

Competition Commission of India

March --, 2011

Case No. 2 of 2009

Consumer Online Foundation

Informant

v.

Tata Sky Limited & Ors.

Opposite

Parties

O R D E R

The instant information has been filed by Consumer Online Foundation ('the informant') against Tata Sky Limited, Dish TV India Limited, Reliance Big TV Limited and Sun Direct TV Pvt. Limited ('the opposite parties') under section 19 (1) (a) of the Competition Act, 2002 ('the Act') alleging, *inter alia*, contravention of the provisions of sections 3 and 4 of the Act.

BACKGROUND

1.1 In India, as on date there are 4 ways in which a viewer may receive broadcast of TV programs:

- a. Free to Air (FTA)
- b. Cable TV
- c. Direct to Home
- d. IP TV

1.2 The above 4 as described briefly as below:

- a. **Free to Air:** These are channels that are broadcast free and a viewer only needs a simple antenna to view these channels. E.g. DD, DD News, DD Plus, Star Utsav, Smile TV (Zee), India News, IBN Lokmat, B4U Music, ETC Music, Aastha, Zee Jagran, DW TV Asia Plus, Russia Today, Kairali TV, Mega TV, Star Jalsha, FM Rainbow etc. There are more than 50 FTA channels easily available in India today.
- b. **Cable TV: Cable television** is a system of providing television to consumers via radio frequency signals transmitted to televisions through fixed optical fibres or coaxial cables as opposed to the over-the-air method used in traditional television broadcasting (via radio waves) in which a television antenna is required. FM radio programming, high-speed Internet, telephony, and similar non-television services may also be provided.
- c. **Direct to Home: DTH** is defined as the reception of satellite programmes with a personal dish in an individual home. DTH does not compete with CAS.

Cable TV and DTH are two methods of delivery of television content. CAS is integral to both the systems in delivering pay channels. Cable TV is through cable networks and DTH is wireless, reaching direct to the consumer through a small dish and a set-top box. Although the government has ensured that free-to-air channels on cable are delivered to the consumer without a set-top box, DTH signals cannot be received without the set-top box.

d. **IP TV: Internet Protocol television (IPTV)** is a system through which digital television service is delivered using the architecture and networking methods of the Internet Protocol Suite over a packet-switched network infrastructure, e.g., the Internet and broadband Internet access networks, instead of being delivered through traditional radio frequency broadcast, satellite signal, and cable television (CATV) formats. IPTV services may be classified into three main groups: live television, time-shifted programming, and content (or video) on demand. It is

distinguished from general Internet-based or web-based multimedia services by its on-going standardization process (e.g., ETSI) and preferential deployment scenarios in subscriber-based telecommunications networks with high-speed access channels into end-user premises via set-top boxes or other customer-premises equipment. IPTV launched only in some cities around 2006-2007 by MTNL/BSNL. Private Broadband providers are also entering the IPTV service sectors in certain metros such as Delhi, NCR region.

1.3 According to figures mentioned in some market studies in public domain, India has over 130 million homes with television sets, of which nearly 71 million have access to cable TV. The overall Cable TV market is growing at a robust 8-10%. One such study states that, in 2008 there were 117 million households in India with TVs. Of these, 68 mn (58%) had cable TV while only 8.9 mn (7.6%) had DTH. According to another report by 2017 Cable TV

would cover 67% homes, DTH about 17 % homes and IP TV about 1% homes.

1.4 The technological aspect of DTH can be summarized as below:

- (i). Direct to Home (DTH) is relatively new technology in India.
- (ii). It seeks to replace cable TV network that used cables to transmit signals.
- (iii). DTH delivers better quality of signals to homes.
- (iv). DTH operators receive signals from TV broadcasting companies like Star, ESPN, Zee etc. These are encrypted and transmitted to the homes of customers using satellites.
- (v). The customers receive these signals through small satellite receivers (dishes) and decrypt them through Set Top Boxes (STBs).
- (vi). Whereas STBs are generic hardware capable of decrypting signal from any service provider (SP), they need a Conditional Access Module (CAM) card that is inserted / fixed into a slot inside the STB.

- (vii). A CAM card is a tool for Conditional Access System (CAS) regime where a subscriber would be able to only view those paid channels that he has paid for.
- (viii). The licensing agreement issued by Ministry of Information & Broadcasting requires that STBs should be interoperable – i.e. they should support different CAM cards from different SPs.
- (ix). At this moment, SPs are not supplying CAM cards independent of STBs.
- (x). Telecom Regulatory Authority of India (TRAI) has stipulated that every SP has to give the consumer 3 options with respect to STBs: (a) outright purchase (b) hire purchase (c) rental.

1.5 At this juncture in the development of TV broadcasting in India, the issue of technological platform itself is of some importance. As discussed above, under CAS regime, STB is the crucial key. These devices are used to decode encrypted and compressed signals from DTH

service providers. Currently, DTH operators are using either MPEG2 or MPEG 4 technology for compression and their respective CAM cards for decryption. Both have to be used together for service delivery. Various aspects of these devices and the technological limitations inherent in DTH service are discussed in detail later in this order.

FACTS

2. Facts, as stated in the information filed are summarized as under:

2.1 It is stated in the information that Direct to Home ('DTH') services refer to satellite television broadcasts intended for home reception. The DTH services have been allowed in India since July, 2006.

2.2 According to the Telecom Regulatory Authority of India's Report presented on April 1, 2009, the DTH market was at 11.1 million consumers at the end of December. However, according to certain news reports it may have grown close to 13.5 million by April -May, 2009.

2.3 The information states that the following are the four main DTH service providers in the market:

- i. Dish TV India Limited
- ii. Tata Sky Limited
- iii. Reliance Big TV Limited
- iv. Sun Direct TV Pvt. Limited

2.4 The above mentioned players ('DTH service providers') are allegedly restraining competition in the market by preventing interoperability between hardware and DTH signals provided by different manufacturers and DTH service providers. DTH service providers are not providing DTH services to consumers, unless they also purchase the hardware from them, which includes the Dish Antennae and the Set Top Box ('STB').

2.5 According to the information primarily there are two stages in DTH technology. First is the beaming of compressed and scrambled signals by the Broadcast Centre of the DTH service provider to the Satellite. Second is the transmission of the scrambled signals to the subscribers.

These scrambled signals can be de-scrambled by the subscriber of the services through the dish antennae and the STB. It is at this stage that the service providers restrict the ability to descramble only through specific hardware supplied by the service provider himself. In other words, other hardware manufacturers are prevented from supplying their hardware to subscribers as such hardware would not have the ability to unscramble the signals which can be achieved by using a coded viewing card, provided by the DTH service provider.

2.6 The information claims that ideally, if a consumer has a STB, he should be able to access the services of different DTH service providers, without being required to buy a new STB. At the same time, different manufacturers should be able to provide hardware directly to the subscribers irrespective of the service provider of the content. The situation can and should not be different from the mobile phone services where a consumer can use any hardware (mobile phone) to access the signals of any of the mobile

service providers as long as the consumer buys the Subscriber Identity Module ('SIM') card of that particular mobile service provider.

2.7 The informant gives instances of acts by the DTH service providers that show how they are avoiding interoperability:

2.7.1 DTH service providers are restricting competition amongst themselves because once a consumer buys the hardware to access services of a particular DTH service provider, he cannot avail the services of any other DTH service provider unless he buys new hardware from the next DTH service provider. For migrating to any other DTH service provider, he will have to procure a completely new set of hardware, being offered by that particular DTH service provider whose services the Customer wants to access. Thus they are limiting competition amongst themselves.

2.7.2 All the DTH service providers procure STBs only from their select manufacturer/s and are thus restricting the consumers who have to purchase a new STB of a specific make as supplied by the DTH service provider.

2.7.3 By preventing interoperability the DTH service providers are creating a barrier to entry for the enterprises which manufacture only STBs. The market for the independent STB manufacturers is therefore completely blocked only because the DTH service providers do not allow the interoperability of the STBs and the DTH signals.

2.8 Specifically, the information alleges that the DTH service providers are violating section 3 of the Act which prohibits anti-competitive agreements and section 4 of the Act which prohibits abuse of dominance in the following manner:

(a) *Limiting competition amongst themselves by not offering interoperability*

DTH service providers are limiting competition amongst themselves by preventing interoperability of the DTH Signals and the hardware. This ensures that once the consumer subscribes to a particular DTH service provider, he cannot migrate to any other DTH service provider unless he is willing to buy a completely new STB. This practice is being carried out by all the DTH service providers in the Indian Markets, without any exception. This indicates that there is a tacit understanding between the existing market players to reduce competition amongst themselves. This is a clear violation of Section 3(1) of the Act which prohibits agreements which cause or are like to cause an appreciable adverse effect on competition within India.

(b) Limiting Competition by putting Restrictive Conditions

DTH service providers are preventing migration of customers not only by preventing interoperability but also by putting restrictive clauses in the Subscription Agreements with the Customers. For instance Clause 13.6 of the Tata Sky Subscription Agreement lays down that the Customer would

forfeit any available balance in the subscriber account in case of cancellation. Similarly the Conditions of Outright Sale Offer and Hire Purchase Offer of Reliance Big TV lays down the following:

“In case Big TV service is not subscribed by customer, Big TV has right to debit Rs. 100 per month”

Such clauses have been incorporated by most of the DTH service providers, clearly with the intention of preventing migrations of customers and restricting competition between themselves. This is a clear violation of section 3(1) of the Act.

