DIGITAL NEWS PUBLISHERS ASSOCIATION

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**Mr. Anil Kumar Bhardwaj** **June 28th , 2022**

Advisor (B&CS),
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg
New Delhi- 110 002

Dear Sir,

**Sub: Response on TRAI's Consultation Paper on "Issues related to Media Ownership"**

This has reference to the Consultation Paper issued by TRAI on "Issues related to Media Ownership" on 12" April 2022.

Please find attached the response from Digital News Publishers Association. We have submitted our comments in two parts:

A. Overall Note including Major Recommendations &
B. Responses to Questions

In case of any further queries, please feel free to contact us.

Thanking you,

Warm Regards

Sujata Gupta
Secretary General

CC: Mr. Tanmay Maheshwari, Chairman DNPA

Please find comments in two parts:

A. Overall Note including Major Recommendations &
B. Responses to Questions

## OVERALL NOTE:

### 1. Introduction:

The Indian media sector is the most competitive, diverse and pluralistic in the world. Hence we state at the outset that there is absolutely no need to consider any measures concerning horizontal cross-media ownership by any government body. The exercise in this regard undertaken by Telecom Regulatory Authority of India (TRAI) under the consultation paper (CP) is not necessary and would produce no benefit for the Nation. In fact, we are surprised that the totally redundant question of curbs on horizontal Media ownership in India –which is the world's most competitive and pluralistic Media industry-- are being raised at all. The following points are pertinent in this regard:

i. TRAI had previously opined that there was enough competition and therefore, plurality in the industry and there was no need to regulate horizontal integration. Infact, from that time –2014 till today, 8 years on-- the Indian Media space has become far, far, more competitive. Not only is there far more competition in each segment, but the rapid pace of convergence with mega new Digital entities including OTT, has also made the concept of geographical markets redundant and irrelevant. *{Details in 2. Principal View (vii) below}*.
ii. In any case, the few countries that did introduce horizontal cross-media ownership restrictions many decades ago because of the very limited number of Media outlets there at that time, have been rolling them back for many reasons including convergence and the decline of traditional Media.*{Details in 2. Principal View (xii) below}*.
iii. It should also be understood that these few countries had introduced these curbs in the 1950s-60s in circumstances totally opposite to what India is in today; they were introduced only because the very few Media entities in those few countries were diversifying into terrestrial TV (which had limited channels) in view of its reach. However, on the other hand, in India, the Indian media sector with its lakhs of publications and hundreds of TV and radio channels totally bans private sector from entering terrestrial TV --which is instead the absolute monopoly of the public service broadcaster Prasar Bharati (Doordarshan).

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Hence, any recommendations to restrict horizontal cross-media ownership would not be in public interest and may be construed as a means for inviting undue government control of the content Media. It is a known fact that India has been ranked in 2022 at a dismal 150 out of 180 countries by the NGO *Reporters Without Borders* in the annual ranking of countries based upon the organisation's assessment under its Press Freedom Index. The ranking, accessible at https://rsf.org/en/index, which shows that much needs to be done to increase Indian Media's freedom. Any further restrictions on the Indian Media with regard to horizontal cross-media ownership restrictions, would only worsen the situation.

On the other hand, the best way to preserve plurality and diversity is to ensure Indian Media companies have a viable future as no Media company can survive in today's evolving market conditions if it is not horizontally integrated and cannot be present across textual, audio and video mediums. Moreover, it must be able to compete effectively against the likes of Facebook, Twitter and other Big Tech companies --as well as telcos which not only own content but also the pipe including in broadcasting distribution and are hence vertically integrated in both telecom as well as broadcasting, owning content and carriage in and across both telecom and broadcasting.

The following measures are necessary to ensure Indian Media companies do not turn sick:

(i) **Media companies, most importantly traditional media like print, TV and Radio, must be allowed unfettered horizontal integration so that they can survive by owning different forms of Media like Newspapers, TV, Digital and Radio as at present, most of them are in decline as can be observed by simply looking at TRAI's statistics mentioned in the consultation paper;**

(ii) **Media companies must be protected against Big Tech monopolies and abuse of dominance by them;**

(iii) **Digital Media publishers must be protected against any abuse of dominance by owners of the pipe;**

(iv) **Media broadcasting companies must be protected against vertically integrated entities like telcos owning and controlling both content and carriage. Hence, for a level playing field, the DTH (Direct-to-Home) broadcasting rules not allowing applicants more than 20% equity share cap in a broadcasting and/ or cable network company and vice versa, must be extended to other owners of the pipe like telcos which already own and control both content as well as distribution--and it is surprising that TRAI has neglected this particular aspect of common ownership of broadcasting and telecom in its CP. There are other checks and balances for DTH, including a limitation of 15% capacity reservation for vertically integrated broadcasters, which should also be extended to telecos;**

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2. **Principal View:**

(i) **Convergence and Media: Concept of geographical market –and hence cross-media restrictions in age of Big Tech—totally outdated:**

Convergence has been a reality for many years now, and hence actually the term 'cross-media' itself has lost its relevance. Convergence, Internet and mobile telephony brings the Newspaper, TV and Radio channel on a single screen, thus making the very concept of specific Media markets/geographies irrelevant and redundant. With multiple technological methods to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium. In such a scenario, it is also not possible for a single entity to dominate any given "market" based on "market share" in a given "geography" within a Media segment, and hence there is no reasonable basis to bring in any kind of horizontal cross-media restrictions at all. With the defined borders of platforms diminishing, how can one define a 'relevant market' in light of such trends in Indian Media?

User Generated Content (UGC) is the biggest source of content on digital platforms. Such content, available freely on the internet, competes against studio-produced content on traditional media outlets. With respect to video content, what the consumer sees is no longer only what the broadcasters produce. The popularity of platforms like YouTube, WhatsApp, Instagram, Facebook etc., indicates just how strong UGC has become. Likewise in the text domain, blogging is a huge phenomenon online, and bloggers are starting to shape public opinion more than many established media outlets. This also indicates the obsolescence of the concept of geographical markets and lack of viewpoint plurality in any market including India.

BigTech engages users across multiple platforms without any geographical market considerations. In the case of Google, it is Youtube, Google Search, Google Discover, Google News, their advertising reach on GDN and the Android operating system. In the case of Meta, nearly every Indian Internet user uses WhatsApp, and most youth use Instagram and Facebook. Both of them act as Media platforms, choosing and prioritizing content and deciding what content needs to be shown to which user. In fact, traditional and Indian Digital Media needs less regulation to compete fairly with such BigTech Media houses, rather than being burdened with additional regulation which is no more relevant in a geographical border-less consumption world on laptop and mobile devices.

(ii) **Traditional Media and their Digital arms in forefront of fighting fake news:** Fake news is challenging our society at a fast pace and social Media

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penetration is getting deeper in the masses. Following lack of truly effective regulations on dissemination of information on social Media and the Internet, our society is in dire need of credible information from well-regulated sources like the Print and TV Media and their Digital arms. In fact, any action through any untoward recommendations following the CP, will muzzle the Media and availability of credible information will be adversely affected. Moreover, any action which may split the synergies in Media entities would lead to public facing activities of the Media also drying up. The CP itself highlights issues on fake news in paras 4.16 to 4.18, which we request be seen in context of the need of viable continuation of India's pillar of democracy –traditional media and their digital arms-- without any unreasonable restrictions.

(iii) **Anticompetitive practices and abuse of dominance by Tech companies:** TRAI has in para 2.10 to 2.13 correctly noted that the Digital Media industry is unable to tap benefits due to Big Tech giants like Facebook, Twitter, etc, whose dominance and control is itself an indicator of the potential abuse which gets further corroborated and re-enforced because of their non transparent behaviour when it comes to sharing of advertising revenue. Resultantly, a case has been filed before Competition Commission of India (CCI), which has directed the Director General to investigate allegations of abuse of dominance as practiced by it under Section 4 of the Competition Act, 2002.

While there are sufficient checks and balances for traditional news platforms wherein noncompliance can result in cancellation of registration/licenses/permission, this is missing when it comes to social networking platforms and search engines which also take a substantial share of advertising revenue for the content provided by traditional news Media broadcasters.; in fact, news publishers are dependent on Google and Facebook for referrals and traffic on their websites. However, on the other hand, often, news is manipulated due to the algorithms used by search engines; for example, a Facebook or Twitter user viewing a particular video or news article finds that the algorithm usually pushes similar content/news items which is trending without giving any real or apparent control or choice to the user. Therefore, algorithms tend to create "filter bubbles", insulating viewers from opposing points of view. This is extremely dangerous given the huge numbers who get their news from social Media platforms such as Facebook and Twitter.

(iv) **No Jurisdiction under the TRAI Act**: The TRAI Act, 1997 defines functions of TRAI in section 11 and states that TRAI may make recommendations in relation to 'telecommunication services' only. Telecommunication service is defined to include services which are transmitted or received using wire, Radio, visual or other electromagnetic means. Broadcasting services were included by way of a specific notification in 2004. Hence any input that TRAI seeks or recommendation that it makesin relation to Print Media/other entities not under its jurisdiction, shall not be in accordance with the TRAI Act.

