Network18 Media & Investments Response to the Telecom Regulatory Authority of India Consultation Paper on "Issues relating to Media Ownership"

The specific issues for consultation are:

1. 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.

   Response:

   We do not have any comments to question 1.

2. 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.

   Response:

   We do not have any comments to question 2.

3. 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?

   Response:

   We believe that current Indian laws provide adequate guidance on the issue of ownership and control. These standards must be applied in evaluating an entity's ownership and control of a particular media outlet. Moreover, the Competition Act, 2002 (Competition Act) also contains provisions which delineate these issues quite clearly. Accordingly, we suggest that there should be no ownership/control threshold which restricts equity holding.

4. 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.

   Response:

   Please see our response to question 3, above.

5. 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.

6. 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

Responses to questions 5 and 6 can be clubbed and answered as follows:

We strongly support the view that viewpoint plurality is critical to the functioning of a healthy democracy. Thus, it is imperative that plurality of opinions is encouraged. However, we recommend that prior to ascertaining ways and means to ensure viewpoint plurality; a strong empirical analysis is conducted to conclusively ascertain its absence in today's media environment. Moreover, given the rapid rise of the internet and mobile technology including social media, blogs and other 'many to many' forms of communication, it is arguable that viewpoint plurality has in fact increased substantially in the last few years. In light of this, the hypothesis that plurality of opinions is deficient and thus needs to be ensured is questionable. From the point of view of genres, we believe that news and current affairs is most closely associated with this issue, given its role in shaping public opinion and citizen awareness.

Additionally, given the blurring of lines between different forms of media (for example content is circulated through several mediums viz., newspapers are available online and television content is also distributed through handheld devices) we are of the strong view that distinction should not be made between the mediums through which content is distributed. By way of an example, if a media company is engaged in the business of broadcasting news and current affairs and is also engaged in publishing news and current affairs on its website, restrictions should not be placed on such media companies in broadcasting and operating such website.

We fail to understand why TRAI is proposing to implement cross media ownership rules. Considering the technological advancements in the media sector, we believe that these rules may end up being too restrictive and will at best, pose commercial restrictions and hinder business. Blanket restrictions on cross media ownership can have adverse effects on individual media businesses and the overall media industry. These can result in a decline in investment in the industry and can reduce commercial sustainability of firms. Accordingly, in our view, the current form of checks and balances through the Competition Commission of India (CCI) and where the prescribed thresholds are not met, through the market forces, are sufficient to ensure that healthy competition is maintained and does not necessarily warrant the need for any other specific guidelines.

7. 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?

Response:

India is a complex media market with a dynamic consumption pattern. This implies that an Indian media user generally consumes content from multiple media sources across several languages and access points. While, language may be a key criterion to differentiate between media markets, it is not the only parameter and thus any approach which is predicated largely on the basis of language may be limiting. Definition of relevant markets may require a synthesis of multiple parameters which strongly influence consumer choice, advertiser and distributor decision making. Additionally, the relevant market as well as its components viz., the relevant geographic market and the relevant product market are well defined in the Competition Act. Besides reflecting universally applied concepts, these concepts are being actively used by the CCI in its proceedings. Therefore there is no need to develop separate concepts for the media sector. Accordingly, it is pertinent to note that if different definitions are used by the CCI on the one hand and MIB/TRAI on the other hand within the same country, it could generate confusion amongst the enterprises and also lead to different treatment by the two authorities in regard to the same set of facts. In a situation where the same transaction is being considered by both the authorities, viz., CCI and TRAI/MIB, this could result in different treatment and lead to different conclusions since the proposals come very close to supplanting the role of CCI or at least confusing the roles of the two bodies. Such lack of clarity or differential treatment could be harmful from the regulatory perspective.

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

   Response:

   Please see response to question 7 above, which clearly states that no alternate basis is required.

9. 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.