(c) Tie-in Arrangement

DTH service providers are forcing the consumers to get into a tie-in arrangement with them. They require the purchaser of their DTH Services to also buy/take on rent the STBs procured by them. They are not giving DTH services to those who are not willing to buy/take on rent their STBs. This

is a clear violation of section 3(4) of the Act under which a tie-in arrangement would *prime facie* be considered violative of section 3 if it has an appreciable adverse effect on competition in India. A tie-in arrangement has been defined as including an “*agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods*”.

2.8.1 Further, as these four DTH service providers control more than 80% of the market, any anti-competitive practice would definitely have an appreciable adverse effect on the market. Hence, this is a clear case of a tie-in arrangement which is having not only an appreciable but a ‘significant’ adverse effect on competition in the market.

2.8.2 The information emphasizes that in some of the cases the players are forcing the people to pay a particular amount of money for the hardware, including the dish antennae and the STBs while claiming that the property in the hardware would remain with the DTH service provider.

2.8.3 The information draws attention to section 2(o) that defines 'price' as following:

"price", in relation to the sale of any goods or to the performance of any services, includes every valuable consideration, whether direct or indirect, or deferred, and includes any consideration which in effect relates to the sale of any goods or to the performance of any services although ostensibly relating to any other matter or thing"

2.8.4 It is averred that the consideration taken by the DTH service providers from the consumers would be considered 'price' under the Act and the transaction would qualify as purchase of goods and services.

d) Exclusive Dealing Agreements between the DTH service providers and Manufacturers

Section 3(4) of the Act also prohibits Exclusive Dealing Agreement. It is stated that DTH service providers use particular kind of STBs manufactured by particular manufacturers. It is stated that the informant suspects that

the DTH service providers have some kind of Exclusive Dealing Agreement with the manufacturers.

e) Abuse of Dominance

Because of small number of licenses given by TRAI, there are very few players in the market. Following are the details of the market shares of the parties in a market which has around 11.1 million to 13.5 million consumers according to TRAI:

<i>Market Player</i>	<i>Share (approx.)</i>
	<i>(In millions)</i>
Dish TV India Limited	5.0
Tata Sky Limited	3.5
Reliance Big TV Limited	1.5
Sun Direct TV Pvt. Limited	3.1
Others	2.4

2.9 Relying on the above data, the informant avers that Dish TV Indian Limited, Tata Sky Limited and Reliance Big TV Limited are the dominant players in this market. It further mentions how they are abusing their dominance in the following manner:

(i) Abuse of dominance under sections 4(2) (b) (i) and (iii)

Section 4 of the Act prohibits abuse of dominance by any enterprise. According to section 4(2)(b)(i) of the Act, there shall be an abuse of dominance if an enterprise limits or restricts market for production of good or provision for services. Further, according to section 4(2) (b)(iii), there shall be an abuse of dominance if an enterprise “*indulges in practice or practices resulting in denial of market access in any manner*”. In the present case, DTH service providers, by restricting interoperability of the STBs and the DTH signals, are restricting the market for enterprises which manufacture STBs. A manufacturer like Samsung which produces STBs will not find a market for its STBs and *perforce* has to get

into an arrangement with one of the DTH service providers in order to sell its product in India.

(ii) Abuse of Dominance under section 4(2)(b)(iv)

According to section 4(2)(b)(ii), there shall be an abuse of dominance if an enterprise “*makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts*”. It is stated that DTH service providers are supposed to provide only video signals via satellite. They may offer STBs but they cannot force the consumers to buy/take on rent the STBs. However, it is alleged that the DTH service providers are offering the services subject to the consumers taking the STBs from them. Buying of STBs is a supplementary obligation which is being illegally imposed on the consumers for getting into a subscription agreement with the DTH service providers.

2.10 It is further averred that a DTH system is supposed to work in a manner very similar to Mobile services. It is stated that if a consumer has a dish antennae and STB he should be able to access the services of any of the DTH service providers.

2.11 It has been further averred that the eligibility conditions for obtaining license for providing DTH Broadcasting Service in India require that the DTH service provider should ensure interoperability of the STBs. Hence, it is stated that interoperability is not only technically feasible but also a desired characteristic of DTH services.

2.12 On these allegations and averments, the informant has prayed to the Commission to enquire into the anti-competitive agreements entered into by the opposite parties and also to enquire into the abuse of dominant position by the opposite parties.

Order under section 26 (1) of the Act

3. On examination of the information and material filed in support therewith the Commission was of the opinion that there exists a *prima facie* case and accordingly, directed the Director General (DG) vide its order dated 30.06.2009 to conduct an investigation into the matter and to submit a report thereafter.

Report of the DG

4. Pursuant to the aforesaid order of the Commission the DG investigated into the matter and submitted its report on 24.09.2009. It was noted by the DG in the report that the original information related to four DTH service providers, viz., Tata Sky Ltd., Dish TV, Sun Direct Pvt. Ltd. and Reliance Big TV Ltd., however, during the course of investigation, it was found that, in addition to these four DTH service providers, two more DTH service providers, viz., Airtel Digital TV and Videocon d2h have also started

providing services in the same market of DTH service providers in India. Therefore, these two DTH service providers were also included in the scope of investigation.

4.1 During the course of the investigation, the DG sought information from *six* DTH service operators relating to technological and commercial interoperability, functioning of DTH, license agreement, DTH schemes and client base etc. The DG made separate observations on the responses of the respective operators.

4.2 In his report the DG has returned the findings based on investigation and has stated that the DTH segment initially required huge investment and is in the nascent stage in India. The DTH service operators at this point of time are not interested in poaching on each other's client but are more focused in increasing their individual subscription base so as to achieve their breakeven point. The provision for both the technological and commercial interoperability was made by the Government of India while issuing license to the

DTH service operators so that the clients have a choice to exit in case they are not satisfied with the services of the DTH services operators. However, the DTH service operators have not made their respective Conditional Access Modules (CAMs) available in the market which can be placed in the common slot of the STB as specified by the BIS. To comply with the BIS specification DTH service operators provided the common slot in STB, however, no interoperable CAMs were provided which is similar to have a gun without the bullets. This issue has been brought out in the survey wherein information asymmetry is noticed in the DTH market. The information about the various schemes offered, access to Free to Air (FTA) channels etc. was not disseminated freely in the market as the same would have resulted in movement of existing clients from one DTH service provider to another DTH services provider and, in turn, resulted in vigorous competition in the DTH market. The said 6 DTH service operators control nearly 100% of the market for DTH services. Therefore, from the investigation, it emerges that

the practices followed by different DTH service operator has resulted in adverse effect on competition.

4.3 The DG, based on the replies received from the respective DTH service operators, examination of terms and conditions and the survey conducted, noted that none of the 6 DTH service operators provides their respective CAMs in the market other than the inbuilt CAMs in their STBs. By not making their respective CAMs available in the market they have restricted technological interoperability in the DTH market. The non availability of CAMS of the respective DTH service operators in the market has restricted the options available to the client who wishes to shift from one DTH service operator to another. Instead of enabling subscribers taking an informed independent decision in switching over to another DTH service operator, the DTH service operators have decided not to supply their respective CAMs considering its cost. In addition to this, availability of the CAMs of various DTH service operators in the market would have resulted into churning of customers among the DTH

service operators which would have resulted into vigorous competition and forced the DTH operators to improve quality of service so as to retain their existing customer base.

4.4 The DG has further noted that the STB alone have no utility without the smart card/viewing card. The smart card supports the STBs in decoding the signals based on the package of channels opted by the client. Each smart card is paired with a particular STB and cannot be used in any other STB. A STB without a smart card is similar to a mobile phone without a SIM (Subscriber Identity Module) card. It is noted that ownership of either the STB or the smart card or both lies with the DTH service operator. The smart card needs to be periodically recharged based on the scheme (s) opted by the client.

4.5 It has been noted by the DG that once the grace period (time given to the client on expiration of the due date of payment) is over the DTH service operator deactivate the smart card located in the STB. In such a scenario, a client

who doesn't want to recharge further and wished to view the FTA channels through the STB could not do so owing to the deactivation of the smart card. Thus, it becomes mandatory for a client to maintain a minimum account balance as specified by the respective DTH service provider. In most of the packages/schemes of channels the FTA channels are not provided independently but are clubbed with the pay channels which results in deactivation of the FTA on account of deactivation of the pay channels. The above mentioned practices of the said DTH service operators are anti-competitive and the existing client once got stuck is left with the limited options to exit. The practice, in general, which is carried on by all the 6 DTH service operators is in violation section 3 (3) of the Act which prohibits the anti-competitive agreements.

Recommendations of the DG

5. In the light of the aforesaid findings, the DG made the following recommendations in his report:

“1. With regard to technological interoperability, it is recommended that CAMs and smart card independent of the STBs should be provided by the DTH Service operators for sale in the market.

2. With regard to commercial interoperability it has been found that on account of huge information asymmetry created by the practice carried on by the DTH service providers, there is substantial lack of customer awareness. On account of the lack of customer awareness it is recommended that the said 6 DTH service operators should make public announcements in national newspapers informing about the three options of outright purchase, rental scheme and the hire-purchase scheme available to the existing and new subscribers, information with regard to the ownership of STB, dish antenna and the smart card.

3. It is noted that the terms and conditions mentioned on the reverse of subscription application form (SAF) are very minutely written and are not clearly readable. It is recommended that the font size of 12 should be minimum for the terms and conditions given on the reverse of the SAF Agreement. The terms and conditions specifying the subscription agreement, terms, service and charges applicable, settlement of charges applicable, obligations of the subscriber, deactivation and reactivation of subscription service along with the charges applicable, obligations of the subscribers to be highlighted in bold and each to be mandatory signed separately therein.

