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02 September, 2013

To,

Mr. Wasi Ahmad,  
Advisor (B&CS),  
**Telecom Regulatory Authority of India,**  
Mahanagar Doorsanchar Bhawan,  
Jawahar Lal Nehru Marg,  
New Delhi – 110 002.

Dear Sir,

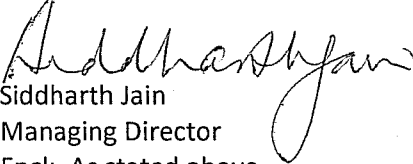
**Subject: Consultation Paper No. 58/2013 dated 06 August, 2013 (Consultation Paper)**

This is in reference to the Consultation Paper issued by the Telecom Regulatory Authority of India (TRAI) on "Distribution of TV Channels from Broadcasters to Platform Operators".

We thank TRAI to give us an opportunity to present our views on the Consultation Paper. Please find enclosed our response, which we request TRAI to take on record. If you require any further information/clarification, please do not hesitate to contact us.

Yours faithfully,

**Turner International India Private Limited**

  
Siddharth Jain  
Managing Director  
Encl: As stated above



**RESPONSE ON BEHALF OF TURNER INTERNATIONAL INDIA PRIVATE LIMITED TO THE CONSULTATION PAPER DATED 6<sup>TH</sup> AUGUST 2013 ON DISTRIBUTION OF TV CHANNELS FROM BROADCASTERS TO PLATFORM OPERATORS**

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This has reference to (i) the Consultation Paper dated August 6, 2013 released by the Telecom Regulatory Authority of India ("TRAI") on 'Distribution of TV Channels from Broadcasters to Platform Operators' enclosing draft amendments to tariff orders, interconnection and register of interconnect regulations applicable for both addressable and non-addressable broadcasting and cable TV services ("Consultation Paper"), and (ii) the press release issued on August 27, 2013 extending the time for submissions of comments on the Consultation Paper till September 3, 2013.

We thank the TRAI to give us an opportunity to present our views/comments on the Consultation paper introduced by the TRAI on Distribution of TV Channels from Broadcasters to Platform Operators.

At the outset, we deny all statements/suggestions made in the Consultation Paper against the Distribution Agencies. It is stated that nothing has been placed on record or discussed in the Consultation Paper to suggest, leave aside to establish, any kind of alleged monopolistic practice and misuse of its dominant position by the Distribution Agencies.

The Consultation Paper suggests that in the complaints filed by the Platform Operators against the Distribution Agencies with the MIB and the TRAI, the Platform Operators have alleged that the Distribution Agencies force the Platform Operators to (i) accept all channels of the Distribution Agencies, and/or (ii) execute fixed fee deals, and/or (iii) make payments based on entire subscriber base and not as per actual uptake of channels, and/or (iv) make payments on minimum guarantee, and/or (v) accept any other unreasonable terms and conditions. We deny all such allegations. Such unsubstantiated sweeping statements by the Platform Operators must first analysed in detail, instead of being taken at face value. If analysed prudently, it will be apparent that the deals presently done by the Distribution Agencies with the Platform Operators are pursuant to the requests made by the Platform Operators and with an intention to support digitalization.

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<sup>1</sup> Please note that this response on behalf of Turner International India Pvt. Ltd. is without prejudice to its rights and contentions.

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It is denied that the Distribution Agencies force Platform Operators to accept all channels of the Distribution Agencies. Even if the Distribution Agencies wanted to force the Platform Operators to accept all channels of the Distribution Agencies in a single bouquet, it would not have been possible as TRAI itself has frozen all prices in bouquet. In addition TRAI has also mandated all channels to be offered on a-la-carte basis. The Platform Operators themselves subscribe to all/majority of bouquets offered by the Distribution Agencies and then offer to the consumer as one single retail package. Therefore even if the Broadcasters offered broadcaster wise packages, the Platform Operators shall still continue to offer in retail as a single package.

It is denied that the Distribution Agencies force the Platform Operators to execute fixed fee deals. The Distribution Agencies will be happy to execute cost per subscriber deal. In fact all Distribution Agencies, by way of their respective Reference Interconnect Offers, have made open offer to the Platform Operators to execute cost per subscriber deal. The Platform Operators themselves insist for fixed fee deals, as it works in their favour (as is reflective in the quarterly results of the listed Platform Operators). If the TRAI was to access the audited subscriber base of the Platform Operators, it would note that the Platform Operators pay outs towards a fixed fee is far less than the pay outs that the Platform Operators would have otherwise paid under the RIOs.

