



**TELECOM REGULATORY AUTHORITY OF INDIA**



**Recommendations**

**on**

**Monopoly/Market dominance in cable TV services**

**26<sup>th</sup> November, 2013**

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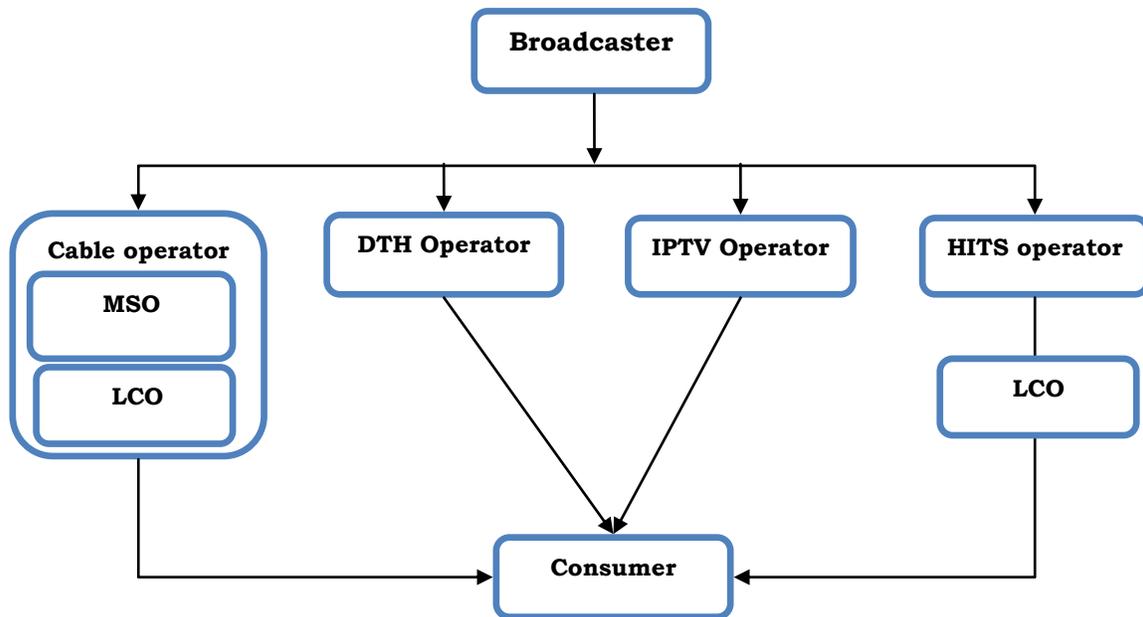
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## Introduction

1. Television has come to be a very prominent medium in India for the delivery of information, news and entertainment. With revenues of Rs. 34,000<sup>1</sup> Crore it represents around 42% of the total Media & Entertainment industry. As per an industry report<sup>2</sup>, total TV households in India were estimated to be 15.5 Crore at the end of December 2012.
2. The broadcasting and distribution sector today comprises around 795 television channels, 6000 Multi-System Operators (MSOs), 60,000 Local Cable Operator (LCOs), 7 Direct to Home (DTH) operators and a few Internet Protocol Television (IPTV) service providers. The Value Chain of the TV channel distribution market is depicted below:



**Broadcasting and Distribution Value Chain**

3. Even though TV channel distribution mostly is through Cable TV networks and DTH platforms. However, Cable TV is the dominant platform. Cable TV networks have grown exponentially with the number of cable TV

<sup>1</sup>CII PwC-India Entertainment and Media Outlook 2012

<sup>2</sup>Media Partners Asia report: Asia Pacific Pay TV and Broadband Market 2012

households increasing from 4.1 lakh in 1992 to more than 9.6 Crore till the end of December 2012. DTH services have emerged as an alternate platform for TV channel distribution. There are 6 pay DTH operators in the country, namely, Dish TV, TATA Sky, Airtel, SUN, Videocon and Reliance; Doordarshan provides free DTH services. The DTH platform is also growing with the registered number of DTH subscribers reaching a figure of 5.45 Crore till the end of December 2012.

4. Currently there are no restrictions on the area of operation and accumulation of interest in terms of market share in a city, district, State or the country, by MSOs. It has been observed in some States that a single entity has, over a period of time, acquired 'control' of several MSOs and LCOs, virtually monopolising cable TV distribution in that market. Cases of market dominance by MSOs have been reported at various forums. Such monopolies/market dominance in the TV channel distribution market are not in the best interest of consumers and may have serious implications in terms of competition, pricing, quality of service and the efficient growth of the TV channel distribution market.
5. Under the terms and conditions of Unified Licence (UL), voice and broadband services can be provided over the cable TV networks also. There is a possibility that the effects of monopoly/market dominance in cable TV distribution segment could also extend to other services such as voice and broadband service.
6. Telecom Regulatory Authority of India (TRAI) received a reference dated 12.12.2012 from the Ministry of Information and Broadcasting (MIB) (Annexure) seeking TRAI's recommendations under Section 11(1)(a) of the TRAI Act. The reference states that in view of the fact that the cable TV distribution is virtually monopolized by a single entity in some States, it has become necessary to examine whether there is a need to bring in certain reasonable restrictions on MSOs and LCOs including restricting

their area of operation or restricting subscriber base to prevent monopoly. TRAI has, therefore, been requested to provide its recommendations under Section 11(1)(a) of TRAI Act on the following:

*“In order to ensure fair competition, improved quality of service, and equity, should any restriction be imposed on MSOs/LCOs to prevent monopolies/accumulation of interest? If yes, what restrictions should be imposed and what should be the form, nature and scope of such restrictions? Accordingly, amendments required in the Cable Television Networks (Regulation) 1995 Act and Rules framed there under may also be suggested.”*

7. The Authority issued a Consultation Paper (CP) on ‘Monopoly/Market dominance in Cable TV services’ on 3<sup>rd</sup> June 2013. Written comments and counter comments on the consultation paper were invited from the stakeholders by 1<sup>st</sup> July, 2013 and 8<sup>th</sup> July 2013 respectively. All the comments received were posted on TRAI website. Subsequently, Open House Discussions were held at Bangalore on 16<sup>th</sup> July 2013. Based on the Open House discussions, all the stakeholders were given time till 19<sup>th</sup> July to forward additional comments, if any.
8. After carefully examining and analysing various issues emanating from the written submissions of the stakeholders, the Open House Discussions and international practices, the Authority has finalised its recommendations. Various issues related to monopoly/market dominance are discussed in Chapter-I. A summary of the recommendations is provided in Chapter II.

## **Chapter I**

### **Addressing Monopoly/ Market dominance in cable TV services**

1.1 The issues raised in the CP deal with the need to address monopoly/market dominance in cable TV services, the relevant market for measuring monopoly/market dominance, and restrictions/guidelines which could be imposed in the relevant market for addressing the monopoly/market dominance issues. These issues are discussed in the succeeding paragraphs.

