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STAR's Counter Comments to TRAI's Consultation paper no. 01/2016 dated 29th Jan 2016

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1. Busting Myth–Prevailing discounts are greater than 90%

Some stakeholders have commented that discounts prevailing in the market are more than 90% of RIO rates. Indicative comments are reproduced below:

Airtel Response (pg12-13) – "… the channel price in fixed fee/CPS agreements is less than 4% of the RIO rates…"
Videocon Response (pg. 6) – "…SD channels are cumulatively discounted in excess of 93%"
Dish TV Response (pg. 30) – "…the deals are being entered into by the broadcasters at 10% of RIO rates"
AIDCF Response (pg. 9) – "…current market price of pay channels is around 10% of the published RIO rates"
DEN response (pg. 29) – "…current market price of Pay channels is around 10% of the published RIOs rates"
GTPL response (pg. 9) – "…current market price of Pay channels is around 10% of the published RIOs rates"
SITI Cable response (pg. 8) – "…prevailing prices in the market which are at round 10% of the notified RIOs"

At the outset, we are appalled at such attempts to **mislead the Authority**. It is factually incorrect to say that the discounts prevailing in the market are greater than 90%**,** as **all the channels are not subscribed to by every subscriber,** due to the packaging/tiering done at the retail level.

- Only after accounting for the number of subscribers for each channel, can the effective prices/CPS and the discounts from the published RIO rates be ascertained, as has been illustrated in the analogy below.
  - Analogy:
    - A wholesaler buys three goods 'A', 'B' & 'C' from a manufacturer for onward selling to customers
    - Wholesale prices charged by the manufacturer are Rs.15/-, Rs.20/- & Rs.40/- respectively
    - 10 customers buy a mix of these products, from the wholesaler
      - All 10 customers buy product 'A'
      - 5 customers buy product 'B' too
      - And, 2 customers buy product 'C' as well
      - Now, the total wholesale payout, by the wholesaler to the manufacturer, is as follows:

Product	Wholesale Price	Quantity Purchased	Wholesale Discount	Total Wholesale Payout
A	Rs.15/-	10	0%	Rs.150/-
B	Rs.20/-	5	0%	Rs.100/-
C	Rs.40/-	2	0%	Rs.80/-
Total	**Rs.75/-**		**0%**	**Rs.330/-**

Total wholesale payout = Rs.330/-
Total number of customers = 10
Average wholesale price = Rs.33/- (330/10)
Thus, avg price is Rs.33/-&NOT Rs.75/-

Perceived Discount = 56% (Rs.33vs. Rs.75)
Actual discount given = **NIL**

- As shown in the table above, the wholesaler pays Rs.330/- to the manufacturer
- As there were 10 customers, the wholesale payout per customer will be Rs.330/10 = Rs.33/-.

  - **<u>This average wholesale priceper customer is similar to the concept of Cost per Subscriber (CPS) as used in the broadcast industry</u>.**
  - As the sum of wholesale prices of products 'A', 'B' & 'C' were Rs.75/-, anerroneous perception is created that the manufacturer has sold the products at **56%** discount at Rs.33/-.
  - However, as is evident, the real discount was 0%.

- For the same reason, **<u>the discounts quoted by Videocon D2H in their response are erroneous and is aimed at causing undue prejudice against broadcasters</u>**
  - As per Videocon d2h, summation of RIO rates of Star channels is Rs.187/- (Rs.129/- for Star Network and Rs.58/- for Star Sports) while the negotiated CPS is Rs.29/- to Rs.33/- per subscriber. Hence, there is 82-84% discount.
  - This perception is fallacious and is a wrong representation of facts.
  - Similar to the above analogy, this perception is incorrect since all the subscribers of Videocon d2h do NOT subscribe to all the channels of Star.
  - The real discountcan be established by following two steps

Step 1: **Average prices should always be arrived at after considering channel penetration/subscriber countfor the channel**

In Videocon D2H example, the discount comes to 62% and not 82%, as established below

