Response of Zee Network to

TRAI Consultation Paper No 01/2013

On

Issues relating to Media Ownership

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Response to TRAI Consultation Paper No 01/2013

The Zee Network is pleased to enclose its response to the Consultation Paper No 01/2013, Issues relating to Media Ownership.

1. Introductory Comments

Before offering comments on the specific issues recommended for consultation, Zee Network would like to highlight some issues which pertain to the issue of the Consultation paper itself.

We would like to point out at the outset that in the present Indian scenario where highly competitive environment exists in each segment of Media – whether it is Television (more than 750 channels with more than 150 broadcasters) or Print Media (62,000 registered newspapers across 24 languages, or Radio (839 licenses across 294 cities,), 6 DTH players apart from DD Direct plus of Prasar Bharti , Cable Sector (approx. 6,000 - 7000 MSOs & 55,000 – 60,000 LCOs), there is absolutely no danger whatsoever by any stretch of imagination of any one player dominating the Media landscape.

- Even from a market share perspective, no single player in any category of Media has a dominant market share of viewership or readership or listenership. There is not even a possibility of the same in the near future. In the entire Consultation Paper, not a single instance has been cited where the market dominance or monopolization has taken place in any segment of Media in India. Thus, in Indian context the discussion and deliberation about the cross media restrictions is not warranted at all.

- We are of the firm view that while it is necessary to ensure the competition in the Broadcasting Sector in order to promote the efficiency of the Sector and also to prevent monopolies, too many restrictions on the ownership pattern would turn out to be counter-productive.

- It may be mentioned that present era is that of globalisation and consolidation by way of merger and acquisition, so as to access and optimally utilise the resources of capital formation for the growth and development of the Sector. The Indian media industry specially the Indian broadcasters have to compete with the global media companies in this sector. In order to match the might of these companies, they must have adequate technology, capital and manpower resources. Thus the process of capital formation is one of the key ingredients to acquire and accumulate competitive strength. Any kind of restrictions are likely to adversely affect the said process, which would be prejudicial and detrimental to the growth of Indian media companies.

- If we look at the world trends, we find that there is a tendency not only for the technologies to merge but also large companies in different areas of the media, either print or electronic, to come together. Time Warner is a case in point. Why should we prevent such developments from taking place in India? We should think of Indian companies becoming multinationals and powerful media companies. But contemplating restrictions on cross holdings, we are losing an opportunity to develop strong India media MNCs.

As far as media software is concerned, India perhaps produces the largest number of films and with the exploding number of television channels we have seen the blossoming of talents. But cross-holding restrictions tend to prevent the advantage of synergies and also optimum use of the financial resources of those who will be investing in the sector. The core competence in broadcasting will improve if opportunity is given for any service provider to use different means of broadcasting so that there will be advantages of economies of scale and also better competition.

1.1 Cross Ownership Between Telecom & Media Sectors

As detailed in section (viii) of the Consultation paper, TRAI has already carried out a consultation on Cross Media ownership in 2009 and as a result of this consultations gave its recommendations to the Government on Cross Media ownership and Cross Ownership in Distribution Platforms (vertical integration). The recommendations of the TRAI were inter-alia as follows:

> *"TRAI also recommended that no restriction should be imposed on cross control/ownership across telecom and media sectors at this point of time; however, this issue could be reviewed after two years".*

We note from the current scope of the consultation paper that the **issues of cross ownership between Media and Telecom are not being proposed** to be put up for consultation even though Telecom is now steadily emerging as a major platform for distribution. For Mobile devices including mobile phones and iPADs etc.. **Telecom is the only platform for distribution of media.** Similarly VoD via IPTV and DSL mode of delivery has been growing exponentially.

We are of the opinion that keeping Telecom out of the scope of Vertical- Horizontal integrations in media is not a fair option. It predetermines that Telecom companies which today provide all mobile services to over 1000 million Indians will never be a viable distribution platform and therefore need not form a part of discussions in media ownership restrictions.

In fact quite to the contrary, the LTE and 4G networks coming on stream are fully geared to deliver Video services and these need to be factored in as a part of Telecom operators delivering media services.

We therefore recommend that the consultation paper should be withdrawn and reissued.

1.2 Media Cross Ownership and Distribution Platforms

The consultation paper, is primarily targeted at Media Cross Ownership i.e. between Print, Radio and Television. It also cites the justification for bringing out a policy on cross media ownership in Section (vi) of the consultation paper:

(vi) Most international markets have identified the parameters that define the level of concentration in media ownership and cross media holdings. These parameters are reviewed periodically and the restrictions/ safeguards are modulated from time to time. The international scenario has been discussed in detail in chapter III of the consultation paper.

However in the consultation paper, distribution platforms such as DTH, Cable TV have also been bundled together for the purpose of media cross ownership discussions. Section (vi) of the consultation paper conveys an impression that as cross media ownership restrictions exist in most markets, these should also be imposed in India. However this is not the case as sought to be made out in consultation paper except for Terrestrial broadcasting Stations where the use of frequencies (which are limited) is involved.

<u>**Broadcaster vs Content Originator**</u>

We would like the TRAI to refer to the INDO-US paper which clearly distinguishes the role of a **Broadcaste**r vis-à-vis a **Content Originator** such as CNN, CNBC or others. In contrast such entities are treated as "Broadcasters" with all applicable restrictions.

Quote:

It is useful to explain the term "broadcaster" as it is used in the United States. In the United States, a "broadcaster" is an entity that has a license from the FCC to use broadcast spectrum to distribute programming to television viewers across the United States, free-over-the-air, e.g. ABC, NBC, CBS and Fox. The "broadcaster" may or may not have a financial interest in the programming it distributes. The FCC requires any entity that wants to use free-over-the-air broadcast spectrum to apply for a license to "broadcast" signals in the United States. In the United States, programming networks such as Discovery Channel, CNN, MTV etc., do not use spectrum to send their programming services to consumers. Rather they contract with other distributors such as cable operators or direct to home satellite providers to send their signals to consumers. ***Therefore, any restrictions related to "broadcasters" do not apply to such channels either domestic or foreign.***

Similarly, foreign programming networks that wish to distribute their signals in the U.S. contract with local cable and satellite companies to send their programming to consumers. As with domestic programming networks distributed in this way in the United States, no license is required for foreign programming networks to distribute their programming over cable or satellite.

Unquote

Extracted from http://www.usibc.com/sites/default/files/committees/files/ictbroadcastingpaper.pdf

To elaborate the point further, first, such content generators such as CNN, MTV etc. do not require an FCC License. Secondly, the Platform operators (Such as DBS operators or Cable TV operators) are not subject to any cross holding restrictions.

In fact countries such as USA not only permit 100% holding of a DTH license by a single entity, it even allows for 100% foreign holding of such platforms.

In the present Consultation paper, the TRAI has equated Content generators (Such as Zee, Star, Colors, Sony, Sahara) with Broadcasters, and therefore cited the same as reason to impose cross holding restrictions citing other countries such as USA, whereas the fact is just the opposite- such operators which generate content are not subject to any media cross holding restriction.

The Consultation Paper is therefore based on inaccurate premises. In order to formulate any meaningful Cross Media Guidelines the TRAI first needs to define entities correctly- the Content Generators, Platform operators, Broadcasters (terrestrial),Telecom Operators and other entities such as FM Broadcasters, News papers etc.

Cross Media restrictions are meaningless in the current context when Content Generators can continue to generate content from within India or overseas and can deliver it via different media including IPTV, VoD or streaming.

1.3 Media Regulation -Type of Channel

The MIB in its own wisdom has classified channels under various categories as follows:

-News & Current Affairs

-General Entertainment including Cinema

-Sports

The License conditions (Uplink and Downlink) for such channels are different.

We have noted that the concern of TRAI on the need of Cross media restrictions arises from the following underlying theme as outlined in Section 1.32 of the consultation paper:

> *1.32 Media outlets owned/controlled by industrialists or business houses have it in their power to propagate biased analysis or forecasts to further their business interests or harm the interests of business opponents, to the detriment of the interests of investors and other stakeholders. Such exercises could vitiate the investment climate in the country and jeopardize economic growth. Similarly, media outlets owned/controlled by*

politicians/political organizations may also try to influence public opinion in their favour by propagating biased analysis or forecasts e.g. manipulated EXIT polls etc.

Such perceived propagation of business interests, it would appear apply to News and Current Affairs Channels. Channels such as those of Cinema are in fact telecast a series of Censor Board approved films. Viewers have the choice to view them even without the services of the channel generator by using the Movies on demand facility of a DTH or Cable platform, IPTV or other means.

If a Media house or a company which generates such channels has a large viewership in India, this is no justification that they should not be allowed to enter print media. The same applies to other variety of channels such as Music channels (which comprise of a series of Songs), General Entertainment Channels (A series of programs produced by a variety of production houses). Many music channels run by users dialing in and selecting songs, and thus even the content aggregator (generating a channel) has no control on the channel.

We do not believe that it is the intention of TRAI to regulate such companies which exhibit cinema shows, Music or other entertainment content by denying them cross media ownership such as that of News papers or Radio Stations.

Cross Media restrictions, if any, would by logic apply only to news and current affairs companies. Due to regulations, these companies have a distinct identity where they stand apart from companies aggregating movies, music or entertainment content. The same is otherwise not relevant in Indian context as explained hereinafter.

However the questions which have been framed by the TRAI for consultation do not reflect such an intent to make a distinction between current affairs companies and other companies generating(or allowing users to themselves generate) music, movies or entertainment content.