It is denied that the Distribution Agencies force the Platform Operators to make payments based on entire subscriber base and not as per actual uptake of channels. As discussed above, by and large, fixed fee deals are executed between the Distribution Agencies and Platform Operators. Under such circumstances, charging of subscription fees basis subscriber bases does not arise. In case of RIO deals, the payments are demanded by the Distribution Agencies basis the subscriber reports provided by the Platform Operators. However, it has been noticed that in many cases the Platform Operators have not been providing the subscriber reports and the Distribution Agencies have not been billed for several months. The Distribution Agencies have filed several complaints in this regard with the MIB/TRAI but no action has been taken by the TRAI against such defaulting Platform Operators.

If the Platform Operators fail to provide addressability, the Distribution Agencies, in order to protect its commercial interest, are well within their rights to seek for

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minimum guarantee, which are also acceptable to the Platform Operators, as they know very well that such pay outs are well within the pay outs that the Platform Operators would otherwise have paid under the RIOs.

It is denied that the Platform Operators were forced to accept unreasonable terms and conditions to obtain signals of the broadcasters at the fag end of the implementation of digital addressable cable TV systems (DAS), Phase I and Phase II. The existing regulatory framework prohibits the Distribution Agencies to execute interconnection agreement on a discriminatory basis and/or impose unreasonable terms and conditions. If any Platform Operator was aggrieved by actions or inactions of any Distribution Agencies, under the applicable law, such Platform Operator must ideally have approached the Telecom Dispute Settlement and Appellate Tribunal ("TDSAT"). It is stated that the DAS has still not been implemented properly due to the inability of the Platform Operators to close commercial agreements with the LCOs.

We would like TRAI to take into consideration the following summarised facts:-

- a) **What is Monopoly:** Monopoly means the sole and exclusive possession or control of the supply or trade in a commodity or service in a particular market. In fact there are many authorised distribution agencies competing in the market and hence there is a fundamental flaw in the assumption that there is monopolistic practice in the distribution chain of television. TRAI has in the consultation paper mentioned that there are more than four authorised distribution agencies.
- b) **Proof of Abuse of Dominance:** It is not established that the authorised distribution agencies have dominance over the Platform Operator. In fact the Platform Operators have an upper hand in negotiation given their sole presence in particular areas. Hence there is no question of abuse of dominance by the authorised distribution agencies but by the Platform Operators.
- c) **Platform Operator's Monopoly:** TRAI has in its Consultation Paper dated 3<sup>rd</sup> June 2013 admitted that the Platform Operators has monopoly in their areas. TRAI should rather than regulating the Distribution Agencies have a regulation for Platform Operator to rectify the monopoly of Platform Operator and their abuse of dominance.

- d) **Must Provide:** TRAI regulations have a provision for “Must Provide” i.e. broadcasters/ distribution agencies are obligated to provide their channels to Platform Operator on non-discriminatory basis irrespective of the size, market, reputation, paying capacity of the Platform Operator. This substantially reduces the bargaining power of broadcasters/ distribution agencies vis-à-vis Platform Operators and hence the question of monopolistic practise does not arise.
- e) **Must Carry:** There is no reciprocal provision in the TRAI regulations that Platform Operator should carry the channels of the broadcasters/ distribution agencies thereby again hampering the negotiating power of the broadcasters/distribution agencies.
- f) **Retail Offering by Platform Operators:** The regulation would prevent bundling by distribution agencies which however would not prevent platform operators to further bundle the channels/bouquet to end subscribers. Thus the end subscribers would not benefit and only the distribution agencies would be in disadvantage in negotiating deals with Platform Operators.
- g) **A-la-Carte benefit:** Platform Operators have the choice to subscribe for channels on a-la-carte basis and continue to enjoy the fruits of bouquet and price freeze for the last 10 years. The paper wrongly presumes that the Distribution Agencies have imposed all their bouquets and channels on the Platform Operators when in reality it was the Platform Operator who despite having the option of subscribing for channels on a-la-carte basis has subscribed for all the channels distributed/offered by Distribution Agencies/ Broadcasters.
- h) **Tariff Orders:** The Tariff Orders have already frozen the rates of the TV channels offered by broadcasters/ distribution agencies and hence even assuming there is a monopoly of distribution agencies, there is nothing they can take advantage of their position. Also the Non DAS and DAS Tariff Orders are pending before the Supreme Court, whereby the Supreme Court has passed status-quo orders. The proposed by TRAI will result in unbundling of bouquet and rates which will be contrary to the status quo orders of Supreme Court.