Key packs in ROI market	Star channels	Channel penetrations
Super Gold pack	Star Plus, Channel V, Life OK, Star Gold, Movies OK, NGC, NG Wild, Fox Life, Regional channels (Star Pravah, Star Jalsha, Jalsha Movies, Suvarna, Vijay TV, Asianet, Asianet Plus)	100%
Gold Maxi	Star Sports 2, Star Sports 3	31%
New Gold Sports	Star Sports 1, Star Sports 4	29%
New Diamond	Star Movies, Star Movies Action, Star World	12%
Platinum	FX	6%

Sum of RIO rates = Rs.187
Penetration-weighted* RIO rate = Rs.86
Current actual negotiated deal (as quoted by D2H) = Rs.29 – Rs.33

Perceived Discount = 82% (Rs.33 vs.Rs.187)
Actual discount given = 62% (Rs.33 vs.Rs.86)

*basis subscriber reports submitted by Videocon to Star, for the month of January 2016

Step 2: **The higher discount is also a manifestation of inefficient packaging by DPOs**

- Even this 62% discount arises out of retailer inertia to implement retail packaging.
  - In case of Videocon D2H, all regional channels have been included in the base pack, forcing every regional channel to all consumers across India, regardless of demand.
  - Actually, the broadcaster deals factor in limited demand of regional channels in geographies other than the primary regional market, which has not been considered by DPOs in such retail packaging.
- If D2H packaging is corrected to remove irrelevant regional channels from the base pack (Super Gold pack), the numbers would become more rational.
  - E.g.: For a consumer in Maharashtra, post removal of all non-Marathi regional channels (if required, the consumer can buy these a-la-carte), the actual discount would be 44%:

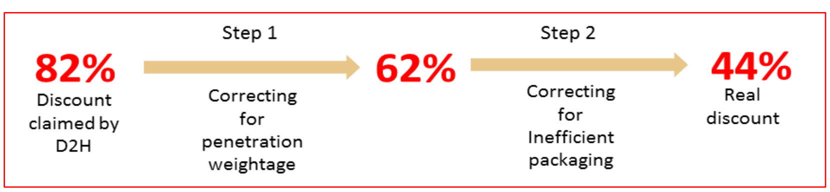
Corrected packs for Maharashtra	Star channels	Channel penetrations
Super Gold pack	Star Plus, Channel V, Life OK, Star Gold, Movies OK, NGC, NG Wild, Fox Life,Regional channel (Only Star Pravah)	100%
Gold Maxi	Star Sports 2, Star Sports 3	31%
New Gold Sports	Star Sports 1, Star Sports 4	29%
New Diamond	Star Movies, Star Movies Action, Star World	12%
Platinum	FX	6%

Penetration-weighted* RIO rate= Rs.59/-
Current actual negotiated deal (as quoted by D2H) = Rs.29 – Rs.33/-

Actual discount given = 44% (Rs.33 vs. Rs.59)

*basis subscriber reports submitted by Videocon to Star, for the month of January 2016

Thus, if we relook at discounts in line with the above two steps, the **discounts** would stand corrected from perceived 82% to 44%.



Further, the discount of 44% would have been even lower, if there were no legacy price freeze.

- Legacy price freeze scared broadcasters, drivingnewer channels to be priced at the ceiling and then being discounted heavily
- If there were no price freezeand broadcaster were allowed to move prices up or down dynamically basis changing brand strength,RIO rates of new channels would have been demand drivenand not close to ceiling.

Incumbent Channel		*Channel launched after 2004*	
Star Plus	7.87	Life Ok	9.21
Star World	2.05	FX	6.51
NGC	2.58	Nat Geo Wild	6.72

RIO rates of Star channels in D2H packs

Star's recommendation: Control discounts and not prices

Most DPOs have submitted that the discounts prevailing in the market are high and hence RIO prices need to be controlled / reduced.