#### **A. Need for addressing the Monopoly/market dominance in cable TV services:**

1.2 The cable operators are governed by the Cable Television Networks (Regulation) Act, 1995 as amended from time to time (hereinafter referred to as the Cable TV Act) and the Cable Television Networks Rules, 1994 as amended from time to time (hereinafter referred to as the Cable TV Rules). Under sub-section (1) of section 4 of the Cable TV Act, for operating a cable TV network, a person is required to register as a cable operator with the registering authority. The Head Post Master of the Head Post Office of the local area has been notified as the registering authority for cable operators. The eligibility conditions stipulated for LCOs are also applicable to MSOs.

1.3 The Cable TV Act and the Cable TV Rules do not restrict the number of MSOs/LCOs operating in any particular area. As per the cable TV Rules, at the time of registration as a cable operator (LCO as well as MSO), the applicant can choose its area of operation. There are some MSOs which operate at the national level, while many others operate either at the regional level, State level or in a smaller area. Some of the prominent national MSOs are Hathway Datacom, DEN Networks Ltd., Digicable, IndusInd Media and Communication Ltd., and Siti Cable. Some of the prominent MSOs that operate in regional/ State level markets are Fastway,

GTPL, KAL Cables (Sumangali), Ortel, Asianet, Tamil Nadu Arasu Cable TV (TACTV) Corporation Ltd., Manthan, JAK Communications, and Darsh Digital. The vast majority of MSOs operate in smaller areas with a subscriber base of a few thousand only.

- 1.4 At present, cable TV networks in large parts of the country are analogue and non-addressable i.e. the cable TV signal is not digital. The Government accepted TRAI's recommendations on implementation of Digital Addressable System (DAS) for distribution of TV channel through cable TV networks in India. Accordingly, the Government amended the Cable TV Act on 25th October 2011 and a notification has been issued on 11th November 2011 giving a schedule for phased implementation of DAS in the country to be completed by December 2014. This makes it obligatory for every cable operator to transmit or re-transmit programmes of any TV channel in encrypted form in DAS notified areas.
- 1.5 As per the Cable Television Networks (Amendment) Rules, 2012, an MSO operating in DAS notified areas is also required to register with MIB in addition to registration as a cable operator. As on 1st October, 2013, 115 MSOs have been registered by MIB for providing cable TV services in DAS areas<sup>3</sup>.
- 1.6 With the implementation of DAS, the business model has undergone a change. In areas where DAS has been implemented, only MSOs can receive signals from the broadcasters as per the amended Cable TV Rules. In the case of DAS, both FTA and pay channels received from the broadcasters are transmitted to LCOs in encrypted form by the MSO. All the channels are now decrypted at the customer end through a Set Top Box (STB) programmed by the MSO. Therefore, in the DAS environment, MSOs play a key role in distribution of both FTA and pay TV channels.

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<sup>3</sup> <http://mib.nic.in/ShowDocs.aspx>

- 1.7 In a well-functioning competitive market, where MSOs are competing on fair terms and there are no artificially erected barriers of entry, there may not be any need to impose restrictions on Merger and Acquisition (M&A) among MSOs. However, if there is little or no competition in the market or in cases where barriers to entry are erected by incumbents, there is a possibility of the abuse of market dominance by the incumbent operator(s).
- 1.8 It has been observed that the level of competition in the MSOs' business is not uniform throughout the country; certain markets like the States of Delhi, Karnataka, Rajasthan, West Bengal and Maharashtra have a large number of MSOs while other markets like the States of Tamil Nadu, Punjab, Orissa, Kerala, Uttar Pradesh and Andhra Pradesh are characterized by dominance of a single MSO. However, the same MSO is not dominant in all States.
- 1.9 In response of the issue raised in the CP regarding need for addressing the issue of monopoly/ market dominance in cable TV distribution, stakeholders representing larger MSOs stated that there was no need or requirement for any regulatory intervention to prevent alleged monopolies or accumulation of interests by MSOs or LCOs. Some of them mentioned that the question of monopoly/market dominance falls outside the scope of the TRAI Act and the Cable Television Network (Regulation) Act and should be dealt through the Competition Act, 2002. Another view was that cable TV and DTH provide a substitute for each other and with 6000 MSOs and 7 DTH players, there is enough competition in the distribution segment and customers have the option to switch over to another MSO/ DTH operator.
- 1.10 Stakeholders representing broadcasters and consumer organizations were of the opinion that there is a need to address the issue of monopoly/market dominance in cable TV services. Some of them argued that market dominance in cable TV distribution needs to be addressed as it is detrimental to consumer interest. According to them, it is all the more important in cable TV distribution as it impacts a very large population

covering various socio-economic classes and also that it is detrimental to distribution of niche programming services/ TV channels.

- 1.11 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 alleged that a group of MSOs, controlled by the same entity, operating in the State of Punjab had acquired substantial market share in the cable TV distribution and denied market access to its channel. In another development, the Government of Tamil Nadu has incorporated Tamil Nadu Arasu Cable TV (TACTV) Corporation Ltd. in September, 2011 for distribution of cable TV in Tamil Nadu. It has been expanding by taking over Headends from private MSOs. Interestingly, channels of the SUN group, an integrated player providing both broadcasting and distribution services, were not available on the TACTV network for quite some time.
- 1.12 Section 11 (i) (a) (iv) of TRAI Act provides that one of the functions of the Authority shall be to make recommendations regarding measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services. Accordingly, facilitating competition and promoting efficiency, clearly falls within the remit of the sector regulator.
- 1.13 In a growing TV channel distribution market, if Mergers and Acquisitions (M&A) among competing MSOs are left un-regulated by the sector regulator, then there is a distinct possibility that such M&A may transform even competitive markets into monopolistic or oligopolistic market structures, where only a few firms dominate and markets become highly concentrated. In such cases, dominant MSOs may misuse their market power to create barriers of entry for new players, provide unfair terms to other stakeholders in the value chain and distort competition. Further, it may also lead to selective blocking of content and become an obstacle to promoting plurality of viewpoints.

- 1.14 Technological developments, particularly the use of packet switched digital communications, have made it possible to provide voice and broadband service over cable TV networks. The Government has already announced a Unified Licence (UL) policy under which a Licensee can provide a variety of telecommunication services using the same network. The new UL is delinked from spectrum assignment. Therefore, Cable TV networks can become an alternate and convenient way of providing voice and broadband service, as cable TV networks already have reach to a large number of households. Then, there is the possibility that the effects of monopoly/market dominance in cable TV distribution segment could also extend to other services such as voice and broadband service.
- 1.15 In the light of the discussions above, the Authority is clear that for facilitating competition, promoting efficiency in the operation of the TV channel distribution market, improving the quality of service and protecting the interests of consumers, the issue of monopoly/market dominance in the TV channel distribution sector needs to be addressed.

#### **B. Relevant market for measuring monopoly/market dominance**

- 1.16 Presently in India, the TV channel distribution market comprises many technologies such as cable TV, DTH, terrestrial TV transmission and IPTV networks. Since the market share of the IPTV and HITS operators is insignificant and terrestrial TV transmission does not re-transmit private satellite TV channels, these are not considered for identification of the relevant market.
- 1.17 For interchangeable or perfectly substitutable products by the consumer, the 'relevant market' comprises the geographical area where the conditions of competition are distinctly homogeneous. The purpose of defining the relevant market is to measure the concentration and ensure that the market remains competitive. The CP discussed various options for defining the relevant market for TV channel distribution i.e. the country or a State

or a district and stakeholders were asked to suggest the most appropriate option for defining relevant market.

