

DIGICABLE'S VIEWS ON ISSUES RELATING TO MEDIA OWNERSHIP

General Disqualifications

Q1: In your opinion, are there other entities, apart from entities such as political parties, religious bodies, Government or government aided bodies which have already been recommended by TRAI to be disqualified from entry into the broadcasting and distribution sectors, which should also be disqualified from entry into the media sector? Please elaborate your response with justifications.

A1: We are of the view that the entities recommended by TRAI covers almost everybody.

Q2: Should the licensor, either suo motu or based on the recommendations of the regulator, be empowered to disqualify any entity from entering the media sector in public interest? For instance, should the licensor or the regulator be empowered to disqualify (or recommend for disqualification) a person who is subject to undue influence by a disqualified person.

A2: We agree with this statement and feel that the licensor or the regulator should be empowered to disqualify a person or a corporate body who is subject to undue influence or vertically linked to the list of disqualified groups entering into this broadcasting and distribution sector.

Media Ownership/ Control

Q3: Should ownership/ control of an entity over a media outlet be measured in terms of equity holding? If so, would a restriction on equity holding of 20% (as recommended by TRAI in its recommendations on Media Ownership dated 25th Feb 2009) be an appropriate threshold? Else, please suggest any other threshold value, with justification?

A3: We would like to mention that the ownership / control of an entity over a media outlet sometimes go beyond even equity holding percentage. TRAI has already mentioned that in the Telecommunication Sector that the licence agreement for Unified Access Services (UASL) requires that no single company / legal person either directly or through its associate shall have substantial equity holding in more than one licensee company in the same service area for the access services, where substantial equity means an equity of 10% or more.

Our view is that for Cross Media, the equity holding restriction can be between 15% - 20%. However, we recommend that in case of Vertically Integrated media outlets, there should be **NO** affiliations/equity holdings/interest either directly or indirectly. We would also like to mention that TRAI in its recommendation **on media** ownership dated 25.2.2009, inter alia, observed that there is a need to move from 'company based' restriction to a system of 'entity based' safeguards.

Q4: *In case your response to Q3 is in the negative, what other measure(s) of ownership/ control should be used? Please support your view with a detailed methodology to measure ownership/ control over a media outlet.*

A4: No Comment

Media Ownership rules

Q5: *Should only news and current affairs genre or all genres be considered while devising ways and means to ensure viewpoint plurality? Please elaborate your response with justifications.*

A5: We are of the view all genres should be considered while devising ways and means to ensure viewpoint plurality.

Q6: *Which media amongst the following would be relevant for devising ways and means of ensuring viewpoint plurality?*

- (i) Print media viz. Newspaper & magazine*
- (ii) Television*
- (iii) Radio*
- (iv) Online media*
- (v) All or some of the above*

A6: In our view, TV, unlike Print or Online media, is consumed by everybody including the semi and fully illiterate consumers who easily get influenced by it. In addition, People mostly access news and entertainment from television. Moreover, TV is the most powerful medium as it delivers an immersive audio – visual experience of the news and entertainment and it garners the highest share of the consumer’s mind space and therefore has far greater influence on the people. Hence, Television is the most relevant for devising ways and means of ensuring viewpoint plurality.

Q7: *Should the relevant markets be distinguished on the basis of languages spoken in them for evaluating concentration in media ownership? If your response is in the affirmative, which languages should be included in the present exercise?*

A7: Yes, the markets should be distinguished on the basis of languages spoken in them for evaluating concentration in media ownership. In addition to the 8 languages mentioned by ASCI as mentioned in the TRAI paper we recommend that Punjabi, Urdu and English should be added.

Q8: *If your response to Q7 is in the negative, what should be the alternative basis for distinguishing between various relevant markets?*

A8: N.A.

Q9: *Which of the following metrics should be used to measure the level of consumption of media outlets in a relevant market?*

- (i) Volume of consumption*
- (ii) Reach*
- (iii) Revenue*
- (iv) Any other*

Please elaborate your response with justifications.

A9: No Comments

Q10: *In case your response to Q9 is „Any other“ metric, you may support your view with a fully developed methodology to measure the level of consumption of various media outlets using this metric.*

A10: N.A.

Q11: *Which of the following methods should be used for measuring concentration in any media segment of a relevant market?*

- (i) C3*
- (ii) HHI*
- (iii) Any other*

A11: No Comments.

Q12: *If your response to Q11 is „Any other“ method, you may support your view with a fully developed methodology for measuring concentration in any media segment of a relevant market using this method.*

A12: N.A.