We strongly believe that**'Discount control'** is a more effective tool to bring realism in pricing, as it makesa-la-carte choice a viable fall back option and also allows enough flexibility to broadcasters for fair price discovery.

- Fair Value discovery is already happening on ground despite the alleged high RIO rates, as demonstrated by Videocon D2H in its response. We further elaborate the same here:

Network	Viewership Share (Nov 15 – Mar 16)	Sum of RIO (Rs.)	CPS (as per Videocon D2H)(Rs.)
Star	21%	129	20-23
Zee Turner	20%	162	23-26
Indiacast	12%	142	10-15
Sony	8%	97	10-15

    - Despite the sum of RIO rates being allegedly high, none of the broadcasters are able to charge high CPS (say Rs.100/-) because of market dynamics, thus demonstrating discovery of fair value
- Controlling discounts, rather than controlling prices, will lead to realism in pricing. As illustrated below, 'Discount control' prevents wholesale price distortions.

	Pricing Distortions in Current Regime	Controlled Discount in Proposed Regime
Contracted Price of channel	Rs.2/-	Rs.2/-
Operating Discount	80%	33%
Wholesale List Price	**Rs.10/-**	**Rs.3/-**

Market discovered (contracted) price of channel being Rs.2/-, the wholesale list price of Rs.10/- in the current regime will be forced to align at Rs.3/- due to controlled discount (say 33%) in the proposed regime.

Hence, 'Discount control', and NOT 'price capping' will achieve TRAI's objective of fair & efficient choice to the buyer, without stifling innovation.

2. Genre caps should NOT be based on averaging of current genre prices

Some of the stakeholders have commented that genre caps should be determined by averaging the current genre prices and reducing them further. Some of these comments are reproduced below:

AIDCFs response (pg10-11) – "…Price Cap can be ascertained after taking the average of the current RIO Prices …. Thereafter, the Price Cap can be further discounted by 40% - 50%..."

Den's response (pg. 30) – "…price cap can be ascertained after taking the average of the current RIOs …. Thereafter, the price cap can be further discounted by 80%..."

Siti's response (pg. 9) – "…price cap post taking the average of the current RIO Prices … The CAP can be further discounted around 50% to bring it nearer to the present deals"

GTPL's response (pg. 10) – "…The mechanism of arriving at a genre average and applying a discount to take it close to the actual realization of 10% while allowing a profit margin on top of it may be a feasible method."

- At the outset, we would like to submit that the genre caps disclosed by TRAI in its Consultation Paper **have come as a surprise** as these were never published before, nor were they arrived at after proper consultations.We cannot accord any credibility to such purported price ranges.
- Even if we assume that these genre caps were to be taken into account, these have no relevance in today's addressable environment, as these channel prices were derived from
  - **Analog prices prevailing in non-addressable regime**
  - **Frozen legacy bouquets**that had no linkage to individual channel demand.
- These arbitrary**price caps haveled to severe market distortions**in the past.
- Thus, **any attempt to reduce price caps**by averaging genre ranges in the new regime **will further aggravate the endemic issues of the older regimeand willcontinue to hurt the broadcasting industry through:**
  - Continued under-monetization of flagship channels, as the value attributable to flagship channels by consumers is much higher than the current genre caps, (For details, please refer to Annexure A of our CP response)

Genres	Maximum RIO price	Minimum RIO price	Average RIO price	Leader Channel RIO price	Remark
GEC (Hindi)	10.58	0.45	5.52	7.87	Any cap lower than current genre caps will continue to harm the legacy/ leader channels
GEC (English)	6.52	2.05	4.29	6.52	
GEC (Regional)	6.72	2.10	4.41	5.57	
Movies	9.66	2.39	6.03	7.64	

  - Stifling of future growth of flagship channels
  - Dis-incentivizing investments, innovation and content diversity,
  - Consumers losing out on quality content and choice

    - Impairing initiatives like “Make In India” and “Ease of Doing Business”

- Also, Supreme Court has kept channel prices for digital addressable systems at 42 % of the Non DAS rates per Order dated April 18, 2011 in **CA 2847- 2854 of 2011**.
- Hence, we strongly recommend that the Authority should not use ‘price caps’ or further reduce existing capsto address market distortions. Instead, they should **use‘discount control’ as a mechanism,**as this will achieve TRAI’s objectives of rationalization of tariff structure.If at all, as averred in our Response to the CP, TRAI as an interim measure should only consider ceilings for Mass Genres to facilitate DAS, with clear sun set dates paving the way for eventual rate forbearance.