We would therefore like to point out that the Consultation paper as it is framed, is inappropriate as it fails to distinguish, firstly between content generators and broadcasters, and then again between news content and other content such as movies or songs, and the companies which are involved in such businesses.

1.4 Media Regulation- issues of FDI

It is well known that a number of foreign media houses are delivering their channels in India. They not only have over 30-40% share of the channels, but also enjoy large viewership. They only need to have an Indian agent in order to get a downlink license. At the same time, they have full access to operate delivery platforms as FDI up to 74% (with up to 49% being under automatic route) is permitted based on the Platform such as Cable TV, HITS or DTH.

The present consultation paper has no questions which would have sought to lift the corporate veil of such foreign entities and seek regulations on how their effective direct or indirect control can be avoided.

1.5 Media Regulation: The Competition Act, 2002

The Competition Act, 2002 (the **Competition Act**) is entrusted with ensuring a level playing field and ensuring that there is no foreclosure in the market (which in turn ensures plurality and diversity).

The provisions of the Competition Act, prohibiting '*Anti-competitive Agreements*' and '*Abuse of Dominant Position*' were notified and the Competition Commission of India (the **CCI**) commenced its regulatory/enforcement activities in these two spheres on 20 May 2009. The provisions relating to merger control - the third critical regulatory limb of the Act - were notified by the Government of India on 4 March 2011 and these provisions are in force with effect from 01 June 2011.

The key provisions relating to the Competition Act deal with:

a) ***Prohibition on Anti-Competitive Agreements*** (Section 3):
Section 3 proscribes any agreement (vertical or horizontal) that has an Appreciable Adverse Effect on Competition (**AAEC**).

b) ***Prohibition on Abuse of Dominant Position*** (Section 4):
Section 4 of proscribes abuse of dominance. Thus, any conduct by a dominant enterprise that are likely to have a harmful effect will be prohibited under this provision.

c) ***Regulation of Combinations*** (Sections 5 & 6):
The Competition Act vide Section 5 & 6 prohibits any structural change in an enterprise (vertical, horizontal or otherwise) that causes or is likely to cause an AAEC.

Thus, while Sections 3 and 4 of the Competition Act are *ex-post* measures to address competition concerns that arise from conclusion of an agreement or through conduct of a dominant enterprise, Sections 5 and 6 are *ex-ante* measures that address and contain competition concerns that are likely to arise from any structural change.

Further, the provisions of the Competition Act are applicable to all sectors, including the entertainment and media industry. In fact, the provisions of the Competition Act are more comprehensive and address all perceivable issues relating to competition in the market. Therefore, any issue arising with respect to vertical or horizontal integration is likely to be covered under the Competition Act.

For instance, the concept of dominance is not limited to the level of concentration as envisioned by the proposed regulations in the Consultation Paper. More importantly, the approach that is adopted under the Competition Act is based on the *effect* (presence of AAEC) on competition in the market. This standard is likely to be more effective than blanket restrictions, proposed regulations in the Consultation Paper, as this approach would not factor in the pro-competitive effects that may arise.

Lastly, the CCI, the regulatory body responsible for the enforcement of the Competition Act, has wide powers to assess, investigate and pass appropriate orders as it deems fit to ensure healthy competition in the market.

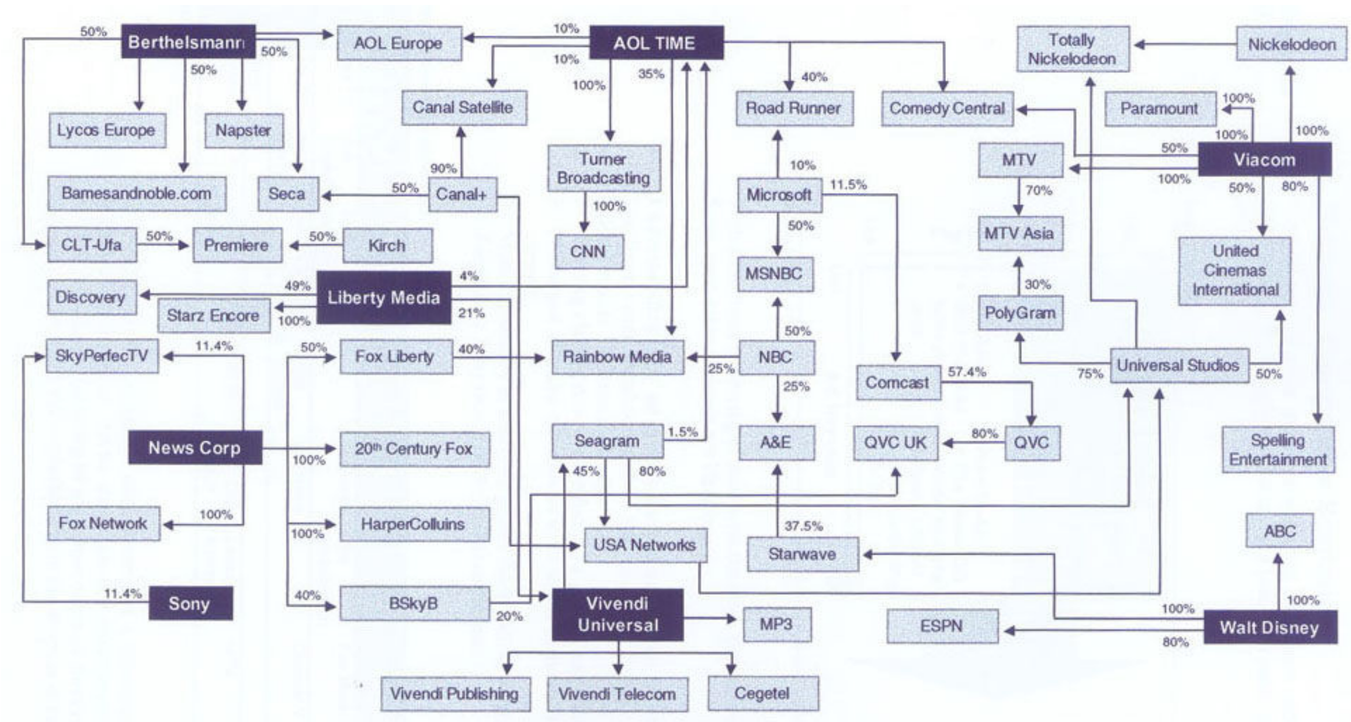
Owing to such major fallacies in the consultation paper, we would suggest that it should be withdrawn and reissued after properly factoring in these major issues.

Issues for Consultation

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.

No, we do not recommend any other bodies to be excluded from broadcasting and distribution sectors. We would like to offer two comments in this area.

The First comment relates to Foreign entities. The present License conditions are overgenerous for the foreign companies. Hence while there seem to be a series of controls on Indian companies, the same is not true for foreign telecom operators and foreign media companies. For example FDI of 49% is permitted under automatic route and 74% with FIPB approval in MSO, DTH and HITS platforms. The nature of foreign entities cannot be accurately established owing to a plethora of cross holdings amongst media, distribution, print and broadcasting. Moreover these relationships keep changing from time to time and it is not practically possible to establish the real ownership or interests.



(Equity Holdings depicted may not be up to date)

As TRAI is well aware, many of the companies depicted above are operating in India on a large scale in TV channels, DTH and Cable TV Platforms, while others may enter into the arena later.

Accordingly, current as well as proposed restrictions on domestic entities' participation across these platforms, while continuing to allow foreign entities (with similar business interests) a much higher threshold to participate and control such Indian companies seems contrary to policy objective.

Second while religious bodies are not allowed to obtain an uplink license, there are religious channels which comprise primarily of slot sales. These slots are sold to religious bodies for placing their content. There are also live coverage of events such as Pujas, Darshans etc. running into many hours per day. Hence TRAI needs to reexamine the purpose in excluding these bodies. Hence TRAI needs to focus on the objectives to be met with such a blanket ban on religious channels.

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.

We do not recommend such a power to disqualify a channel based on assessment of "undue influence". Such a provision can be very subjective, and in any event open to misuse by one political party against another.

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?

As explained by us in our introductory comments, there needs to be a definition of a media outlet.

At present, so far as electronic media **content** is concerned, the only way the Govt can exercise control is via regulating the uplink license or the downlink license for a TV channel, implying the control on a satellite service. **However media and production houses are free to distribute their content via Internet, Optical Fiber and other telecommunications media without needing a license.** As these facilities expand, these will reach each home and make media ownership controls ineffective. **Hence the key is to include telecom operators also in the media distribution space for the purpose of any controls.** We regret to note that the TRAI has unilaterally decided to exclude Telecom operators from the scope of such restrictions.

The importance of the Internet medium for Media delivery is now so well established in US and Europe that the regulators have adopted rules requiring captioned programs shown on TV to be captioned when re-shown on the Internet. **These rules implement provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA).**

The FCC has prescribed the following timelines:

•March 30, 2013: Live and near-live video programming must be captioned on the Internet if it is shown on TV with captions on or after March 30, 2013. Near-live video programming is defined as programming that is performed and recorded less than 24 hours before being shown on TV for the first time.

•September 30, 2013: Pre-recorded video programming that is substantially edited for the Internet must be captioned if it is shown on TV with captions on or after September 30, 2013.

Information on Internet delivered Closed Captioning as required by FCC is available on the following link:

Closed Captioning of Internet Protocol-Delivered Video Programming

Video delivery on the Internet and mobile devices including from sites such as Netflix, Hulu, YouTube etc. is now considered to be a mainstream mode of delivery and will gain further importance in the future.

IP video can take a number of forms, such as programming delivered to personal computers, tablet devices, cellular phones, game consoles, Blu-ray players, or set-top boxes. The rules adopted by the FCC include technical standards, protocols, and procedures for the transmission of closed captioning delivered using IP, to ensure that various apparatus are capable of rendering, passing through, or otherwise permitting display of the captions for viewers.