- 1.18 In response, some stakeholders suggested that the whole country should be the relevant market. The argument is that with the spread of optical fiber network across the country, it will be easier to distribute content across India through centralized headend(s) at reduced cost and, hence, pan-India operations as a relevant market will be appropriate.
- 1.19 Some stakeholders were of the view that the State should be the relevant market. Some other stakeholders, while agreeing that the State be considered the relevant market, suggested that large cities/metros should be separately considered as relevant markets. Another view is that cable TV services predominantly involve re-transmission of broadcaster's content and since most broadcasters' subscription deals are city specific, a city should be the relevant market.
- 1.20 Some stakeholders have commented that for the purpose of measuring market dominance/ concentration, the combined cable TV and DTH market ought to be considered as these are interchangeable or substitutable products for the consumer. Some other stakeholders have suggested that there must be a minimum of three to four MSOs operating in any relevant market.
- 1.21 In case the country as a whole is defined as a relevant market, there could still be market dominance of an individual MSO in the States, though it may not be dominant all over India. For instance, if a restriction of say 25% of market share is applied on a national basis, certain MSOs could still monopolize/ dominate several individual State markets as the share of cable TV homes in States varies significantly and can be as small as 1% of the national market in some States. As regards the deployment of centralized headend(s) for country- wide operations, it is reported by MSOs that even within a State they are using multiple headends to cater to the

State market. Therefore, in the light of the above arguments, defining pan-India as a relevant market may not serve the purpose.

- 1.22 Alternatively, the relevant market could be the State or the Metro/ City. Digitization in cable TV is progressing and targeted to be completed by December 2014. In the process of digitization, substantial costs will have to be incurred for setting up/up-gradation of headends by the MSOs. Because of these costs, it could be argued that setting up of independent operations at each city level may not be economical. Centralized operations at the State level with only a few headends will lead to benefits of economies of scale with reduced CAPEX and OPEX. Defining the city as the relevant market will also pose difficulties in measurement, as competition will have to be monitored in all cities, which are large in number.
- 1.23 As regards defining large cities/metros as separate relevant market, it is observed that except for Bangalore city, other cities do not constitute a substantial share of the respective State markets (Table-1.1). Even for Bangalore city, the share is expected to go down with the increase in TV penetration in the State.

**Table-1.1: TV penetration in Major cities**

<b>Name of the city</b>	<b>State</b>	<b>Number of TV households in the state</b>	<b>Number of TV households in the city</b>	<b>% of TV households in the city</b>
Hyderabad	Andhra Pradesh	1,23,58,093	7,46,818	6.0
Ahmedabad	Gujarat	65,50,293	11,59,650	17.7
Bangalore	Karnataka	79,11,490	21,99,944	27.8
Mumbai	Maharashtra	1,35,25,610	22,68,853	16.8
Chennai	Tamil Nadu	1,60,80,190	10,55,696	6.6
Lucknow	Uttar Pradesh	1,09,35,311	5,06,413	4.6
Kolkata	West Bengal	70,91,740	8,16,141	11.5

Source: Census of India, 2011

- 1.24 Moreover, unlike in the telecom sector - where metros contribute a major share of revenue on account of higher business activities, higher spending power and, therefore, increased consumption of telecom services - the

consumption of TV services is mainly from households. Even though the consumption of TV services or revenues from households in urban areas may be higher, still there will be a limit for consumption or revenue due to the nature of TV services. Accordingly, defining major cities/ metros as a separate relevant market may not be required. Similarly, the various Union Territories, which have a very small market size, need not be considered separately and may also be considered as part of the respective State market as mentioned below in Table 1.2.

**Table 1.2: Relevant markets for TV channel distribution**

1	Andhra Pradesh
2	Arunachal Pradesh
3	Assam
4	Bihar
5	Chhattisgarh
6	Delhi
7	Goa
8	Gujarat including UTs of Dadra & Nagar Haveli and Daman & Diu
9	Haryana
10	Himachal Pradesh
11	Jammu & Kashmir
12	Jharkhand
13	Karnataka
14	Kerala including UT of Lakshadweep
15	Madhya Pradesh
16	Maharashtra
17	Manipur
18	Meghalaya
19	Mizoram
20	Nagaland
21	Odisha
22	Punjab including UT of Chandigarh
23	Rajasthan
24	Sikkim
25	Tamil Nadu including UT of Puducherry
26	Tripura
27	Uttar Pradesh
28	Uttarakhand
29	West Bengal including UT of Andaman & Nicobar Islands

- 1.25 A suggestion was made that market dominance/ concentration should be computed with reference to the combined cable TV and DTH market share. Though it is acceptable that DTH services have emerged as an alternate to cable TV services for the distribution of TV channels, but DTH services are not perfect substitutes of cable TV services. This is because cable TV operators can provide broadband and voice services in addition to the distribution of TV channels, which DTH operators cannot. Furthermore, even for distribution of TV channels, competition within the cable TV sector is essential as cable TV networks operate on a State/ regional basis and can choose specific channels to be supplied according to the demand in a particular area whereas DTH services operate on a national basis and transmit the same channels throughout the country irrespective of variations in demand of channels in different markets.
- 1.26 What is more, while it is possible to have M&A among competing MSOs/ LCOs at the State level, as cable networks can be combined in a particular geographical area, the same is not possible in the case of DTH operators as the footprint of DTH services is pan-India.
- 1.27 Therefore, the Authority is of the opinion that market dominance/ concentration should be computed using the market share of MSOs only and the State should be considered as the relevant market for assessing monopoly/ market dominance of MSOs in TV channel distribution market.
- 1.28 **The Authority recommends that the State, with certain exceptions as mentioned in the Table 1.2 above, should be considered as the relevant market for assessing monopoly/ market dominance of MSOs in the TV channel distribution market.**

**C. Basis of addressing monopoly/ market dominance**

- 1.29 In the CP, stakeholders were asked whether restrictions in the relevant cable TV market to curb monopoly/market dominance can be:

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

### **Market dominance based on area of operation**

- 1.30 Some stakeholders have suggested that the cable TV distribution market can be regulated based on the area of operation with a minimum number of MSOs operating in each area. Some others suggested that in the relevant cable TV distribution market, the restrictions should be at two levels: first, based on area of operation, and second based on market share of MSOs operating in such area of operation. Another view is that restrictions cannot be based on area of operation because if an MSO has invested in some towns in each district, it is not possible to wind up the network in the areas/ districts which will lead to a loss to the MSO and also would affect the subscribers.
- 1.31 In case the restrictions are applied on geographical area of operation, the boundaries of the area served by an MSO should be clear and unambiguous. Even if, in a relevant market, the area is restricted for operation for an MSO, there could still be situations where an MSO becomes a monopoly in that particular area. Therefore, restricting the area of operation may not serve the purpose.

### **Market dominance based on market share**

- 1.32 Some stakeholders were of the view that restrictions in the relevant market should be based on the market share of the MSO. Some other stakeholders stated that restrictions cannot be based on market share because if an MSO already has built up its market share due to better service or better price, the regulation should not penalize such an MSO by asking it to reduce its market share.