4. It is suggested that Subscriber information Brochure (SIB) providing basic information related to the DTH Services, enclosed as

Annexure VII, be made mandatory to be attached along with the SAF and signed by the subscriber.

5. A copy of the SIB may be forwarded to the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution for undertaking Consumer Awareness Campaign.

6. It is noted during the investigation that some of the DTH service operator charge an amount of Rs.100 or so (variable) for maintaining the customer records such as STB data, subscriber profile, smart card details, subscriber package details etc. for the period when the subscriber does not recharge the subscription within the grace period. The subscriber after the expiry of grace period may not be interested in recharging the subscription immediately owing to several reasons. If a subscriber recharges his account

after, say, a gap of six months the amount by which he recharges his account will not be his account balance but it will be that amount reduced by Rs.600/- or so (variable) which are debited on account of this practice. On account of lack of interoperability, the customer has no choice but to suffer this practice carried on by some of the DTH service operators. Since the subscriber has not availed the DTH services it is recommended that no charges may be deducted during this period.

7. The DTH Service operators may be directed to provide the information referred to in serial number 2 on their homepage as well as the periodic display of ticker on the screen.”

6. The Commission after considering the investigation report, in its meeting held on October 20, 2009, directed that some issues be further examined and detailed response

submitted to the Commission. The issues highlighted by the Commission, for this purpose, are as under:

- (i) Brief account of the matter and technical process involved should be furnished the functioning of various equipments like Set Top Box (STB), CAM and smart card should also be explained.
- (ii) Examination of each allegation made in the information and findings of the investigation in relation thereto by giving reference to the relevant material and evidence. Specific findings should be recorded regarding the allegation relating to the violation of section 3 (1), 3 (4) and section 4 of the Act in the context of allegations made in the information
- (iii) The DG should examine the terms and conditions of the license granted to DTH operators and also the stipulations contained in the agreement executed by them with their customers.
- (iv) The role of other regulators, if any, involved and action taken by them in this regard.

- (v) International practices may also be examined and should be referred to for arriving at conclusions in respect of various issues.
- (vi) The DG may obtain expert opinion on technological aspects, if required.

Supplementary Report

7. The DG considered all the above issues in detail and after completing the investigation submitted his supplementary report on 03.12.2009. It can be noticed from the supplementary report that the status of regulation in the sector *vis-à-vis* interoperability is such that although interoperability has always been desired by licensing authority, i.e., Ministry of Information & Broadcasting, the sector regulator, i.e., TRAI and standards setting body, i.e., Bureau of Indian Standards (BIS), but it has never been achieved or enforced.

7.1 The conclusions of the DG in the supplementary report are noted below:

“In DTH services the STB, Smart Card/Viewing Card and Conditional Access Module (CAM) are the main integral components. The STB in association with the Smart Card/Viewing Card is responsible for converting the digital encrypted signals received from satellite to analog signals which are then displayed on the television set of the subscriber.

There are two main issues with regard to interoperability of the STB among different DTH Service providers i.e. Technical interoperability and Commercial interoperability. A reference is drawn to the findings of investigation on pages 21-23 of the main investigation report. With regard to technical interoperability most of the television sets in India are in analog format. The STSB is provided by the DTH

Service providers (based on their business model) to the subscribers to enable access to encrypted signals and for converting digital signals to analog signals compatible with the subscriber television sets. The license was given by Ministry of Information and Broadcasting to the DTH Service providers for operations in India. It was made clear in the license that the DTH Service providers will ensure technical compatibility and effective interoperability among different DTH Service providers.

The standards for the STB were laid by the Bureau of Indian Standards (BIS) wherein it has specified that the STB must have at least one common slot/interface. The purpose for providing the common slot/interface in STB is to ensure technical interoperability through a Conditional Access Module (CAM). This CAM

can be interested in the common slot/interface provided in the STB. The CAM also has a conditional access based on the package availed or payments made by the subscriber. Since no CAM and Smart Card of any of the DTH Service providers independent of the STB are available in the market the very purpose for which BIS specified the common slot of interface in STB is defeated. Non availability of CAMs/ Smart Card impedes technical interoperability among different DTH Service providers.

With regard to Commercial Interoperability, TRAI came out with the Standards of (Quality of Service) Regulation, 2007 (Annexure-1 of main report) wherein subscribers were to be given three options i.e. Outright purchase, rental and Hire-purchase by the DTH service

providers. TRAI mandated these options so as to ensure commercial interoperability among different DTH service providers and to provide exit route to the subscribers. “Based on the findings of investigation (Reference to pages 21-23 of the main investigation report) it is noted that neither the technical interoperability nor the commercial interoperability is present.”

7.2 This supplementary report was considered by the Commission, in its meeting held on 05.01.2010. After having gone through the supplementary report, the Commission, *vide* its order dated 08.01.2010, sought additional supplementary report with regard to the issue of DTH service providers forcing the consumers to enter into a tie-in arrangement.

Second Supplementary Report

8. The DG, pursuant to the aforesaid directions of the Commission, conducted investigation into the said issue and submitted his second supplementary report on 25.01.2010.

8.1 This issue of tie-in sales of the consumer premises equipment (Set Top Box, Smart Card and Dish Antenna) was examined by the DG in detail including the reasons for the continuance of this practice.

8.2 The said report focused on two major interfaces related to 'tie-in' arrangement. These are:

- a. Interface between the DTH service provider and STB manufacturer
- b. Interface between the customer and DTH service provider

8.3 Both the above two interfaces were examined by the DG to find out if DTH service providers have introduced

some element causing lack of interoperability right at the time of procuring the Set Top Box from the manufacturers. The second interface between the customer and the DTH service provider was examined to see if the agreement entered into between the DTH service providers and the customer contains some restrictions on customers which causes 'lack of interoperability' amongst different DTH service providers.

8.4 After examination of the above mentioned interfaces, it was found by the DG that there is nothing which causes 'lack of interoperability' in the agreement between the DTH service providers and the suppliers of Set Top Box. The set top box, as manufactured by the set top box supplier, is interoperable according to the standards laid down by Bureau of Indian Standards (BIS). With the insertion of a CAM of any other DTH service provider, the same set top box can start giving transmission to the customer subject to some small limitations pertaining to the technology platform used in

transmission (depending on whether MPEG-2, MPEG-4 or some still higher platform is used).

8.5 Further, on examination of the agreement between the DTH service provider and the customer, it was noted by the DG that no such clause which directly restricts or forces the customer to enter into tie-in arrangement is there. However, on account of the lack of customer awareness and lack of availability of Set Top Boxes and other equipments in open market, the customer does end up buying all the related equipments from the DTH service providers only. The sale of Set Top Box, Smart Card and Dish Antenna is tied-in as all the three equipments are provided in one package and are not readily available for sale in open market-independent of each other. These three components are technically essential as each performs a specific function for availing the DTH service transmission. Owing to the lack of practical interoperability and lack of consumer awareness, the customer has no alternative but to purchase these three equipments from the DTH service provider whose service he

is availing. This ultimately results in tie-in arrangements of the Consumer Premises Equipment from the DTH service provider. Except Dish TV, no other DTH service provider, under investigation, has specifically and clearly mentioned in its agreement with the customer that a customer can avail or procure compatible Set Top Box from any other source. This offer of Dish TV is also of no benefit to customer as neither the compatible Set Top Box is commercially and readily available in the open market, nor the consumer is really aware of this possibility.

8.6 It has also been observed by the DG that the DTH service providers do not offer a clear picture to the customer. The format for supplying a DTH service connection is such that the customer has little choice. The DTH service providers also show the position of the transaction in their records as they deem fit. The guidelines issued by TRAI on the issues are not being enforced and so is the Clause 7.1 of the license agreement between the Ministry of Information and Broadcasting and the DTH service provider.

8.7 A reference was also made to the findings of the survey which was included in the main investigation report. It is clear from the findings that the customer is not aware of the nature of transaction as well as different options available to him.

8.8 The report concluded by noting that with the availability of CAM, STB in the open market and enhancement of customer awareness the interoperability, which is technically possible, can be achieved.

8.9 Summing up the findings, the DG concluded as under:

“The entire forgoing discussion and the recent developments indicate that the ‘tie-in’ sale of the Customer Premises Equipment is happening on account of non-availability of Conditional Access Module (CAM), Set Top Box etc. in the open market, lack of consumer awareness as well as lack of enforcement of licensing conditions by any regulatory

authority. The recent development of the news of the likelihood of availability of Conditional Access Module (CAM) in open market will be a positive step towards achieving interoperability. This can be further enhanced and fully interoperability, which is technically possible, can be achieved by the availability of non proprietary Set Top Boxes in the open market and enforcement of the clause 7.1 of the DTH licensing agreement relating to achieving interoperability among the DTH Service providers.'

8.10 The Commission in its meeting held on 04.02.2010 considered the reports of the DG. It was found that the DG has concluded that six DTH service providers mentioned in the report have indulged in anti-competitive tie-in arrangement.

9. On consideration of the entire material on record and the reports of the DG, the Commission decided that further enquiry is called for into the alleged contravention in accordance with the provisions of the Act. The Commission, therefore, decided that copies of the reports be forwarded to all the concerned parties in accordance with the provisions contained in section 26 of the Act for inviting their replies/objections.

Reply/Objections of Tata Sky Ltd.