However we regret to note that TRAI is not considering Telecom as a substantive mode of delivery requiring considerations in the present consultation paper.

So far as the distribution platforms such as HITS,DTH and IPTV are concerned, it is not a practice to impose cross media restrictions with content production such as a TV channel producer.

In this connection we would like the TRAI to refer to the Media Ownership rules in UK.

http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/DCMS-submission_Narrative-on-media-ownership.pdf

The Communications Act 2003(UK) had restrictions which applied to License holders for TV (Terrestrial Broadcast) and radio (Terrestrial Broadcast) in respect of their cross holding in News Papers or Print.

This was expressed as follows:

(a) *no one controlling more than 20% of the national newspaper market mayhold any license for Channel 3;*

(b) *no one controlling more than 20% of the national newspaper market may hold more than a 20% stake in any Channel 3 service;*

(c) *a company may not own more than a 20% share in such a service if more than 20% of its stock is in turn owned by a national newspaper proprietor with more than 20% of the market.*

This is often referred to as the *"20/20"* rule.

The Broadcasting Act 1990 also placed different ownership restrictions on DBS and non-DBS services. National newspapers could not hold more than a 20% stake in a direct broadcasting satellite channel. (The same restriction also applied in respect of a Channel 3, Channel 5 or national radio licensee).

The Secretary of State asked Ofcom on 8 July 2010 to revisit its advice on retaining the "local monopolies" rule. We would like to draw your attention to Para 57 and 58 of the above report:

> *57. The Secretary of State asked Ofcom on 8 July 2010 to revisit its advice on retaining the "local monopolies" rule. Ofcom replied on 29 July and published a fuller version of the reply in August32. It recognised that there had been some changes in circumstances since their original report but that a decision on whether to remove this one remaining local rule "is a matter of judgement and one which is rightly made by Government and Parliament".* ***Having considered the matter further, the Secretary of State concluded that the remaining rule should also be removed and this was given effect by the Media Ownership (Radio and Cross Media) Order 2011.***
>
> *58. The Government's view was that local media ownership rules (for television, radio and newspapers) placed unnecessary limitations on ownership within commercial media; that the rules were no longer appropriate in a conversing digital world; and that removing regulatory barriers would help established industries adapt to new environments. The deregulation of the local media ownership regulations now enables partnerships between local newspapers, radio and Channel 3 television stations to promote a strong and diverse local media industry.*

We agree in substance and reasoning of the direction of regulatory reform in the UK, **and believe that there is no reason to impose cross holding restrictions which are of the nature of distribution platforms with high degree of competition.** For example, the DTH space, which is essentially the only major digital customer base of over 50 million customers is well divided amongst 6 DTH players with each having customers from 4 million to 12 million. There is thus no monopoly of any player in DTH, and no such advantage can be sought by a media player such as a Channel or content producer in acquiring a stake in a Cable or DTH operator. Due to the competition, it would not allow any potential buyer any monopoly control of the market or pricing power.

With the implementation of mandatory digitalization of Cable Sector by Ministry of Information and Broadcasting, the emerging situation amongst the Digital MSOs is the same with 12-15 major players at the National level and various local MSOs at the state level having an evenly divided and segmented market.

Hence we believe that the cross holding restrictions in place today such as 20% cross holding of a broadcaster or DTH operator in a HITS platform are uncalled for and would only harm domestic investors to the advantage of foreign investors.

If one analyzes the US market, it is evident that the only restrictions which apply on ownership relate to TV stations (terrestrial Stations) having stake in Local Cable markets. Other than that there are no restrictions on ownership, pricing or reach, number of customers, revenue or any other parameter which TRAI is contemplating to use.

On the other hand, larger operators are encouraged for reasons of economies of scale. During the late 1990s, cable operators and telephone companies entering the television business were not only adjusting to the new FCC guidelines set by the Telecommunications Act of 1996, they also faced the demands of local governments that tried to maintain local control of rates and public rights-of-way. An April 1996 ruling eliminated rate regulation in areas where a cable company had non-DBS competition. It was recognized that size is necessary to achieve economies of scale and to provide cash flow for investments into research and development, development of new programming and markets, and acquisitions. Large companies can gain economies of scale in purchasing equipment, satellite time, and programming. In addition, by being large enough to be able to purchase its own satellite, a cable company gains significant control over costs and programming. Through ownership of large libraries of information (music, video, etc.), the cable company not only controls costs, but also drives other competitors through access to that programming. Finally, programming consists mainly of large fixed costs. With a large cable company, this fixed cost is spread over a larger base, resulting in increased profits. This is particularly important for the development of fiber optics.

The following depicts the FCC's Policy in this regard:

> ***Multiple and cross-ownership***
>
> *With the exception of its broadcast licences, the FCC generally does not limit the number of spectrum licences that may be held by or 'attributed' to (i.e., deemed to be held by) a single individual or entity. However, in evaluating the likely competitive effects of significant wireless transactions, the FCC has utilised a 'spectrum screen' to identify local markets that merit closer scrutiny by looking at the total amount of spectrum that would be controlled by one individual or entity, and the FCC has indicated that it will soon initiate a proceeding to re-examine its use and definition of such spectrum screens.*
>
> *The FCC also has imposed certain limitations on the ability of parties that hold licences or authorisations of one type to hold licences or authorisations of another type. For example, the FCC's rules prohibit cable service providers from holding an attributable interest in the local exchange carrier that has historically served the same market, and vice versa. The FCC has explicit limits on the number of broadcast stations (radio and TV) an individual or entity can own in a given local market, as well as the percentage of households nationwide that can be covered by television stations attributable to a single individual or entity. The FCC also has adopted rules limiting the cross-ownership of radio and television stations, as well as the cross-ownership of broadcast stations and newspapers. Several of these rules are under review by the FCC and the courts.*

Source: The Technology, Media and Telecommunications Review

Law Business Research, Third Edition, Editor John P Janka, Nov 2012)

It is notable that while FCC has restrictions where Spectrum (Terrestrial TV and Radio) is involved, and also on Telecom operators, there are no other restrictions on Cable and DBS platforms owning or being owned by Content producers.

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.

We would like to suggest that once terrestrial broadcasting is opened up, which involves the use of terrestrial frequencies, Telecom operators which already hold 3G or 4 G spectrum should not be allowed to bid for terrestrial spectrum.

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.**

(i) The justification advanced for imposing cross media control/ownership is with ostensible motives to prevent the monopolies across different sections of the media as well as within the Broadcasting segment & to ensure diversity of news and views. However these restrictions/controls in effect would restrict the growth and development of the Broadcasting sector and media as a whole. A realistic and more feasible approach would be to ensure that there will not be sidelining of interest of anybody by categorically giving directions as to the functional aspects, rather than putting a Blanket ban on accumulation of interests. The concern about plurality and diversity are misplaced. The Broadcasting sector in India is still at a nascent stage and has not reached at such a level so as to warrant the stipulation of ownership restrictions.

(ii) As outlined by us in our introductory comments, the primary issue is the dissemination of information and views to the Public in which there should be a plurality. Hence putting any restrictions on content generators which merely aggregate cinema, music or general entertainment would achieve no purpose in serving the above objective.

(iii) Thus the plurality and diversity are going to be of concern with regard to news channels only. The provisions of must carry of Public Broadcaster's channels and compliance of stipulated public broadcasting obligations are going to ensure plurality and diversity. Moreover, the entire terrestrial transmission is controlled by the State Broadcaster – Doordarshan and such the apprehensions of dominance by single media entity are not only misplaced but devoid of any logic as well. **It is pertinent to point out that Terrestrial TV broadcasting by Doordarshan to its**

1500 transmitters and 66 studio centres across country reach approx. 40 million households. Other channels which carry predominantly entertainment programmes like soaps, movies, music etc. are not going to impact the plurality or diversity. So any kind of restrictions covering all these channels will be detrimental not only to the broadcasters but also to various other sections like artists, technicians etc who work on these channels.

(iv) It is pertinent to invite attention to the functions of Public Broadcaster– Prasar Bharti as contained in section 12 of Prasar Bhart Act :

"12. Functions and powers of the corporation

(1) Subject to the provisions of this act, it shall be the primary duty of the corporation to organise and conduct public broadcasting service to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television. Explanation -- For the removal of doubts, it is hereby declared that the provisions of this section shall be in addition to, and not in derogation of, the provisions of the Indian Telegraph Act 1885.