Q13: *Would Diversity Index be an appropriate measure for overall concentration (including within media and cross media) in a relevant market?*

A13: No Comment.

Q14: *In case your response to Q13 is in the affirmative, how should the weights be assigned to the different media segments in a relevant market in order to calculate the Diversity Index Score of the relevant market?*

A14: N.A.

Q15: *Would it be appropriate to have a “1 out of 3 rule” i.e. to restrict any entity having ownership/control in an outlet of a media segment of a relevant market from acquiring or retaining ownership/control over outlets belonging to any other media segment? Please elaborate your response with justifications.*

A15: We consider that “1 out of 3 rule” should be applicable for TV content centre i.e. the TV content centre should not have any ownership / control in the other two media space like Print and Radio.

Q16: *Alternatively, would it be appropriate to have a “2 out of 3 rule” or a “1 out of 2 rule”? In case you support the “1 out of 2 rule”, which media segments should be considered for imposition of restriction? Please elaborate your response with justifications.*

A16: N.A.

Q17: *Would it be appropriate to restrict any entity having ownership/ control in a media segment of a relevant market with a market share of more than a threshold level (say 20%) in that media segment from acquiring or retaining ownership/ control in the other media segments of the relevant market? Please elaborate your response with justifications.*

A17: We are fine with 20% market share levels

Q18: *In case your response to Q17 is in the affirmative, what should be such threshold level of market share? Please elaborate your response with justifications.*

A18: As above

Q19: *Would it be appropriate to lay down restrictions on cross media ownership only in those relevant markets where at least two media segments are highly concentrated using HHI as a tool to measure concentration? Please elaborate your response with justifications.*

A19: No Comments.

Q20: *In case your response to Q19 is in the affirmative, please comment on the suitability of the following rules for cross media ownership:*

(i) No restriction on cross media ownership is applied on any entity having ownership/ control in the media segments of such a relevant market in case its contribution to the HHI of not more than one concentrated media segment is above 1000.

(For methodology of calculation please refer para 5.42)

(ii) In case an entity having ownership/ control in the media segments of such a relevant market contributes 1000 or more in the HHI of two or more concentrated media segments separately, the entity shall have to dilute its equity in its media outlet(s) in such a manner that its contribution in the HHI of not more than one concentrated media segment of that relevant market remains above 1000 within three years.

A20: N.A.

Q21: *Would it be appropriate to lay down the restrictions on cross media ownership only in highly concentrated relevant markets using Diversity Index Score as a tool to measure concentration? Please elaborate your response with justifications.*

A21: No Comments.

Q22: *In case your response to Q21 is in the affirmative, please comment on the suitability of the following rules for cross media ownership in such relevant markets:*

(i) *No restriction on cross media ownership is applied on the entities contributing less than 1000 in the Diversity Index Score in such a relevant market.*

(ii) *In case any entity contributes 1000 or more in the Diversity Index Score of such a relevant market, the entity shall have to dilute its equity in the media outlets in such a manner that the contribution of the entity in the Diversity Index Score of the relevant market reduces below 1000 within three years.*

A22: N.A.

Q23: *You may also suggest any other method for devising cross media ownership rules along with a detailed methodology.*

A23: N.A.

Q24: *In case cross media ownership rules are laid down in the country, what should be the periodicity of review of such rules?*

A24: Every Year

Q25: *In case media ownership rules are laid down in the country, how much time should be given for complying with the prescribed rules to existing entities in the media sector, which are in breach of the rules? Please elaborate your response with justifications.*

A25: We should provide one Financial Year for that Company at the maximum.

Mergers and Acquisitions

Q26: *In your opinion, should additional restrictions be applied for M&A in media sector? Please elaborate your response with justifications.*

A26: No Comments

Q27: *In case your response to Q26 is in the affirmative, should such restrictions be in terms of minimum number of independent entities in the relevant market or maximum Diversity Index Score or any other method. Please elaborate your response with justifications.*

A27: N.A.

Vertical Integration

Q28: *Should any entity be allowed to have interest in both broadcasting and distribution companies/entities? If “Yes”, how would the issues that arise out of vertical integration be addressed?*

If “No”, whether a restriction on equity holding of 20% would be an adequate measure to determine “control” of an entity i.e. any entity which has been permitted/ licensed for television broadcasting or has more than 20% equity in a broadcasting company shall not have more than 20% equity in any Distributor (MSO/Cable operator, DTH operator, HITS operator, Mobile TV service provider) and vice-versa?