3. Genre caps should NOT to be based on current negotiated deal values

Some of the industry participants have opined that the genre caps in the new tariff regime should be based on the prevailing negotiated deal values. Some of the responses are reproduced below:

Airtel response (pg. 13) - "… the current RIO rates of broadcasters should not be more than the average rate of each channel under fixed fee/CPS agreements…"

Videocon response (pg. 9) – "…RIO rates need to be re-regulated based on actual deals…"

- In our view, **'price forbearance along with discount control'**is the right way forward for the industry to prosper.Even if TRAI believes prices caps might be required during the transition, it should be restricted only to the mass genres, as explained and elaborated in our response to the CP.
- Also, it should be noted that the **current negotiated deal values factor invarious discounts** provided by broadcasters to incentivize DPOsto deliver certainpredefined business objectives - including, but not limited to, channel penetration, LCN positioning, operator size, etc.
    - Any attempt to link genre caps to current negotiated deal values will have to ensure delivery of these various business objectives by the DPOs
    - TRAI in 2010 had reduced channel prices for addressable platforms from 50 percent of Non DAS prices to 35 percent, after holding broadcasters' agreements with addressable systems were at that rate ignoring that such reduced rates were a result of operators delivering on the said business objectives.[1]
    - The TDSAT had set aside the said Tariff and the Supreme Court had substituted 35 % with 42 %.
    - The DPOs are reviving this fallacious line of argument yet again.
    - Also it betrays logic that channel prices should be further regulated or reduced owing to deal values being discounted.

[1]The data available with TRAI for 2008-09 indicates that several agreements between DTH operators and broadcasters are of long duration and have been finalized at 30-35% of the non-CAS rates…….Keeping in view the above considerations,the Authority is of view that the wholesale rates of pay TV channel(s) and bouquets for all addressable systems should not be more than 35% of corresponding channel(s) and bouquets in cable TV services in non-addressable market. **Explanatory Memorandum to The Telecommunication (Broadcasting And Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 dated 21st July 2010**

4. Cost based model is unworkable and detrimental for content ecosystem

Several stakeholders in their responses have favored cost-based model. Some of these responses are reproduced below:

Airtel's response (pg. 3) – "We firmly believe that a cost-based model will be the best approach to fix wholesale tariffs of TV channels"

Dish TV's response (pg. 8) – "Dish TV strongly supports for cost based model for determination ofthe prices of the channel"

Sun Direct's response (pg. 4) – "we are in favor of Cost based model"

We strongly oppose the cost based tariff model on the following grounds.

- Cost based model is unworkable
    - Programming costs are dynamic and vary frequently owing to inter alia nature of content, rights acquired and production quality. If channel prices were to move frequently in line with variable programming costs, it will inconvenience operators and consumers alike.
    - It will be impossible to predict the number of subscribers for allocation of costs to arrive at channel price
    - Accuracy of data for cost calculation will always be in dispute
- Cost based model will be detrimental for content ecosystem
    - Historical content costs should not be used as a benchmark for channel pricing, as it will impair broadcaster's ability to address ever-evolving tastes and preferences
    - This will limit scope for investments in future technologies, like 4K, 3D, VR, etc.
- Cost based model is regressive
    - Cost based pricing will mean that the Regulator will be dictating profit margins of broadcasters.
    - Such practice will push broadcasting sector back to 'License Raj' era
    - This will act as a dampener to "Make in India" initiatives

In 2010, TRAI had attempted a cost based exercise for Tariff; however in 2015 it realized andacknowledged that the Cost based Model is unworkable.[2]

[2] "However, mainly, because of the limited availability of comprehensive channel-wise information from the industry and significant variation in the cost base of various components that determine the ultimate price of the channel, the Authority concluded that the results of the cost-

5. Distribution Network Model severely harms consumer interests

A few cable MSOs seem to be favoring this model, as seen from their responses.