Section 11 of the TRAI Act describes the functions of the TRAI which are divided into two broad areas: (i) Making recommendations on certain matters, and (ii) regulatory functions.

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The regulatory functions largely deal with monitoring compliance with the telecom licenses and other functions of service providers.

TRAI's powers to make recommendations extend to the following matters:

- Need and timing for introduction of new service provider;
- Terms and conditions of licence to a service provider;
- Revocation of licence for non-compliance of terms and conditions of licence;
- Measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;
- Technological improvements in the services provided by the service providers;
- Type of equipment to be used by the service providers after inspection of equipment used in the network;
- Measures for the development of telecommunication technology and any other matter relatable to telecommunication industry in general;
- Efficient management of available spectrum

It is submitted that most of the above matters deal specifically with functions of service providers, which are limited to 'telecommunication services', and NOT in respect of transmission of information/content through other modes like Newspapers, Radio, OTT platforms, other application-based platforms, etc. Therefore, TRAI's present consultation on issues directly impacting the ownership and content businesses of Media players is beyond its jurisdiction.

(v) **Acarpous exercise, in contravention of settled law:** It may be noted that the CP does not pass the tests governing restrictions on the Media, as laid down by the Hon'ble Supreme Court of India in numerous judgements. In *Ajay Goswami* v. *Union of India* [(2007) 1 SCC 143] it was held that protecting public order in light of the Constitutional right to freedom of expression requires the existence of a fair balance and that any imposition on speech must be "reasonable." The CP misses numerous glaring facts, including the rich diversity of viewpoints in the Indian Media, and contains numerous contradictions. This judgement also shows that content-based plurality already exists in the Indian Media and options of different types of Media content is available with the public and it is encouraged too.

(vi) **Violation of Constitutional Provisions:** Article 19(1)(g) provides all the citizens of the country the right to practice any profession or to carry on any occupation, trade or business. This fundamental right can only be curtailed by certain reasonable restrictions as laid down under Article 19(6)(2), which includes a) restrictions in the interest of the general public; b) prescribing any professional or technical qualifications; and c) enabling the State to make laws for creating state monopolies either partially or completely in respect of any trade or business or industry or service by excluding the private citizen. The main objective behind this Constitutional right is to establish economic unity and to be invoked when the free flow of trade, commerce, and intercourse is hampered through any direct impediment from the State.

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In **Hathising Manufacturing Company, Ltd. v. Union of India A.I.R 1960 S.C 923**, the Court held that the fundamental right guaranteed under Art. 19(1)(g) of the Constitution can be suitably restricted only by a valid law which must stand the scrutiny under Art. 19(6) of the Constitution.

In **Dwarka Prasad v State of U.P AIR 1954 SC 224**, the Hon'ble Supreme Court said that *"any uncontrolled, arbitrary administrative discretion to restrict a citizen's right in respect of trade, business, and industry cannot be permitted as it would be imposing an unreasonable restriction outside the scope of clause (6) of Article 19".*

In the case of **Indian Cement v State Of A.P (1988 (1) SCC 745)**, the Supreme Court opined that the restrictions must be reasonable and must be backed by law and should work for the free trade, commerce and intercourse, and not against it.

Moreover, the right to Freedom of Speech and Expression enshrined under Article 19(1)(a) of the Constitution, can only be curtailed by reasonable restrictions on the ground of sovereignty and integrity of the country, security of the State, friendly relations with other foreign State, public order, decency and morality or in relation to contempt of court, defamation etc. In the following judgements, the Supreme Court of India has recognized the freedom of Media:

- Express Newspaper Vs. Union of India (AIR 1958 SC 578)
- Bennett Coleman Vs. Union of India (AIR 1973 SC 106 para 23)
- Sakal Newspaper Vs Union of India (AIR 1962 SC 305)
- Indian Express Newspapers (Bombay) Pvt Ltd Vs Union of India (AIR 1986 SC 872)
- Bennett Coleman & Co Vs Union of India (1972) 2SCC 788

In **Express Newspaper Vs. Union of India (AIR 1958 SC 578)** and **Bennett Coleman Vs. Union of India (AIR 1973 SC 106 para 23)**, wherein the Supreme Court has held that it would not be reasonable for the State to single out Press for laying upon it excessive and prohibitive burdens which would restrict circulation, impose a penalty on its right to choose the instruments for its exercise or to seek an alternative Media.

In the case of **Sakal Newspaper Vs Union of India (AIR 1962 SC 305)**, wherein the Hon'ble Court agreed that there are two aspects of Newspapers dissemination of news and views and commercial. The two aspects are different, the former falls under Article 19(1) (a) read with Article 19(2), and the latter falls under Article 19(1) (g) and can be regulated under Article 19(6). Further this judgment enunciated that the State cannot make a law which directly restricts one freedom even for securing the better enjoyment of another freedom. The State cannot directly restrict one freedom by placing an otherwise permissible restriction on another freedom. Thus, the freedom of speech cannot be restricted for the purpose of regulating the commercial aspect of the activities of the Media.

Further, the Hon'ble Supreme Court in **Indian Express Newspapers (Bombay) Pvt Ltd Vs Union of India (AIR 1986 SC 872)**, held that the then prevailing law in question was to directly affect the right of circulation of Newspapers, which would necessarily undermine their power to influence public opinion. These restrictions would amount to major government interference as it would have the final power and this would constrict the existence of a free

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Press. It is the primary duty of all the national courts to uphold the said freedom and invalidate all laws or administrative actions which interfere with it contrary to the Constitutional mandate.

In **Bennett Coleman & Co Vs Union of India (1972) 2SCC 788**, the Supreme Court has held that the government could not, in the garb of regulating distribution of newsprint, control the growth and circulation of Newspapers. As a direct effect of the so-called regulation policy, which was in fact a control policy, the Newspapers suffered financial loss and infringement of freedom of speech and expression. In the words of the Court, Freedom of the Press is both qualitative and quantitative. Freedom lies both in circulation and content.

In light of the aforesaid, we are of the opinion that the State cannot seek to place restrictions on business by directly and immediately curtailing any other freedom of the citizen guaranteed under the Constitution and which is not susceptible of abridgement on the same grounds as are set out in Article 19(6). The fundamental right as enshrined under Article 19(1)(g) read with Article 19(1)(a) therefore cannot be taken away with the object of placing restrictions on the business activities of a citizen. We are of the opinion that similar is the situation with any proposed restraint on horizontal cross-media ownership holdings. In the attempt to regulate business activities, Freedom of Speech and Expression could be compromised and curtailed by taking away the right to a free Press, which is antithetical to the sole purpose of these restrictions of promoting a free Press.

(vii) **Most pluralistic Media sector –and plurality has increased hugely since TRAI's previous cross-Media ownership recommendations in 2014:** The Indian Media sector, especially Print, TV and their Digital arms, is the most competitive in the world as far as content is concerned, is hugely diversified and has the most possible plurality imaginable –of views, Media owners as well as types of content creators.

(a) Herein, t*he most important and basic point is that plurality in Media ownership is not a requirement to ensure plurality in views.* This is obvious from the fact that different Media products owned by the same Media entity are in different companies, run by entirely separate management and editorial teams, are designed to focus on their own differentiated target audiences and are hence usually entirely different in viewpoints from each other. Hence, the same Media entity with different Newspapers or TV channels, for instance, would perforce have different content strategies for each of them to ensure each caters to a different target audience --otherwise there would be no interest/buyers/viewers/readers for the same viewpoints across these different products and these products would invariably flop.

(b) Moreover, *in some instances, it is ironical that it is the government itself which has barred plurality.* As TRAI is aware, Indian FM Radio stations cannot broadcast any original programmes which relate to news and current affairs and can only re-broadcast news and current affairs content sourced exclusively from the government-run All India Radio in its original form or translated, without any distortion or editing, into the local language/dialect. Such restrictions have the effect of having zero programme diversity i.e., there is duplication of programming

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on virtually all channels. Not only is this an inefficient use of the scarce Radio spectrum and a lost opportunity to use that precious spectrum to serve a community and offer plurality of viewpoints, but it is also a way to ensure that only the same viewpoint as broadcast by AIR is carried by all private sector FM Radio stations in India.

(c) Plurality increased manifold since 2014: Since TRAI's previous cross-Media ownership recommendations in 2014, Media plurality has increased manifold, including with digitisation. Consequently, the consumer has access to more content than ever before –both from local and global platforms across Print, TV, Radio, OTT and social Media. There are 909 TV channels, 1,44,520 registered publications, 386 private FM Radio stations, 2000+ Digital news publishing platforms and over 40 OTT Platforms which are non-news Online Curated Content Providers (OTT-OCCP) available in India. This is in addition to the user generated content available across platforms such as YouTube and Twitter, for example.

| i.**_Media_** | ii.**_2014_** | iii.**_2021_** |
|---|---|---|
| iv.TV channels | v.826 | vi.909 |
| vii.Pvt FM Radio stations | viii.243 | ix.386 |
| x.Registered publications | xi.94,067 | xii.1,44,520 |
| xiii.OTT-OCCP | xiv.<10 | xv.40+ |
| xvi.Cinema screens | xvii.Approx. 10,000 | xviii.9,423 |

The following free to air (FTA) platforms are also available in India:

- *43 million subscribers on the Free TV platform, DD FreeDish, which has over 200 Television channels and Radio stations*
- *Over 400 Radio stations operated by Prasar Bharti, the public broadcaster, and around 300 community Radio stations*
- *543 free to air (FTA) channels*
- *450mn+ users on FTA YouTube*

In addition to this, with the advent of the Internet, the Indian consumer has access to various international Media platforms across the world wide web and through applications, both free and paid for.