10. The answering opposite party in its reply/objections to the reports of the DG has made various submissions. It has been stated that the notice of the Commission does not refer to any specific clause of section 3 (4) of the Act and therefore, it is bad in law. It has been contended that the charge of tie-in has been alleged without defining the tying product and the tied product. The DG has not applied rule of reason test which is evident from the absence of any discussion on weighing the benefits *vis-à-vis* the losses to

the consumers in the analysis. It has been submitted that the competition assessment in terms of the factors given in section 19 (3) of the Act has not been carried out. It has been stated that the service provider makes available to the consumers, equipments procured from reputed manufacturers, at zero or highly subsidized rates in the absence of a market for some of these equipments. The consequential gains to the consumers are obvious and unambiguous. It has been mentioned that the sectoral regulator, the licensor and the standards regulator acknowledge the harm to consumer welfare being caused by the current standards of interoperability in the wake of advancements in technology. It has also been alleged that the Commission has pre-judged the issue by asking the DG to conduct an enquiry into infringement of section 3(4) (a) of the Act and has thus prejudiced the investigator.

10.1 Moreover, the answering opposite party has also filed supplementary written submissions and has contended that it is fully in compliance with the technical requirements as

specified by the licensor in Article 7 of the license with regard to *technical compatibility and effective interoperability* and the BIS standards on STBs. It has been contended that the above requirement set out by the licensor has been translated as '*technical and commercial interoperability*' in the investigation report, which is a clear departure from the requirement of '*technical compatibility and effective interoperability*'. It has also been argued that the issue of technical compatibility and effective interoperability amongst different DTH service providers which is at the heart of the present enquiry has been a subject matter of numerous multi forum proceedings. Thus, it has been contended that any decision by the Commission on the issue, without taking into consideration the views of the TRAI and the impending decision of the TDSAT would not only lead to a situation of regulatory uncertainty but may also lead to a conflict with the sectoral regulator/tribunal.

10.2 It has been submitted that the Commission must appreciate the main reason for mandating interoperability at

the time was the concern over affordability of the DTH STB. However, over the last four years, the market forces have ensured affordability and it is not a concern today as all DTH operators have deployed narrowly targeted subsidies directly to all their subscribers. It is an established economic principle that narrowly targeted subsidies are the most economically efficient means of ensuring affordability. The DTH operators have addressed the prime concern of public policy and hence it has been submitted that interoperability is not material relevance in today's market conditions.

10.3 It has been further submitted that the investigation has proceeded on the premise that technical compatibility and effective interoperability are economically and technologically feasible. However, this presumption is not tested on the touchstone of technical and economic reality as well as conditions that prevail in the market. It is, thus, submitted that an inquiry under section 3 (4) of the Act will be incomplete if it is conducted bereft of a robust evaluation of the prevalent technical and economic/market conditions.

10.4 It has also been submitted that the market reality has been acknowledged by the licensor, the Ministry of Information & Broadcasting in its letter dated 28.09.2007 to the sector regulator, the TRAI stating that in reality “*the interoperability between set top boxes between two DTH operators is practically not feasible to the level of completeness*”.

10.5 It is next contended by the answering opposite party that the Commission ought to appreciate that enforcing interoperability shall result in an avoidable technology barrier that will only distort the competitive environment and not work in the interest of consumers in the long run. Technology changes very frequently rendering the earlier technology obsolete and thereby making switching difficult. It is stated that even in a nascent market industry like DTH different formats have come into existence which clearly demonstrates the problems of switching as the STBs are incompatible for such changes in technology. It is further

submitted that almost all other DTH service operators, who entered the market subsequent to the answering opposite party herein, are not using the compression (MPEG2) and transmission (DVBS) specification laid down by the BIS (IS 15377: 2003) transmission so there is no possibility of its subscribers receiving their signals.

10.6 To buttress the above submissions, it has also been emphasized that lack of interoperability is not only on account of lack of consumer awareness and non-availability of CAMs, but the veritable reason for non-interoperability is that it is technically and economically not feasible.

10.7 Further, it has been submitted that the Commission ought to ensure that its interference on this issue does not end up defeating the purpose of the Act. The preamble to the Act states that one of the aims of the Commission is to promote and sustain competition in markets. In this regard it has been submitted that the recommendation of the DG for the compulsory supply of CAMs may hinder competition in

markets which may, in turn, undermine the avowed objective of the Act. For instance, the requirement to compulsorily supply CAMs which at present cost as much as or even higher than STBs may result in creation of barriers for entry of new DTH service providers, because of the increased cost of providing services. At the same time, existing firms may exit the market if the humongous cost of conversion to a particular technology standard or the increased cost of supplying CAMs makes it unviable for them to remain in business. Moreover, in the event that the service providers pass down the cost of CAMs to customers, the purported objective of interoperability may be defeated because customers may not like to pay for the new CAMs and instead go for a new STB altogether. Therefore, it has been submitted that the Commission may disregard the recommendations of the DG requiring the DTH service providers to compulsorily supply CAMs.

10.8 Without prejudice to the aforesaid, it has been urged that since the issues involved in the present investigation

pose complex technical issues which have serious impact on the sector, it may be apposite to make a reference under section 21 A of the Act to the licensor, the sector regulator- TRAI and also the standards regulator- BIS for their opinions so as to reconcile the inherent anomalies provided the Commission feels the need of further inquiry in spite of overwhelming evidence in favour of the answering opposite party.

Reply/objections of Dish TV India Ltd.

11. The answering opposite party has, at the outset, denied that it is indulging in anti- competitive tie-in arrangement and is in breach of the provisions of section 3(1), section 3(4) and section 4 of the Act. It has been submitted that the answering opposite party has been providing its DTH services in strict compliance with the guidelines stipulated by the Ministry of Information and Broadcasting and the applicable TRAI regulations.

11.1 It has been further averred that the allegation that the answering opposite party is indulging into anti-competitive tie-in arrangements is also contrary to the findings of the report dated 25.01.2010 of the DG in the instant matter. A bare perusal of the report would reveal that it has been specifically acknowledged in the said report that the answering opposite party is the only DTH operator which is providing technical and commercial interoperability and the answering opposite party has also provided CAMs. The said report appreciates the initiative of the answering opposite party to launch CAMs in the open market as well in order to achieve the objective of interoperability.

11.2 The answering opposite party has also raised an objection that the Commission does not have the jurisdiction to entertain the present complaint. It has been submitted that the complaint in hand pertains to the issues relating to the regulatory positions in the telecommunication and broadcasting industry for which a specific statutory authority

has been created and formed under a separate legislation, viz., the Telecom Regulatory Authority of India Act, 1997 has established the Telecom Regulatory Authority of India (TRAI) which has been vested with the jurisdiction and responsibility to govern and regulate the telecommunication industry covering telecom, broadcasting and cable TV services which, *inter alia*, include DTH Broadcasting Services and the jurisdiction to entertain/settle/ resolve any dispute arising out of the same vests with the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) created by the said statute.

11.3 It has been urged by the answering opposite party that DTH Broadcasting Service Licenses are granted by the Central Government under Section 4 of the Indian Telegraph Act, 1885 and accordingly, if there is an allegation of non-compliance of any terms & conditions of the licence, the complaint is required to be made to TRAI and it is the function of TRAI to ensure compliance of terms & conditions of the DTH licence.

11.4 It has been further submitted that the STBs provided by the answering opposite party are in full compliance with the requirements of licensing conditions laid down by the licensor and are also in compliance with the standards laid down by BIS.

11.5 It has been submitted that the STBs provided by the answering opposite party to its subscribers for availing the Dish TV DTH services are interoperable both in accordance with the terms of the DTH License granted to Dish TV and the standards laid down by the BIS as well as in compliance of the terms of the Regulations of the TRAI. It has been stated that the answering opposite party has been strictly complying with the TRAI Regulations and offers the STBs to the subscribers under rental, hire purchase and outright sale mode and also provide the facility of return of hardware and refund of security deposit after proportionate and reasonable reduction in case the STBs have been availed on rental basis.

11.6 In view of the above, it has been prayed to the Commission to drop the present proceeding against the answering opposite party.

Reply/Objections of Reliance Big TV Ltd.

12. The answering opposite party has denied the contents of the information as false, misleading, vexatious and unsustainable in law. It has been stated that the STBs are technically interoperable and the lack of interoperability, if any, does not arise on account of any restrictive clause in the agreement with the manufacturers of any peculiar design features and therefore, it is averred, the said allegation is baseless and needs to be rejected. It has been further argued that the answering opposite party is providing STBs to the customers by way of outright purchase basis, hire-purchase basis and on rental basis in accordance with the regulations framed by the TRAI. Further, it has been submitted that the answering opposite party is following all the regulations framed by the TRAI.

12.1 It is contended by the answering opposite party that the DTH operators either under the license agreement for DTH services or under any regulation of the sectoral regulator-TRAI are not obliged to make their respective CAMs available in the market which can be placed in the common slot of the STBs as specified by BIS. It has been further urged that the cost of CAMs is not commercially viable and therefore it does not make any sense of providing CAMs at a higher cost than that of STBs. It has also been submitted that the prevailing prices of CAMs in the international market range from Rs.2000 to Rs.4400 and with custom duty and other expenses, the landed cost of CAMs is higher than that of new STB. Thus, it is argued that there is no justification in providing expensive CAM when STB is available at a cheaper price. The market forces will lead to provisioning of CAM at competitive price as and when the same are available. It has also been pointed out that from a commercial point of view, operators will be more than willing

to provide CAM if the same are available at cheaper rate so as to attract customers of rival operators.