- 1.33 Restrictions based on the market share (in terms of the number of active subscribers) appear to be logical, as internationally also, the market concentration, a measure for determining the level of competition in the relevant market, is measured by assessing the market share of the competing entities.
- 1.34 Internationally, the Herfindahl–Hirschman Index (HHI) is commonly used for measuring the level of competition or market concentration in a relevant market. HHI is calculated based on the market shares of different firms operating in the relevant market. The HHI reflects both the distribution of the market shares of the top firms and the composition of the market outside the top firms.
- 1.35 For regulating monopoly/ market dominance of MSOs in the TV channel distribution market, out of the two options based on (a) area of operation or (b) market share, the Authority is of the opinion that, for the reasons discussed above, measuring market dominance based on market share in terms of number of active subscribers of MSOs in the relevant market would be an appropriate indicator.
- 1.36 Here active subscribers of an MSO would mean the subscribers who are registered with that MSO for provisioning of cable TV services and availing the cable TV services.
- 1.37 **The Authority recommends that market dominance should be determined based on market share in terms of the number of active subscribers of MSOs in the relevant market. For measuring the level of competition or market concentration in a relevant market, the Herfindahl–Hirschman Index (HHI) should be used.**

#### **D. Threshold value of market share/ HHI**

- 1.38 Stakeholders were also asked to suggest the threshold value of market share beyond which an MSO should not be allowed to build market share, for facilitating competition and promoting efficiency in a relevant market.
- 1.39 In response, stakeholders representing large MSOs have suggested that a threshold value of 80% market share at the national level may be considered as the threshold as higher economies of scale will enable lower prices to customers. Some other stakeholders have suggested that the threshold value of market share could be 60% at the State level, beyond which an MSO should not be allowed to build market share. Some broadcasters have suggested that the market share of the resultant entity in the relevant market may not be above 35% of the total subscriber base. Yet some others have suggested that there must be a minimum of three MSOs operating in any relevant market.
- 1.40 A 60-80% market share of any particular entity in a relevant market would result in a market HHI of more than 4000. Markets with such a large HHI value are considered highly concentrated and result in restricting competition in the market. At the same time, a very low threshold value for market share of an individual or 'group' entity may not help in reaping the benefits of economies of scale. For ensuring that a minimum of three MSOs of comparable size operate in a relevant market, it would be desirable to restrict the building up of market share up to 50%, which corresponds to individual contribution of 2500 to market HHI, by any individual/ 'group' entity through M&A/ 'control' of an entity over many MSOs/ LCOs.
- 1.41 **The Authority recommends that the threshold value for any individual/ 'group' entity contribution to the market HHI should be no more than 2500.**

## **E. Addressing monopoly/market dominance based on market share**

1.42 In the CP, it was discussed that restrictions need to be framed for regulating the M&A/ 'control' of an entity over many MSOs/ LCOs in a relevant market to address concerns of monopoly/market dominance based on market share. It was brought out that monopoly/market dominance can be an outcome of a merger amongst competing entities in the market, acquisition of 'control' over competing entities by a dominant entity, or natural growth based on services offered at lower prices, better service, innovative packaging etc. M&A in the cable TV market will refer to M&A between two MSOs or between an MSO and an LCO. The aspects related to the 'control' of an entity over many MSOs/ LCOs and formation of the 'group' through 'control' of an entity over many MSOs/ LCOs was also discussed in the CP.

1.43 For imposing restrictions on building market share through M&A/ 'control' of an entity over many MSOs/ LCOs, in the CP, it was proposed that M&A/ 'control' of an entity over many MSOs/ LCOs could be permitted provided the following conditions were met:

- i. Post-merger/ 'control' HHI does not cross a threshold X (say, 2000)
- ii. For markets with post-merger/ 'control' HHI between X and Y (say, 3300), M&A/'control' does not result in increase in the HHI (delta) of more than, say, 250 points in the relevant market;
- iii. For markets with post-merger / 'control' HHI beyond Y, M&A of MSO/LCO does not result in increase in the HHI (delta) of more than, say, 100 points in the relevant market;

Stakeholders were asked to comment on the suitability of the above conditions for M&A/ 'control' and were also asked to suggest appropriate values of X, Y and Delta.

## **Monopoly/market dominance through M&A among MSOs/ LCOs**

- 1.44 In response, stakeholders representing broadcasters have agreed with the rules proposed in the CP for regulating the M&A. While most stakeholders representing MSOs did not provide their comments on this issue and argued that only the Competition Commission of India should decide the issue of M&A, some others agreed with the proposed restrictions on M&A. One stakeholder suggested the value of X, Y and delta (change in HHI post M&A) as 7500, 8500 and 500 respectively. It was also suggested that in case post-merger HHI reaches above 8500, a delta of 250 may be allowed. It was further suggested that HHI should be calculated including DTH players in the relevant market as DTH is a substitute for cable TV. Another view was that rather than putting blanket restrictions, prior approval from the regulator should be prescribed for M&A resulting in increase in HHI above the specified threshold.
- 1.45 The World over restrictions are imposed on M&A among competing entities to facilitate competition and promote efficiency. Internationally, restrictions on M&A have been prescribed based on the HHI value of the relevant market and the impact M&A is likely to have on level of competition in the market. For example, the U.S. Department of Justice and the Federal Trade Commission<sup>4</sup> considers the market as un-concentrated if the HHI of the market is below 1500. Markets with HHI between 1500 and 2500 are defined as moderately concentrated markets and markets having HHI beyond 2500 are considered as highly concentrated markets. In UK, the Competition Commission and Office of Fair Trading identifies any market with a post-merger HHI exceeding 1,000 as concentrated and market with a post-merger HHI exceeding 2,000 as highly concentrated.
- 1.46 The Section 11 (i) (a) (iv) of TRAI Act provides that one of the functions of the Authority shall be to make recommendations regarding measures to

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<sup>4</sup> Horizontal merger guidelines, U.S. Department of Justice and the Federal Trade Commission, August 19, 2010

facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services. Accordingly, facilitating competition and promoting efficiency, falls within the ambit of the sector regulator. For structural issues, which are ex-ante, it is the function of sector regulator to take measures/prescribe restrictions to facilitating competition.

1.47 Some MSOs have been acquiring market share and scaling up their operations through M&A with other MSOs/ LCOs in the relevant market. A few of them have already acquired dominant positions in various States through this route. Restrictions are required to be framed to prevent an entity from building dominant positions in the TV channel distribution market through M&A among competing entities. Varying levels of market concentration among different States is expected as there are significant differences in terms of population, area and GDP. Smaller States may get served by a fewer number of players and have higher concentration compared to large States. It is desirable that at least three to five reasonably sized MSOs operate in each relevant market. For a market served by three equally sized operators, the HHI of the market will be around 3300. Similarly, if the market is served by five operators of the same size, the HHI of the market will be 2000.