(2) The corporation shall, in the discharge of its functions, be guided by the following objectives, namely -

(a) upholding the unity and integrity of the country and the values enshrined in the constitution;

(b) safeguarding the citizen's right to be informed freely, truthfully and objectively on all matters of public interest, national or international, and presenting a fair and balanced flow of information including contrasting views without advocating any opinion or ideology of its own;

(c) paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare and science and technology;

(d) providing adequate coverage to the diverse cultures and languages of the various regions of the country by broadcasting appropriate programmes;

(e) providing adequate coverage of sports and games so as to encourage healthy competition and the spirit of sportsmanship;

(f) providing appropriate programmes keeping in view the special needs of the youth;

(g) *informing and stimulating the national consciousness in regard to the status and problems of women and paying special attention to the upliftment of women;*

(h) *promoting social justice and combating exploitation, inequality and such evils as untouchablility and advancing the welfare of the weaker sections of the society;*

(i) *safeguarding the rights of the working classes and advancing their welfare;*

(j) *serving the rural and weaker sections of the people and those residing in border regions, backward or remote areas;*

(k) *providing suitable programmes keeping in view the special needs of the minorities and tribal communities;*

(l) *taking special steps to protect the interests of children, the blind, the aged, the handicapped and other vulnerable sections of the people;*

(m) *promoting national integration by broadcasting in a manner that facilitates communication in the languages in India; and facilitating the distribution of regional broadcasting services in every state in the languages of that state;*

(n) *providing comprehensive broadcast coverage through the choice of appropriate technology and the best utilisation of the broadcast frequencies available and ensuring high quality reception;*

(o) *promoting research and development activities in order to ensure that radio and television broadcast technology are constantly updated; and*

(p) *expanding broadcasting facilities by establishing additional channels of transmission at various levels.*

(3) *In particular, and without prejudice to the generality of the foregoing provisions, the corporation may take such steps as it thinks fit -*

(a) *to ensure that broadcasting is conducted as a public service to provide and produce programmes;*

(b) *to establish a system for the gathering of news for radio and television;*

(c) *to negotiate for purchase of, or otherwise acquire, programmes and rights or privileges in respect of sports and other events, films, serials, occasions, meetings, functions or incidents of public interest, for broadcasting and to establish procedures for the allocation of such programmes, rights or privileges to the service;*

(d) *to establish and maintain a library of libraries of radio, television and other materials;*

(e) *to conduct or commission, from time to time, programmes, audience research, market or technical service, which may be released to such persons and in such manner and subject to such terms and conditions as the corporation may think fit;*

(f) *to provide such other services as may be specified by regulations.*

(4) *Nothing in sub-section (2) and (3) shall prevent the corporation from managing on behalf of the central government and in accordance with such terms and conditions as may be specified by the government the broadcasts made by organizations outside India on the basis of arrangements for reimbursement of expenses by the central government".*

(v) A perusal of the above would reveal that the concerns being expressed regarding plurality and diversity are duly taken care by the Public Broadcaster. It is also pertinent to mention that Public Broadcaster – Doordarshan has about 30 free to air channels which inter alia include the entertainment, news, sports & channels in vernacular language. All the distribution platforms (viz. Cable, DTH etc.) are mandatorily required to carry atleast 8 DD channels namely DD-1 National, DD News, DD Sports, DD Bharti, DD-Gyan Darshan, DD Urdu, DD Lok Sabha, & DD Rajya Sabha. Thus the issues of monopoly or market dominance are entirely misplaced and not at all relevant in Indian context as the subscriber/consumer in any event is getting information, news, views etc. from varied sources.

(vi) In addition, the subjective restrictions on the holding of particular number of channels i.e. market share and the limitation of holding interest in the distribution sector are also likely to affect the growth and development of Indian media. In fact such restrictions /restraints are anti-consumer as they tend to prevent the consumers to have the benefits of a value based product / services. Restriction for number of channels is akin to restricting no of viewers, since in our country channels have to cater to the mass in different vernacular as the language differs from State to State. Restriction for other media like restriction of circulation or readership was never contemplated before. Similarly any move for restricting the number of channels, which will actually be restricting the viewership is also unfair.

(vii) Reverting to the case of News and Current affairs channels also, we understand that the market is heavily competitive. There are over 300 News and Current affairs channels and most channels have viewer ships which range up to 15% of the total market. Hence at present putting any restrictions will be counterproductive, and would like to suggest that the TRAI should desist from putting any shareholding restrictions.

(viii) Further, as mentioned in paragraph 1.5 above, the provisions of the Competition Act prohibiting '*Anti-competitive Agreements*' and '*Abuse of Dominant Position*' were notified and the Competition Commission of India (the CCI) commenced its regulatory/enforcement activities in these two spheres on May 20, 2009. Central to the first three enforcement/regulatory dimensions stated above is the concept of the *"market"*. In every enquiry under the Act, the 'market' in which competition is said to be appreciably adversely effected has to be identified since the *basic concern of the Act is with enterprises that are in a position to exercise a considerable amount of influence in the market*. This 'market power' is generally measured in relation to the product in question (includes 'goods' and 'services') and a geographic area for that product. The definition of market is more specific in cases relating to abuse of dominance where the conduct is assessed in the 'relevant market'. In the Act therefore, the relevant market is defined in terms of the 'relevant *geographic* market' and the 'relevant *product* market'.

Section 19 (4) of the Competition Act provides for various factors that the CCI is to take into consideration when assessing dominant position in the relevant market. As can be seen from the list of factors, in order to determine dominance, the level of concentration is not the only factor. Dominance is a rather dynamic concept that depends on the market structure such as entry barriers, countervailing buying power etc. Additionally, the CCI also has the power to assess any other factor that it may consider relevant. This gives immense power to the CCI to not be constricted/limited, if the facts and circumstances of the case require otherwise. Applying the provisions of the Competition Act with respect to the concerns through cross-media ownership, if an enterprise gains prominence in the market through vertical or horizontal integration it is most likely to be in a position that is to put it in a position of economic power and it is likely to be considered a dominant enterprise.

Therefore, even in the context of the issue relating to measuring concentration or to ascertain the appropriate measure of concentration, the tools available to the CCI under the Competition Act seems to be wide, flexible, contextual and practical, making it an appropriate source to ascertain the relevant level of concentration.

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**

Zee would like to suggest that the following media types be considered for ensuring Plurality:

(i) Print Media - vis-à-vis Terrestrial Television (as & when terrestrial transmission is opened for private players.)

(ii) Print Media -Via-Vis Radio Stations but only after News and current Affairs are permitted on Radio. Till then the current provisions of 15% of total radio frequencies should continue to apply.

(iii) Terrestrial TV Stations Vs Radio when News is permitted on Radio.

We do not suggest any other cross holding restrictions based on distribution of platforms.

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?

Yes, major Indian language clusters-

(i) Hindi-Punjabi

(ii) Kannada

(ii) Tamil

(iv) Telugu

(v) Malayalam

(vi) Bengali

(vii) Urdu

In the context of electronic media, further classification would be there on the basis of "genre" in each of the above language.

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

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.

Reach is a standard parameter used by the industry for assessing the delivery of content in addition to viewership data represented by TRPs and GRPs.

Alternative data such as Revenue is rarely available. Moreover it cannot be a true indicator of reach of program if the channel is free to air or carries little advertising.

As such it is recommended to depend on standard industry metrics- reach and Channel/ program specific data rated by independent agencies.

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.

Reach, TRPs and GRPs are standard industry Metrics.

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

At the outset, we believe that the TRAI use of the term Media Concentration arises from the FCC Report and Order of June 02,2003 (FCC SETS LIMITS ON MEDIA CONCENTRATION) wherein the FCC stated that " *The FCC stated that its new limits on broadcast ownership are carefully balanced to protect diversity, localism, and competition in the American media system*). The FCC developed a "Diversity Index" in order to permit a more sophisticated analysis of viewpoint diversity in this proceeding. The index is "consumer-centric" in that it is built on data about how Americans use different media to obtain news. Importantly, this data also enabled the FCC to establish local broadcast ownership rules that recognize significant differences in media availability in small versus large markets. The objective is to ensure that citizens in all areas of the country have a diverse array of media outlets available to them.

As per the report and order, *The FCC found that pro-competitive ownership limits must account for the fact that broadcast TV revenue relies exclusively on advertising; whereas cable and satellite TV service have both advertising and subscription revenue streams. The FCC also explained that because viewpoint diversity is fostered when there are multiple independently owned media outlets, the FCC's competition-based limits on local radio and local TV ownership also advance the goal of promoting the widest dissemination of viewpoints. The FCC strongly reaffirmed its goal of promoting localism through limits on ownership of broadcast outlets.*

However it is important to note that the FCC restricted itself to Radio and TV Broadcast Stations (terrestrial) and print News Papers in its report and Order of 2003. It also targeted Cable systems ownership and limited it to 30% of the total homes. Other than that it did not provide for any media concentration via Cable or DBS systems. The report and order focused on two aspects: Diversity in TV/Print and Radio/print and the concept of Public Interest. These were indeed relevant considering the prevailing scenario at that time. Embedded in this Report and Order were elements of Anti-Trust issues in which large concentration of a single owner even in a single segment was to be prohibited **(Note: These elements in India are handled by a separate body- the Competition Commission of India - CCI).**

However when put into effect the rules had to be changed dramatically and the very concept of Media Concentration was diluted to an extent that it became irrelevant. This entire process was reviewed extensively in Berkley Law review (Anti-Trust and Mass Media Policy). To cite from the report:

> **Quote**:
>
> The relevant court decisions and legislation show that, by the time the FCC undertook its 2003 biennial review, the momentum was decidedly against the media ownership rules then in place. Congress had signaled its tolerance for less stringent limits for broadcast ownership by raising the cap from 25% to 30%" and had arguably tipped the presumption against other existing limits by putting the burden on the FCC to show the continued necessity of its rules in its biennial reviews. The courts reinforced Congress' mandate by refusing to allow rules to stand absent an administrative record containing unambiguous, convincing evidence, not just theory, that a rule is needed…The FCC considered several rules in its 2003 biennial review:
>
> (1) the "national television multiple ownership rule," which caps the number of television stations a single entity may own nationwide;

(2) the local television multiple ownership rule, which limits the number of stations a singly entity may own in a local viewing market;

(3) the radio/television cross-ownership rule, which limits joint holdings among those media;

(4) the dual network rule, which prohibits combinations among the four major TV networks;

(5) the newspaper/broadcast rule, which limits cross-ownership of television stations and daily newspapers;' and

(6) the local radio ownership rule, which governs the amount of consolidation permissible in a local listening market.