You are welcome to suggest any other measures to determine „control” and the limits thereof between the broadcasting and distribution entities.

A28: TRAI, in its recommendations on media ownership had maintained that any entity owning more than 20% of the paid-in-equity of the broadcasting company / Distributor Company should be regarded as exercising, “**control**” over that company. The same definition may also be extended for the business entities to measure control in cross media situations.

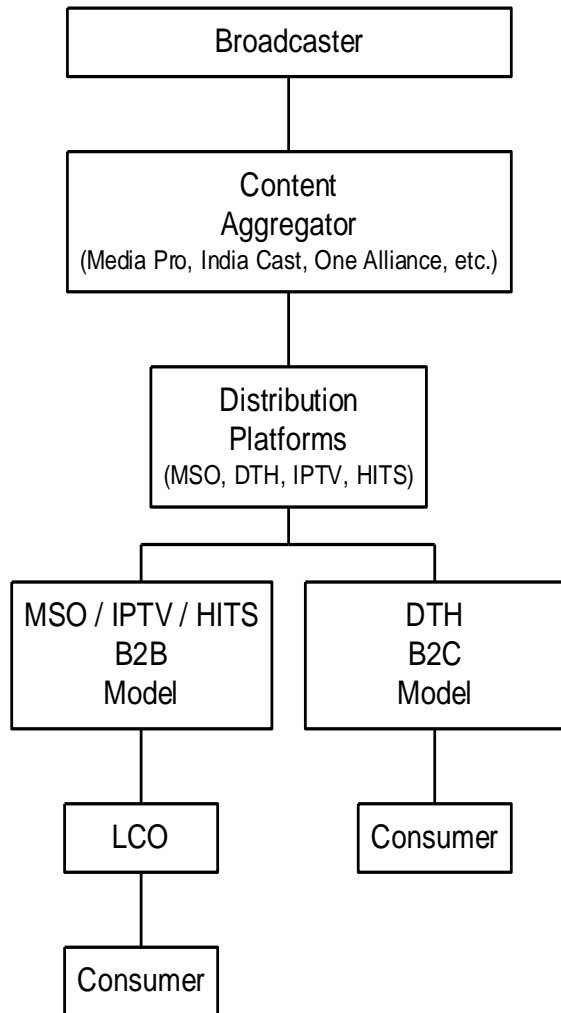
It is worth mentioning that in the telecommunication sector, the license agreement for unified access services (UASL) requires that no single company/legal person, either directly or through its associates, shall have substantial equity holding in more than one Licensee Company in the same service area for the access services where “substantial equity” means equity of **10% or more**”.

The control rights of ownership could also be defined in terms of an **owner’s ability to influence** the way in which the undertaking is run as against the cash-flow rights of ownership represented by equity holding. In some countries, ownership of / control over the media outlet is measured by the number of directors represented on the board of the undertakings.

However, we believe that Television being the most powerful medium delivering an immersive audio – visual experience of news and entertainment garners the highest share of the consumer’s mind space and therefore needs to be deliberated at length.

The competition law basically addresses economic issues only. Most of the leading democratic countries have media ownership safeguard in one form or the other to address these issues. Hence, measures are required to be put in place to address the issues arising out of vertical integration in order to provide a level playing field to all the all the stakeholders.

To understand the criticality, relevance and the importance of impact of Vertical Integration, it is essential to understand the role and hierarchy of various stakeholders in the Satellite TV Channel distribution value chain which is depicted as below



Definition

Vertical Integration involves ownership/control of three most important entities in its value chain – Broadcaster, Content Aggregator and Distribution Platforms. In recent years a new breed of Content Aggregators have come into existence who are clearly offspring of Broadcaster/s and who also tend to aggregate content of smaller Broadcasters to increase their bargaining power.

Impact of Vertical Integration

The repercussions of vertical integration are profound and detrimental in terms of **higher cost to consumers**, denial/restriction of content, blocking of competition, higher entry barrier for the new players to venture into the sector, deter innovations, deterioration of Quality of Service to the consumer in the long run etc.

In case of vertical integration, the entities involved may negotiate mutually beneficial deals amongst the integrated entities and at the same time put up offers for the same deals which would be deterrent to the business interests of entities which are not vertically integrated or allied/affiliated to them in any way. The vertically integrated companies may even bar content from their competitors which might further affect the plurality adversely especially if they hold dominant cross media holdings.