(d) Plurality of private sector Media owners in India: It is widely known that India has the most widest range of entities owning and controlling Media, ie:

- Stock Market Traded and Privately Held Commercial Media – The private sector has 888 channels airing pan India. In addition, the private sector airs 40+ OTT-OCCP pan India and has 1,40,000+ registered publications.
- Civil Society and Not for Profit Media – Several trusts and not for profit organizations own and operate Media vehicles: ie 573 Newspapers and over 300 community Radio stations. In addition, several such bodies engage Digitally with their audiences through online platforms like Facebook and YouTube amongst several others.

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(e) Plurality of Content Creation / Creators:

- As per the 65th Annual Report Registrar of Newspapers for India, (Ministry of Information & Broadcasting, Government of India) as many as 1,44,520 publications (Newspapers & Other periodicals) have been registered in India till 31stMarch 2021. During 2020-21, a total of 1,097 new publications were registered. The total circulation of publications has been taken as 38,64,82,373 copies per publishing day in 2020-21. Hindi had 4,349 Dailies, claiming a circulation of 10,36,19,621 copies, while 1,107 Urdu dailies, 1,083 Telugu dailies, and 820 English dailies claimed (2,18,06,994), (1,47,89,526) & (2,05,04,961) copies per publishing day respectively. As per the data received through Annual Statements submitted by the publishers for 2020- 21, the highest numbers of publications were published in Hindi (16,274) followed by Marathi (2,683), English (2,434), Telugu (2,252), Gujarati (1,834), Urdu (1,698), Kannada (1,151), Tamil (885), Bengali (537), Odia (442), Malayalam (317) etc.

    - India is estimated to produce over 5.5 lakh hours of audio video content each year, excluding user generated content. Of this, around 4 lakh hours is news content and 1.5 lakh hours is other content.
    - The universe of content creators has expanded to meet this projected growth. Today, broadcasters and Digital platforms do not air just content produced by them – most of it is outsourced and produced by several production houses. For example, Netflix worked with 70+ production houses since launch, including 30+ in 2021 itself. The Producers' Guild of India has a directory of 131 production houses. EY estimates over 200 production houses in India.
    - India also produced 878 films in 2021, of which 170 released on streaming platforms. Just 30% of films were in Hindi, the remaining 70% were produced in over 10 regional languages.
    - With the advent of the OTT– OCCP and the popularity of web series there is spurt of production by various content producers. In addition to the shows produced by TV channels themselves and the large producers, there are now a host of smaller production houses which produce content. This ensures that there is diversity in content and plurality of voices. Consumption patterns have also changed and this causes further diversity as opposed to the *'stereotypical'* dramas of yesteryears.

(f) IIMC study on pluralistic Indian Media's coverage: India is a land of diverse and varied culture, and along with that, there has always been an existence and encouragement of circulation of multiple views on each topic. This variety of opinion is so apparent that in 2022, Indian Institute for Mass Communication (IIMC-- which is under the Ministry of Information and Broadcasting), has published a report titled 'Analysis of Global Media Coverage of Events in India' in the latest issue of its quarterly Media journal *Communicator* and endeavours to explain the alleged irrational global Media coverage of socio-political developments in India through facts and figures.

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The report, through in-depth analysis of 3000+ India-related articles by global Media, case studies & readership growth pattern, suggests that these questions about the Western Media's coverage may have some legitimacy to them. The report quotes scientific papers, communication experts and journalists associated with these concerned Western Media houses to explain how there is a natural tendency to prefer click bait journalism in order to garner more eyeballs, which, in turn helps grow their business. Senior writer at *New York Times* David Leonhardt says, "Our healthy skepticism can turn into reflexive cynicism, and we end up telling something less than the complete story because we don't weigh positive news and negative objectively." Award winning American podcaster Jay Acunzo says that it's all about business, "Our Media is addicted to growing ad revenue. The business model is the illness. Everything else is a symptom." This is in contrast to our Media, which is highly plural in its views, thereby benefitting the public right across the Nation.

(viii) **No Dominant Position:** It is submitted that the regulatory restrictions are needed in an industry characterized by low or no competition and abuse of monopolistic position by incumbent. However, in India, the Media & entertainment industry is the most highly competitive in the world as far as content is concerned–with the government's own data specifying this with 909 permitted TV channels, 1,44,520 registered publications and 386 private FM Radio stations. This apart, there are thousands of standalone websites based out of India which give news and information. In the present circumstances, the risk of an individual entity owning two or more Media outlets and being significantly able to influence public opinion at this stage of growth is totally out of the question. Accordingly, introducing restrictions on cross-media ownership/horizontal integration will only hugely stifle the growth of the industry and lead to sickness in the already declining entities.

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. Even post the mega mergers in the Indian Television industry, the market share enjoyed by the proposed Sony-Zee and existing Star-Disney combined entities would be 27% and 24%, respectively[2]. There is not even a possibility of dominance in the near future. Moreover, being in a dominant position *per se* is not illegal; the abuse of such a dominant position is. In the entire CP under discussion, no instance of market dominance by an Indian Media company has been cited; leave alone the abuse of such a dominant position. In any case, the CCI exists to address any issue of potential abuse of dominant position. Thus, in the Indian Media context, the discussion and deliberation about any horizontal cross-media ownership restrictions is not warranted at all.

It may be mentioned that the present era is that of globalisation and consolidation by way of mergers and acquisitions so as to access and optimally utilise the resources of capital formation for the growth and development of the Media sector. The Indian Media industry has to compete with global Media companies in this sector. In order to match the might of these companies, they must have adequate technology, capital and manpower resources.

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Thus, the process of capital formation is one of the key ingredients to acquire and accumulate competitive strength and any kind of restrictions on this front are likely to adversely affect the said process, which would be prejudicial and detrimental to the growth of Indian Media companies.

Media companies create and monetise the same content across different platforms and Media, which allows them to leverage economies of scale and ultimately provide services to consumers of different strata, regions, etc, at competitive rates. Cross-media holdings allow entities to cross-subsidize and bring in synergies between different arms of Media entities that also allow them to operate in a free and democratic environment and not fall prey to solely commercial business objectives.

(ix) **The only monopolies in Indian Media relate to the monopolies by public broadcaster Prasar Bharati** which is the only entity allowed into terrestrial TV and AM Radio, and also is the only entity allowed to broadcast news and current affairs on Radio (as all private FM Radio companies can only air/rebroadcast the news bulletins by Prasar Bharati's All India Radio).

It has also been a well-documented fact (see: https://cmds.ceu.edu/article/2020-06-10/who-finances-indias-journalism) that "Commercial advertisers are the largest players in terms of funding spent in the Media in India, but the State also has a significant role, financing the country's public service broadcaster, shelling out public advertising money to commercial Media and holding a monopoly over the news Radio market." This report also states that "Large international players in Indian news Media include Facebook and Google who have been active in the small but rapidly expanding online news market. They maintain a duopoly in Digital advertising, collectively commanding 68% of the market in India and are the biggest competitors to news outlets in monetizing content online" and "The rise of Digital news along with various developments in content creation and discovery has motivated companies to engage with various models of funding such as paywalls, subscriptions, freemium model, crowdfunding, and philanthropy. However, such revenue streams contribute very little to whole Media funding pie, still dominated by advertising. The Indian state is also a significant funder of the news Media in the country. The Ministry of Information and Broadcasting funds public broadcaster, Prasar Bharati Corporation of India (PBC), and its Television and Radio arms, Doordarshan and All India Radio, through grants and subsidies."

In light of these clear findings, there is no need to further split the Media houses and instead there is a real need to look at State control over Media verticals and how this may be diluted to ensure wider access of independent news and views.

(x) **Multiple layers of laws already exist to regulate traditional Media and their Digital arms and there is no need of further regulation**: The Indian Media industry

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is overburdened with layers upon layers of sector-specific rules and regulations for both business and content.

(a) **Business aspects:** There are stiff rules for entry and existence into different Media sectors right from licensing to other aspects like Interconnect regulations. Most importantly, there are well-functioning entities like CCI, SEBI, etc, which regulate all aspects of relevant activity in the country. Hence, introducing further regulatory oversight or a new regulatory oversight body will only lead to instances of overlap of jurisdiction with the existing regulators, impinging upon the ease of doing business.

- There are enough regulations governing aspects relating to competition, abuse of dominant position, M&As, etc with The Competition Act, 2002 (Competition Act) which vests the CCI with the power to inter alia ex-post regulate anti-competitive agreements in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. The Competition Act also prohibits an entity/ group from abusing its dominant position, which may include practices resulting in denial of market access, in any manner. Subject to the prescribed thresholds under the Competition Act, combinations --which may include acquisition of one or more enterprises-- mergers or amalgamations --which cause or are likely to cause an appreciable adverse effect on competition within the relevant market in India-- are also regulated by CCI.