1.48 In view of above, the Authority is of the opinion that in a relevant market, M&A among competing entities should be considered subject to the condition that post-M&A, the contribution of resultant entity to the market HHI does not exceed 2500. In such markets, M&A among competing entities would be permitted without any restrictions provided that post-M&A the HHI level of relevant market does not cross a threshold level of 2000, where post-M&A HHI of market would be between 2000 and 3300, an increase in HHI (delta) below 250 should be permitted and for post-M&A HHI beyond 3300, an increase in the level of HHI of less than 100 should be allowed.

1.49 To enforce the above restrictions on M&A, any proposal of M&A among MSO(s) or between an MSO and LCO in a relevant market shall require the prior approval of the regulator. The concern of stakeholders could be regarding the delay in according the required approvals. To address this issue, the Authority is of the opinion that the decision on any proposal of M&A, which is complete in all aspects, shall be conveyed within 90 working days.

1.50 **The Authority recommends that:**

**(a) Any M&A among MSO(s) or between an MSO and LCO in a relevant market shall require the prior approval of the regulator. The decision on any proposal, complete in all aspects, shall be conveyed within 90 working days.**

**(b) Such proposals of M&A shall be approved, provided the following two conditions are satisfied:**

**1. Post-M&A the contribution of resultant entity to the market HHI does not exceed 2500, and**

**2. Depending on the value of the post-M&A market HHI, any one of the following conditions are met:**

**(i) either the post-M&A HHI of that market is less than 2000, or**

**(ii) in cases where the post-M&A market HHI is between 2000 and 3300, the proposed M&A does not result in an increase in market HHI (delta) by more than 250 points, or**

**(iii) in cases where the post-M&A market HHI is beyond 3300, the proposed M&A does not result in an increase in market HHI (delta) by more than 100 points.**

**For calculating the increase in HHI (delta) as a result of the M&A among MSO(s) or between an MSO and LCO in the relevant**

**market, the difference of the market HHI pre-M&A and post-M&A shall be taken.**

## **Monopoly/market dominance through ‘control’ among MSOs/ LCOs**

### **Definition of ‘Control’**

1.51 Many stakeholders agreed to the proposed concept of ‘control’ in the CP. Some of them suggested that the definition of ‘control’ should be expanded by harmonizing the definition of the concept across the Competition Act and SEBI’s takeover regulations. Stakeholders representing MSOs have mentioned that it is not necessary to prescribe a condition for evaluating control.

1.52 The definitions of ‘control’ and ‘group’, as given in clauses (a) and (b) of Section 5 of the Competition Act 2002, are reproduced below:

*“(a) ‘control’ includes controlling the affairs or management by—*

*(i) one or more enterprises, either jointly or singly, over another enterprise or group;*

*(ii) one or more groups, either jointly or singly, over another group or enterprise;*

*(b) ‘group’ means two or more enterprises which, directly or indirectly, are in a position to-*

*(i) exercise twenty-six per cent or more of the voting rights in the other enterprise; or*

*(ii) appoint more than fifty per cent of the members of the board of directors in the other enterprise; or*

*(iii) control the management or affairs of the other enterprise;”*

1.53 According to Notification 481 (E) passed on 4<sup>th</sup> March 2011, the following changes were made to the above-mentioned clauses:

*“In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002 (12 of 2003), the Central Government, in public interest, hereby exempts the ‘Group’ exercising less than fifty per cent of voting rights in other enterprise from the provisions of Section 5 of the said Act for a period of five years.”*

- 1.54 In this regard, it is also worth noting the definition of ‘control’ in Regulation 2(1)(e) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 (‘Takeover Code’), which also emphasizes on the importance of agreements between parties that could significantly contribute to control:

*“Control includes the right to appoint the majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.”*

- 1.55 In addition to considering the definition of ‘control’ given in the Competition Act and the SEBI takeover regulations, the definitions of ‘associated company’, ‘control’, ‘subsidiary’ and ‘relatives’ as given in the Companies Act 2013 are also relevant for regulating market dominance through ‘control’ of the competing entities. These are reproduced below:

*“(6) “associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.*

*Explanation.—For the purposes of this clause, “significant influence” means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;”*

*“(27) “control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by*

*virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;”*

*“(77) “relative”, with reference to any person, means any one who is related to another, if—*

- (i) they are members of a Hindu Undivided Family;*
- (ii) they are husband and wife; or*
- (iii) one person is related to the other in such manner as may be prescribed;”*

*“(87) “subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company—*

- (i) controls the composition of the Board of Directors; or*
- (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:*

*Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.*

*Explanation.—For the purposes of this clause,—*

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;*
- (b) the composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;*
- (c) the expression “company” includes any body corporate;*
- (d) “layer” in relation to a holding company means its subsidiary or subsidiaries;”*

1.56 The definition for associate could be further extended by including one aspect of the Meaning of Associated Enterprise as given in Clause 2 (c) of Section 92A in Chapter X of the Income Tax Act 1961 as follows:

*“Two enterprises shall be deemed to be associated enterprises if a loan advanced by one enterprise to the other enterprise constitutes not*

*less than 51% of the book value of the total assets of the other enterprise.”*

This suggests that if the loan advanced by an enterprise is a substantial amount (more than half of assets), then this can amount to exercise of significant influence over the other enterprise, sufficient enough for them to be termed associated enterprises.

1.57 Keeping in view the definition of ‘control’ and ‘group’ as defined in the Competition Act, 2002, SEBI regulations, Income Tax Act 1961 and the Companies Act 2013, the Authority is of the opinion that, for the purpose of regulating market dominance in the TV channel distribution market, the following definition of ‘control’ could be adopted:

An entity is said to ‘control’ an MSO/ LCO and the business decisions thereby taken, if the entity, directly or indirectly through associate companies, subsidiaries and/or relatives<sup>5</sup>:

- (a) Owns at least twenty per cent of total share capital of that MSO/ LCO. In case of indirect shareholding by an entity in MSO/ LCO, the extent of ownership would be calculated using the multiplicative rule. For example, an entity who owns, say, 30% equity in Company A, which in turn owns 20% equity in Company B, then the entity’s indirect holding in Company B is calculated as 30% \* 20%, which is 6%.; Or
- (b) exercises de jure control by means of:
  - (i) having not less than fifty per cent of voting rights in the MSO/ LCO; Or
  - (ii) appointing more than fifty per cent of the members of the board of directors in the MSO/ LCO; Or

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<sup>5</sup> As defined in the Companies ACT 2013

- (iii) controlling the management or affairs through decision-making in strategic affairs of the MSO/ LCO and appointment of key managerial personnel; Or
- (c) exercises de facto control by means of being a party to agreements, contracts and/or understandings, overtly or covertly drafted, whether legally binding or not, that enable the entity to control the business decisions taken in the MSO/ LCO, in ways as mentioned in (b) (i) (ii) and (iii) above.