Hence our recommendation is that a Broadcasting company **shall not have equity/interest** in any distributor (MSO/DTH/HITS/IPTV/Mobile TV service provider) and vice versa. The belief is based on the fact that the restriction on equity holding (as a measure of control) is concerned, it does not guarantee prohibition of malpractices. There are several real life instances where the promoter holds even less than 10% and yet are managing the company. Even in case where promoter/their family or associated relative is on the board, they influence key decisions.

Some of examples of companies with promoter stake less than 10% is shown as below

Sr.	Company	Promoter Group Holding %
1	Tata Motors-DVR	9.17
2	Birla Power Sol.	4.04
3	Allied Computer	3.46
4	Henkel India	1.76

Following example clearly illustrates how vertical integration is damaging for the consumers and non-integrated distribution platforms especially MSOs

No Vertical Integration					
Channel	Broadcaster's Wholesale Rate (As per Rate Card) (B)	Mark-up	Retail Consumer Price (A)	LCO Share @ 35% (C)	Balance Left with MSO (A-B-C)
Colors (Hindi GEC)	8.99	100%	18	6	3
		150%	22	8	6
		200%	27	9	9
		250%	31	11	11
ESPN (Sports)	14.89	100%	30	10	4
		150%	37	13	9
		200%	45	16	14
		250%	52	18	19
Sun Action (Regional)	16.80	100%	34	12	5
		150%	42	15	11
		200%	50	18	16
		250%	59	21	21

Vertical Integration (Broadcaster + Content Aggregator + Distribution Platform)					
Channel	Broadcaster's Wholesale Rate (Discounted) (B)	Mark-up	Retail Consumer Price (A)	LCO Share @ 35% (C)	Balance Left with MSO (A-B-C)
Colors (Hindi GEC)	4.5	200%	13	5	4
		250%	16	5.5	5.7
		300%	18	6	7
		350%	20	7	9
ESPN (Sports)	7.4	200%	22	8	7
		250%	26	9	9
		300%	30	10	12
		350%	34	12	14
Sun Action (Regional)	8	200%	25	9	8
		250%	29	10	11
		300%	34	12	13
		350%	38	13	16

As per the DAS Tariff order, a Wholesale rate is declared by the broadcaster/content aggregator while the Retail rate has complete forbearance i.e. the Wholesale rate can be marked-up by any percentage

- In the above mentioned example, three pay channels from different genres are considered with their actual wholesale rates
- Two cases are depicted – 1) No Vertical integration 2) Vertical Integration

- c. In case of vertical integration, it is assumed that the wholesale rate offered by the Broadcaster/Content Aggregator to its allied/affiliated MSO is at a discount of 50% of the Rate Card
- d. It is assumed that the MSO who is not allied to any Broadcaster/Content Aggregator will get the content as per the Rate Card
- e. As observed from the above table, the vertically integrated MSO can offer Colors channel at a retail price of Rs.20/- (while earning Rs.9/-) as compared to the non-affiliated MSO who will have to offer the same channel at a retail price of Rs.27/- to earn the same Rs.9/-
- f. If one looks at it the other way round, if the non-allied MSO desires to match the retail price of the vertically integrated MSO then he will have to subsidize from his revenue share of Rs.9/- i.e. he will have forgo Rs.7/- and effectively earn only Rs.2/-
- g. Also, as the Broadcaster's wholesale price goes on increasing, as seen in case of ESPN (14.89) and Sun Action (16.8), the difference in the retail price offered by allied and the non-allied MSO increases considerably
- h. The case becomes more critical for premium channels which will be key differentiators and will have to be charged accordingly
- i. The broadcasters/content aggregators will offer a discount on their Wholesale rate to the vertically integrated MSO which will be used by the MSO to pass on to the consumer in terms of lower retail subscription rate as
- j. Moreover, the non-allied MSO practically will have to settle with a paltry margin to remain competitive even when he is investing in CAPEX and developing Digital infrastructure equally as the vertically integrated MSO who will not only benefit from discounted wholesale rates and but also earn a good return of investment
- k. The non-allied Distribution platforms do not get discount and are forced to increase the Retail rate to earn a bare minimum margin. This necessary minimum mark-up results in a substantial increase in the final retail price offered to the consumer
- l. The marking-up of the Wholesale rate has a great bearing on the final price offered to the consumer and this is where the anti-consumer and anti-competitive practices start

The above example wholly endorses Telecom Regulatory Authority of India (TRAI) views on the ills of Vertical Integration.

Therefore, we are of the firm view that Vertical Integration is detrimental for the end consumer and the industry itself.