AIDCF's response – "…subscription of a minimum of ***Rs.150/-*** *for the Basic Services"*

Den's response – "…at least ***Rs.150/-*** *for the Basic Services…an additional amount…for each pack of 25 channels"*

Asianet's response – "…keep the rentals at say ***Rs.200/-*** *minimum per month…additional* ***Rs.25*** *for slabs of 25 channels"*

*Hathway's response – "****Rs.150+tax****…to be charged by DPO as minimum delivery charges… Additional charges of* ***Rs.10+taxes*** *perblock of 10 Pay/FTA channels"*

GTPL's response – "…at least ***Rs.150/-*** *for the Basic Services"*

*Videocon's response – "FTA pack to be mandatory subscribed by consumer... @****Rs.150/- + taxes****…****Rs.1.5+taxes*** *for SD channels,****R. 2.5+taxes*** *for HD channels"*

- **Charging consumers for FTA channels is fundamentally against the principle of free-to-air**. FTA channels should be free to the consumers.
    - On DD FreeDish platform, these FTA channels are available to the consumer free of cost
    - DPOs have put forth ridiculously HIGH Basic Subscription Charge and a-la-carte prices to provide these FTA channelsto the consumer, making a mockery of the concept of FTA.
- Distribution Network Model will **unduly increase subscription charges for the consumers**
    - Pay channels account for more than 80% of viewership, which means, a large majority of consumers subscribe to these pay channels to fulfill their entertainment needs.
    - High 'Basic Subscription Charge' for FTA channels will either lead to consumers paying huge amounts to satiate their entertainment needs or be content with fewer pay channels.
- Some MSO have sought additional rental charge for every incremental pay channel over and above the Basic Subscription Charge. Charging such additional rental on top of subscription fee for Pay channels amounts to **dual charge for the consumers**.
- Even the telecom industry has done away with monthly rental charges and there are no charges for incoming calls. Consumers are charged only for outgoing calls, data usage and other services.

based model were of limited reliability and applicability. - **The Telecommunication (Broadcasting And Cable) Services (Second) Tariff (Fourteenth Amendment) Order, 2015, dated 6th Jan 2015**

6. Payment of Carriage/Placement/Marketing fee outside the ambit of tariff framework will undermineits sanctity

Most of the DPOs are of the view that carriage/placement/marketing fee should continue to be unregulated.

However, we strongly believe **any transaction outside the tariff framework can circumvent principles of transparency & non-discrimination**, and can potentially lead to continuation of price distortions.

Thediscount of up to 33% has been proposed by Star (in its response) forbroadcasters to drive certain business objectives. Carriage, placement and marketing fees are paid to securesuchend objectives and hence should be subsumed in this discount cap of 33%.

Hence, there should be NO separate carriage/placement/marketing arrangements.

7. HD Channels offer a viewership experience that is distinctly different from SD channels, and hence should be priced independent of SD channel price

Some of the DPOs have opined that there is no difference between SD and HD channels and hence their pricing should be same. Some of these responses are reproduced below:

> AIDCF's response (pg. 13) – "…no reason or justification for pricing HD Content higher at the wholesale level by the Broadcaster"
>
> Hathway's response (pg. 19) – "…there should be no difference between HD and SD channel"
>
> GTPL's response (pg. 1, 12) – "…HD channels also need to be brought under regulation…no reason or justification for pricing HD Content higher at the wholesale level by the Broadcaster"
>
> Siti Cable's response (pg10) – "…HD channels too should be regulated"
>
> Dish TV's response (pg. 32) – "…there should not be any difference between HD and SD format of a channel"
>
> Videocon's response (pg. 54) – "…HD price should be kept as same as Standard Definition"

We strongly oppose these views since HD and SD channels are distinctly different and cater to different set of audiences.