12.2 It has been further submitted that in order to remain competitive in the market, the answering opposite party is endeavoring to introduce CAM at the earliest at minimum possible cost so as to attract customers of other service operators. Market dynamics will ultimately decide the introduction of CAM in the market in the competitive environment and as such no regulatory intervention is called for.

12.3 Referring to the reports of the DG, the answering opposite party has highlighted that the DG has concluded that a lack of interoperability does not arise on account of any restrictive clause in the agreement with the manufacturers for any peculiar design feature.

12.4 Further, the allegation of tie-in sale for the purpose of adopting any restrictive trade practices or otherwise has been denied.

12.5 It has been further contented that there is no concept of collective dominance under the Indian Competition laws. The word group referred to in section 4 of the Act does not refer to group of different corporate entities or enterprises. It refers to different enterprises belonging to the same group. Besides, it is argued that allegation against nearly all the main players in the market about the abuse of dominance cannot be sustained in any way, and therefore no further discussion is called for on this allegation.

12.6 The answering opposite party has denied violating any provisions of the Act, including sections 3 and 4 thereof and has prayed to the Commission to reject the information as being misconceived and as also turned the recommendations made by the DG in the reports as unwarranted and

unsustainable as the same having been emanating from no violation of the provisions of the Act.

Reply/Objections of Sun Direct TV (P) Ltd.

13. It has been submitted that the DG's reports have questioned the alleged tie-in arrangements made by the answering opposite party in such a manner as to limit competition, with the ultimate aim of eradicating competition by creating barriers to entry within the relevant market. The answering opposite party has submitted that the ingredients of a tie-in arrangement are not satisfied.

13.1 It has been submitted that the answering opposite party complies with the licensing provision in the following manner:

- a. The service offers the conditional access system through a set-top box.
- b. The set-top-box is compatible with an open architecture inasmuch as it provides for a slot that receives a smart card.

- c. The set-top box provides for a separate common interface slot which is where the CAMs may be inserted. Thus, the conditional access system is compatible with an open architecture as it is a non-proprietary set-top box. Further, the set top box is provided to the subscriber free of cost.
- d. It is, however, necessary with a view to restrict piracy, that this card must be authorized by Sun Direct or any other service provider.

13.2 In view of the foregoing, it was reiterated that the answering opposite party has not breached or contravened either any licensing condition or the Act.

Reply/ objections of Bharti Telemedia Ltd.

14. The answering opposite party denied entering into any 'tie-in arrangement' with its customers. It has raised objections to the allegations made by the informant and the findings made by the DG in his Reports by highlighting the errors in the Reports in terms of appreciation and

understanding of facts, assessment of economic parameter necessary for making out a case under section 3 of the Act and the interpretation and application of the various provisions of the Act.

14.1 It has been submitted that sections 60 and 62 of the Act when read together exhort the Commission to give due deference to the provisions contained in other legislations in as much as such provisions are not inconsistent with the provisions of the Act.

14.2 It has been argued that section 60 of the Act which contains the *non- obstante* provision under the Act stipulates that:

“The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

14.3 It has been further submitted that section 62 of the Act provides that the provisions of the Act are to be in addition to and not in derogation of the provisions of any other law. It reads:

“The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.”

14.4 Based on the above, it has been submitted that the provisions of the Act are in addition to the provisions contained in any other existing Indian law and not in derogation of the provisions contained in other laws. In other words, the Act shall only override the provisions of other laws when such provisions are inconsistent with provisions of the Act. In all other cases, the Act mandates that the provisions of other laws be given due deference. Therefore, in the present case, where the Commission is called upon to adjudicate on a matter which is subject matter of the TRAI Act and the rules and regulations framed thereunder, it shall give due deference to the provisions of

the TRAI Act and the rules, regulations and recommendations of the TRAI, unless there is a contradiction between the provisions of the two statutes.

14.5 It has been, thus, submitted that the DTH Regulations of 2007 and the TRAI recommendations and guidelines pertaining to the DTH services do not impose any condition or requirement which may be inconsistent with the requirements under the Act. On the contrary, they are aimed at facilitating competition, increasing efficiency and protecting the interests of consumers and are in consonance with the objectives and requirements under the Act.

14.6 Thus, it is urged that in light of the requirement under section 62 of the Act, the Commission shall give due deference to the requirements under the DTH Regulations, 2007 and the relevant TRAI guidelines and recommendations and acknowledge the technical and economic constraints while examining the issue of alleged 'tie-in' arrangements

being stipulated by various DTH service providers, including the answering opposite party.

14.7 It has been submitted that DTH services are similar to cable TV and other types of services such as IPTV and HITS and to the extent that they all involve distribution of multi-channel television programmes they are interchangeable and substitutable and hence the Commission should take note of this while making its assessment of the market for the purpose of this investigation.

14.8 Besides, it has been argued that the TRAI has also acknowledged the technical and economic constraints in providing DTH services and in achieving complete technical inter-operability amongst different service providers.

14.9 It has also been stated that the TRAI has sought to ensure effective commercial interoperability by requiring the DTH service providers to give an option to their consumers for obtaining the CPE on outright sale, hire-purchase or

rental basis and the answering opposite party has complied with the requirements of the TRAI both in letter and spirit.

14.10 It is also stated that with respect to technical interoperability, the TRAI requires that DTH service providers supply such STBs which conform to the BIS standards and it was submitted the answering opposite party conforms to the said standards and also provides the common interface slot in the STBs.

14.11 In the light of the above, it was submitted that the answering opposite party is in complete compliance of the requirements stipulated by the TRAI in order to facilitate effective interoperability and that its STBs as well commercial terms for the provision of DTH services are such that they ensure effective interoperability to the extent and as mandated under the exiting Indian law. Thus, it was submitted that the answering opposite party is not engaged in the alleged anti-competitive practices.

14.12 It has been pointed out that the DG has not defined the 'market' on which the alleged tie-in arrangement is said to cause AAEC. The DG has failed to examine whether the distribution of multi-channel television programmes through DTH medium compete with the distribution of such programmes through other medium, including Cable TV, IPTV and HITS and can be said to be substitutable or interchangeable with each other. It has been further submitted that in the present investigation, the DG should have first identified a broad set of services which have the probability of being considered as substitutes for each others. Thereafter, from the perspective of consumers and keeping in mind the characteristics, prices and end usage of the services, the DG should have identified the specific sub-set of services which may be said to be substitutable and interchangeable. This would have helped the DG and the CCI in making an assessment of whether the alleged 'tie-in' arrangements cause an AAEC in India. As the DG has not defined the market within which the AAEC has allegedly been caused and has consequently not fulfilled the

requirements of section 3 (4) of the Act, it was submitted that the investigation carried out by the DG is flawed and the Commission may therefore disregard the DG's reports altogether.

14.13 It was also submitted that the DG's investigation does not clearly establish that the arrangements are indeed "tie-in arrangements" under section 3(4) of the Act and therefore the Commission may disregard the DG's findings.

14.14 It was urged that Section 3(4) of the Act requires the Commission to establish that the agreements alleged to be anti-competitive cause an AAEC in India. Unlike Section 3(3) where there is a presumption of an AAEC with respect to certain types of agreements, the Commission bears the burden of establishing whether a vertical agreement causes AAEC in India under section 3(4) of the Act. It was also submitted that the Act in section 19(3) prescribes the factors which the Commission is required to

take into account while making an assessment of whether an agreement causes an AAEC in India. The DG, in the present case has failed to conduct investigation keeping in mind the said factors to determine whether the alleged 'tie-in' arrangements cause or are likely to cause an AAEC in India. It has been submitted that on the contrary, the alleged tie-in arrangements result in the promotion of competition and efficiency in the market.

14.15 In view of the above, the answering opposite party has prayed to the Commission to make a reference to the TRAI under Section 21 A of the Act to seek the TRAI's opinion on the technical and economic aspects of DTH services, the constraints involved in achieving technical interoperability and the economic effects.

14.16 The answering opposite party has also stated that it is not indulging in any anti-competitive practices or agreements in the supply of DTH services and has prayed to the Commission to disregard the reports of the DG.

Reply/objections of Bharat Business Channel Ltd.

(Videocon)

15. The answering opposite party, at the outset, has stated that as per the provisions of the Act, the DG has to work strictly as per the directions of the Commission and not beyond the Act and therefore, the DG has exceeded its power in investigating the answering opposite party. It was also submitted that no principles of natural justice have been followed by DG while conducting and competing the investigation.

15.1 The relevant competition Commission of India (General) Regulations, 2009 have not been followed while commencing and conducting the investigations in the matter.

15.2 It has been submitted that the answering opposite party since the date of launch of DTH services have been diligently following the TRAI regulations relating to

commercial interoperability in offering services to subscribers on all the three modules prescribed.

15.3 It has also been submitted that as per Article 7.1 of the DTH License Agreement mandates technical interoperability by various DTH Service providers. The specifications for the Set Top Boxes are laid down by the Bureau of Indian Standards. It has been stated that the answering opposite party is in total compliance of the specification laid down by the BIS.

15.4 In the above backdrop, it has been submitted that taking a bird's eye view of the DTH industry it is at a very nascent stage and there are merely 7 DTH service providers. TRAI has issued regulations from time to time to regulate this industry and DTH service providers are conducting their businesses accordingly. There are certain areas where the recommendations of TRAI made by it to the Ministry of Information and Broadcasting, Government of India are still

at the realm of recommendations and decisions are yet to come by.