CCI has been designated as the subject matter regulator to regulate, investigate and act upon any anti-competitive activity across sectors. It has already examined and evaluated multiple matters relating to ownership and competition in the Media sector. The current regulatory regime is adequate to address all anti-competitive issues. The CCI is empowered to ex-ante regulate all acquisitions, mergers and amalgamations across all sectors, which exceed the thresholds provided under the Competition Act. The CCI has the machinery to undertake the required inquiries and analysis. There are also adequate mechanisms in place to ensure that the comments of the concerned statutory authority are considered. The Competition Act along with the rules and regulations framed thereunder form a comprehensive code to regulate, investigate and act upon anti-competitive activity which could threaten Media plurality.

**Sufficiency of Indian Competition Law:** Objects of the Competition Act, 2002 state that it is made "*…to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India…*" The Act regulates competition scenario in India extensively and its implementation has been appreciated by all institutions in India. In view of the extensive provisions of the Competition Act, any further regulation, in the garb of promoting '*plurality and diversity of views,*' would be excessive and may be suggestive of some other extraneous considerations.

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Hence, any kind of additional form of regulation recommended by TRAI on grounds of plurality is undesirable in light of the wider regulatory, economic, social and technological context in which Indian Media sector operates. By enacting the Competition Act, the Parliament is already seized of the concern and has completely taken care of adverse effects on competition and the factors affecting plurality, based on empirical studies of various economies worldwide.

- The Companies Act, 2013 (Companies Act) also provides for provisions governing compromise, arrangement, and amalgamations. It is to be noted that any scheme of merger, compromise or amalgamation is required to be approved by the National Company Law Tribunal, having jurisdiction. The Companies Act provides for the notice of proposed merger/ compromise/ arrangement to be sent to the concerned sectoral regulators. As such, Companies Act ensures that all stakeholders and sectoral regulators can raise concerns on the proposed merger/ compromise/ arrangement.

- The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Code), defines 'control' and the Code provides for open offer requirements when the non-public shareholding in a listed company exceeds prescribed thresholds. Further, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 provide for various disclosures to be made by listed entities, irrespective of the sector in which such entity operates.

(b) To regulate **content** alone, there are four-five layers of rules relating to content in each individual Media space as below:

- First, apart from Indian Penal Code, 1860, there are 30-40 central laws which regulate some aspect or the other of Media content including news and current affairs --like, Indecent Representation of Women (Prohibition) Act, 1986, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Protection of Children from Sexual Offences Act, 2012, Copyright Act, 1957 among others which Media entities adhere to.

- Second, there are also a huge number of individual entities which lay down dos and donts for journalistic coverage and content creation right from state police forces to the Election Commission of India and various Commissions including for children;
- Third, there are sector-specific content rules pertaining to the different Media sectors viz Norms of Journalistic Conduct in Press Council Act 1978, Program Code and Advertising Code in Cable Television Networks (Regulation) Act, 1995, Information Technology (InterMediary Guidelines and Digital Media Ethics Code) Rules, 2021 of IT Act, etc;
- Fourth, there are robust self-regulatory entities at industry association or council level which examine and penalize offenders. This is both at the industry association level like Press Council for Print, IBDF's BCCC and NBDA's NBDSA for TV as well as at external entity level like the Advertising Standards Council of India;
- Fifth, despite all the above, central government controls content via Inter-Ministerial Committee in the Ministry of Information and Broadcasting –which rules viz

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complaints for TV, FM Radio and a similar structure has been set up as *the third tier for Digital Media under the new IT Rules, 2021.*

It is clear that there is absolutely no vacuum in the legal regulation of Indian Media and that robust laws exist to ensure plurality of views following low concentration of ownership, and that the system also has a robust appellate mechanism as well.

(xi) **Position under other laws:** In the garb of promoting Media plurality, any curbs on horizontal cross-media ownership would effectively be against Article 19(1)(a) of the Constitution of India. The action of newspaper and TV establishments being forced to raise the prices of their products to meet the additional financial burden placed on them by being robbed of opportunities to operate multiple platforms, would adversely affect circulation of Newspapers and viewership of TV channels and hugely adversely impact their Digital arms as well. An additional outcome of forced financial burden on these establishments would be raising their advertising tariff, which would adversely affect their advertising revenues as advertisers would invariably shift elsewhere. A decline in revenue is bound to throttle the Press and would be a direct interference with the freedom of speech and expression of the Press, as upheld by the Hon'ble Supreme Court in the case of *Sakal Papers (P) Ltd.*v. *Union of India* [(1962) 3 SCR 842]

- Forcible imposition of constricted structures on newspaper and TV establishments and their Digital arms is an anathema to the economic liberalization policies of the Government of India. Further, a scattered Media would have no say and will not be able to play the role it has been entrusted in our polity. Small entities would be at the mercy of the Government of the day and would be intimidated into submission.

- If the CP results in any proposals to put barriers on Media entities to enter more / new platforms to better utilise their content, newspaper and TV industries in India will lose scaling-up benefits of cross-ownership with other forms of Media –which would be required for them to remain economically viable. No Media company can survive in today's evolving market conditions if it does not have access to medium of presenting content in form of text, audio and video. Any act to deprive a Media entity to have presence across different formats of Media would then also be against Article 19(1)(g) of the Constitution of India.

- By fragmenting Indian Media, advertiser's commercial speech will be adversely affected as well. Presently many Media houses can offer multiple platforms of Media advertisement to advertisers, thereby passing on benefits of synergy to consumers. A fragmented Media will drive up advertisement prices and subsequently drive-up consumer prices. Consequently, a free market will be adversely affected. Such an action would also be against Directive Principles of State Policy and act against consumer protection.

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(xii) **Cross-media curbs –product of a bygone era and being rolled back in the few countries which still have some remnants:** Cross-media restrictions were first imposed more than 60 years ago only in countries with very limited Media plurality –only a handful of Newspapers, TV and Radio channels –and more importantly, were triggered only by entities wanting to enter *terrestrial* TV which at that time had significant reach.

**However, not one of these factors is true for India. Even without mentioning the thousands upon thousands of Digital entities, the Indian traditional Media content industry has 909 permitted TV channels, 1,44,520 registered publications and 386 private FM Radio stations in numerous genres and in multiple languages, and is hence the most competitive and pluralistic in the world as far as content is concerned. *Moreover, terrestrial TV in India is the sole monopoly of Prasar Bharati and private sector is not even allowed into terrestrial TV. Hence the very basis for the effort at restrictions in a few other countries 60 years ago never even existed –or exists today-- in India.***

**However, even in such less competitive markets where the number of TV channels/registered publications/FM Radio are far less and where the language for communication is only English, the respective governments have been liberalizing Media ownership rules since 2006 and rolling back these restrictions because the advent of the Internet and the giant monopolies of Big Tech has made concepts like geographical market (and dominance in the same) totally redundant. Moreover, with Print and TV players losing out to Online, these countries wanted to ensure any cross-media restrictions are withdrawn/restricted significantly also so as to ensure the survival of traditional Print, TV and Radio companies.**

- TRAI's CP also acknowledges the change in regulations in international jurisdictions. For decades, the Federal Communications Commission's (FCC) Media ownership rules limited common ownership of broadcast Radio stations, broadcast Television stations, and daily Newspapers within the same local market. In 2017, the FCC repealed two of these rules, thereby permitting common ownership of Newspapers, Radio stations, and Television stations within the same local Television market. In addition, the FCC relaxed its rule limiting common ownership of Television stations within the same market[4]. To compete globally, Indian Media must be viewed similarly and not in a regressive manner. Some other examples:

- **UK:** The Communications Act 2003 enabled changes to media regulation by easing restrictions on cross-ownership of media. Owners were permitted to hold licenses of both national radio and television. Further, there have been recommendations by the Office of Communications in the UK to liberalise local cross-media ownership regulations.
- **Australia:** In September 2007, the Australian Government under liberal Prime Minister John Howard passed the Bill that scrapped restrictions such as the "one out of three" rule, which had earlier prevented companies from owning more than one form of Media (newspaper, Radio and Television stations) in the same market. It also abolished the reach rule, which prevented a single TV broadcaster from reaching more than 75% of the population[1].

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- **USA:** In 2021, the U.S. Supreme Court unanimously allowed the FCC to loosen local Media ownership restrictions like removing the newspaper/broadcast cross-ownership rule and the Radio/Television cross ownership rule as well as to relax the local TV ownership rule so as to facilitate industry consolidation as consumers have increasingly moved online. The court agreed that this would help ensure the economic survival of local Television amid heavy competition from Internet companies that provide video content. The Supreme Court also agreed that the historical justifications for the ownership rules no longer apply in today's Media market, and that permitting efficient combinations among Radio stations, Television stations and Newspapers would benefit consumers[2]
- **Hong Kong:** The rapidly changing Media landscape and technological advances has prompted a total rethink and it was observed that the proliferation of online infotainment covering a wide range of different tastes, focuses and stances meant any risk of editorial uniformity of traditional Media had been significantly reduced. It was also observed that the viewership and revenues of traditional Media was decreasing, and the Digital Media was increasing. Hence, in order (a) to facilitate innovation and investment in the industry to bring greater benefits to the community, and (b) to help traditional Media stay afloat amid increasing competition from Internet-based counterparts, [3]effective from 2021, Hong Kong eased the rules and permitted the newspaper owners, advertising agencies and other Media companies to get into the free TV, pay TV or Radio broadcasting business.
- **South Africa:** The government has released a draft policy white paper[4] to relax ownership rules[5]. As per the paper, "in an environment where markets are disrupted by technology developments, where Print Media companies are no longer the largest Media companies, and with the proliferation of on-demand content services, the proposed policy intervention will allow consolidation and the creation of synergies by various firms".