- **HD Channels cater to discerning audience seeking superior experience**
    - These channels are aspirational and are for affluent audiences who demand better content & quality offering and have the capacity to pay for it
    - HD channels can be subscribed by only those subscribers who can afford specialized HD TV, and HD set-top-box, each of which comes at premium compared to theregularoptions
- **By regulating HD channels, authority will take away incentive to invest in technology to offer superior experience to consumers**
    - Launch of HD channels required a significant investment in creating an HD ecosystem including up-gradation of production, post production and transmission.
    - These investments have been made possible because of the laudable decision of the Authority to keep HD channels outside the regulatory purview.
    - Regulating HD channels will dis-incentivize broadcasters to invest in upcoming technologies like 3D, 4K and virtual reality
- Some DPOs have mischievously pushed for availing only HD feed and allowing them to re-scale (down-convert) and offer HD and SD versions separately to their consumers. HD and SD channels are separate and distinct and DPOs do not have mandate to tinker with the

broadcaster's product.Allowing this will lead toloss of control of broadcasters on their content IP.

- **Moreover DPOs cannot be allowed to down convert HD channelinto a SD feed and selectively provide such SD feed to viewers. This would amount to a clear violation of (i) the up linking and downlinking guidelines, (ii) the DTH guidelines and (iii) the Cable Television (Network Regulation) Act 1995 and the Rules framed thereunder, as Distribution platforms are only allowed to retransmit channels that are registered with the Ministry of Information and Broadcasting. Accordingly DPOs cannot down convert HD channels that are duly authorized and permitted by the Ministry and create local channels of their own to retransmit such down converted feed. DPOs doing any such conversion would tantamount to them running unauthorised local channel.**
- **Incidentally, DPOs have been running local channels in violation of applicable laws. The TRAI has identified such illegal local channels as Platform Services and have even issued recommendations on the same on 19th November 2014 pursuant to a reference from the Ministry of Information and Broadcasting. A clear mandate is needed from the Ministry and the Authority to the effect that DPOs should not run such local channels. These illegal local channels are not only outside the regulatory purview but are also used for piracy. The DPOs are now attempting to legitimize the same through such undue demands.**
- Videocon and Airtel have demonstrated in their responses that market forces are driving fair prices for HD channels at wholesale level.

Star recommendation

1. There is no need for any price regulation for HD channels
2. We believe that controlling wholesale discounts(instead of prices) and linking retail rates with wholesale will ensure HD prices are realistic.

8. Sports Channels

Some stakeholders have sought the following for sports channels:

- Same sports series should not be spread over multiple sports channels
- DPOs should be allowed to pay for sports channels for select number of days of events instead of full month

We believe that the above demands are borne out of the DPOs'desire to unjustly enrich themselves at the cost of broadcasters.

i. Same sports series may have to be spread over multiple sports channels

- Typically, multiplelive matches are scheduled, by the organizing authorities, at the same time
    - In ODI Cricket World Cup 2015, there were multiple matches on 13 days
    - 6-8 matches of EPL matches are played simultaneously
- Similarly, multiple language channels are required for the same series/event to address consumers across language groups.
    - 95% of consumption of movies and dramas is in their local language and English content consumption is very small and limited
    - Language based channels for the same series/events are not mere dubbed/sub-titled versions but are based on unique propositions, like -
        - Distinct screen graphics & overlay
        - Different crew for presentation in different languages
        - Separate up-linking/down-linking license, etc.

ii. Channels cannot be disintegrated and availed on event basis by DPOs

- The currency of trading in broadcasting is a 'TV channel' only and the same cannot be disintegrated basis an event or a program. DPOs cannot pick and choose individual programs from channels. Broadcasters have the prerogative of determining the program line up of their channels and the same cannot be taken away by disintegrating the very channel. Such an approach will make a mockery of the extant Uplinking and Downlinking Guidelines.