10. 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

   Response to questions 9 and 10 can be clubbed and answered as follows:

   The above are certainly few of the metrics that indicate levels of consumption for a media outlet. However, depending on the context i.e. objective of measuring consumption, multiple other metrics and approaches may be relevant. For example the above metrics may not be as comprehensive for assessment of consumption levels in the out of home, new and social media spheres. Thus, it is important that relevant consumption metrics are considered across media i.e. television, print, radio, online & mobile, out of home and other forms of media. Moreover, the metrics must be studied in conjunction within the larger framework of the market.

   From the perspective of multiplicity of viewpoints, levels of consumption of media outlets and the structure of the market may not be a sufficient yardstick. There are several other factors which may indicate the existence of multiplicity of opinions. These involve subjective parameters which may include but not be limited to identifying common themes and issues, impartiality and consistency of opinions, internal governance etc.

11. 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

Response:

Please our responses to questions 12 and 13, below.

12. 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.

    Response:

    The issue of concentration and competitive fairness are best analysed in the context of the prevalent legal framework in India which is applicable to such matters, including the Competition Act.

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

    As stated above, we recommend that Competition Act and other associated legal frameworks be applied to analyse the issue of concentration. In this respect it may be noted that the 'Diversity index' is a flawed measure that is not recommended internationally and is an inefficient measure of concentration due to the complexities evident in today's media environment. There is a high degree of convergence and multiple media consumption by the same consumer, which makes it difficult to assess relative weightages of different media segments. Further, measuring 'popularity' of a media segment is highly subjective given that it is not just consumer uptake but also the level of engagement i.e. the impact a segment makes that should be taken into account and the latter is highly difficult to ascertain accurately.

    It may also be noted that diversity indexes are falling out of favour internationally, and regulators which once used them (for example the FCC) are moving away from them.

14. 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?

    Response:

    Not applicable

15. 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.

16. 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.

17. 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.

18. 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.

Responses to questions 15, 16, 17 and 18 can be clubbed and answered as follows:

We do not believe that ownership in any media segment should result in a mechanical bar to ownership in other segments. It is important that media plurality measures be based on a full market assessment and not applied on a 'one size fits all basis'. Such restrictions would risk stifling investment and diversity (see below) at a time when the media sector is vibrant and changing, particularly as a result of the internet. Accordingly, we believe that ownership and control regulations must be relevant to and in context of the dynamics of a particular market i.e. 'one size fits all approach' is not advisable. Media markets are derivatives of the larger economic and consumption landscape in a country and consequently their regulation must reflect the ever-changing realities of the economy. Further, application of a mathematical threshold whether in terms of presence in a segment or equity holding can be detrimental to the health of the industry if it is not aligned with the other laws governing market participation in an economy mergers control laws, competition etc., apart from existing sectoral requirements for licensing and operation. As stated earlier, we recommend that the issue of concentration and competitive fairness are best analysed in the context of the prevalent legal framework in India which is applicable to such matters, including the Competition Act. It must also be noted that in a converging media landscape, both from the supply and demand side, regulations should not impede the benefits of economies of scale and scope that can spur growth and diversity in the industry.

Additionally, while it might be tempting to adopt certain tenets of international regulation, there is a real imperative to avoid "copy-cat" regulation which has been shown to be sub-optimal elsewhere and where viable and less costly and cumbersome alternatives exist.

19. 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.

20. 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.

Responses to 19 and 20 can be clubbed and answered as follows:

As stated above, we recommend that any issues related to concentration and competitive fairness are analysed in the context of the prevalent legal framework in India which is applicable to such matters, including under the Competition Act.