- **EU:** There are no European-wide ownership rules in place. Each member state has treated the issue separately, mostly with a de-regulatory trend.

Even in India, the viewership and revenues of traditional Media is decreasing, and the Digital Media is increasing. Under the circumstances, to even thinking of introducing horizontal cross-media ownership restrictions in 2022/23 to further stifle the traditional Media, will be ridiculous. On the contrary, with a view to encourage innovation and investment in the industry and to enable sustainable development of the traditional Media sector amid fierce competition from Big Tech and telecom, TRAI must recommend absolutely no restrictions on cross-media horizontal ownership. Needless to mention that any regressive policy controlling Media ownership would have a negative effect on the Media space in the country and not only take away the gains made by the industry in recent decades but would also result in de-growth, contraction and sickness of the industry.

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## 3. Major recommendations:

- *(i)* ***Media companies must be allowed horizontal integration so that they can survive by owning different forms of Media like Newspapers, TV, Digital and Radio as at present, most of which are in decline;***
- *(ii)* ***Media companies must be protected against Big Tech monopolies and abuse of dominance by them;***
- *(iii)* ***Digital Media publishers must be protected against any abuse of dominance by owners of the pipe;***
- *(iv)* ***Media broadcasting companies must be protected against vertically integrated entities like telcos owning and controlling both content and carriage. Hence, for a level playing field, the DTH (Direct-to-Home) broadcasting rules not allowing applicants more than 20% equity share cap in a broadcasting and/ or cable network company and vice versa, must be extended to other owners of the pipe like telcos which already own and control both content as well as distribution--and it is surprising that TRAI has neglected this particular aspect of common ownership of broadcasting and telecom in its CP. There are other checks and balances for DTH, including a limitation of 15% capacity reservation for vertically integrated broadcasters;***

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As TRAI Chairman Dr PD Vaghela himself was quoted in the Media as saying at a recent discussion on June 1, that as boundaries are blurring between the broadcasting and telecom sectors due to the advent of Digital technologies, there is a need to revisit the governance structure to ensure orderly growth of broadband, broadcasting and the IT sector. In the newly converged environment of broadcasting and broadband services where content consumption is increasingly shifting to smartphones and video consumption becoming the key driver of mobile data growth in India, it becomes imperative to bring direct broadcasting capabilities to mobile phones, he said, adding that it is anticipated that broadcast capable smartphones and mobile phones will be able to stream multiple high-quality video and audio services, optimally utilising valuable spectrum and easing the burden on cellular networks.

This is especially important because the fast evolving scenario hurts traditional Media:

- With the advent of OTT, telecom companies have been aggressive in pushing OTT content through their distribution chains, something which the TV sector has not been able to do due to instant regulations. Today, there are over 40 OTT platforms with 400 million customers; as per the FICCI-EY Report 2021, Digital subscriptions rose by 49% in 2020. Digital and OTT sectors registered a growth of 26%, the highest amongst other M&E segments. According to the PwC Report of Global Entertainment and Media Outlook 2020-2024, with a CAGR of 28.6%, India will be the fastest growing OTT market. It predicts 16% year-on-year decline in TV ad revenue instead. Any horizontal integration restrictions would effectively deprive the broadcast sector from meeting even the OTT challenge even as telcos have been given a free hand to deal with OTT competition –apart from ensuring the demise of independent Media distribution

entities since telcos are allowed unrestricted ownership of any content and any distribution platforms, unlike the broadcast sector.

- Despite the telecom sector directly competing with Media in terms of controlling the distribution of such content, unlike broadcasting, there are no restrictions or regulations on telcos owning Media content on multiple platforms like TV and Online –or broadcasting distribution including cable and satellite service providers. Hence, telcos can become the largest owners *and* distributors of content, data and information in every form and across all pipes. Their ownership of content and carriage across both broadcast and telecom raises hard questions on both dominance as well as possible abuse of dominance.

- Specifically in the distribution segment, there is lack of parity in the regulations and laws and is evident from the fact that telecom sector is not subject to regulations such as the Interconnect Regulations, Tariff Orders, etc., that broadcast Media is currently subject to, nor is there any mention of the convergence threat that telecom brings with it while even owning broadcast Media.

**The need of the hour therefore is to ensure strict adherence to fair and reasonable restrictions and guidelines within the vertically integrated Media value chain and to extend this to telcos as described above --while allowing free operation of Media entities across horizontal Media sectors. It is surprising that TRAI has not examined this in its CP. In the absence of such an approach, the Media sector and specifically the broadcast Media sector, is being unfairly singled out for examination of illogical and irrelevant horizontal cross-media restrictions (on the basis of purported control and dominance concerns which have proved to be bogus). Exclusionary market power concentrated with telecom companies that dominate the reach and distribution of content would be detrimental to the aim of plurality and diversity of content and outlets in the Media market –and especially when the same distribution companies own the same content.** It may also be not out of context here to mention that there are only a handful of players in the telecom sector and the public sector presence has been reduced to a great extent –and hence, this aspect is all the more cause for concern.

**It is clear that telcos' unrestricted transgression into the Media content and distribution space has encouraged complete vertically integrated ownership where the entire chain of content creation and delivery/distribution across multiple platforms is controlled by the same entities using their own infrastructure and platforms. This aspect needs specific attention from the sector regulators as it clearly poses a threat to a fair and level playing market for all constituents. There are no regulations at present to put a check on such vertical integration by telcos and it is vital that TRAI look at this challenge that poses a serious threat to the Media broadcasting segment. In fact, by not including or considering the impact of the telecom sector on Media distribution, the TRAI is pre-supposing that Media distribution will not be affected by the telecom companies, which is a totally wrong premise, as elaborated above.**

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- Hence, in light of the aforementioned fast evolving scenario, there is urgent need for a level playing field and to extend the 20% vertical integration equity cap** in broadcasting content/carriage to telcos as well, whereby a telecom operator would not be allowed to hold/own more than 20% of the total paid up equity in a content company and vice versa, and will also not be allowed to hold/own more than 20% of the total equity share in any other kind of Media distribution platform like cable network companies and vice versa.

*** Policy Guidelines of DTH dated 15.3.2001*

*Para 1.4 The Licensee shall not allow Broadcasting Companies and/or Cable Network Companies to collectively hold or own more than 20% of the total paid up equity in its company at any time during the License period. The Licensee shall submit the equity distribution of the Company in the prescribed proforma (Table I and II of Form-A) once within one month of start of every financial year. The Government will also be able to call for details of equity holding of Licensee company at such times as considered necessary.*

*Para 1.5 The Licensee company not to hold or own more than 20% equity share in a broadcasting and/or Cable Network Company. The Licensee shall submit the details of investment made by the Licensee company every year once within one month of start of that financial year. The Government. will also be able to call for details of investment made by the Licensee company in the equity of other companies at such times as considered necessary.*

*Further, the Amendment to the DTH Guidelines dt. 30.12.2020 imposes restriction on the a vertically integrated DTH as follows :*

*Para 3.Vertically lntegrated Entity: Reserving of operational channel capacity: A vertically integrated entity will not reserve more than 15% of the operational channel capacity for its vertically integrated operator. The rest of the capacity is to be offered to the other broadcasters on a non-discriminatory basis*

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## B. RESPONSES TO QUESTIONS:

*Our comments to each of the issues raised by the TRAI in this CP are captured below and are to be read in conjunction with the comments in Overall Note above.*

**INDIAN MEDIA AND ENTERTAINMENT (M&E) LANDSCAPE: TRENDS AND CHANGES**

**Q1. Media industry has expanded in an unprecedented manner. In addition to conventional Television & Print medium, the industry now comprises news & Media-based portals, IP based website/ video portals (including You-tube/ Facebook/ Twitter/ Instagram/ Apps other OTT portals etc.). Considering overall scenario, do you think there is a need for monitoring cross-Media ownership and Control?**

**Please provide detailed reasoning to support your answer.**

**Response:** No, there is no need to monitor cross-media ownership and control for horizontally integrated Media ---whether conventional TV, Print, Radio or Digital Media --and reasons are additionally given below. However, Media companies, must be protected against the abuse of dominance by Big Tech as well as vertically integrated telcos and/or those telcos who own broadcasting assets whether in content or carriage. In sum:

*(i) Media companies must be allowed horizontal integration so that they can survive by owning different forms of Media like Newspapers, TV, Digital and Radio as at present, most of which are in decline;*

*(ii) Digital Media companies must be protected against Big Tech monopolies and abuse of dominance by them;*

