority as vague at the moment, the entire excise of circulating the present consultation

paper seems to be premature. Without prejudice to the aforesaid, it is submitted that the need for examining any intervention from the Authority to recommend any kind of regulation/amendments to the existing law for addressing the issue of purported monopoly/market dominance should be deferred, at least until the entire country becomes digitalized i.e. 31-12-2014.

5. **Proposal to impose unjustifiable restrictions on MSOs to do business, in absence of purported monopoly is against the basic tenets of constitution:**

It is submitted that proposal to impose unjustifiable restrictions on MSOs in absence of any iota of evidence proving monopoly/market dominance will tantamount to infringing the fundamental right enshrined under Article 19(1) (g) of the Constitution which gives all citizens right to practice any profession, or to carry on occupation, trade or business. It is pertinent to mention that there is no restriction whatsoever in the licenses granted to the MSOs to operate in DAS areas qua the areas of operation and/or the number of subscribers.

6. **FM channels and spectrum allocation cannot be equated with MSO business**

The examples given in the consultation paper for restrictive/limited allocation of FM radio station frequencies and spectrum allocations to telecom companies are highly misplaced and cannot be any manner correlated to present scenario in cable TV industry.

6.1 The Authority must take cognizance of the fact that in case of FM radio as well as telecom companies, they both are dependent on a scarce public resource i.e. spectrum. There is no such allocation of resource or provision of any kind of subsidy by the Government for MSO business and as such the comparison sought to be made is entirely misconceived. It is also pertinent to mention that in FM business, the investment viz-a-viz MSO is very minuscule . Secondly, the license conditions as set out by the Government of India for granting licenses to FM stations clearly spelt out the terms and conditions on which the said license was granted including the one stated in para 2.2. In any case, the license granted by the Ministry of Information and Broadcasting to the MSOs does not restrict the operation of the MSO qua area of operation or number of subscribers.

With the above mentioned Preliminary Submissions, the response to various issues for consultation is being submitted hereinafter:

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?**

RESPONSE:

As submitted hereinabove, firstly there is no monopoly/market dominance in Cable TV distribution and secondly even if there is

dominance in some areas by single MSO, there is no evidence of any kind of abuse of the said dominance because of heavy regulations by TRAI in terms of pricing and consumer offerings as well as the availability of another forum in the form of Competition Commission of India which is the proper forum for redressal of issues arising out of abuse of market dominance/monopoly.

Lower cost to customers is a worthwhile objective but the same cannot be assumed to occur by splitting the industry into multiple players but by virtue of larger economies of scale. The technologies of digitalization favour single large and efficient head-ends serving up to 1000 channels delivered over optical fiber networks to large contiguous areas forming efficient customer clusters. The same cannot be achieved efficiently by splitting the licenses to multiple small operators who may not have the wherewithal to support for a medium term continuous services to customers. This increases risk to customers of having to deal with an operators who may be unable to sustain and make the investments in STBs worthless.

The contents of Preliminary Submissions hereinabove are reiterated. The need here is to effectively implement the regulations framed by TRAI rather than introducing any kind of new amendments in the Cable TV Act etc.

2. **Do you agree that the State should be the relevant market for measuring market power in the cable TV sector? If the answer is in the negative, please suggest what should be the relevant**

market for measuring market power? Please elaborate your response with justifications.

RESPONSE:

Without prejudice to the submission that there is no need for any kind of measures/regulations for addressing the issue of non-existent monopoly/dominance in the Cable TV sector, SITI Cable disagrees that the State should be the relevant market for measuring market power in the cable TV sector as the same may not be an accurate measure of the relevant market. This is because of the fact that the data used for making the state as basis may not be accurate. Also, the concept of relevant market is highly technical and will need to be determined on a case to base basis.

As per the Section 2(t) of the Competition Act relevant market means a market comprising of all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.

While determining the relevant market under the Competition Act, Section 19 (7) provides the followings factors which need to be considered by the Competition Commission of India:

- a. Physical characteristics or end use of goods;
- b. Price of goods or service;
- c. Consumer preferences;

- d. Exclusion of in-house producers;
- e. Existence of specialised produces;
- f. Classification of industrial products

The examples given in the consultation paper for restrictive/limited allocation of FM radio station frequencies and spectrum allocations to telecom companies are highly misplaced and cannot be any manner correlated to present scenario in cable TV industry.

The Authority must take cognizance of the fact that in case of FM radio as well as telecom companies, they both are dependent on a scare public resource i.e. spectrum. There is no such allocation of resource or provision of any kind of subsidy by the Government for MSO business and as such the comparison sought to be made is entirely misconceived. It is also pertinent to mention that in FM business, the investment viz-a-viz MSO is very minuscule. Secondly, the license conditions as set out by the Government of India for granting licenses to FM stations clearly spelt out the terms and conditions on which the said license was granted including the one stated in para 2.2. In any case, the license granted by the Ministry of Information and Broadcasting to the MSOs does not restrict the operation of the MSO qua area of operation or number of subscribers.

The determination of relevant market is a highly technical issue and has to be determined on case to case basis keeping in view the parameters laid down in the Competition Act and that too in cases where there is an alleged evidence of abuse of market dominance.

Since the issue squarely falls within the domain of Competition Commission, no interference from TRAI is warranted in this regard.