- In any case no public interest shall be sub-served through such a measure. It is only DPOs who shall benefit from the same. In any event the Sporting events of national importance are made available to Prasar Bharati by the force of law for their terrestrial and DTH subscribers.
- Attempts to disintegrate sports channels on the basis of event will be in derogation of making India a multi-sport nation which is the cherished objective of any sports broadcaster.
    - New sporting events will have a higher sampling opportunity in standard offering, as compared to event-based offering.

9. Significant Market Power (SMP): Present in Operators - Absent in Broadcasters.

- Some DTH operators have attempted to make out a case for SMP in broadcasting and proposed a regulatory construct around it. However, the same is misconceived. In this connection, while we reiterate our position as articulated in our response dated 11-Mar-2016, we further submit:
  - CCI has on multiple occasions held that the TRAI regulations give no scope for broadcasters to indulge in restrictive activities of controlling the supply of TV channels to distribution platforms.[3]
  - In fact real monopoly exists at the operator level/last mile. TRAI's own findings conclude that cases of market dominance by MSOs have been reported at various forums.[4]
  - Broadcasters acquire content or produce the same with the intent to monetize it in accordance with the Copyright and Contract laws. However, TRAI's ex-ante regulations like "must provide" act as a compulsory license in favor of the distributors of the TV channels. Further, TRAI's tariff orders have frozen channel prices since 2004.
  - TRAI has itself found that retail tariffs in India are the lowest in the world. Moreover two distribution platforms have themselves responded stating that in some cases the contracted whole sale prices are 20-25 percent of the declared RIO prices.All these are indicative of lack of market power on the part of broadcasters.
  - In view of the aforesaid, it is mischievous and misleading on the part of the operators to allege that there is a case for identifying and regulating SMP or that such SMP is generally created through sports content.
  - Further the CCI has held that in view of the Sports Broadcasting Signals (mandatory sharing with Prasar Bharati) Act, 2007 that requires the broadcasters to compulsorily share the live feed of the sporting events of national importance with Prasar Bharati, the bargaining strength of the broadcaster is constrained. [5]

[3]Annexure 1- Media Pro Case (No 31/2011, Decided by CCI on 21/03/2013)

[4]Annexure 2- TRAI's "Recommendations on Monopoly/Market dominance in cable TV services"

[5]Annexure 3 – Combination Registration No C-2012/7/64 Decided by CCI on 20th Sept 2012

- If the broadcaster is able to influence demand/supply at the wholesale level, then a logical corollary of it is that broadcaster should be able to influence the same at the retail level. Only then can a broadcaster be realistically said to be possessing SMP.
- However, clearly that is not the case. The retail packaging is the sole and exclusive prerogative of operators as per extant regulations. Moreover an operator's retail packaging strategy depends on the amount of carriage and placement fees that it can extract from broadcasters.
- The CCI has also noted that MSOs earn more from unreasonable Carriage and Placement fees, rather than subscription revenues. This enables them to exercise greater bargaining power over the broadcasters who have no option but to pay such fees in order to gain access to markets that are critical for its advertising and subscription revenues.
- In fact, even with the advent of digital addressable systems, the menace of Carriage and Placement Fees has only been increasing. Broadcasters have had to pay carriage and placement fees even for their flagship channels. This shows that the last mile visibility and choice related to a particular channel is not determined either by the broadcaster or the viewer, rather only by the DPOs.
- Even today broadcasters only end up receiving 25-30% of the total ground collection by the operators, clearly indicating that the market power is skewed in favor of the latter.