**1.58 The Authority recommends that an entity is said to ‘control’ an MSO/ LCO and the business decisions thereby taken, if the entity, directly or indirectly through associate companies, subsidiaries and/or relatives:**

**(a) Owns at least twenty per cent of total share capital of that MSO/ LCO. In case of indirect shareholding by an entity in MSO(s), extent of ownership would be calculated using the multiplicative rule. For example, an entity who owns, say, 30% equity in Company A, which in turn owns 20% equity in Company B, then the entity’s indirect holding in Company B is calculated as 30% \* 20%, which is 6%.; Or**

**(b) exercises de jure control by means of:**

- (i) having not less than fifty per cent of voting rights in the MSO/ LCO; Or**
- (ii) appointing more than fifty per cent of the members of the board of directors in the MSO/ LCO; Or**
- (iii) controlling the management or affairs through decision-making in strategic affairs of the MSO/ LCO and appointment of key managerial personnel; Or**

**(c) exercises de facto control by means of being a party to agreements, contracts and/or understandings, overtly or covertly drafted, whether legally binding or not, that enable the entity to control the business decisions taken in the MSO/ LCO, in ways as mentioned in (b) (i) (ii) and (iii) above.**

**For this purpose:**

**(i) The definitions of ‘associated company’, ‘subsidiary’ and ‘relatives’ are as given in the Companies Act 2013.**

**(ii) An ‘entity’ means individuals, group of individuals, companies, firms, trusts, societies and undertakings.**

1.59 Comments of stakeholders in respect of the proposed restrictions on ‘control’ by an entity over many MSOs/ LCOs for gaining market dominance are similar to those given in respect of M&A among MSOs/ LCOs.

1.60 Some MSOs have been acquiring market share and scaling up their operations through acquisition of ‘control’ in other MSOs/ LCOs in the relevant market. Restrictions, similar to those of M&A, are required to be framed to prevent an entity from building dominant positions in the TV channel distribution market through acquisition of ‘control’ in the competing entities.

1.61 If an entity or an MSO has ‘control’ over many MSOs/ LCOs, these MSOs/ LCOs will be treated as interconnected undertakings and will be treated as a single ‘group’. For example, if MSO A who has market share X, has ‘control’ over MSO B, which has a market share of Y in the same market, then MSO A and MSO B will be treated as a ‘group’ for the purpose of calculation of HHI and the contribution of HHI from the ‘group’ consisting of A and B will be taken as the square of (X+Y).

- 1.62 In the CP it was also discussed that, in cases, where the dominant entity in the relevant market has already acquired 'control' of the competing entities and has built a monopolistic position through this route, the dominant entity will have to dilute 'control' within a given timeframe so as to comply with the restrictions framed for regulating the acquisition of 'control' in the TV channel distribution market.
- 1.63 Stakeholders were also asked as to how much time should be given to such entities which would be in breach of the guidelines to be issued based on these recommendations. In response, stakeholders suggested time varying from 3 months to 3 years for complying with the guidelines.
- 1.64 In view of above, the Authority is of the opinion that, in a relevant market, acquisition of 'control' over the competing entities would be permitted subject to post-acquiring 'control', the contribution of a 'group' to the market HHI does not exceed 2500. In such markets, acquisition of 'control' in the competing entities would be permitted without any restrictions provided that post-acquiring 'control', the HHI level of market does not cross a threshold level of 2000. Further, where post-acquisition of 'control' over the competing entities HHI of market would be in between 2000 and 3300, an increase in HHI (delta) below 250 should be permitted and where post acquisition of 'control' over the competing entities, HHI goes beyond 3300, an increase in the level of HHI of less than 100 should be allowed.
- 1.65 To enforce the above restrictions, any proposal of acquisition of 'control' of MSO(s)/ LCO(s) in a relevant market shall require the prior approval of the regulator. The concern of stakeholders could be regarding the delay in according the required approvals. To address this issue, the Authority is of the opinion that the decision on any proposal of acquisition of 'control', which is complete in all aspects, shall be conveyed within 90 working days.

1.66 **The Authority recommends that:**

- (a) If an entity ‘control’ many MSOs/ LCOs simultaneously in the relevant market, these MSOs/ LCOs shall be treated as interconnected entities and shall be treated as a single ‘group’.**
  
- (a) Any arrangement that results in ‘control’ of MSO(s)/ LCO(s) in a relevant market by an entity shall require the prior approval of the regulator. The decision on any proposal, complete in all aspects, shall be conveyed within 90 working days.**
  
- (b) Such arrangements shall be approved provided the following two conditions are satisfied:**
  - 1. Post acquiring ‘control’ the contribution of ‘group’ to the market HHI does not exceed 2500, and**
  
  - 2. Depending on the value of the market HHI post acquiring ‘control’, any one of the following conditions is met:**
    - (i) either post acquiring ‘control’, HHI of that market is less than 2000, or**
    - (ii) in cases where post acquiring ‘control’ market HHI is between 2000 and 3300, the proposed M&A does not result in an increase in market HHI (delta) by more than 250 points, or**
    - (iii) in cases where post acquiring ‘control’ market HHI is beyond 3300, the proposed M&A does not result in an increase in market HHI (delta) by more than 100 points.**

**For calculating the increase in HHI (delta) as a result of formation or expansion of ‘group’ among MSO(s)/ LCO(s) in the relevant market, the difference of the market HHI pre-‘control’ and post-‘control’**

**shall be taken. The combined market share of MSOs of a 'group' in the relevant market would be considered for calculating the HHI.**

- (c) In the cases where any group's contribution to market HHI is more than 2500 in a relevant market as on the date of issue of guidelines, such legal entity/ 'group' shall take necessary remedial measures, within 12 months from the date of issue of guidelines, so as to limit its 'control' in various MSO(s)/ LCO(s) in such a way that the contribution to market HHI of that 'group' reduces to less than or equal to 2500.**

### **Monopoly/market dominance by single entity**

1.67 So far we have discussed the situations of market dominance through M&A and 'control'. A third situation could be dominance by a single or individual entity all by itself through natural growth. It can be argued that it will pose a challenge for an MSO, which already possesses market share beyond a stipulated threshold, to ask its consumers to leave its network so as to meet the restrictions on market share. There could also be the view that imposing a restriction on market share may hurt efficient operators who gain market share based on better service, innovative packaging etc. Further, consumers' choice would also be constrained if availing of services of an operator is restricted on account of market share restrictions. However, market dominance cannot be encouraged as it could lead to non-competitive practices. Here, the Authority is of the opinion that any MSO which by itself has more than 50% market share in the relevant market should not be permitted to merge with or acquire the 'control' of any other MSO/ LCO in the same relevant market. Also, such MSO would be closely monitored by TRAI for any anti-competitive practices.