15.6 Besides, it has been pointed out that as per provisions of TRAI Act, a separate authority has been created by statute i.e. Telecom Regulatory Authority, who has been taking care of entire DTH industry and have been keeping minute watch on functioning of DTH industry. That apart it is important to note that TRAI has given certain guidelines to DTH industry and Broadcasters, to stringently follow Anti-piracy requirement while distributing STB and Smart Card and it is mandated that each smart card shall function for one STB.

15.7 The answering opposite party, has denied having infringed, violated or breached any of the provisions of the Act and has submitted that it has been complying with all applicable regulations.

Additional submissions of the informant

16. The Commission granted an opportunity to the informant to make further oral submissions on 23.11.2010. During the oral hearing, the counsel for the informant stated that copies of the submissions made by the opposite parties had not been provided by them in terms of Regulation 29 of The Competition Commission of India (General) Regulations. The Commission considered this point and concluded that since the informant had already been given due opportunity to inspect the entire material on record, including submissions of the opposite parties, the ends of natural justice embedded in Regulation 29 had been met. Accordingly, the Commission issued a letter dt. 24.11.2010 conveying this position and also offering the informant another opportunity to the informant to inspect the records and obtain certified copies of documents according to the relevant regulations. In addition, the informant was given the option to file further written submissions within 15 days.

16.1 In a detailed written submission dt. 9.12.2010, the informant once again raised the plea that procedural regulations have been violated during the course of inquiry because the opposite parties had not given copies of their submissions to the informant. The view of the Commission on this issue has already been iterated above and no reiteration is necessary.

16.2 The written submission relied upon the DG report and asserted that not only are the respondents indulging in anti-competitive practices, but they are also violating the terms of license conditions mandated by TRAI. It also averred that international practices favored interoperability. The informant submitted that Federal Communication Commission (FCC) of USA as well as European Commission espoused the cause of interoperability.

16.3 The informant brought in a fresh allegation that the DTH operators are indulging in cartelization. The informant alleged that there was “uncanny similarity of practices by the

Respondents in the relevant market” and it “indicates a tacit understanding between the Respondents not to compete with each other...” It further argued that “There cannot be any viable explanation for such uniform practice except that the Respondents are operating a cartel” with the object of “limiting *inter se* competition.” The informant submitted that such concerted practices fall under the provisions of section 3 (3) and can be presumed to lead to appreciable adverse effect on competition in India.

16.4 The informant also alleged that the Respondents have successfully created a vertical integration by ensuring that STBs are sold only with their DTH Services. It has also led to “complete elimination of competition in the market of STBs.” This has, in effect, created an absolute barrier to entry in DTH market.

16.5 The informant also disagrees with the observation of DG that the Respondents are not dominant enterprises. The informant asserts that concept of dominance should be

extended to include non-related multiple legal entities. Without prejudice to this assertion, the informant submits that each of the DTH operators has been able to affect its consumers and the relevant market in its favor and hence all of them individually are in a position of strength.

16.6 Lastly, the informant submitted that even if the Respondents are providing STBs at subsidized rates or for free, it amounts to their abuse of dominant position through 'predatory pricing'.

Points for Determination

17. From the foregoing, the following points arise for consideration and determination by the Commission:

- (i) Whether the opposite parties are contravening the provisions of section 3 of the Act in any manner?
- (ii) Whether the opposite parties have abused their dominant position in terms of section 4 of the Act?

Point No.1

18. The basic allegation by the informant is that the DTH service providers are limiting competition amongst themselves by preventing interoperability of STBs. The informant has alleged that this is indicative of a tacit understanding between the existing market players to reduce competition and it contravenes the provision of section 3 of the Act which prohibits agreements which cause or are likely to cause an appreciable adverse effect on competition within India. It has also been alleged that DTH service providers are forcing the consumers to enter into a tie-in arrangement with them by requiring the subscriber of the DTH services to also buy/ rent the STB from the same DTH operator. This act, according to the informant, violates the provision of section 3 (4) of the Act being a tie-in arrangement.

18.1 To appreciate the contentions, interoperability issues in DTH industry have to be examined. Interoperability

essentially protects the interest of the subscribers by giving them freedom to shift from one DTH service provider to another. This would generate healthy competition amongst the DTH operators, resulting in gains for the subscribers both in terms of subscription charges as well as quality and value addition to service.

18.2 A careful consideration of the existing technological state of DTH industry in India, the regulatory framework and commercial aspects indicate that the interoperability issue has two dimensions:

(a) technical and

(b) commercial

Both these dimensions have to be examined in terms of existing level of technology and regulatory environment.

18.3 At the outset, it is important to briefly go into the technology involved in transmission of DTH service. As discussed in the introductory section of this order, DTH service encrypts and compresses signals of broadcasters

and transmits the same to the home of the subscriber who can view the broadcast by using a dish antenna and a Set Top Box. Broadly speaking, currently, there are 2 types of compression technologies being used in India – MPEG 2 and MPEG 4.

18.4 MPEG-2 is a standard for "the generic coding of moving pictures and associated audio information". It describes a combination of lossy video compression and lossy audio data compression methods which permit storage and transmission of movies using currently available storage media and transmission bandwidth. MPEG-2 is widely used as the format of digital television signals that are broadcast by terrestrial (over-the-air), cable, and direct broadcast satellite TV systems. It also specifies the format of movies and other programs that are distributed on DVD and similar discs. As such, TV stations, TV receivers, DVD players, and other equipment are often designed to this standard. MPEG-2 was the second of several standards developed by the Moving

Pictures Expert Group (MPEG) and is an international standard (ISO/IEC 13818). Regional institutions can adapt it to their needs by restricting and augmenting aspects of the standard. MPEG-4 is a collection of methods defining compression of audio and visual (AV) digital data. It was introduced in late 1998 and designated a standard for a group of audio and video coding formats and related technology agreed upon by the ISO/IEC Moving Picture Experts Group (MPEG) (ISO/IEC JTC1/SC29/WG11) under the formal standard ISO/IEC 14496 - *Coding of audio-visual objects*. Uses of MPEG-4 include compression of AV data for web (streaming media) and CD distribution, voice (telephone, videophone) and broadcast television applications. MPEG-4 absorbs many of the features of MPEG-1 and MPEG-2 and other related standards, adding new features.

18.5 In short, it can be said that MPEG 4 is an advanced version of the MPEG 2 technology. For effective technical interoperability, the STB used by a subscriber has to be able to decode signals transmitted in either of these

technologies, depending on the format being used by the DTH service provider. Whereas an STB capable of decoding MPEG 4 format signals can also decode MPEG 2 format, the converse is not possible. Some of the older DTH operators like Dish TV use MPEG 2 format while some newer operators, like Big TV use MPEG 4 format. That is why some of the older operators using MPEG 2 have STBs complying to that technology and therefore, these are not technically compatible with MPEG 4 technology. As may be seen in the later paragraphs, the regulators are trying to resolve this issue.

18.6 A related aspect of this technical compatibility is the CAM card that is inserted in the STB. The CAM card is a device that decrypts the signals of a particular DTH operator. Thus, for a subscriber to be able to view the signals, he must have the right STB compatible with the compression technology used by the operator (MPEG 2 or 4) as well as a CAM card that decodes the encryption by that service provider.

18.7 It can be seen that to achieve full interoperability, it is required that all STBs are universally compatible i.e. capable of both MPEG 2 and 4 compression technologies. Secondly, they must be designed to have a separate slot where CAM of any service provider can be inserted. Thirdly, both STBs and CAMs should be independently available in the market for subscribers. As will be seen in the following discussion, considerable progress has been made through regulatory intervention to achieve the first two steps. The third step has commercial limitations as presently, the cost of production of CAMs is almost as high as that of STBs. All these aspects are discussed in greater detail below.

18.8 The requirement of technical compatibility – also referred to as technical interoperability in the DG’s report - of STBs of DTH is provided in Article 7 of the licensing agreement and the same is quoted below:

“7.1 The open Architecture (non-proprietary) Set Top Box, which will ensure technical compatibility and effective interoperability among different DTH service providers, shall have such specifications as laid down by the Government from time to time.”

The specifications for STBs for DTH have been provided by the Bureau of Indian Standards (BIS).

18.9 The requirement of technical interoperability essentially protects the interest of the subscribers by enabling them to shift from one DTH service provider to another without having to buy new hardware.

18.10 The DG has found that the DTH service operators have not made their respective Conditional Access Modules (CAMs) available in the open market which can be placed in the common slot of the STBs as specified by the BIS. To comply with, the BIS specifications, the DTH service operators provided the common slot in STBs. The DG, on

examination of the replies received from the respective DTH service operators, terms & conditions and the survey conducted, noted that none of the 6 DTH service operators provided their respective CAMs in the market other than the inbuilt CAMs in their STBs. He further, noted that by not making their respective CAMs available in the market, the DTH service operators have restricted technological interoperability in the DTH market. The non-availability of CAMs of the respective DTH service operators in the market has restricted the options available to the subscriber who wishes to shift from one DTH service operator to another. Instead of subscribers taking an informed independent decision in switching over to another DTH service operator, the DTH service operators themselves have decided not to supply their respective CAMs considering its cost.

18.11 The DG has further noted that availability of the CAMs of various DTH service operators in the market would have resulted into churning of customers among the DTH service operators which would have resulted into

vigorous competition and force the DTH operators to improve quality of service so as to retain their existing customer base.