*(iii) Digital Media publishers must be protected against any abuse of dominance by owners of the pipe;*

*(iv) Media broadcasting companies must be protected against vertically integrated entities like telcos owning and controlling both content and carriage. Hence, for a level playing field, the DTH (Direct-to-Home) broadcasting rules not allowing applicants more than 20% equity share cap in a broadcasting and/ or cable network company and vice versa, must be extended to other owners of the pipe like telcos which already own and control both content as well as distribution--and it is surprising that TRAI has neglected this particular aspect of common ownership of broadcasting and telecom in its CP. There are other checks and balances for DTH, including a limitation of 15% capacity reservation for vertically integrated broadcasters;*

- New age tech companies like - Google including Google search & Youtube and Facebook including Instagram & Whatsapp control majority of market revenue share

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through their monopolistic power & strong hold in supply chain. They use traditional Media houses' trustworthy content to distribute on their platforms without sharing adequate revenue with publishers. Indirectly, they are controlling and dictating traditional Media houses to follow their rules for content distribution & revenue. TRAI has in para 2.10 to 2.13 rightly noted that the Digital Media industry is unable to tap benefits due to commanding tech giants like Google, FB, Twitter, etc. The said issue is already under investigation by CCI. The dominance and control exercised by Tech Companies like Facebook and Google (over 60%) is itself an indicator of the potential abuse and which gets further corroborated and re-enforced because of their non transparent behaviour when it comes to revenue sharing of advertising revenue. There is already a CCI case pending on the said issue wherein DG has been asked to investigate the unfair and monopolistic trade practices followed by FB and Google and alleged abuse of dominance practiced by them.

- A key argument against monitoring of Media ownership is based on the constitutional protection provided under Article 19(1)(a). Overbearing structural regulations indirectly trample upon the free speech rights enjoyed by the Media entities. The right to free speech of Media entities has been affirmed by the Hon'ble Supreme Court in a number of judgements. Other points include those below:

- Horizontal Cross-Media Ownership/Control: Is there a need?

  *The most important and basic point here is that plurality in Media ownership is not a requirement to ensure plurality in views:* This is obvious from the fact that different Media products owned by the same Media entity are run by entirely separate management and editorial teams, are designed to focus on their own differentiated target audiences and are hence usually entirely different in viewpoints from each other. Hence, the same Media entity with different Newspapers or TV channels, for instance, would perforce have different content strategies for each of them to ensure each caters to a different target audience --otherwise there would be no interest/buyers/viewers/readers for the same viewpoints across these different products and they would invariably fail with readers/viewers/listeners.

- In any case, Plurality increased manifold since 2014: Since TRAI's previous cross-Media ownership recommendations in 2014, this plurality has increased manifold with digitisation. Consequently, the consumer has access to more content than ever before –both from local and global platforms across Print, TV, Radio, OTT and social Media. There are 909 TV channels, 1,44,520 registered publications, 386 private FM Radio stations, 2000+ Digital news publishing platforms and over 40 OTT Platforms which are non-news Online Curated Content Providers (OTT-OCCP) available in India. This is in addition to the user generated content available across platforms such as YouTube and Twitter, for example.

| ***Media*** | ***2014*** | ***2021*** |
|---|---|---|
| TV channels | 826 | 909 |
| Pvt FM Radio stations | 243 | 386 |
| Registered publications | 94,067 | 1,44,520 |

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| OTT-OCCP | <10 | 40+ |
|---|---|---|
| Cinema screens | Approx. 10,000 | 9,423 |

The following free to air (FTA) platforms are also available in India:

- *43 million subscribers on the Free TV platform, DD FreeDish, which has over 200 Television channels and Radio stations*
- *Over 400 Radio stations operated by Prasar Bharti, the public broadcaster, and around 300 community Radio stations*
- *543 free to air (FTA) channels*
- *450mn+ users on FTA YouTube*

In addition to this, with the advent of the Internet, the Indian consumer has access to various international Media platforms across the world wide web and through applications, both free and paid for.

Hence, there is no question of a monopoly or "dominance" in any single market across any content Media entity. In fact, the Indian content Media sector is considered a hyper-competitive one and is the most pluralistic in the world; and any question of regulating on grounds of dominance or monopoly by content entities is farcical.

- Total monopoly over terrestrial/AM broadcasting and news on radio by Prasar Bharati: In fact it is pertinent to note here that there are over two dozen Doordarshan channels and many AIR Radio stations. In fact, it is Prasar Bharati, which is running a total monopoly since DD and AIR have an absolute monopoly over terrestrial TV and AM Radio. What is worse, is that AIR has an absolute monopoly over news on Radio across the whole of India, as it is the only one permitted to broadcast news, while private FM stations are still not allowed to carry self-generated news content and can only re-broadcast AIR news bulletins. The government should revisit this policy which is not in conformity with the plurality of views as suggested in this CP, given that as opening up of news for private FM Radio will, in fact, promote plurality of views in this sector.
- UK's Ofcom (Office for Communications, UK's communications regulator) undertook a 7 months public consultation exercise on measuring plurality. Its consultation involved stakeholder engagement, academic seminars, international benchmarking, extensive consumer research, an in-depth study of the provision of news and a review of the academic literature. Ofcom's stark observation on the assessments of Media plurality was that Media plurality should not be boiled down to simple market share measures and that *"Ownership plurality does not always ensure a plurality of news sources. For example, local commercial Radio stations often have separate owners but obtain their national news programming from the same source…"Ownership plurality does not necessarily ensure editorial or viewpoint diversity. Journalists, editors and producers may have a more direct impact on the views expressed in a Media outlet*

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*than the outlet owners. Editorial viewpoint and agenda setting is not always dictated by ownership. For example, ITV and Channel 4 have different news agendas, but they both source their national news from ITN. Also relevant is the argument that, in some cases, different sources of news offer similar perspectives, thus reducing the diversity of voice sought by ensuring different ownership."*[28]

- Economies like India require cross investments within a sector: The Indian Media economy requires cross-media holdings by which one Media segment can augment the growth of the other, considering the adverse growth environment. An economically well-placed Media entity should be permitted to invest in Print, Television, Radio, and Online Media segments and vice versa. Restricting companies from making investments in other Media segments will affect their growth and hinder expansion of business, which are vital for the Media industry to progress. It would also deprive companies to extend their expertise and goodwill to other Media segments which would otherwise bring in enhanced quality, optimum utilization of resources and most importantly will be able to cater to growing consumer demand for better information & entertainment services.

The TRAI should not proceed with any kind of proposal that fixes any threshold limits for holdings across-media to conclude that there is 'control' over that entity.

- Convergence and Media: In any case, with the advent of Digital/OTT/ On-Line Media, convergence is a tangible reality the world over and the term 'cross-media' is no longer relevant. Convergence, Internet, and Mobile telephony brings the newspaper (e-newspaper), TV (simulcast live streaming) and Radio channel on a single screen and or through mobile apps, and it has become mandatory and inevitable for every business house to adapt these fast changing technologies to cater to the fast changing tastes/ needs of its consumers/ reader/ viewers/ listeners etc. for which expansion of business activities is the only solution, failing which the economy will be adversely impacted. Thus, the very concept of specific Media markets/geographies has become irrelevant; with multiple technological methods developing to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium or indeed a geographical market. Hence not only is it not possible for a single entity to dominate any given "market" based on concentration, but market share in each geography within a Media segment is a redundant concept. Hence, there is no reasonable basis therefore to bring in any kind of cross-Media restrictions.
- International scenario: International markets which have defined the level of concentration in Media ownership and cross-media holdings have done so based on the peculiar requirements of their respective jurisdictions –which are no longer relevant and are hence being rolled back as detailed in Overall Note above. Cross-media regulations had come into play around 60 years ago in a few small countries like the UK which had only a handful of Newspapers or TV channels or Radio stations and were triggered when entities wanted to enter terrestrial TV. However, these are now being rolled back, not only because of greater competition, but as they have become irrelevant today in the face of convergence and new technology even as traditional Media has declined. As already outlined in detail, the situation in India has been vastly different as it is, regarding content, the most competitive Media market

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in the world, and in any case does not even allow private sector into terrestrial TV. But the most basic point, is that with the Internet and the huge monopolies by Big Tech, the traditional concept of geographical markets no longer apply; in fact, the US' FCC also agreed that the historical justifications for the ownership rules no longer apply in today's Media market, and that permitting efficient combinations among Radio stations, Television stations and Newspapers would benefit consumers[8]

Hence, there is no need for monitoring cross-media ownership and control for horizontally integrated Media entities in India. In fact, horizontal cross-media ownership is necessary for the viability of the Indian Media industry.

**Q2. Media has the capacity to influence opinion of masses, more so the news Media. Should there be a common mechanism to monitor ownership of Print, Television, Radio, or other Internet-based news Media?**

**a. If yes, elaborate on the Authority, structure and mechanism of such monitoring mechanism/ regime?**

**b. If no, should there be a self-regulatory mechanism by the industry? What should be the mechanism for defining and implementing such industry based self-regulatory regime? In case some players do not follow the self-regulation, what should be the procedure for enforcing such regulations?**

**Response:** No, there is no requirement for a common mechanism to monitor ownership of Print, Television, Radio, or other Internet-based news Media. As answered in detail in response to Q#1 above and in Overall Note, The Indian news media is the most pluralistic, competitive and diverse news market in the world and it is only the government-run/funded Prasar Bharati which has a monopoly over terrestrial TV, AM Radio as well as original programming on news and current affairs on FM Radio –which in itself reduces plurality. TRAI has not flagged any example of dominance, let alone abuse of dominance, anywhere in the CP.