- 1.68 The Authority recommends that any MSO which by itself contributes to more than 2500 HHI in a relevant market should not be permitted to merge with or acquire the 'control' of any other MSO/ LCO in that**

**relevant market. Also, the tariff offerings, interconnect agreements, must carry provisions and quality of service of such MSO would be closely monitored by TRAI for any anti-competitive practices.**

**F. Disclosure and reporting requirements**

- 1.69 The CP proposed that certain aspects should be mandatorily disclosed by the MSO for effective monitoring and enforcing compliance of the restrictions with respect to market dominance, if any, as well as determining the 'control'/concentration of different entities/companies in cable TV market. The parameters which were proposed for disclosure include equity structure, shareholding pattern, FDI, shareholders agreements, loan agreements, interest of the entity in other companies engaged in TV distribution, interest of other companies in the cable TV entity, details of board of directors and key executives, subscribers served, revenue earned and area of operation. The stakeholders were asked to suggest the adequacy of these parameters for mandatory disclosures, the periodicity of such disclosures, and the disclosures that should be made available in the public domain.
- 1.70 Some stakeholders said that the parameters listed for mandatory disclosures for effective monitoring and compliance of restrictions on market dominance in cable TV sector were adequate. They also suggested that these parameters be reviewed, from time to time, for introducing additional parameters.
- 1.71 Some stakeholders stated that the existing filing / reporting requirements imposed by the MIB in terms of the amendments to the Cable Television Act, 1995 and the Cable Television Networks Rules 1994 (in view of digitization) and the reporting requirements to TRAI in terms of the amendments to the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations 2004 were sufficient for effective monitoring and determining market share of players in the cable TV sector. They

therefore contended that the parameters listed in CP were, not required to be implemented. Stakeholders also suggested the periodicity of mandatory disclosures varying from 3 months to 3 years.

1.72 In order to monitor the TV distribution market effectively, there will be a need to collect information from MSOs on a periodic basis. The Authority is of the view that mandatory disclosure of all relevant details by MSOs not only ensures transparency but also helps in ensuring compliance with prescribed conditions. Disclosure by these entities on websites will allow the public at large to have enough information and achieve greater transparency. However, these entities may not like to place certain information in the public domain which is of a confidential nature or commercially sensitive.

1.73 **The Authority recommends that:**

**I. The following information shall be disclosed by the MSOs on their website:**

- a. Ownership pattern including foreign investment/ joint venture details;**
- b. List of MSO(s)/LCOs, who are part of the 'group' in the relevant market;**
- c. Details of Chairman, Directors in the Board, CEO and CFO;**
- d. State-wise (as given in table 1.2) geographical area coverage details.**

**II. The following information shall be provided by the MSOs annually to MIB and TRAI :**

- a. Share-holding pattern including foreign investment/ joint venture details as per instructions issued from time to time. Changes, if any, in the share-holding pattern during the reporting period, shall be reported within 30 days of such changes;**

- b. Copy of shareholders agreements, loan agreements, contracts and/or understandings (once and subsequently for the changes);**
- c. The details of MSO(s)/LCOs who are part of the ‘group’;**
- d. Interests of the entity(ies) which controls the ‘group’ of MSOs/ LCOs in the relevant market;**
- e. Details of Chairman, Directors in the Board, CEO and CFO;**
- f. State-wise (as given in table 1.2) geographical area coverage details.**

**III. State-wise (as given in table 1.2) number of active subscribers will be provided by the MSOs to MIB and TRAI on quarterly basis.**

#### **G. Amendments in Statutory rules**

1.74 MIB in its reference has also requested to suggest amendments required in the Cable Television Networks (Regulation) 1995 Act and Rules framed thereunder, to implement the restrictions, if any, on MSOs/LCOS to prevent monopolies/accumulation of interest. In the consultation paper, stakeholders were asked to suggest the amendments to be made in the statutory rules/ executive orders for implementing the restrictions to curb market dominance in Cable TV sector. In response some of the stakeholders suggested that the Cable Television Networks (Regulation) Act, 1995 and the Cable Television Networks Rules need to be appropriately amended to include the restrictions on M&A/ acquisition of control.

1.75 Presently, the Cable TV Act and the Rules made thereunder do not have any provisions regarding restrictions on M&A/ acquisition of control by MSOs over MSOs/LCOs. In order to implement the rules on M&A/ acquisition of control, to be framed to prevent monopolies/accumulation of interest in the cable TV services, suitable amendments may be carried out

in the Cable TV Rules. The amendments should incorporate these framed rules and make their compliance mandatory.

- 1.76 **The Authority recommends that the Cable TV Networks Rules may be amended to incorporate the rules on M&A/ acquisition of control, to be framed to prevent monopolies/accumulation of interest in the cable TV services and also to make it mandatory for MSOs to comply with the same.**

## **Chapter II**

### **Summary of Recommendations**

- 2.1 The State, with certain exceptions as mentioned in the Table 1.2, should be considered as the relevant market for assessing monopoly/ market dominance of MSOs in TV channel distribution market.**
- 2.2 The market dominance should be determined based on market share in terms of number of active subscribers of MSOs in the relevant market. For measuring the level of competition or market concentration in a relevant market, the Herfindahl–Hirschman Index (HHI) should be used.**
- 2.3 The threshold value for any individual/ ‘group’ entity contribution to the market HHI should be no more than 2500.**
- 2.4 Any M&A among MSO(s) or between an MSO and LCO in a relevant market shall require the prior approval of the regulator. The decision on any proposal, complete in all aspects, shall be conveyed within 90 working days.**
- 2.5 Such proposals of M&A shall be approved, provided the following two conditions are satisfied:**
  - 1. Post-M&A the contribution of resultant entity to the market HHI does not exceed 2500, and**
  - 2. Depending on the value of the post-M&A market HHI, any one of the following conditions are met:**
    - (i) either the post-M&A HHI of that market is less than 2000, or**
    - (ii) in cases where the post-M&A market HHI is between 2000 and 3300, the proposed M&A does not result in an increase in market HHI (delta) by more than 250 points, or**

- (iii) in cases where the post-M&A market HHI is beyond 3300, the proposed M&A does not result in an increase in market HHI (delta) by more than 100 points.

For calculating the increase in HHI (delta) as a result of the M&A among MSO(s) or between an MSO and LCO in the relevant market, the difference of the market HHI pre-M&A and post-M&A shall be taken.

**2.6 An entity is said to ‘control’ an MSO/ LCO and the business decisions thereby taken, if the entity, directly or indirectly through associate companies, subsidiaries and/or relatives:**

(a) **Owns at least twenty per cent of total share capital of that MSO/ LCO. In case of indirect shareholding by an entity in MSO(s), extent of ownership would be calculated using the multiplicative rule. For example, an entity who owns, say, 30% equity in Company A, which in turn owns 20% equity in Company B, then the entity’s indirect holding in Company B is calculated as 30% \* 20%, which is 6%.**; Or

(b) **exercises de jure control by means of:**

(i) **having not less than fifty per cent of voting rights in the MSO/ LCO;** Or

(ii) **appointing more than fifty per cent of the members of the board of directors in the MSO/ LCO;** Or

(iii) **controlling the management or affairs through decision-making in strategic affairs of the MSO/ LCO and appointment of key managerial personnel;** Or

(c) **exercises de facto control by means of being a party to agreements, contracts and/or understandings, overtly or covertly drafted,**

whether legally binding or not, that enable the entity to control the business decisions taken in the MSO/ LCO, in ways as mentioned in (b) (i) (ii) and (iii) above.