18.12 In this connection, it is relevant to refer to the recommendations made by the TRAI on interoperability and other issues relating to DTH on January 30, 2008 wherein it has noted as follows:

“3.10 It is seen that in the present state of DTH market in the country, technical interoperability has not taken deep roots. The main reason for this is unavailability of Conditional Access Modules (CAM) of different DTH service providers. The BIS specifications for DTH set top boxes require each set top box to have a Common Interface (CI) slot for the purposes of technical interoperability. Technical interoperability is achieved by plugging in the CAM of new DTH operator in the CI slot of set top box provided by the existing DTH operator. For example, a subscriber of DTH operator ‘A’ who

wishes to switch over to DTH operator 'B' has to procure a CAM from 'B' and plug the CAM into the CI slot of the set top box supplied by 'A'. This enables the subscriber to start receiving the services of 'B' using the existing set top box and dish antenna (although the dish antenna has to be re-aligned towards the satellite being used by 'B')."

It further noted:

"3.11 As of now, the Conditional Access Modules (CAM) are not being supplied by the DTH operators as the Conditional Access Modules (CAM) presently cost almost as much as a new set top box. Therefore, technical interoperability has not been very successful. However, it is expected that the new DTH service providers, who may be interested in taking over the DTH subscribers of existing DTH operators, will start making available Conditional Access Modules (CAM). Moreover, presently the DTH market is at a nascent stage with a small

subscriber base. With a small subscriber base, the churn or shift from one service provider to another is going to be even smaller. Therefore, the demand for Conditional Access Modules (CAM) is also very limited. Once, the subscriber base of DTH grows and the churn becomes substantial, the demand for Conditional Access Modules (CAM) will also increase and it is expected that increase in volumes will result in drastic fall in prices of Conditional Access Module (CAM). Hence, it is essential to ensure that all the set top boxes have the CI slot mandated by the BIS specifications in order to benefit from the technical interoperability in near future.

18.13 Accordingly, the TRAI was of the opinion that in spite of some problems in implementation of technical interoperability of DTH set top boxes, the provision requiring technical interoperability for DTH set top boxes needs to be retained. Therefore, the TRAI recommended that there is no

need for doing away with the existing technical interoperability conditions.

18.14 The TRAI also noted in its aforesaid recommendations that the BIS specifications of the STBs also reflect the advancement of technology so that the same do not inhibit the advent and advancement of technology. The TRAI in its aforesaid recommendations also referred to a letter from the Ministry of Information & Broadcasting which raised the issue of advancement in compression technology from MPEG2 to MPEG4 format, and its implication for technical interoperability. Para 3 of the above letter of the Ministry of Information & Broadcasting is reproduced below:

“There are already two DTH operators who are operational and are using the MPEG 2 compression format as per the present BIS specification provided for the same. The new operators like Sun TV Direct Pvt. Ltd., Reliance Blue Magic Ltd., and Bharati Telemedia Ltd. are wanting to go on the MPEG4

compression format and it has been said that it offers substantial video quality improvements over current compression format and with over 25% savings in the transmission bandwidth.”

18.15 The Ministry of Information & Broadcasting also convened a meeting with the representatives of BECIL, Prasar Bharat and Bureau of Indian Standards on the issue of technical interoperability and in this connection para 4 of the above referred letter of the Ministry is reproduced below:

“A meeting was held in the Ministry with the representatives of BECIL, Prasar Bharati and Bureau of Indian Standards on the issues of technical interoperability. It was suggested in the meeting that the guidelines be modified to incorporate the commercial interoperability of set top boxes for the following reasons:-

(a) the interoperability between set top boxes between two DTH operators is practically not feasible to the level of completeness

(b) the imposition of this clause of interoperability increases the cost of set top boxes which consumer has to bear.

(c) the strict adherence to BIS specifications of set top boxers inhibits the advent and advancement of technology and the resulting benefit to the consumer.”

18.16 The TRAI in its aforesaid recommendations further noted that the change in compression technology means that a DTH subscriber who has been using a Set Top Box using MPEG 2 compression format cannot migrate to the services of another DTH operator who is using MPEG 4

compression format using the same Set Top Box, though the converse is possible. It recommended that this issue can be resolved by mandating that once BIS standards for DTH Set Top Boxes are revised incorporating MPEG 4 compression format, then even the DTH operator using MPEG 2 format would start supplying Set Top Boxes with MPEG 4 format for his new subscribers enrolled after the revision in BIS standards. It may be noted here that change in the BIS standards for DTH Set Top Box from MPEG 2 to MPEG 4 would not mean that the existing DTH operator using MPEG2 broadcast stream has to start transmitting the broadcast stream in MPEG 4 format. The correct position is that the DTH operator can continue to broadcast in MPEG 2 format or switchover to MPEG 4 format at his option, but the Set Top Boxes which he will start distributing would be based on MPEG 4 standards due to revision in BIS standards and consequently, new Set Top Boxes using MPEG 4 format would continue to receive the existing MPEG 2 transmissions of the existing DTH operator.

18.17 Considering the advantages of technical interoperability as well as the need to adopt modern technology, the TRAI in the aforesaid recommendations dated 30.01.2008 opined that the issue of revision of BIS standards for DTH set top boxes should be taken up by the Government with the Bureau of Indian Standards so that the standards laid down by BIS for DTH Set Top Boxes are updated for advanced technologies. It further recommended that revision of standards should be prospective and should apply to DTH subscribers who are enrolled after six months from the date of such revision. Further, it noted that such revision should not compulsorily require the DTH operators to upgrade the STBs of existing subscribers to conform to revised standards, though they would be free to do so on their own.

18.18 Accordingly, the TRAI recommended clause 7.1 of the DTH license conditions should be amended to read as under:

“7.1 The open Architecture (non-proprietary) Set Top Box, should be such as to ensure technical compatibility and effective interoperability among different DTH service providers. The DTH Set Top Boxes supplied to the subscribers shall have such specifications as laid down or as revised by the Government from time to time. However, in cases of revision of specifications such revisions will be applicable prospective to new subscribers, and the licensee will have a transition period of six months from the date of such revision to ensure full compliance with the revised specifications for the new subscribers.”

18.19 In this connection, we may note that the Commission *vide* its letter dated 05.07.2010 sought the views of the Ministry of Information & Broadcasting on certain issues relating to technical and commercial interoperability of DTH services. The Ministry of Information & Broadcasting responded to the said letter of the Commission *vide* its letter dated 27.09.2010 and the relevant contents thereof are noted below:

“.....With passage of time, different technologies and standards have evolved (MPEG-2,4/DVB-S,DVB-S2) for signal compression and transmission. For this and various other reasons the Ministry, therefore, requested TRAI to examine the issue of interoperability afresh and submit its recommendations to the Ministry. TRAI forwarded its recommendations on interoperability and other issues relating to DTH recommendations to the Ministry on 30th January, 2008..... The recommendations

were discussed with various stakeholders in the Ministry and it was felt that for a number of reasons the recommendations of TRAI need to be further examined by TRAI. Accordingly, Ministry...has referred the matter to TRAI for re-examination... TRAI has since floated a consultation paper on 20th August, 2010 which is available on their website. The Ministry is awaiting the recommendations of TRAI before firming up a view on whether the requirement of technical compatibility and effective interoperability among different DTH service providers needs to be continued with as it is, or in a modified form or should be dispensed with entirely.....”

18.20 It can be noticed from the aforesaid that the licensing authority, viz., the Ministry of Information & Broadcasting and the sectoral regulator, viz., the TRAI are seized of the issue of technical interoperability among the

DTH Service providers and no final view has been firmed up as yet.

18.21 The Commission has given thoughtful consideration on the issue of lack of technical interoperability amongst the DTH Service providers. Though there cannot be any gainsaying the desirability of technical compatibility or interoperability however, the feasibility thereof requires a closer scrutiny. We have referred to the licensing conditions as also the recommendations of the sectoral regulator TRAI. As the TRAI and the licensing authority of DTH services are seized of the issue of technical interoperability of DTH services in the light of technological advancement, we are of the considered opinion that any interference at this stage of evolution of technology by this Commission may not be appropriate. The informant has referred to efforts made by FCC of USA and European Commission to promote interoperability. It is noted that in both these jurisdictions, these efforts are being made by the sectoral

regulators and not by competition regulators. The plausible reason could be that interoperability would bring in competitive advantages but there are technological constraints that have yet to be overcome. In India, the existing licensing conditions also espouse technical interoperability in the DTH services but there are certain inherent technical problems in fully implementing it at this juncture. This can only be resolved by the TRAI and the Government by bringing about changes in specifications to be prescribed by BIS for STBs. There is no evidence that the current market practice is a result of any action in concert by various DTH service providers and hence they cannot be said to be in infringement of the provisions of section 3 of the Act.

18.22 The assertion of the informant that “There cannot be any viable explanation for such uniform practice except that the Respondents are operating a cartel” though well-meaning, cannot be accepted in the true spirit of competition laws. When a business practice in any industry

emerges due to technical constraints, it is not appropriate to treat it as “action in concert” as envisaged in competition laws. The definition of “cartel” under section 2 (b) of the Act has the phrase “by agreement amongst themselves” as its fulcrum. For any “practice” to be considered as *concerted action*, the facts must be counterpoised on that fulcrum of “by agreement amongst themselves”. Such “agreement” should not be adduced, assumed or arrived at through eliminative or wishful reasoning but must be concluded through amassment of undisputable evidences. The establishing of joint *mens rea* of non-competition is imperative. In this case, there are no such evidences of any *agreement* between the DTH operators to not compete with each other either by mutually agreeing to avoid interoperability or by any other means. Competition laws are different from criminal laws in as much as they are also an instrument of economic growth and development apart from being a deterrent for anti-competitive conduct. Not only must they punish anti-competitive acts because they cause harm to the economy but they must also help the

economy by not unnecessarily interfering with markets without very solid evidences. The onus to protect freedom of trade is as much at the heart of competition laws as is consumer welfare and economic development. Therefore, it is not judicious to treat the respondent DTH operators as a cartel.