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- i) **Market Forces:** It is advised that in the predominantly regulated market, it should be best left to the market forces to create competition rather than further regulating which will only be disadvantageous to the negotiating power of the Distribution Agencies/Broadcasters. Regulating the distribution agencies would only be biased in favour of the platform operator thereby hampering fair play for the distribution agencies.
- j) **Under Declaration:** TRAI has ignored the fact that till date none of key Platform Operators have provided accurate and correct subscriber report. Even the TRAI has not shared the data filed by Platform Operators with TRAI with the Broadcasters/Distribution Agencies.
- k) **Favouritism to Platform Operator:** One of the objectives of Digitization was to reduce the broadcasters over dependence on advertisement revenue and shift focus to equitable distribution of subscription revenue amongst stakeholders resulting in broadcasters getting their fair share. The proposed amendments will on the contrary result in abnormal profits/revenue share in the hands of Platform Operators in terms of higher subscription revenue (derived by the Platform Operators from LCOs) and higher carriage income. The proposed regulation is only a favouritism shown to Platform Operators.
- l) **Platform Operator as aggregator:** The Consultation Paper fails to recognize that even the Platform Operator is an aggregator and negotiates on behalf of numerous LCOs with the Broadcasters and enters into agreements with Broadcasters in its own name. To elaborate, even an Platform Operator negotiates with Broadcasters on behalf of all LCOs and later executes agreements with LCOs on a principal to principal basis.
- m) **Agreement with LCOs:** Platform Operators are wrongly shifting the onus of failures of Digitization on the Distribution Agencies/ Broadcasters. In reality it is their failure to execute agreements with LCOs and get subscriber forms viewers that has led to the current fiasco.
- n) **Discount on Rates:** The paper fails to recognize the fact the Platform operators have had the advantage of higher discounting on rates through bulk buying. The TRAI has failed to analyse the contracts filed with them to

ascertain the discounts in rates that has been offered to Platform Operators/DTH operators.

- o) **CPS Deals:** The Consultation Paper wrongly assumes that Fixed Fee deals have been imposed on Platform Operator when in reality it was the Platform Operator who insisted on Fixed Fee deals and sought TRAI's intervention in ensuring deals are signed on Fixed Fee basis to facilitate smooth transition to Digitization. Distribution Agencies/ Broadcasters were always ready to execute CPS deals.
- p) **Margins:** TRAI has completely ignored the increasing reported margins of Platform Operators and are holding the broadcasters guilty of super profits/higher revenue. Even losses of DTH operators, is not attributable to higher content cost but to higher license fee and tax burdens. In fact at a channel level several Broadcasters are suffering losses due to high and unregulated costs of content acquisition with no commensurate revenues.
- q) **Jurisdiction of TRAI:** It is stated that the Competition Commission of India established under the Competition Act, 2002 (as amended) ("Competition Act") is the right forum to adjudicate any complaints relating to alleged monopolistic practices and/or misuse of its dominant position (and surely outside the scope of the Telecom Regulatory Act, 1997). It is stated that the Platform Operators had in fact filed a complaint with the Commission against one such Distribution Agency on the same grounds and, post investigation, the Commission held that such Distribution Agency did not abuse its dominance. It appears that pursuant to such adverse order from the competent authority, i.e. the Commission, the Platform Operators have approach the MIB and the TRAI and made false representations against the Distribution Agencies concealing the facts. Such misrepresentation must not be taken on face value and forum shopping by the Platform Operators must not be permitted.
- r) **Transparency:** The proposed regulation not only defeats the principle of transparency, but also is fundamentally flawed as no detailed research on the core issues has been undertaken.

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- s) **Placement Fees:** To add to the woes, Broadcasters have to pay the Platform Operators huge sums as carriage and placement fees. TRAI should take into consideration that it is because of the upper hand of the Platform Operators, Broadcasters are forced to shell out huge sums.
- t) **Revenue Share:** TRAI should take into consideration that the share of the Distribution Agencies from the subscription revenue collected from the market is only around 17% of the total collection and the major portion goes to Platform Operators while it is the Broadcasters who invest heavily on content and deserve a much larger portion.
- u) **Fundamental Right:** The proposed regulation violates the fundamental right i.e. freedom to trade (Article 19(1)(g) of the Constitution of India. The proposed regulation is an unreasonable restriction on the fundamental right.
- v) **Efficiencies:** In virtually every industry, manufacturers, service providers appoint distribution agencies to achieve business efficiencies and take advantage of economies of scale and cut costs to increase sales, which ultimately benefits the end consumer. Outsourcing is not illegal or unlawful or anticompetitive in itself.
- w) **Agreements with Distribution Agencies:** Presently Platform Operators has to enter into agreement with a few Broadcasters and Distribution Agencies and if the proposed regulation is passed, the situation will worsen as the Platform Operators will have to enter into agreements with each Broadcaster directly.
- x) **Need of Distribution Agencies:** Admittedly, the prime drivers for the emergence of the Distribution Agencies is the fact that the analog Cable TV distribution market is too fragmented with the presence of a very large number of Platform Operators and LCOs. This poses practical difficulties for the broadcasters to deal with them individually. As per TRAI Recommendation, India has 6,000 Platform Operators, around 60,000 LCOs, 7 DTH/satellite operators and several IPTV service provides. Even after 2<sup>nd</sup> phase DAS implementation, the numbers of distributor of TV channels have not substantially decreased. Moreover, the broadcasters' reliance on advertising revenues, which was about Rs. 8,800 Crores (75%) in 2010 vis-a-vis about Rs.