In the light of above facts and taking into account the business scenario, our recommendations are as follows

- 1) There should be absolutely NO interest/stake of a Broadcaster and a Content aggregator in distribution platforms viz. MSO/DTH/IPTV/HITS or any other and vice versa
- 2) Broadcasters can create their fully owned distribution company to distribute their own channels to distribution platforms viz. MSO/ DTH/IPTV/HITS or any other distribution platform. But these companies cannot become content aggregators of other pay channels

- 3) Broadcasters or any of the “entity” related to the Broadcaster should not be an aggregator of channels of other broadcaster and distribute the same to either MSO/DTH/IPTV/HITS or any other platform. (“Entity” includes any person including individual, a group of persons, a public or private body, corporate, firm, a trust, or any other organization or body to include interconnected undertakings)
- 4) The independent Broadcasters (not related directly or indirectly to any other Broadcaster) who own less than 5 pay channels can aggregate content provided that they distribute not more than 10% of the total pay channels or a maximum of 20 pay channels whichever is higher. Also, an aggregator should be allowed to distribute only 3 channels of each genre to avoid bundling and passing on weaker pay channels. Moreover, FTA channels should not be allowed to be bundled with pay channels while creating bouquets
- 5) An independent entity which is neither a pay channel Broadcaster nor affiliated/connected to it can become a content aggregator. However, they should distribute not more than 10% of the total pay channels or a maximum of 20 pay channels whichever is higher. Also, the entity should be allowed to distribute only 3 channels of each genre to avoid bundling and passing on weaker pay channels. Moreover, FTA channels should not be allowed to be bundled with pay channels while creating bouquets

We believe that to protect plurality, we recommend the need to restrict the number of pay channels distributed by a single entity should be restricted to not more than 25 channels. The reasoning for this being that the worldwide average number of channels that a family watches is around 25 and no single aggregator should control more than this number of channels. Also, it is observed that the bigger the content aggregator greater is the chance of anti-competitive activities which affect all the other stakeholders down the line, including the end consumer.

Further we also recommend that any single aggregator entity should not be allowed to distribute more than 3 channels of each genre to ensure that weaker channels of the same genre are not pushed through its bouquets.

Finally, all the content deals should be monitored to keep a check of anti-competitive practices.

There is a need to have certain acceptable safeguard against the ills of vertical integration between broadcasters and distributors in the television media space. Presently, there are no restrictions for broadcasters to own or share interests in cable networks and vice versa. As a result of this, some of the broadcasters have stakes in cable distributions networks / MSOs. The consumer should also have effective choice both in terms of content and delivery platforms. The rationale of the existing, policy restrictions or recommendations on cross ownership restrictions between broadcaster and distributors (DTH, HITS, Mobile, TV etc.) is to ensure that the broadcasters and distributor do not have common ownership control which perpetuate the ills of vertical integration.

The restrictions based on company holding can be easily subverted by creating another company by the same entities. In fact today even though there is a control/ownership restriction between DTH operators and the broadcasters the effectiveness of these restrictions in the present form is questionable.

With the present dispensation a company/entity can have controlling stake in a broadcasting, company and a DTH licensee company, without violating the license condition. This defeats the purpose of putting such restrictions and may lead to vertical integration between the broadcaster and the distributor. Such a broadcaster could then block the content of competitive broadcaster in the DTH distribution network by citing the reason of insufficient bandwidth similarly with around 700 channels that are being broadcast, a similar anti-competitive behavior is possible from broadcasters who may have a stake in MSO/cable operators. So it would be in the interest of the sector as the whole that a clear distinction is maintained between the broadcaster and the distributor.

Mandatory Disclosures

Q29: *What additional parameters, other than those listed in para 7.10 (i), could be relevant with respect to mandatory disclosures for effective monitoring and compliance of media ownership rules?*

A29: Whatever listed in para 7.10 (i) is sufficient

Q30: *What should be the periodicity of such disclosures?*

A30: Half yearly

Q31: *Should the disclosures made by the media entities be made available in the public domain?*

A31: Yes, the disclosures should be made available in the public domain.

Other Issues

Stakeholders may also provide their comments on any other issue relevant to the present consultation.

The Must Provide Clause in the DAS Interconnection regulation needs to be **Unconditional** as it is observed that Vertically Integrated entities **DENY** or offer unreasonable commercial terms thereby act as a deterrent to the non-allied MSO/Distribution platform. This is very important in ensuring plurality.