18.23 However, it may also be noted that for a subscriber to take advantage of the full technical interoperability as and when it happens in future, he must also have the option of both buying or renting the STBs or related hardware so that he is not faced with a sunk cost in that equipment, making it difficult to switch.

18.24 The DTH license agreement does not specifically go into this issue. However, the sectoral regulator TRAI *vide* its the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007 makes it mandatory for the DTH service providers to provide an option to their

respective subscribers for obtaining the DTH hardware on *outright purchase, hire purchase or rental* basis. Thus, technically the subscribers do have an option to change their DTH service provider. Regulation 4 (2) of the Regulations, 2007 is quoted below:

“Every direct to home operator shall give all the three options, namely, (a) on outright purchase basis, (b) on hire purchase basis, and (c) on rental basis, as referred to in sub-regulation (1), for making available the Direct to Home Customer Premises Equipment to the person making the request for the same under the sub-regulation.”

18.25 Thus, it has been mandated that the subscriber has a choice to return the dish antenna and the STB taken on hire purchase or rental basis from the DTH service operators if they change or stop the service. For availing

this option the subscriber must be well informed about the various schemes made available by the DTH operators.

18.26 The DG in his report has noted that with regard to commercial options on account of huge information asymmetry created by the practice carried on by the DTH service providers, there is substantial lack of customer awareness. On account of the lack of customer awareness, the DG recommended that the DTH service operators should make public announcements in national newspapers about the three options of outright purchase, hire purchase and rental schemes available to the existing and new subscribers, and disseminate information with regard to the ownership of STB, dish antenna and the smart card to subscribers. It is expected that the concerned regulators would take appropriate steps to ensure this.

18.27 The DG in his second supplementary report has noted that the recent developments indicate that the 'tie-

in' sale of the Customer Premises Equipment is happening on account of non-availability of CAMs, STBs etc. in the open market, lack of consumer awareness as well as lack of enforcement of licensing conditions by any regulatory authority. The recent development of the news of the likelihood of availability of Conditional Access Module in open market will be a positive step towards achieving interoperability. This can be further enhanced and full interoperability, which is technically possible, can be achieved by the availability of non proprietary Set Top Boxes in the open market and enforcement of the clause 7.1 of the DTH licensing agreement relating to achieving interoperability among the DTH service providers.

18.28 We have considered the conclusions reached by the DG and in the light of our discussion in the foregoing paras we believe the issue of tie-in sale of Customer Premises Equipments (CPEs) being a necessary fall out of lack of technical compatibility or interoperability can be dealt with through ensuring interoperability by the sectoral

regulator and the licensing authority who are seized of the issue as noted above.

18.29 Another aspect of the apparent “tie-in” arrangement where DTH operators supply STBs along with the subscription is the level of technological development in production of CAM cards. As contended by one of the respondents at para 12.1 supra, the cost of CAM card itself is almost as much as that of STB and it does not make it commercially viable to supply the CAM independently. This position has also been accepted by TRAI, as can be seen from para 18.12 above. At this moment, the STB loaded with the requisite CAM / smart card is almost akin to a SIM card of a cellular operator. To subscribe to the cellular service, the customer has to use the SIM card given by the operator. Similarly, a DTH subscriber can only access the service if it uses the STB. The subscription is a composite of hardware gateway in the form of STB and software bouquet of channels transmitted through the STB to the consumer’s home. The

Commission is inclined to accept the view of the DTH operators that market dynamics will resolve the issue in future when technological improvements will bring down the cost of CAM cards sufficiently for it to be viable to make them available independently in the market. Any interference with this market dynamics at this stage would perhaps prove counterproductive for the industry.

18.30 Coming to the allegation of the informant that DTH operators have created entry barriers in the STB market by bundling their DTH service with STBs of limited set of manufacturers, this Commission is constrained to observe that there is no competition issue in this allegation. If DTH operators are buying STBs from certain manufacturers of their preference, they are only exercising their freedom of consumer choice. It is only obvious that all STB manufacturers would be competing to sell their products to DTH operators and the latter would buy from the manufacturer who offers the best deal. Just like no individual consumer should be expected or forced to

purchase products of different brands, so also should DTH operators not be expected to buy STBs of all manufacturers. The competition in DTH market is for getting more subscriptions/viewers and it is inconceivable why DTH operators would want to create entry barriers in STB market because STB manufacturers are not their competitors. Furthermore, just because they are not buying STBs of each and every manufacturer, they cannot be said to be guilty of refusing to deal in the context of section 3(4). DTH is a service and quality and value addition is the key for such markets. STBs alone can hardly be considered to be a decisive factor for viewers. The adverse effect, if any, of bundling of STBs with DTH services would hardly be appreciable.

18.31 Finally, on purely legal point and economic position, it is noted that section 3(4) of the Act envisages an agreement between enterprises or persons “*at different stages or levels of the production chain in different markets...*” In common parlance of international

competition laws, this nature of agreements is called “vertical restraints”, of which “tie-in” is one form. Internationally, these agreements reflect dynamics between manufacturers-retailers; manufacturers-distributors or distributors-retailers existing at different levels in the production and supply chain.

18.32 A manufacturer / service provider and the consumer cannot ever be said to be part of any “production chain” or even operating in “different markets” because a consumer does not participate in production and at the same time, the market for any good or service must include the producer and the consumer. There cannot be any market that only has the producer or the consumer. Therefore, both are, by definition, part of the same relevant market. Any “agreement” between the producer / service provider and consumer occurs after inter-brand or intra-brand competition has already played out and therefore such agreements with the end consumers do not have any competition aspect. Economic

theory supports the view that if any such restraint is imposed by a manufacturer / service provider on the end consumer, it would be resolved over time since the consumers would start shifting to competitors who do not impose such restricting conditions. This legal and economic position takes the subscription “agreement” between DTH operators and its subscribers out of the purview of section 3(4) of the Act.

18.33 Thus, in conclusion to our discussion above on any allegations with respect to section 3 of the Competition Act this Commission is of the view that the practice of supplying STB / CAMs by DTH service providers along with the subscription is not due to any tacit agreement or action in concert, but due to limitations of the existing technology and its cost. Moreover, the sector regulators are fully seized with the matter and at this stage, there is no competition angle involved. Similarly, STB / CAM is an intrinsic part of the service of direct to home transmission and therefore, there is no aspect of vertical restraint being

imposed on any person. Finally, even a cursory application of factors given in sub-section (3) of section 19 of the Act to the DTH industry in India reveal that none of the factors are applicable. The empirical data available in public domain point to the fact that DTH market is fairly competitive and will be expanding vigorously over the coming years. There is no indication of entry barriers or foreclosure of competition apparent from the facts discussed above. For these reasons, there is no contravention of any of the provisions of section 3 of the Act in the instant case.

Point No. 2

19. The DG has also discussed the issue of abuse of dominance by the opposite parties by restricting interoperability. The DG noted that this is a very vague allegation and was not established through investigation. It further observed that Indian law does not recognize collective abuse of dominance as there is no concept of 'collective dominance' which has evolved in jurisdictions

such as Europe. The word 'group' referred to in section 4 of the Act does not refer to group of different and completely independent corporate entities or enterprises. It refers to different enterprises belonging to the same group in terms of control of management or equity. This is not the case with the opposite parties. The contention of the informant that each of the DTH respondents is individually dominant is not sustainable. This Commission agrees with the informant to the extent that market share is not the only determinant of dominance. But the concept of dominance does centre on the fact of considerable market power that can be exercised only by a single enterprise or a small set of market players. Every single player in any relevant market cannot be said to possess such dominance, as seems to be the contention of the informant. All service providers of the entire DTH industry cannot be said to be individually dominant. Individually, none of the DTH operators has dominant position in terms of Explanation (a) to section 4. It is noteworthy that the Competition Act uses the article "an" and not "any" before

the word “enterprise” in subsection (2) of section 4. For a plural interpretation of “an” the combined entity should be an identifiable artificial juridical person such as association of persons (AOP) or body of individuals (BOI) mentioned in subsection (1) of section 2 of the Act. That is why the Act includes the term “group” separately because a “group” of firms with joint management control can have collective decision making and can exercise joint dominance. In this case, the respondents cannot be said to be AOP or BOI. Therefore, they cannot be said to be “an enterprise” for the purpose of section 4.

19.1 The TV subscription market is very dynamic and competitive where not only are DTH operators vigorously competing with each other but also with the entrenched cable TV providers. Therefore, allegation of dominance cannot be established. In absence of dominance, the question of any abuse, including predatory pricing, does not arise.

19.2 As can be noticed from the response of the Ministry of Information & Broadcasting as reflected in its

letter dated 27.09.2010, the Ministry has already requested the TRAI to examine the issue of interoperability afresh and submit its recommendation to the Ministry. As the recommendations of the TRAI are awaited by the Ministry on various issues relating to technical compatibility and effective interoperability among different DTH service providers, no interference by the Commission in the matter is called for at this stage.

19.3 However, we see no reason as to why the DTH operators should not give clear choice to subscribers to outright purchase, hire-purchase or rent the STB as mandated under the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007.

20. In view of the discussion above, this Commission does not find any contravention of section 3 or section 4 of the Act in this case. Accordingly, the proceedings are hereby closed.

20. Secretary is directed to inform the parties accordingly.

Member (G)

Member (P)

Member (GG)

Member (AG)

Member (T)

Chairperson