2,900 Crores (25%) from subscription fees, as per the TRAI Recommendation, has not decreased even pursuant to 2nd phase DAS implementation. Under the circumstances, there are reasons for the broadcasters to continue its focus on content and advertising revenues, and outsource the subscription business to the Distribution Agencies. The addressable market needs to be substantially mature for the broadcasters to even consider doing the subscription business on its own.

- y) **Role of Distribution Agencies:** It is denied that in the absence of any regulatory framework for the Distribution Agencies, they started to bundle channels of more than one broadcaster and form bouquets. It is stated that the Distribution Agencies always formed part of the definition of 'broadcaster' and therefore part of the regulatory framework. The definition of 'broadcaster' as per the Cable Television Regulations Act, 1995 (as amended) and the interconnection regulations/tariff orders are extracted below:

*"broadcaster" means any person including an individual, group of persons, public or body corporate, firm or any organization or body who/which is providing satellite television channels, which have been registered by the Ministry of Information & Broadcasting under the Downlinking Guidelines and permitted to be downlinked / received / transmitted and re-transmitted in India for public viewing and includes his / her authorised distribution agencies;*

*"broadcaster" means any person including an individual, group of persons, public or body corporate, firm or any organization or body who/which is providing broadcasting service and includes his / her authorised distribution agencies"*

In the TRAI Recommendations, the TRAI has itself described the role of the Aggregator in the following manner:

*"1.14 TV channels can be distributed by the broadcaster himself or through authorized distribution agencies to the distribution platforms. An aggregator is a distribution agent who undertakes the distribution of TV*

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*channels for one or more broadcasters. The role of the aggregator in the value chain is to provide bundling and negotiation services for subscription revenue on behalf of the broadcasters. 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.”*

The TRAI have always interacted with the Distribution Agencies (including issuing directives against the Distribution Agencies) in the capacity of the broadcasters' authorized distribution agencies. Moreover, by virtue of the definition of 'broadcaster' in the existing statute, the TDSAT also admits matters by and against Distribution Agencies in its capacity as 'authorised distribution agencies of broadcasters'.

The Consultation Paper's objective of restricting the role of authorised Distribution Agencies in TV Channel distribution is fundamentally flawed as it is not established that Distribution Agencies wield substantial negotiating power which can be and is often misused leading to several market distortions. Even assuming that Distribution Agencies have an upper hand in negotiation (which is not true) vis-à-vis Platform Operators, we request TRAI to establish, as to how can Distribution Agencies use it to its benefit?

Given below are some Q&As that will answer the above points in a summarised manner:-

a) **Q:** Can Distribution Agencies increase the rates of the channels?

**A:** NO, The rates are already frozen by the Tariff Orders.

b) **Q:** Can Distribution Agencies deny any Platform Operators any request for the channels?

**A:** NO, The "Must Provide" regulation obliges Distribution Agencies to provide all its channels to Platform Operators.

c) **Q:** Can Distribution Agencies impose compulsory offering of bouquets to Platform Operators?

**A:** NO, Distribution Agencies are bound by the regulations to offer all its channels on a-la-carte basis.

d) **Q:** Can Distribution Agencies force for larger subscriber numbers from Platform Operators:

**A:** NO, With digitisation the subscriber numbers will be ascertained.

e) **Q:** Can Distribution Agencies put onerous / one-sided terms on the Platform Operators?

**A:** NO, Even the terms and conditions are specified as per the TRAI's Reference Interconnect Offer.

f) **Q:** Can Distribution Agencies arm twist Platform Operators by threatening to disconnect the signals unreasonably?

**A:** NO, The process of notice, reason for termination and requirement of public notice is specified by TRAI.

In summary, we request TRAI to analyse and then establish the alleged fact of abuse of dominance before attempting to change any regulation.

## CONCLUSION

Turner International India Private Limited does not agree with the rationale of the Consultation Paper based upon which TRAI has proposed the regulation on restricting the role of Distribution Agencies. We request TRAI to not initiate any drastic change in the regulatory frame work till the time the entire process of implementation of digitization is complete across the country. It is only when the market stabilizes post complete and real implementation of digitization across the country, will TRAI be able to ascertain the need and extent of regulations across the value chain. Any hasty regulatory intervention based on inaccurate information, misleading complaints and occasional standoffs between certain stakeholders will only create more chaos and unwarranted disputes amongst the stakeholder at a time when they are required to work hand in hand to successfully implement digitization and let the real benefits of the same flow across the value chain.

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