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

(i) Based on area of operation?

(ii) Based on market share?

(iii) Any other?

Please elaborate your response with justifications.

RESPONSE:

SITI Cable is of the firm view that at present there is no requirement for imposing any restrictions in the cable TV market. The Preliminary Submissions hereinabove are reiterated and reaffirmed and not repeated for the sake of brevity.

4. In case your response to Q3 is (i), please comment as to how the area of a relevant market ought to be divided amongst MSOs for providing cable TV service. Please elaborate your response with justifications.

5. In case your response to Q3 is (ii), please comment as to what should be the threshold value of market share beyond which an MSO is not allowed to build market share on its own? How could this be achieved in markets where an MSO already possesses market share beyond the threshold value? Please elaborate your response with justifications.

6. In case your response to Q3 is (ii), please comment on the suitability of the rules defined in para 2.26 for imposing restrictions on M&A. Do you agree with the 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 values for HHI and delta could be prescribed for defining restrictions? Please elaborate your response with justifications.

RESPONSE:

With respect to issue no. 4 and 5, our submissions made in response to issue no. 3 are reiterated and reaffirmed.

So far as the issue no.6 of the Consultation regarding the proposal for imposing restrictions on M & A is concerned, it is submitted that again the Competition Act has given Competition Commission of India ample powers not only to regulate the traditional mergers and acquisitions but also to have a check that no such act of merger should result in adverse effect on competition. Section 4 of the Act prohibits anti competitive agreements and Section 6 of the Competition Act, 2002 states that, no person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.

Also, as per the provisions of the Act, being dominant in any market per se, is not illegal but only when such dominance is abused the same is considered bad and against the provisions

of the Act. Competition Commission of India is taking active steps to monitor all such deals/acquisition of shares to ensure that such acquisition of shares causes or is likely to cause an appreciable adverse effect on competition within the relevant market and one such recent example in the acquisition of 26% of the equity shareholding in IC Media Distribution Services Pvt. Ltd. by UTV Global Broadcasting Ltd. wherein an Order dated 19-02-2013 was passed by the Commission and it held that the proposed combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission approved the proposed combination. It was further held by the Commission that:

“Similar to the analogue 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.”

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.

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.

- 7. Should 'control' of an entity over other MSOs/LCOs be decided as per the conditions mentioned 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.**

RESPONSE:

It is reiterated that with respect of control, Section 5 of the Competition Act is quite clear and provides for prior approval of combinations from the Competition Commission of India and the term combination includes any acquisitions of shares, voting rights, control and assets of an enterprise, or mergers and amalgamation between enterprises, subject to meeting the minimum monetary threshold prescribed under the Section.

Furthermore, it is clear from the above submissions that the Competition Commission of India alone has the jurisdiction and mandate to regulate the conditions for control and not the Authority.

- 8. Please comment on the suitability of the rules defined in para 2.31 for imposing restrictions on control. Do you agree with the 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 values for HHI and delta could be prescribed for defining restrictions? Please elaborate your response with justifications.**

RESPONSE:

In response to the issue no.8, it is submitted that It is submitted that being DAS in its nascent stage, where till date the subscribers have not entered and submitted the duly filed Subscriber Application Form (SAF) making the ascertainment of subscribers very difficult and thereby making the data as referred by the Authority as vague at the moment and the entire exercise of initiating the present consultation paper seems to be premature and without prejudice to the aforesaid, it is stated that any restriction/control on the basis of purported threshold values of HHI and increase of HHI indicated in this para are not workable. In the absence of exact number of subscribers and other statistics no threshold values for HHI and delta can be prescribed for defining restrictions.

- 9. In case your response to Q3 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.**

RESPONSE:

In view of our comments as submitted in response of issue no.3, there is no requirement for any further comment. The Preliminary Submissions hereinabove are reiterated and reaffirmed.

- 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.**

RESPONSE:

It is reiterated that there is no need to place any restrictions on the cable TV sector.

- 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? What additional variables could be relevant? Please elaborate your response with justifications.**

RESPONSE:

SITI Cable firmly believes that Authority has already put in place adequate regulations and compliances for mandatory disclosures and further more the activism with respect of various DAS compliances as shown by the Ministry of Information and Broadcasting is more than sufficient for the mandatory disclosures. Apart from that, there are statutory compliances which almost all big MSOs, being Public or Private Companies are complying and the same is in public domain which can be accessed by anybody. Hence, there is absolutely no need to put unnecessary burden on the MSOs with respect of compliances instead of focusing of digitalisation. In any event, we are of the view that except for commercially sensitive information such as details of subscribers, exact location and area of operations, detailed shareholding, shareholders' agreements, and loan agreements etc. rest of the information can be made available.

- 12. What should be the periodicity of such disclosures?**
- 13. Which of the disclosures made by the Cable TV entities should be made available in the public domain? Please elaborate your response with justifications.**

RESPONSE:

In our view, there is no need to disturb the present set of disclosures/compliances made by MSO to the Authority, ministry or any other authority. In any event, the disclosure should be annual.

- 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?**

RESPONSE:

In our view, there is no need to amend any statutory rules/executive orders for implementing the restrictions as the parliament has already enacted The Competition Act, 2002 keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.