Additionally, we are of the view that the current regulatory regime is adequate to address any anti competitive issues. In this respect, the CCI is empowered to *ex-ante* regulate all acquisitions, mergers and amalgamations across all sectors, which exceed the thresholds provided under the Competition Act, that is those that fall in the definition of a combination. The CCI has the machinery to undertake the required inquiries and analysis. The CCI is adequately equipped to analyse vertical integrations taking place in the broadcasting sector as well; it has already done so in a number of merger cases in the broadcasting sector, and has taken cognizance of the effectiveness of TRAI's regulations in the broadcasting industry. The CCI also has powers to conduct *ex-post* inquiries in order to prohibit any abuse of dominant position and any anti-competitive agreement that creates an appreciable adverse effect on competition; the CCI has carried out such inquiries in the broadcasting sector and passed appropriate orders in such cases.

Further, the Competition Act provides for mutual consultations between the CCI and statutory authorities (including TRAI) in matters where a competition issue may arise. The Competition (Amendment) Bill, 2012 proposes to make such mutual consultation mandatory, and consulting authority would be required to pass a reasoned order taking into account the views of the consulted authority. This would ensure that TRAI's views are fully taken into account in all cases of combinations in the media sector, including the broadcasting sector. The amendments proposed in the Competition (Amendment) Bill, 2012, mandate consultation between the CCI and sector regulators (like TRAI) and the provision for separate thresholds for combinations in different sectors would enable the mergers in the media sector, both vertical integration cases and cross-media holdings, to be effectively reviewed under the Competition Act by the CCI with the view to prevent any misuse of market power by combined entity.

It may also be noted that diversity indexes are falling out of favour internationally, and regulators which once used them (for example the FCC) are moving away from them. TRAI should not attempt to rely on tools which are known to be inaccurate and whose use carries high risks of distorting markets. Use of the HHI or other diversity indexes are highly risky, and therefore bad, idea.

21. 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.

22. 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.

Responses to 21 and 22 can be clubbed and answered as follows:

As stated earlier, the 'Diversity Index' suffers from fundamental flaws arising out of the method's inapplicability in today's complex and converging media environment. Issues of competitive fairness or dominance must be studied in context of existing regulations especially competition law in India.

Further, please see our responses to questions 19 and 20, above.

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

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

25. 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.

    Response:

    As stated earlier, we are of the view that the current regime is adequate to ensure anti competitive activity and will further get strengthened once the Competition Act is amended pursuant to the Competition (Amendment) Bill, 2012. In view of the foregoing, we do not believe that there is any need to have any separate media ownership rules.

Mergers and Acquisitions

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

27. 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.

    Response:

    Media markets are derivatives of the larger economic and consumption landscape in a country and consequently their regulation must reflect the ever-changing realities of the economy. We believe that existing regulations relevant to mergers & acquisitions in the country including under the Competition Act are sufficient. Further restrictions run the risk of being counterproductive and detrimental to the growth of the sector.

    Please also see our responses above setting out our arguments against having additional restrictions become applicable to M&A in the media sector.

Vertical Integration

28. 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.

    Response:

Vertical integration as a principle is not contrary to ensuring a healthy and competitive market place. As has been seen in several cases, vertical integration can have strong efficiency enhancing effects on an entity as well as the industry at large, ultimately benefitting the end-consumer in terms of choice, quality of services and prices. In fact, in a highly dynamic market place where several technological and consumer trends are impacting businesses, a blanket restriction on vertical integration may have counterproductive consequences on the growth and innovation in the industry as well as plurality of opinion. We recommend that the anti-competitive aspects of vertical integration be analysed on a ‘case to case’ basis, within the ambits of existing regulatory regime concerning competition in India. Further, vertical integration has very little anti-competitive effects compared to other forms of mergers. In the broadcasting sector, there is empirical evidence to demonstrate the benefits of vertical integration. Authorities in most jurisdictions do not impose any blanket ban on vertical integration in the broadcasting sector; on the other hand, they analyse individual transactions case by case based on the rule of reason.

Mandatory Disclosures

29. 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?

30. What should be the periodicity of such disclosures?

31. Should the disclosures made by the media entities be made available in the public domain?

Response:

We are of the view that disclosures as required per the current regulatory and licensing requirements are sufficient.

Other Issues

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

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