With regard to the national television ownership rule, for example, the **FCC increased the limit on audience reach from 35% to 45% nationwide**.

The FCC made the **biggest changes to its cross-ownership rules**. It substantially repealed the prior ban on newspaper/broadcast and broadcast/radio cross-ownership and retained the ban (subject to waiver) only in markets with three or fewer television stations. In markets with four to eight television stations, the order permitted cross-ownership between a daily paper and one television station, as well as cross-ownership between either a daily paper or a television station and a limited number of radio stations. **The FCC completely repealed the cross-ownership rules in markets with nine or more television stations**.

In Fox Television v. FCC, the court found that the FCC failed to provide any basis for retaining either the national television station ownership limit or the cable/broadcasting cross-ownership prohibition. With respect to the national broadcast ownership cap, the court found that the FCC did not take into account recent data on the number of stations in operation.

A different panel of the D.C. Circuit decided in **Sinclair Broadcast Group v. FCC** that the FCC had failed to justify its remaining local broadcast station ownership limits;… The court clarified that neither the precedent recognizing FCC's "wide discretion" to draw administrative lines **nor the difficulty of defining "diversity" freed the FCC from its obligation to explain why and provide evidence that its rules are necessary to promote diversity.**

Unquote

It is therefore clear that Media Concentration and Diversity are not commonly used terms to define how the media is reaching the people. While TRAI has drawn extensively from an outdated FCC report and order, the fact remains that this is a not an accepted approach to create media regulations.

Media concentration is not a standard term in measuring media reach. For each industry such as Print Media, TV and Radio there are certain industry specific metrics which should be used. With Digitization, the number of customers, number of channels subscribed and specific channels subscribed will be available to the regulators. They can devise forms or returns to be filed periodically by all operators giving customer, subscription and channel data.

However for actual popularity of programs they will still need to depend on Audience measurement metrics, which is available for C&S.

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.

Not Applicable

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

The diversity Index of FCC relates to Cross-Ownership of Broadcast Stations and Newspapers (MM Docket No. 01-235), Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations In Local Markets (MM Docket No. 01-317). **None of these are directly applicable to India as we are not comparing Terrestrial TV ownership with Newspapers or Radio stations.**

In USA itself, the diversity Index has been opposed and proven to be faulty by Consumers Federation of America and other bodies. Rather than being a pro-competition and diversity promoting measure, it was proven that it has had precisely the opposite effect.

As reported by Consumer Federation of America

> **Quote**
>
> "***The Diversity Index Produces Absurd Results:*** *The easiest way to judge the Diversity Index is by the results it produces. In the New York City area, Shop at Home Incorporated TV, the Dutchess Community College TV and Multicultural Radio Broadcasting Inc. (with three radio stations) each has been*

given more weight than the New York Times. Again in New York, Univision TV has more weight than ABC Inc., NBC/GE, Viacom or News Corp., even when Viacom's and News Corp.'s radio stations and newspapers are included. Univision is three times as important as the New York Times.

Faulty Analysis Underlying the Virtual Elimination of the Ban On TV-Newspaper Cross-ownership:

FCC ignores the audience of the individual outlets that will actually merge and swap. In other words, the FCC's Diversity Index never considers the actual market share of these media outlets in the market. The FCC decision to abandon this fundamental tenet of sound economic analysis has no basis in the professional literature. The FCC uses a weighting scheme in the cross media analysis that underweights TV and daily newspapers and vastly overweights weekly newspapers, radio and the Internet, giving them more than twice the weight they deserve..

The decision to allow newspaper-TV cross ownership in the overwhelming majority of local media markets in America is based on ..the Diversity Index, that was pulled from thin air at the last moment without affording any opportunity for public comment. The Diversity Index played the central role in establishing the markets where the FCC would allow TV-Newspaper mergers without any review.

…The most blatant contradiction underlying the Diversity Index occurs within the discussion of the cross ownership rule. The FCC justifies getting rid of the ban on cross ownership on the basis of a discussion of the market share and "influence" of the various media."

Unquote

Even the courts have held that the Diversity Index devised was in fact faulty. In *Prometheus Radio Project v. Federal Communications Commission,* the Third Circuit reviewed the media cross-ownership limits proposed by the Federal Communications Commission ("FCC"). The Third Circuit critically examined the FCC's use of a "Diversity Index" to reach its proposed rules and then remanded the Cross-Media Limits to the FCC for justification or modification. The Third Circuit concluded that "[t]he Commission's failure to provide any explanation for this glaring inconsistency is without doubt arbitrary and capricious, and so provides further basis for remand of the Cross-Media Limits."

Subsequently the Diversity Index was analyzed by Indiana University which came to the conclusion that the Diversity Index Scheme of FCC is **"Fatally Flawed".**

Please see
http://law.indiana.edu/fclj/pubs/v58/no1/HillPDF.pdf

It should have been evident to the TRAI that the "Diversity Rule" was in fact created to facilitate many mergers and acquisitions which later on went to create monopolies. In effect, this rule is "Anti-Diversity".

We would like to refer the Representation by the Consumers Federation of America and numerous other documents to TRAI in this regard.

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?

Not Applicable

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.

As elaborated by us at length, first TRAI should come to terms with the entities to be regulated in terms of ownership/ controls in Cross Media. Worldwide, these are only three:

(i) TV Terrestrial Radio Stations
(ii) FM Radio Stations
(iii) Newspapers

Hence channels for uplink or delivery by Fiber are not included in the Media segments to be regulated for cross media ownership. Similarly ownership of DTH and DBS Platforms, Cable TV, MSOs etc. are not media entities which are to be subject to cross media ownership or regulation. This is also borne out by the worldwide scenario. News Corp for example owns and operates the DirecTV platform with 30 Million Networks, Owns and Operates Fox Cable Networks with reach to over 100 million viewers, and at the same time owns and operates 37 Television Channels and owns Licenses for Terrestrial TV Stations.

The only cross media restrictions applicable are in respect of newspaper and TV stations (terrestrial).

Justification for regulation?

Now so far as the Terrestrial TV Stations are concerned, post the digitization in USA, Europe and other countries, the situation in regard to the availability of spectrum has changed. Each Terrestrial Frequency which was under use as NTSC, has now has the Capacity of 8-10 Channels using ATSC. There is an abundance of spectrum rather than scarcity. The question of regulating broadcasting in the traditional manner citing scarcity of Spectrum has been questioned even before the completion of Digitization in USA.

As reported in Commlaw Conspectus report on Spectrum Scarcity (Why Regulate Broadcasting?; Volume 15 Page 438):

Scarcity Has Given Way to Abundance

Even if scarcity was once a legitimate concern within the broadcast sector, it certainly is not today, considering the cornucopia of media choices at the public's disposal. The number of broadcast TV stations in America has doubled since Red Lion was decided in 1969, while daily newspapers have been in a steady state of decline. Daily newspapers are now more "scarce" than broadcast television stations. The number of radio stations in America has also roughly doubled since 1970. Meanwhile, other media technologies and outlets have proliferated, including cable and satellite television, satellite radio, the Internet, blogs, and others…Even the FCC has acknowledged these arguments in a report from the agency's Media Bureau ***("Berresford Scarcity Report").*** *In the report, John Berresford, a staff attorney with the FCC's Media Bureau, refers to the* ***scarcity rationale as "outmoded,"*** *"based on fundamental misunderstandings of physics and economics," and "no longer valid." All that is left now is for the right case to come before the Supreme Court to drive the final stake through the heart of* Red Lion *and the scarcity rationale. Alternatively, the FCC and the courts might just let this regulatory rationale wither away gradually and never again cite it as a defense for unique regulatory treatment of broadcasters…*

Media content and outlets are blurring together today thanks to the rise of myriad new technologies and competitors. These new media technologies and competitors generally ignore or reject the distribution-based distinctions and limitations of the past. In other words, convergence means that media content is increasingly being "unbundled" from its traditional distribution platforms and finding many paths to the consumer. As a result of such developments, it is now possible to consume the same piece of content via a broadcast TV or radio station, a cable channel, a satellite system, on a DVD player, on a cell phone or other mobile media device, on a portable gaming system, or over the Internet.

Cable and DTH

The same situation prevails in Cable and DTH. With the digitization of Cable a capacity of over 1000 channels is available for content producers using for example 64QAM. Similarly DTH systems on a single satellite using MPEG-4 DVB-S2 8PKK can provide over 1000 channel capacity.

While the dynamics of delivery to customers has changed in many ways including:

- Increased capacity on Terrestrial broadcast
- Increased Capacity on Digital Cable
- Increased Capacity on DTH

- Alternative modes of delivery of Newspapers, Information Exchange (Blogs e.g. Facebook, Youtube)

It may be noted that the regulatory mechanisms have not kept pace and keep harping on the old notions of scarcity and therefore regulating the cross media.

Today while a regulator (such as FCC or TRAI) may try to regulate Print media ownership Vs. TV Station Ownership, it is becoming irrelevant. Anyone can start an electronic news paper and deliver information via the Internet. Similar TV channels and Internet Radio stations are available in Plenty. The views of subscribers are today more influenced by reporting on Facebook than on one of a thousand of TV channel.

There is need that the regulators should first recognize the extent of available resources through which people are consuming information (and therefore are likely to be influenced by it) rather than trying to regulate decaying media outlets such as Print Media. Many newspapers which enjoyed limelight in their heydays have now, one after another closed print editions and gone fully electronic. This way they can reach all audiences via Laptops, I-PADs, smartphones etc. In 2011, 152 News papers had closed down. In Oct 2012, News Week decided to close its Print Edition. The Guardian also is contemplating closing down the Print edition. The older regulations, controls and cross media restrictions can not be enforced and are irrelevant.