- Here, it must be pointed out that there is a basic fallacy in TRAI's position. It seems to be leading with the premise that news Media is responsible in influencing the opinion of the masses and that ownership of multiple Media platforms by the same entity challenges plurality. This premise is completely wrong because we reiterate that *plurality in Media ownership is not a requirement to ensure plurality in views.* This is obvious from the fact that different Media products owned by the same Media entity are structured under different companies, run by entirely separate management and editorial teams, are designed to focus on their own differentiated target audiences and are hence usually entirely different in viewpoints from each other. Hence, the same Media entity with different Newspapers or TV channels, for instance, would perforce have different content strategies for each of them to ensure each caters to a different target audience --otherwise there would be no interest/buyers/viewers/readers for the same viewpoints across these different products and these products would invariably flop. **In fact, even in the same company within the conglomerate, one news channel would often be taking a totally different**

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**editorial stance from its own sister TV channel because their target audiences and content strategy are totally different. Here it must be noted that a Media conglomerate present in many different Media segments drives plurality because it can offer a differentiated product matrix to cater to different kinds of audiences and advertisers—something which standalone entities are less able to do as they cannot cross-subsidise and so end up offering the same undifferentiated content "that sells".**

- In any case, News Media, in any form whatsoever, is a highly overregulated and over-monitored sector, and any further regulation or monitoring mechanisms will only muzzle the news Media and stifle its already declining growth trajectory. Herewith just a glimpse of the layers and layers of regulation that the Indian news Media industry is subject to:

(a)There are a plethora of regulations governing **business aspects** relating to competition, abuse of dominant position, M&As, etc with Competition Act, 2002 which vests the CCI with the power to inter alia ex-post regulate anti-competitive agreements in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. The Competition Act also prohibits an entity/ group from abusing its dominant position, which may include practices resulting in denial of market access, in any manner. Subject to the prescribed thresholds under the Competition Act, combinations, which may include acquisition of one or more enterprises, mergers or amalgamations, which cause or are likely to cause an appreciable adverse effect on competition within the relevant market in India, are also regulated by CCI.

- **Sufficiency of Indian Competition Law:** Objects of the Competition Act, 2002 state that it is made "*…to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India…*" The Act regulates competition scenario in India extensively and its implementation has been appreciated by all institutions in India. In view of the extensive provisions of the Competition Act, any further regulation, in the garb of promoting '*plurality and diversity of views,*' would be excessive and may be suggestive of some other extraneous considerations.

Hence, any kind of additional form of regulation by TRAI on grounds of plurality is totally undesirable in light of the wider regulatory, economic, social and technological context in which Indian Media sector operates. By enacting the Competition Act, the Parliament is already seized of the concern and has completely taken care of adverse effects on competition and the factors affecting plurality, based on empirical studies of various economies worldwide.

CCI has been designated as the subject matter regulator to regulate, investigate and act upon any anti-competitive activity across sectors. It has already examined and evaluated multiple

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matters relating to ownership and competition in the Media sector. The current regulatory regime is adequate to address all anti-competitive issues. The CCI is empowered to ex-ante regulate all acquisitions, mergers and amalgamations across all sectors, which exceed the thresholds provided under the Competition Act. The CCI has the machinery to undertake the required inquiries and analysis. There are also adequate mechanisms in place to ensure that the comments of the concerned statutory authority are considered. The Competition Act along with the rules and regulations framed thereunder form a comprehensive code to regulate, investigate and act upon anti-competitive activity which could threaten Media plurality.

- The Companies Act, 2013 (Companies Act) also provides for provisions governing compromise, arrangement, and amalgamations. It is to be noted that any scheme of merger, compromise or amalgamation is required to be approved by the National Company Law Tribunal, having jurisdiction. The Companies Act provides for the notice of proposed merger/ compromise/ arrangement to be sent to the concerned sectoral regulators. As such, Companies Act ensures that all stakeholders and sectoral regulators can raise concerns on the proposed merger/ compromise/ arrangement.

- The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Code), defines 'control' and the Code provides for open offer requirements when the non-public shareholding in a listed company exceeds prescribed thresholds. Further, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 provide for various disclosures to be made by listed entities, irrespective of the sector in which such entity operates.

- There are also designated authorities in place, which consider the ownership, control, FDI, annual compliances and related issues which pertain to all categories of the company such as Industry ministry's DPIIT, MCA, SEBI and RBI apart from the Ministry of Information and Broadcasting, when there is foreign investment, loan arrangement with foreign entities or change of shareholding structure of any Media company.

(b) This apart, to regulate **news content** alone, there is also over-regulation, with four-five layers of rules relating to content in each individual Media segment as below:

- First, apart from Indian Penal Code, 1860, there are 30-40 central laws which regulate some aspect or the other of news content --like, Indecent Representation of Women (Prohibition) Act, 1986, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Protection of Children from Sexual Offences Act, 2012, Copyright Act, 1957 among others, which Media entities adhere to.

- Second, there are also a huge number of individual entities which lay down dos and donts for journalistic coverage right from state police forces to the Election Commission of India and various Commissions including for children;

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- Third, there are sector-specific news Media rules pertaining to the different Media sectors viz Norms of Journalistic Conduct in Press Council Act 1978, Program Code and Advertising Code in Cable Television Networks (Regulation) Act, 1995, Information Technology (InterMediary Guidelines and Digital Media Ethics Code) Rules, 2021 of IT Act, etc;
- Fourth, there are robust self-regulatory entities at industry association or council level which examine and penalize offending news entities. This is both at the industry association level like Press Council for Print, IBDF's BCCC and NBDA's NBDSA for TV as well as at external entity level like the Advertising Standards Council of India;
- Fifth, despite all the above, central government controls content via Inter-Ministerial Committee in Ministry of Information and Broadcasting –which rules viz complaints for TV, FM Radio and a similar structure has been set up as *the third tier for Digital Media under the new IT Rules, 2021.*

It is clear that there is no vacuum in the legal regulation of Indian news Media and that robust laws exist to ensure plurality of views following low concentration of ownership, and that the system also has a robust appellate mechanism as well.

- We strongly believe that news Media in India, across platforms and technologies, must be governed by the principles of self-regulation. There already exists robust self-regulation mechanisms across the Media sector relating to content and the need of the hour is to strengthen and give more power to the self-regulatory bodies rather than to formulate additional layers of regulations on the Media sector. Keeping in mind the evolving self-regulatory approach in the Digital Media space and the already existing robust self-regulation system in Print and TV sectors, we are of the view that there is absolutely no need for any measures to monitor or regulate ownership across news media or indeed any content sectors.

Hence, there is no requirement to bring in any form of mechanism (common or otherwise) or regulation to monitor ownership of Print, TV, Radio and other Internet-based news Media. As stated before, India has a vastly plural news space and any horizontally integrated entities actively differentiate content within the same companies let alone the same mediums. In any case, there already exist expert mechanisms like CCI to examine issues that may crop up from time to time.

**Q3. There are regulatory agencies like CCI and SEBI among others that monitor and regulate mergers, acquisitions, and takeovers. Is there a need for any additional regulatory/ monitoring mechanism? Do you think there's a need to monitor takeovers, acquisitions of Media companies, especially the news Media companies?**

**3.1 If yes, which agency/ ministry should be entrusted with the task of such data collection, regulation & monitoring?**

**a. Whether such monitoring/ control be ex-ante as is the case with combinations in the Competition Act 2002?**

**b. What should be the procedure of reporting and monitoring?**

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**What should be the periodicity of such reporting?**

**c. What should be the powers of the concerned authority for enforcing regulatory provisions, inter-alia including imposition of financial disincentives, cancellation of license/ registration etc.?**

**3.2 If no, please provide an elaborate justification as to why there is no need for such a mechanism? Provide market data to substantiate your opinion.**

**Response:** No, there is no need for any additional regulatory/ monitoring mechanism to monitor and regulate mergers, acquisitions, and takeovers. There is also no need to monitor takeovers and acquisitions of Media companies, especially the news Media companies.

- Regulatory supervision over control and ownership of Media entities, i.e., via the CCI, SEBI, the National Company Law Tribunal (NCLT), the Industry ministry's DPIIT, etc. already exists and is sufficient for all contours of the aforesaid topic:

  **Anti-Competitive Agreements, Abuse of Dominance, Mergers and Acquisitions of Media Companies**: The CCI has an all-encompassing jurisdiction over entities (private, public as well as listed) across different sectors, including the Media and broadcasting sector, where the issue concerns an aspect of competition that seems to violate the Competition Act, 2002. CCI has been designated as the subject matter regulator to regulate, investigate and act upon any anti-competitive activity across sectors. It has already examined and evaluated multiple matters relating to ownership and competition in the Media sector. The current regulatory regime is adequate to address all anti-competitive issues. The CCI is empowered to ex-ante regulate all acquisitions, mergers and amalgamations across all sectors, which exceed the thresholds provided under the Competition Act. The CCI has the machinery to undertake the required inquiries and analysis. There are also adequate mechanisms in place to ensure that the comments of the concerned statutory authority are considered. The Competition Act along with the rules and regulations framed thereunder form a comprehensive code to regulate, investigate and act upon anti-competitive activity which could threaten Media plurality.