**For this purpose:**

- (i) The definitions of ‘associated company’, ‘subsidiary’ and ‘relatives’ are as given in the Companies Act 2013.**
- (ii) An ‘entity’ means individuals, group of individuals, companies, firms, trusts, societies and undertakings.**

**2.7 If an entity ‘control’ many MSOs/ LCOs simultaneously in the relevant market, these MSOs/ LCOs shall be treated as interconnected entities and shall be treated as a single ‘group’.**

**2.8 Any arrangement that results in ‘control’ of MSO(s)/ LCO(s) in a relevant market by an entity shall require the prior approval of the regulator. The decision on any proposal, complete in all aspects, shall be conveyed within 90 working days.**

**2.9 Such arrangements shall be approved provided the following two conditions are satisfied:**

- 1. Post acquiring ‘control’ the contribution of ‘group’ to the market HHI does not exceed 2500, and**
- 2. Depending on the value of the market HHI post acquiring ‘control’, any one of the following conditions is met:**
  - (i) either post acquiring ‘control’, HHI of that market is less than 2000, or**
  - (ii) in cases where post acquiring ‘control’ market HHI is between 2000 and 3300, the proposed M&A does not result in an increase in market HHI (delta) by more than 250 points, or**

- (iii) in cases where post acquiring 'control' market HHI is beyond 3300, the proposed M&A does not result in an increase in market HHI (delta) by more than 100 points.

For calculating the increase in HHI (delta) as a result of formation or expansion of 'group' among MSO(s)/ LCO(s) in the relevant market, the difference of the market HHI pre-'control' and post-'control' shall be taken. The combined market share of MSOs of a 'group' in the relevant market would be considered for calculating the HHI.

- 2.10 In the cases where any group's contribution to market HHI is more than 2500 in a relevant market as on the date of issue of guidelines, such legal entity/ 'group' shall take necessary remedial measures, within 12 months from the date of issue of guidelines, so as to limit its 'control' in various MSO(s)/ LCO(s) in such a way that the contribution to market HHI of that 'group' reduces to less than or equal to 2500.
- 2.11 Any MSO who by itself contributes to more than 2500 HHI in a relevant market should not be permitted to merge with or acquire the 'control' of any other MSO/ LCO in that relevant market. Also, the tariff offerings, interconnect agreements, must carry provisions and quality of service of such MSO would be closely monitored by TRAI for any anti-competitive practices.
- 2.12 The Following information shall be disclosed by the MSOs on their website:
- (a) Ownership pattern including foreign investment/ joint venture details;
  - (b) List of MSO(s)/LCOs, who are part of the 'group' in the relevant market;
  - (c) Details of Chairman, Directors in the Board, CEO and CFO;

**(d) State-wise (as given in table 1.2) geographical area coverage details.**

**2.13 The Following information shall be provided by the MSOs annually to MIB and TRAI :**

**(a) Share-holding pattern including foreign investment/ joint venture details as per instructions issued from time to time. Changes, if any, in the share-holding pattern during the reporting period, shall be reported within 30 days of such changes;**

**(b) Copy of shareholders agreements, loan agreements, contracts and/or understandings (once and subsequently for the changes);**

**(c) The details of MSO(s)/LCOs who are part of the 'group';**

**(d) Interests of the entity(ies) which controls the 'group' of MSOs/ LCOs in the relevant market;**

**(e) Details of Chairman, Directors in the Board, CEO and CFO;**

**(f) State-wise (as given in table 1.2) geographical area coverage details.**

**2.14 State-wise (as given in table 1.2) number of active subscribers will be provided by the MSOs to MIB and TRAI on quarterly basis.**

**2.15 The Cable TV Networks Rules may be amended to incorporate the rules on M&A/ acquisition of control, to be framed to prevent monopolies/accumulation of interest in the cable TV services and also to make it mandatory for MSOs to comply with the same.**

### List of Acronyms

<b>Abbreviation</b>	<b>Description</b>
CAPEX	Capital Expenditure
CCI	Competition Commission of India
DAS	Digital Addressable System
DD	Doordarshan
DTH	Direct to Home
FTA	Free to Air
GDP	Gross Domestic Product
HHI	Herfindahl-Hirschman Index
HITS	Headend in the sky
IPTV	Internet Protocol Television
LCO	Local Cable Operator
M & A	Merger and Acquisition
MIB	Ministry of Information and Broadcasting
MSO	Multi System Operator
OPEX	Operational Expenditure
SEBI	Securities and Exchange Board of India
SMS	Subscriber Management System
STB	Set Top Box
TACTV	Tamil Nadu Arasu Cable TV
TRAI	Telecom Regulatory Authority of India
TV	Television

## Letter from MIB

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GOVERNMENT OF INDIA  
MINISTRY OF INFORMATION & BROADCASTING  
SHASTRI BHAWAN, NEW DELHI-110001

12.12.2012

Dear Dr. Khullar,

Multi System Operators (MSOs) and Local Cable Operators (LCOs) are required to be registered with local Post Offices to be able to operate in the permitted areas of registration. However as per recent amendments in the Cable Television Networks (Regulation) Amendment Rules 2012, it has become mandatory for MSOs to get themselves registered with the Ministry of Information and Broadcasting to operate in those areas which are notified for analogue switch off under Rule 11C of the said Rules. This provision is quoted as below:

*On being satisfied that the applicant fulfils the eligibility criteria specified under rule 11B and the requirements of rule 11A, the registering authority shall, subject to the terms and conditions specified in rule 11D and the security clearance from the Central Government, issue certificate of registration.*

2. There are no restrictions on the issue of accumulation of interest in terms of market share in a City, District, State or country by individual MSOs and LCOs in the Cable Sector. MSOs and LCOs are, therefore, free to operate in any area(s) of their choice after obtaining registration from the Ministry.

3. As TRAI is already aware, the accumulation of interest restrictions are applicable in case of FM Radios where no company or Group of companies can operate more than 40% of the total FM Radio channels in each city. Further, the total number of channels that a company or Group of Companies can operate cannot exceed 15% of the total number of channels allocated in the country. This stipulation was imposed to ensure equity, fair play and to restrict monopolies. This restriction also ensures that there will be adequate competition in the market and the same shall ensure diversity in content. However, no such restrictions exist for MSOs or LCOs in the extant Cable Rules.

4. It has been observed that the cable TV distribution is virtually monopolized in some States as operation of the entire cable TV network is dominated by a single entity in that State. It is felt that such monopolies may not be in the interest of consumers and may have serious implications in terms of competition, pricing and healthy growth of cable TV sector in that market. Competition is good for the consumers as it leads to better quality of service at reasonable prices. Competition also gives a choice of service provider to the consumer.

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5. TRAI may be aware that the Competition Commission of India has recently passed an order with regard to the monopolistic practices adopted by a Multi System Operator and three others operating in a particular State and has also imposed certain penalties.

6. In view of above, it has become necessary to examine whether there is a need to bring in certain reasonable restrictions on MSOs and LCOs including restricting their area of operation or restricting subscriber base to prevent monopoly. TRAI is, therefore, requested to provide its recommendations under Section 11(1) (a) on the following:

"In order to ensure fair competition, improved quality of service, and equity, should any restriction be imposed on MSOs/LCOs to prevent monopolies/accumulation of interest? If yes, what restrictions should be imposed and what should be the form, nature and scope of such restrictions? Accordingly, amendments required in the Cable Television Networks (Regulation) 1995 Act and Rules framed thereunder may also be suggested."

*Regards,*

Yours sincerely,

*Uday Kumar Varma*  
(Uday Kumar Varma)

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