We would like to therefore suggest that the TRAI desist from the temptation of trying to frame cross media rules with age old presumptions which no longer hold valid today. **The channels transmitted on a Digital Cable are not "TV Stations" and there is no danger that one entity can pocket the lion's share of such channels.**

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.

We do not propose any cross media restrictions. So far as terrestrial TV is concerned, the frequencies and spectrum for the same is yet to be made available by the Govt to the media industry. The DTH segment in India is overly competitive with 7 players. Digital cable is just emerging, and with its large capacity requires no limitations on physical number of channels by one entity. There are alternative media on the Internet which are today more commonly used for broadcasting. We do not recommend regulating press media as well, as magazines and news papers are going online and do not need any license or permission.

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.

As elaborated painstakingly in our analysis and discussions, there is no rationale for cross holding restrictions in any media segment at present, considering the state of the media industry and the alternative ways of consumption of information.

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.

Not Applicable

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.

At the Outset Zee would like to state that we do not consider HHI to be an appropriate tool to measure media concentration. While The HHI was initiated as a tool for measuring media concentration in 2003 in USA by the FCC, the times have changed since then, and the measure is seriously flawed for the reasons below.

As provided in the consultation paper, Quantitatively, HHI is expressed as below: $HHI = s1^2 + s2^2 + s3^2 + ... + sn^2$ where s1, s2, s3… are the percentage market shares of various media outlets operating in a media segment of a relevant market. s12, s22, s32 … are called the contribution of outlet-1, outlet -2, outlet -3,… respectively in the HHI of the media segment.

As may be seen from the formula, all media outlets are therefore presumed to carry equal weightage. For example is S1 ia an FM radio outlet, S2 a TV outlet and S3 a newspaper outlet, if a company has 50% share of radio market its HHI score is 2500. A TV Media operator having a 50% market share also has the same HHI score of 2500, as also the case of a media outlet having 50% share in newspapers or 50% share in magazines or a media outlet having 50% share in Internet.

This presumes that consumers are affected in forming their views equally by all media be it TV, Radio, Newspapers or Internet as all these media percentages give the same HHI score. But the above assumption has proved wrong and has led a series of wrong decisions by the FCC.

Even **Ofcom**, in its report **"Measuring Media Plurality"** http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/statement/statement.pdf

has first identified what it is significant in Media Plurality as follows:

3.16 **We believe news and current affairs are the most relevant forms of content for the delivery of the public policy goals. We recommend that the scope of any plurality review should be limited to these.**

…..

4.5 Our quantitative consumer research highlighted the following patterns of consumption.

• TV remains the most used and important platform by usage

. TV-85%

Radio 53%

. Newspapers -53%

. Internet-41%

The above data shows that all media outlets are not used equally, and therefore cannot be weighted equally. In fact the role of newspapers is further on the decline post this report as is of terrestrial radio.

If a Newspaper has a market share of 25% of the TV market, it has an HHI score of 625, and by virtue of HHI Index (say a limit of TRAI as mentioned in TRAI consultation paper) it would not be allowed to enter TV, but the fact is that News papers are read by only 53% of population. Hence a 25% market share in news papers has a different capability to influence public opinion as against 25% share in TV market which is viewed by 85% of population.

Figure 1: Headline consumption measures for news media

News Metrics	Total	TV	Newspapers	Radio	Internet
% of all adults use nowadays	95%	85%	53%	53%	41%
% of all adults use daily	88%	71%	30%	41%	29%
Average number of platforms used	2.4	-	-	-	-
Perceived importance of platform (mean score)	-	7.7	6.9	7.2	7.1
Average number of sources used (amongst those who use at least one)	4.8	2.2	2.2	1.4	2.0
Top 5 sources used nowadays (by reach)	BBC One ITV Sky News BBC News BBC Website	BBC One ITV Sky News BBC News Channel 4	The Sun The Daily Mail The Daily Mirror Mail on Sunday Sunday Mirror	BBC Radio 4 BBC Radio 2 BBC Radio 1 Heart FM Capital FM	BBC Web Facebook Google Sky News web Guardian web
Cross-media Share of References	100%	44%	11%	24%	21%

The Ofcom therefore rightly provides a "Cross Media Share of Reference" which is a better measure than HHI on how a media outlet is influencing the viewers.

Now reverting back to India, these issues are further skewed owing to illiteracy and a visual media is much more important and significant. In rural areas, newspapers account for barely 5% of reach. Hence not allowing an entity having a newspaper having 25% market share (in newspapers) to enter TV market is illogical. It is equally illogical to prevent a TV agency having 25% market share (and therefore an HHI score of 625) to enter the newspaper segment- a dying industry.

The case for radio is even further skewed. In India FM channels do not carry news and current affairs, and therefore even where these have different market shares, these do not influence viewer opinions in a politically, Corporate or otherwise biased manner.

The second issue is that the issue of diversity, industry shares and media concentration fall within the purview of CCI.

We believe that the issue needs to be discussed together with Competition laws in India. Whether an entity could be restricted by virtue of its being "highly concentrated" using HHI tool in at least two media segments would be an empirical question based on an assumption that two media segments can lead to a status of control where viewer opinions could be affected. It is only CCI which can decide on these issues.

In our opinion, mergers (and therefore cross holdings) may be inappropriate even if only one segment leads to market dominance (say 80%). However these relate to specifics and need to be examined for each case.

The very basis in USA for setting aside such arbitrary rules by courts was that the FCC could never justify why it had selected a particular figure, and that it was taking on the role of an anti-trust body (akin to CCI in India). Quoting from the report:

The court unequivocally placed the burden on the FCC to show that the harms to diversity in absence of its rule were "real, not merely conjectural. The Time Warner Entertainment case clarified to the FCC that its media ownership rules would need to be carefully justified on the basis of actual market evidence rather than anecdote or theory.
Unquote

We would therefore not venture to recommend any specific figures or any restrictions in the absence of specific data.

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)

Pls see our response to Q19 wherein we have outlined that HHI is not a suitable Index (despite being used by FCC) as it gives equal weight age to all media, which are not consumed equally. A Cross Media share of references is a better measure. However this should apply only to News and Current Affairs Media as done by OFCOM.

(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.

While Zee does not consider the HHI Index to be an appropriate measure for the determination of media concentration, we would like to highlight the following additional issues in so far as its implementation is concerned. These issues are:

(i) Definition of Markets for Each segment i.e. TV, Media, Content, Radio, Print, DTH, Cable, IPTV, Streaming based delivery, Mobile etc.

(ii) Defining how market Shares will be measured in each segment.

The HHI index as used in USA is highly market specific- meaning thereby the local markets. For this purpose the FCC has defined markets for each segment i.e. media, telecom, wireless etc. For example, the listing of Radio Markets in USA covers over 558 Specific markets which are identified by the Market Number and their demographics. A sample of the markets defined for USA is as below:

A Sample of Radio Markets in USA

Market Code*	Rank	Type	Freq.	Market	Metro 12+ Population	DST	Hispanic 12+ Population**	Black 12+ Population***
546	236	2A	2	Abilene, TX	140,300	H	28,000	10,700
081	79	4S	4	Akron	601,500	B	8,700	74,300
580	238	2A	2	Albany, GA	137,300	B	3,100	71,500
069	65	4S	4	Albany-Schenectady-Troy	797,800		34,300	60,300
141	68	4S	4	Albuquerque	748,700	H	338,800	20,800
587	220	2A	2	Alexandria, LA	163,900	B	4,300	48,200
145	70	4S	4	Allentown-Bethlehem	710,800	H	89,900	35,700
219	255	2S	2	Altoona	109,500		1,000	2,300
147	166	2A	2	Amarillo, TX	249,700	H	63,200	14,400
315	167	2S	2	Anchorage	248,300		17,700	15,900
303	137	2S	2	Appleton-Oshkosh	336,400		10,700	5,600
221	159	2S	2	Asheville	281,300		13,700	14,500
047	9	PPM	13	Atlanta	4,385,000	BH	458,600	1,496,500
367	145	2S	2	Atlantic City-Cape May	318,800	BH	42,700	38,500
305	110	2S	2	Augusta, GA	455,800	B	20,700	155,900
527	258	2A	2	Augusta-	105,900		1,200	900

Market Code*	Rank	Type	Freq.	Market	Metro 12+ Population	DST	Hispanic 12+ Population**	Black 12+ Population***
				Waterville, ME				
135	37	PPM	13	Austin†	1,537,600	BH	458,400	113,700
143	77	4S	4	Bakersfield	624,600	H	318,800	35,800
021	21	PPM	13	Baltimore	2,341,300	BH	109,600	676,300
526	218	2S	2	Bangor	167,900		1,700	1,600
223	80	4S	4	Baton Rouge	593,800	B	23,400	200,500
531	253	2A	2	Battle Creek, MI	113,500	B	4,500	13,100
149	141	2A	2	Beaumont-Port Arthur, TX	329,300	BH	41,800	79,700

In the same manner Markets have been defined for Telecom, Media and TV.

(ii) The Second issue is **to measure** the reach or coverage by the "channels" of a particular media house so that the HHI Index can be computed and then be used (if at all) for restricting cross media ownership. At present despite the markets having matured since 2003 in USA when these measures were introduced, there is no proper measurement mechanism. FCC has been using various measures such as Investment Banker reports, Nielson Data or data from other sources. Its conclusions on the measured / computed HHI have been strongly criticized on this account.

Even in UK where audience measurement is well established- BARB for TV, NRS for Newspaper, RAJAR for Radio, Ofcom has considered that these measures do not serve the purpose of determining media Plurality as these are isolated figures which do not relate to the "Impact on the viewers" as elaborated by us in our next point.

