INDUSIND MEDIA &COMMUNICATION LTD.(IMCL-INCABLE)

IMCL'S RESPONSE TO CONSULTATION PAPER 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 feel that the entities recommended by TRAI as above should definitely be disqualified for entry into broadcasting and distribution sectors. However, we feel that any individual or corporate body should be automatically disqualified if the group has any indirect vertical relationships with any of the entities mentioned by TRAI as in the above question. We also feel individuals or companies with any criminal conviction should be completely forbidden for entry into broadcasting and TV distribution sector.

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 , the parameters of which can be framed by TRAI; for 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 in terms of 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.**

So we agree that the equity holding restriction should be 20% or less for any media & media distribution sector. 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: **As above**

<u>Media Ownership rules</u>

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 feel that apart from news and current affairs all genres should be considered while devising ways and means to ensure viewpoint plurality. We do agree that news and current affairs has the potential of maximum influence for impacting the mindset of the consumer especially in a effective democratic set up, however, in India the other genres, especially the tele serials, animation and children contents can impact various social and behavioral issues in a multi linguistic and multi religion country like India.**

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: **We strongly believe that the TV sector would be the most relevant for devising ways and means of ensuring viewpoint plurality as it reaches the maximum number of households and population, both urban and rural in this country. It should also be noted that TV can impact even if person just views the contents, even if he is illiterate.**

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. All the 8 languages mentioned by ASCI as mentioned in the TRAI paper should be included and English & Gujarati can also be added. (The languages would be then Hindi, English, Bengali, Kannada, Oriya, Malayalam, Marathi, Tamil, Telugu and Gujarati).**

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: **We feel the reach and revenue should be considered for measuring the level of consumption of media outlets. Reach means higher generation of advertising revenue and higher generation of subscription revenue also. We do agree the mechanism to measure reach needs to be further enhanced for which MIB is already taking actions.**

The revenue criteria are obviously the most important because when higher revenue is generated then the ability to focus on select non profitable but either individually benefited or enhancement of monopoly methods becomes feasible.

In addition concentration of a large number of channels of all genres as has currently happened post digitization needs to be key criteria for measuring level of consumption as these cartels force distributors to distribute the entire bouquet by the simple expedient of making a la carte channels uneconomically high.

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: **The sheer number and variety of channels in a particular cartelized aggregator is sufficient proof to disgorge the cartel.**

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: **We are more comfortable with the HHI method , as explained in the consultation paper; which is already being used by the US Anti-Trust division of Department of Justice.** 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: NA.

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

A13: **Not relevant**

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: **NA**

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 three media spaces like Print and Radio and Internet..**

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: **NA**

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: **Yes.**

For any relevant market where at least two media segments are highly concentrated, restrictions on cross media ownership may be applied as below:

(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 more than 1000.

(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 at least two 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.

The briefing of the following in the consultation paper shows the same light.

*Q20: In case your response to Q19 is in the affirmative, please comment on th*e 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: **Already agreed in A.19**

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: **TRAI in its recommendations on media ownership dates 25.02.2009, inter-alia, observed that there is a need to move from “company Based” restrictions to a systems of “entity based” safeguards**

in view of the fact that..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."

As above we are Ok to have cross Media Ownership in highly concentrated relevant markets using Diversity Index Score as a tool to measure concentration

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: **We are fine with the above recommendations**

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

A23: **NA**

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 Three Years**

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. However, there should be some incentive, in case a company is willing to comply within 6 months**

<u>Mergers and Acquisitions</u>

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

A26: **No**

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: **NA**

<u>Vertical Integration</u>

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: **No.**
Vertical integration is one of the most critical issues in the TV sector as this has the maximum reach and maximum platforms (cable TV analog and digital, DTH, IPTV, etc.). We would like to quote some of the important quotes of TRAI already quoted in the Consultation Paper.

Some of the analysis is captures in Chapter VI as below:
6.2Though the vertical integration of various entities within a particular sector results in reduction in cost to the company as well as offers economies of scale, it often manifests in the form of ills of monopolies viz. higher cost to the consumers, blocking of competition, higher entry barrier for the new players to venture into the sector, deter innovations, deterioration of the quality of service to the consumers in the long run etc.

6.3 Vertically integrated entities may negotiate mutually beneficial deals amongst the integrated entities & 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. As the vertical integration penetrates the market beyond a certain level, the vertically integrated entities may even block content from their competitors which might further affect the plurality adversely, more so, if they hold dominant positions and have cross media holdings.

6.13 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.

6.17 The Authority also recommended that for the purpose of putting in place effective safeguards to prevent vertical integration between the broadcasting sector and its distribution platforms (as listed above in para 6.14), the word —entity‖ be given a broad meaning so as to include any person including an individual, a group of persons, a public or private body corporate, a firm, a trust, or any other organization or body and also to include —inter-connected undertakings‖ as detailed in Chapter IV.

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. Definition

Vertical Integration:
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 ill effects of vertical integration can become obvious 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.

We strongly recommend that a Broadcasting company should not have equity/interest in any distributor (MSO/DTH/HITS/IPTV/Mobile TV service provider) and vice versa.

We further recommend that:

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) **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 15 pay channels whichever is higher. Moreover, FTA channels should not be allowed to be bundled with pay channels while creating the bouquets**

We strongly recommend that all the content deals should be monitored to keep a check of anti-competitive practices.

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, and TV etc.) is to ensure that the broadcasters and distributor do not have common ownership control which perpetuates 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.

Presently a company/entity can have controlling stake in a broadcasting company and a DTH licensee company, without violating the license condition.

This 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 any obscure reason

A similar anti-competitive behavior is possible from broadcasters who may have a stake in MSO/cable operators.

Hence it is essential that a clear distinction is maintained between the broadcaster and the platform distributor of TV channels.

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**: Every Half year**

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

A31: **Yes, should be made.**

<u>Other Issues</u>

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

A. Not applicable