10. Stealth Inclusion of OTT – Backdoor attempt by DPOs to hijack Consultation

Various DTH operators and MSOs have made a pitch for:

- *Cross-holding regulations between broadcasters and their OTT platform*
- *Holdback on airing of content on OTT platforms*
- *Pay TV content should not be free on OTT - Disparity in pricing at which broadcasters offer their content to DPOS*
- *All linear and non-linear content distributors, including OTT, should be defined as DPOs and be entitled to regulatory benefits like "Must Provide" etc.*

- At the very outset, we have serious objection to such attempts on the part of the distributors to expand the scope of the instant Consultation process. The instant consultation paper clarifies the intent and objective of the current exercise as follows:

  "To carry out a review of existing Tariff arrangements and developing a Comprehensive Tariff Structure for Addressable TV Distribution of "TV Broadcasting Services" across Digital Broadcasting Delivery Platforms (DTH/ Cable TV/ HITS/ IPTV) at wholesale and retail level."

- Online content is only a small subset of the entire internet ecosystem that comprises of broadband, EDGE based services, VoIP, e-commerce, search engines, LTE, payment gateways, mobile platforms etc. Accordingly, any discussion on online video would necessarily require larger participation from stakeholders cutting across the entire internet value chain.

- Multiple laws and regulations namely - the IT Act, RBI guidelines, DIT Notifications etc. would also have to be reviewed.

- Hence, this is a mischievous attempt on part of the distributors of TV channels as well as TSPs to stealthily expand the terms of reference of the instant consultation by attempting to force a piece-meal review of online video dehors the entire gamut of internet services.

- The market for distribution of TV channels through platforms recognized by the up-linking/downlinking guidelines is distinct and separate from the market for distribution of content via online services. Internet and television therefore, cannot be considered interchangeable from a consumer's perspective due to the following reasons:
  - Low penetration level of internet compared to Television.
  - Higher data charges for consuming internet
  - Higher cost of switching from TV to internet.
  - Viewing experience – seamless in TV but patchy in internet owing to poor download speed
  - Target Audience – TV is for masses while internet is for millennials.
  - Differing business models – B2B for TV but B2C for internet.

- Different relevant geographic markets – TV being pan India, while internet is global
- Nature of Competition – Broadcasters primarily compete inter se for subscription and advertising revenues, while online video content has to compete with Social media platforms (like Facebook, etc.) and also with third party video content aggregators like YouTube and of course TV channels.

Accordingly, there is no justification for the instant consultation exercise to consider this specious plea of DPOs to include OTT services.

11. “Must Provide” and “Non-Discrimination” cannot apply to Telcos

An association of telecommunication companies has all of a sudden demanded that the regulatory construct applicable for MSOs/DTH operators/HITS/IPTV ought to be extended to telecommunication companies as well.

We strongly object to the same, on the following grounds, among others:

- As stated that the scope of the current consultation exercise is only limited to DTH/ Cable TV/ HITS/ IPTV.[6]

- Further, it is to be noted that the business models of telecommunication companies are primarily based on voice, sms and data. However, the business models of distribution platforms like MSOs/DTH/HITS/IPTV have the delivery of TV channels at their core.

- It is unconscionable for telecommunication companies to seek augmentation of data revenues that are presently unregulated, at the cost of broadcasters by availing TV channels at regulated rates.

- Further, telecommunication companies with their deep pockets, massive infrastructure and insurmountable gatekeeping abilities have considerable market power to the disadvantage of broadcasters. Accordingly, there is no justification for broadcasters to extend regulatory subsidies to telcos. On the contrary, broadcasters should be entitled to negotiate the terms of the trade in accordance with market forces and in keeping with applicable copyright laws in order to avail a fair share of the data revenues that accrue to such telcos by provisioning online video content.

- It is to be noted that telecommunication companies come under the DOT while broadcasting and distribution platforms come under the MIB. Also the underpinning policy guidelines are different for telcos as compared to the broadcasters and the distribution platforms. There is admittedly a need for wider consultations on the policy framework that shall inform the discourse of “convergence” going forward that shall balance the rights and interests of all stakeholders in the digitally converged narrative. However, the same cannot be done in a perfunctory manner by allowing a regulatory scope creep by telcos.

[6] Para 1.2.1 of the Consultation Paper