In India, the media measurement, reach and other figures are even more empirical and expected to stay so for the next 4-5 years. Moreover India has multiple languages (22 Official languages) and therefore need many more media outlets with diverse languages.

(iii) The Third issue consists of the capability of media to "Impact" the viewers which needs to be considered. This has been plank-stone of the Ofcom Policy.

As per the Ofcom report mentioned above:

Impact metrics

5.22 *Impact metrics need to capture the influence of news content consumption on how people's opinions are formed.*

5.23 *However, our attempts to measure impact through quantitative research have revealed complexity in how people's opinions are formed:*

- *Impact can occur in a subtle and indirect fashion and it is unlikely that people are fully aware of its effects.*
- *This means that any attempt to measure impact using direct techniques, such as asking people to state if they have been influenced, are likely to be blunt and limited tools.*
- *Our qualitative research commissioned for this report confirmed that while participants could talk about the different sources that may inform their opinions on news and current affairs, there was no easy way to capture opinion-forming directly.*

Summary

5.31 ***In bringing this all together, we recommend that a plurality assessment must make use of a basket of measures – of which consumption metrics are the most useful – together with consideration of a range of contextual factors. This is summarised below in Figure***

Figure 3: Recommended measurement framework

Category	Metrics	Description	What it indicates
Availability	Number of providers		An indication of the potential for diversity of viewpoints.
Consumption	Reach	By platform – TV, Radio, Newspapers, Internet By provider within platform	An indication of the diversity of viewpoints disseminated.
		Cross platform	As above. Potentially useful in assessing a cross media merger. It establishes the capability for each provider to reach the population regardless of platform.
	Share of consumption	Within platform - – TV, Radio, Newspapers, Internet By provider within platform HHI within platform	An indication of the potential concentration in patterns of consumption.
		Cross platform – TV, Radio, Newspapers, Internet Cross platform by provider HHI cross platform	As above. Note: this can be in the form of Ofcom's bespoke share of consumption that captures the reach and frequency of consumption; or in the form of average minutes consumed on each platform derived from industry measurement systems.
	Multi-sourcing	By platform and cross platform	An indication of the extent to which consumers are sourcing their news from one or a range of sources.
Impact	Personal importance	By platform By provider	Provides one proxy for measuring the potential to influence opinion.
Contextual factors	A range to be considered dependent on the situation	Examples include Internal plurality Internal governance processes Editorial policy Impartiality requirements Market trends and future market developments	

It may be seen that the measures adopted by Ofcom are much more scientific, and HHI is one of the many measures considered, as depicted in the table above.

In the Indian context these factors need to further refined in regard to the methods of measurement which are reliable, account for multiple languages and account for new media such as Internet (meaning thereby services such as YouTube and Facebook).

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.

At the outset, as elaborated by us at length, first TRAI should come to terms with the entities to be regulated in terms of ownership/ controls in Cross Media. Worldwide, these are only three:

(i) TV Terrestrial Radio Stations

(ii) FM Radio Stations

(iii) Newspapers

Hence we would like to reiterate that regulating platform providers such as Cable operators, DTH operators, HITS operators in respect of cross equity holdings with content generators such as Zee, Star, Sony does not serve any purpose. All these platforms can have capacities of 1000 channels or more, and a single content generator with even 50 or more channels can have no impact on the operations of the Platform.

The operating environment is very competitive in India with 7 DTH platforms including the FTA DD-Direct Platform.

We now revert to the question of using the Diversity Index Tool as a concept used by FCC now applied to India. In this context we would like to refer TRAI to the Publication -Media Diversity And Substitutability: **Problems with the FCC's Diversity Index**, Adam Marcus - I/S: A JOURNAL OF LAW AND POLICY FOR THE INFORMATION SOCIETY.

http://moritzlaw.osu.edu/students/groups/is/files/2012/02/Marcus-formatted.pdf

As per the report:

The FCC calculated Diversity Index scores for ten sample markets,76 and used these results to set its Cross-Media Limits. Using these sample scenarios, the FCC found that in small markets (those with three or fewer television stations), all of the consolidation scenarios resulted in high increases to the average Diversity Index score. As a result, the FCC prohibited newspaper/television, newspaper/radio, and radio/television combinations in those markets. In large markets (nine or more television stations), all of the consolidation scenarios resulted in "acceptable increases" to the Diversity Index scores, so no limits were imposed on cross-media ownership in those markets. In mid-sized markets (between four and eight television stations), the Commission found that only the newspaper/television duopoly scenario increased the Diversity Index scores to an unacceptable level.

Based on these models, the FCC established new numerical limits for local television markets and common ownership of sources in different media outlets. The new limits were designed to keep a market's Diversity Index score below the Department of Justice and Federal Trade Commission's threshold of 1800, which indicates highly concentrated markets for antitrust purposes. For radio ownership limits the FCC did not rely on the Diversity Index and instead maintained the existing "five equal-sized competitors" rule based on game theory .Cable and satellite television are not included in the new Cross-Media Limits because (1) satellite "provides little or nolocal nonbroadcast content[,]" (2) only one-third of cable subscribers have access to a local cable news channel, and (3) these channels are the least watched of any broadcast or cable channels in the market. The FCC assumed that each market has only one weekly newspaper.

The court found this assumption to be "inconsistent with the Commission's overall approach to its Diversity Index[.]" "The Commission's decision to assign equal market shares to outlets within a media type does not jibe with [its]

decision to assign relative weights to the different media types themselves, about which it said ***'we have no reason to believe that all media are of equal importance.'" The equal shares methodology leads to "absurd results."***
Unquote

It may thus be seen that the Diversity Scores methologies, which are based on many assumptions, inaccurate measurement, improper weightings have been found liable to be set aside.

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.

As we have demonstrated in detail, the Diversity Index, as conceptualized gives inaccurate results. A diversity Index of 1000, for example, can be achieved by groups having very small level of activities as compared to national scale, and it equates all media in terms of computation of diversity Index.

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

We would like to reiterate our position that the media ownership restrictions should only be applied where allocation of natural resources such as spectrum is involved.

We would like to point out that there is a global opinion which is being built around easing of media ownership. Against this background, it is ironical that the TRAI is embarking on a proposal to impose cross media ownership on entities such as content generators, which are in fact not subject to media ownership restrictions anywhere.

In USA for example, the Editorial Board of Star Tribune reported as follows:

Quote:

Article by: EDITORIAL BOARD, Star Tribune

Updated: January 17, 2013 Every four years, the Federal Communications Commission undergoes a legislatively mandated review of media ownership, and FCC commissioners soon will vote on proposed adjustments to newspaper/broadcast cross-ownership rules.

If approved, new FCC rules would generally allow cross-ownership of newspapers and TV stations in the top 20 markets, assuming that the TV station is not one of the top four in a market and that eight "major media voices" would remain after a transaction. The current regulatory framework would be maintained for smaller markets.

In addition to those changes, the new rules would generally allow cross-ownership of newspapers and radio stations regardless of the size of the market.

The proposals reflect the evolving media landscape. ***In fact, the proposed changes, while welcome, do not go far enough to ensure the vitality of local news organizations that are essential to democracy. The FCC should allow even top-four TV stations to combine with newspapers.***

Australia

At the same time, **a major Federal Government review has recommended the biggest shake-up of media regulation in decades.** The Convergence Review was set up to work out how Australia's media regulations should adapt as the media undergoes huge changes.

Quote Excerpts from the report:

Media regulation was much simpler in the past, but the digital revolution has introduced a number of new players that cannot be called a radio or TV station or a newspaper.

The initial findings of the review, released today, recommend cross-media laws be axed.

...

The laws were developed in the 1980s to prevent anyone dominating all traditional media outlets in one market.

The interim report says laws preventing anyone controlling more than two out of the three traditional media outlets in one market should be abolished.

http://www.abc.net.au/news/2011-12-15/review-recommends-media-shake-up/3732012

Zee would like to point out to the TRAI that the concerns which have been articulated in the Federal Review in Australia are the same which Zee has been articulating- that the previous regimes of Media Cross Restrictions related to "Traditional Media outlets" i.e. TV Stations (Terrestrial), Radio (Including Spectrum) and Print Media.

However the Content Providers (such as Zee, Star, Turner, Viacom, Eaanadu) which generate content but do not control Terrestrial TV stations, or for that matter on-line TV channels, VoD providers, Online paper publishers comprise of new media which need a different handling and cannot be equated to the antiquated laws which governed cross media restrictions based on TV stations, Radio and Print.

With Digitalization which permits over 500-800 channels of carriage, DTH with over 400 channels or more, such content generators cannot effectively control the Media Space in the traditional manner in which Terrestrial TV stations could, as there were only 30-54 frequencies available in the VHF/UHF bands, all put together.

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

As mentioned hereinabove, the situation in India does not warrant laying down any kind of cross media ownership rules. Without prejudice to the above submission it is stated that currently the FCC reviews such rules after every 4 years. Considering the period of public consultation, promulgation of new cross Media guidelines, implementation processes, equity dilutions which may be required for restructuring existing companies, we believe that anything less than 4 years would be impractical.

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.

The answer to the question lies in part with the procedures and processes which the TRAI and the MIB intend to follow in allowing the media enterprises to restructure and obtain new licenses for uplink of channels as may be necessary.

As Zee has been constantly pointing out, the MIB and the TRAI are following a highly bureaucratic procedure in granting permissions to uplink, frequency authorizations and in general allowing channels to operate from within or out of the country. While such bureaucratic practices are very extensive and all pervasive, some specific ones deserve mention.

(i) While the broadcasters and teleport operators can lease C-Band capacity directly from Insat or foreign satellite operators (for all satellites which have been coordinated with ISRO), the same dispensation of direct leasing of Satellite capacity has not been extended to Ku-Band even after Ku-Band has been permitted for uplinks, teleport operations and HITS. As pointed out by us earlier, there are no restrictions DTH license which mandate that the leasing of the Ku-Band bandwidth must be routed through ISRO or Antrix. This has been a continuation of past practice where Insat capacity was available and ISRO therefore acted as a nodal agency. However as you are aware, almost all DTH operators have been leased out capacity on foreign satellites only, and that too meeting a fraction of their requirements.

(ii) The MIB refers each case of channel uplink for DoS permission instead of maintaining a separate list of approved satellites. This process alone takes over 3-4 months.

(iii) The Channels first need to lease satellite capacity and then apply and await licenses which implies that the satellite capacity remains idle for over a year.

We suggest that the TRAI make it mandatory for MIB to disclose the following parameters for each channel approved for uplinking and down linking:

(i) Date of receipt of application

(ii) Date when referred to ISRO/DoS

(iii) Date when response received

(iv) Date when MIB permission granted

(v) Date of WPC application

(vi) Date when final channel uplink permission granted.

The TRAI will then have a true picture and understanding how much tome remodeling a media outfit can take.

Considering and assuming that these procedures will continue, we suggest a time period of 5 years for media enterprises to restructure.

Mergers and Acquisitions

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

The Zee network does not believe that any additional restrictions should be applied for M&A in Media sector. In the current digital delivery scenario, there is no dearth of capacity or channels and multiplicity of content can always be maintained. With up to 1000 channel capacity, no case is made out for vertical integration or horizontal integration with respect to either content generation or distribution platforms.

On the contrary, it is our considered opinion that the Media, Content and distribution Industry in India is over split making the entire sectors uncompetitive. We believe that the License conditions should be relaxed to permit merger of DTH operators, HITS operators and Content/ uplink providers. This will reduce the utilization of resources, bring down the cost and make better services available to the customers. In addition, the competition regulations already take care of the issue of merger & acquisition by providing the threshold beyond which the consent of the competition Regulator is necessary.

Additionally, the provisions of the Competition Act effectively regulate competition concerns arising from any structural change.

The Competition Act regulates combinations vide Sections 5 and 6. Section 6 of the Competition Act proscribes any combination that causes or is likely to cause an AAEC.

The definition of the combination under Section 5 of the Competition Act perceives a very broad definition of combination and seems to include almost any and every structural change by an enterprise relevant in the field of competition law (horizontal, vertical and conglomerate).

Not only are the substantive legal standards broad enough to comprehensively address competition concerns arising from any type of structural change, the provisions of the Competition Act provide for a clear and lucid procedure, delineating all the steps from the period of notification to the point where the CCI passes its order. This is likely to ensure transparency and certainty.

For instance, in notice for acquisition filed by Independent Media Trust[1], the CCI assessed a transaction that related to acquisition by Reliance Industries Limited (that had a subsidiary that proposed to offer broadband internet services) of Network 18 and TV 18 (an enterprise with interest in television, internet, films and other allied business). The CCI when assessing the proposed combination paid due consideration to the competitive impact in relation to the business where both groups operated. In light of the same, having another regulatory body to assess the same transaction is likely to create confusion and inefficiency.

It is important to point out that in some countries; concurrent jurisdiction exists in the sphere of M&A. In the U.S, all telecommunications mergers are subject to review by the Department of Justice (**DOJ**) and the Federal Communications Commission (**FCC**)—each agency analyzes the impact of the merger under different legal standards, different burdens of proof, and different policy guidelines.[2] The proposed merger between AT&T and T-mobile is an example of such a scenario. In the instant, the proposed merger was simultaneously reviewed by FCC and DOJ.[3]

[1] C-2012/03/47.

[2] Laura Kaplan, *One Merger, Two Agencies: Dual Review in the Breakdown of the AT&T / T-Mobile Merger and a Proposal for Reform*, 53 B.C.L. Rev. 1571 (2012), http://lawdigitalcommons.bc.edu/bclr/vol53/iss4/9.

[3] *Id.*

This kind of dual review has been criticized as resulting is a system of delay, redundancy, and inefficiency.[4]

Thus, in light of the same, it does not seem prudent to emulate a system of review that is likely to result in an inefficient mechanism.

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.

The Zee Network would like to reply to this question in the affirmative, that media companies should be permitted to be vertically integrated i.e. a content generator should be allowed to enter the areas of distribution such as Cable or DTH platforms or have cross holdings in the Distribution companies such as MSOs.

The Zee network would like to reiterate the following:

(i) The term "broadcasting companies" which has been used is in fact not in conformity with the definition of "Broadcasters" or "Broadcast Stations" which are used internationally and which are used to place restrictions in different markets.

(ii) In India the companies which generate TV channels for different platforms are in fact "TV channel Producers" and do not own a broadcast station. **They are in fact generating the content which by TRAI Regulations must be offered to all platforms of carriage on a mandatory "Must provide" and non-discriminatory basis.**

Hence as per international practice, there is no justification in placing either media cross holding or Platform ownership (such as DTH, Cable) restrictions on such companies.

We believe that this is necessary to make the Indian Media Industry competitive globally, to expand its presence beyond India and to have companies which have a global scale of operations. In the current digital delivery scenario, there is no dearth of capacity or channels and multiplicity of content can always be maintained. With up to 1000 channel capacity, no case is made out for restricting

[4] *Id.*

vertical integration or horizontal integration with respect to either content generation or distribution platforms.

Some of the larger global platforms are able to sustain and grow due to synergies which arise from vertical and horizontal integrations, just as in the manufacturing industries.

The users have multiple choices and TRAI has issued various Regulations including Interconnect & Tariff Regulations so as to ensure free & fair competition and to prevent any kind of discrimination/dominance/anti-competitive practices.

At the same time, the scale of operations of Indian Content producers, MSOs and DTH operators is very small in comparison to a global Scale. It is of paramount importance that the India media companies and broadcasting companies be allowed to have vertical integration and grow to a global scale. The absence of such vertical integration places the Indian media companies seriously disadvantaged in comparison to media companies from overseas, which can invest 74-100% but are highly vertically integrated in their markets. The examples of such companies are many, and we have already cited Newscorp, Time Warner and Viacom. The question is therefore whether Indian companies should be placed at a disadvantage and not allowed to vertically integrate despite the fact that Indian customers now have multiple choices and that the capacity of digital platform takes the channel capacity 20 times making it difficult for any channel content generator to monopolize the market.

As India is different from countries such as USA, UK or Australia which have the predominance of English language channels, the Indian market has channels in over 30 different languages. For a TV channel producer having channels of three or four genres (Cinema, News, General Entertainment and Science/ technology /Education) should therefore not be considered anything unusual. Hence an Indian TV channel producer, seeking to address all the markets (over 24 different languages) needs to have over 100 channels.

By merely having 100 channels, it should not be presumed that any form of market dominance or monopolization has been achieved. This is owing to the fact that in each language, there may be more than 20 TV channel producers present.

In regard to the vertical integration, it must be stated that it should not be measured by percentage of shareholding, but by the number of group channels in percentage terms carried on the medium such as Cable or DTH. It is suggested that if a DTH platform owned by a "Channel producer" (we are not using the term broadcaster as it is not appropriate), has more than 30% of channels on the platform, then it should draw the attention of the TRAI. In any event the prevalent regulatory regime of 'Must Provide' duly takes care of the issues regarding "exclusivity" & denial of content to competing platforms. As most Cable / DTH platforms have the capability to carry over 400 channels, it would imply around 120 channels which could be carried before being adversely noted by the TRAI for vertical integration.

Concluding Remarks

The Zee Network would like to place its concluding remarks for perusal by the TRAI. We have detailed the following points in our offer with examples and web references:

(i) The proposed regulation of media ownership wrongly assumes that the content providers which generate channel content are TV stations. Worldwide only Terrestrial TV stations have been subject to Media ownership regulations and that too considering that there are only limited number of frequencies which necessitate such cross ownership restrictions.

(ii) The TRAI has failed to include or consider, for unexplained reasons any of the Telecom License holders in its proposed ambit of cross media restrictions. This pre-supposes that Media delivery will not be affected by the current and future Telecom Networks. In fact, as we have shown the facts are quite to the contrary and Telecom Networks (New Media) are now subject to greater regulation as compared with Traditional TV Stations. TV channels as carried on DTH, DBS or Cable platforms are not subject to such restrictions or regulations because these systems have very large capacity and entities having even a large number of channels still cannot dominate the space.

(iii) We have demonstrated that the Diversity Index and HHI proposed/ considered by the TRAI are entirely inappropriate for media diversity measurement. These indices which measure Diversity do not distinguish between the effects of different types of media, and give erroneous results. On the contrary we have demonstrated that rather than promoting cross media restrictions, these indices have been used to bypass or circumnavigate some of the existing cross media restrictions.

(iv) we have demonstrated that even in those countries where some forms of cross media restrictions have existed, the current trend is to distinguish the "traditional media" meaning TV stations, Radio and Print and New Media- Internet, IPTV or OTT TV amongst others. even here the trans is to remove restrictions even on the traditional media.

(v) In the current digital delivery scenario, there is no dearth of capacity or channels and multiplicity of content can always be maintained. With up to 1000 channel capacity, no case is made out for vertical integration or horizontal integration with respect to either content generation or distribution platforms.

To summarize, the Zee Network recommends that no restrictions should be enforced in relation to Cross Media Holdings.