Thus, the CCI is well equipped to handle any competition concerns that arise from M&As, takeovers and acquisitions and there is no need for separate, additional regulation.

- **Regulation of Foreign Investment**: Prior approval of the Central government, through the Foreign Investment Facilitation Portal of the DPIIT, is required in case of FDI in the news Media sector.
- **Regulations of Arrangements and Amalgamations**: The NCLT and NCLAT are empowered to sanction and approve compromise (amicable agreement where mutual concessions are made), arrangements (process by which the share capital of the business is reorganised either by the consolidation or division of shares), and amalgamations (where two businesses are willing to combine or carry out their business together) under the Companies Act, 2013.

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- **Maintenance of Transparency**: Vide I&B ministry's notification dated 16.11.2020, all news websites/portals, news aggregators and news agencies operating through Digital Media, with foreign investments under the prescribed threshold, must submit, *inter alia*, details such as the shareholding pattern, names and addresses of the shareholders, promoters and significant beneficial owners to the ministry.
- **Corporate Restructuring of Listed Entities**: In case of listed entities (including Media companies that are listed), SEBI already oversees the corporate restructuring. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations) set out the procedure to be followed in case of acquisition of 25% or more of voting rights or control over the target company. The Takeover Regulations provide for the public disclosures, open offer, minimum price etc. These regulations have very specific reporting / compliance requirements, and focus on the intricate details particular to acquisitions, leading to detailed scrutiny.

- We do not see the need to bring in additional restrictions on M&A deals in the Indian Media sector. M&A deals are integral to any business restructuring exercise, whether in Media or other sectors. Specific guidelines and rules govern M&As and any fear of hindrance to competition or abuse of any dominant position by an entity would be adequately addressed under Competition laws. The CCI is empowered to regulate corporate combinations that are anti-competitive and result in abuse of dominant position and is also granted powers to investigate and disallow any mergers or proposed mergers that may cause an adverse impact on competition. Despite the Small Target Exemption as allowed currently, the Indian Competition law framework is well equipped to deal with issues affecting competition across sectors, including the M&E sector.

Other regulators such as SEBI, DPIIT and NCLT/NCLAT have sufficient powers under respective statutes to oversee and regulate M&A deals across sectors. It is our view that there exist enough regulatory mechanisms to monitor acquisitions/ takeovers etc. in the Indian Media sector and hence there is no need to impose additional restrictions or monitoring for M&As in Media to achieve this objective.

- The right to exit the business is as valuable a right as the right to enter business, and the same should be as smooth as entering the business. This is part of ease of doing business. No entity can be permanently assumed to be carrying on the business for indefinite period of time. There are many business cycles an entrepreneur has to go through. At some point of time, it may not be feasible for the business entity to make further investments or stay afloat. Hence, not to allow any business restructuring in terms of sale, merger, transfer of interest is harmful to the industry. There are enough conditions in the licenses or permissions which ensures entry of serious players. However, once the business is set up and made operational, a business entity should be allowed to get the right value of its investments if such entity decides to exit business due to any reasons. There can be measures to check that the new entity fully meets the eligibility criteria to hold the licenses. However, M&A should not be restricted if it meets the general laws of the land. If M&A are restricted, then it directly affects the valuation of business entities operating in that space. There may be some entities which may not be able to continue with the operations due to financial or

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other reasons. If there is no exit option, such business entities may be forced to shut down operations resulting in waste of resources. This situation is unwarranted and also directly impacts the new investment in the sector and results in unemployment also. No investor would like to put money where the exit is difficult and uncertain.

- It is again submitted that TRAI is proceeding on the premise that M&A deals in the Media sector, especially news Media, have a big impact on viewpoint plurality. As mentioned earlier, common horizontal integration is actually the best way to ensure different content strategies and different viewpoints across various platforms under the same roof. Further, it is not necessary that Media plurality can be achieved only by fragmented ownership and control. Dissemination of factual information is more important than plurality. Too much emphasis on Media plurality is unwarranted. It is well imaginable that if hundreds of opinions are taken on a particular issue, then effectively no decision making can happen. The country cannot progress if there are too many divergent views on any aspect. In that scenario, there can be no change whatsoever which can be expected. Further, as explained earlier, it is totally wrong to assume that an entity with a horizontal cross-media ownership will disseminate similar views on issues.

- Finally, as submitted earlier, all that is required to be done, is that broadcasting companies must be protected against vertically integrated entities like telcos owning and controlling both content and carriage. Hence, for a level playing field, all that is required is that the DTH (Direct-to-Home) broadcasting rules not allowing applicants more than 20% equity share cap in a broadcasting and/ or cable network company and vice versa, must be extended to other owners of the pipe like telcos which already own and control both content as well as distribution.

**Q4. Please suggest the most suitable criteria to define and measure Ownership/Control along with suitable reasoning. Define Control and prescribe the statutory/ regulatory/ legal powers to enforce such criteria of Control.**

**Response:** There is absolutely no need to examine, define and measure ownership/control through any criteria for horizontal cross-Media holdings. Please refer to our submissions made to Q1 above.

**Q5. Should the licensor, based on recommendations of the concerned monitoring agency/ regulator, restrain any entity from entering the Media sector in public interest? Please elaborate your answer.**

**Response:** Media is often termed as the fourth estate or the fourth pillar of democracy and its need to remain neutral is paramount. Hence, in this backdrop, we submit that the following

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must be restricted from entering the Media sector --and if they are currently present, then a suitable exit route in a specific time frame must be recommended:

*(i) Political parties/groups, Political bodies*

*(ii) Religious bodies*

*(iii) Urban and local bodies, Panchayati Raj bodies and other publicly funded bodies*

*(iv) Central government ministries and departments, Central government-owned companies, undertakings, Joint Ventures of the Central government funded entities*

*(v) State Government Departments, State Government owned companies, undertakings, Joint Ventures of the State government funded entities*

The entities referred to above should mean to cover not only companies but also sole proprietorships, association of persons, body of individuals, partnership firms, limited liability partnerships, corporate bodies, trusts (including discretionary trusts) and undertakings and inter-connected undertakings.

While extending the general disqualifications to other entities including surrogate entities, the I&B Ministry should exercise its powers of prohibition only on the basis of substantial information, due, fair and transparent process with prior intimation and opportunity and on the basis of evidence --and not merely on the basis of 'opinion'.

While Media has tremendous potential to inform citizens about events and issues that occur in their world, it also has unparalleled potential for abuse by political partisans to propagate and further their own agenda. The goal of any rule or regulation brought upon the Media must necessarily achieve the objective of preventing abuse and dominance of the Media by such forces and to ensure unbiased coverage of public issues.

**Q6. Which of the following methods should be used for measuring market concentration?**

**(i). Concentration Ratios**

**(ii). Lerner's Index**

**(iii). Hirschman-Herfindahl Index (HHI)**

**(iv). Any other**

**Please comment on the suitability of HHI for measuring concentration in a Media segment in a relevant market. In case you support "Any other" method, please substantiate your view with a well-developed methodology for measuring concentration in a Media segment in a relevant market**

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**Response:** In our opinion, there is absolutely no need to examine, define and measure ownership/control as well as "market" concentration.

As outlined earlier, convergence has made the concept of "market", "geographic market" and hence "concentration" totally redundant: Convergence has made it possible for us to watch content online, on mobile devices, across geographical boundaries and virtually removing any kind of demarcation whatsoever to any given Media platform. Online/Digital Media has made it possible to read text, watch videos, listen to audio and also interact on one single platform, completely dispensing with traditional forms of viewing. The consumer today is making decisions about his/her unique mix, being much more active than conventional Media would allow. In fact, Newspapers, TV and Radio are available on a mobile device and online and are read in every corner of the globe.

Hence, the term "cross-Media" has become irrelevant and so has the concept of "cross-Media restrictions". With the defined borders of platforms diminishing, how can one define a "relevant market" in light of such trends in Indian Media? With multiple technological methods developing to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium. It is also not possible for a single entity to dominate any given market based on market share in a given geography within a Media segment because with tech, geographical boundaries do not exist. There is no reasonable basis or the need therefore to adopt any kind of measurement techniques that help derive "relevant markets" and "concentrations" for the same.

**In any case, as repeatedly outlined earlier, Indian media content is available through lakhs of publications and hundreds of TV and radio channels, well apart from the thousands of digital entities. There is hence no question of "concentration" in content media, even if a "market" could be found anywhere.**

**Q7. What all genres shall be considered for the purpose of overseeing of Media ownership to ensure viewpoint plurality? Please elaborate your response with justifications.**

**Response:** We are clear that there is totally adequate viewpoint plurality and that there is no need to oversee media ownership to ensure the same. Hence, flagging any specific genres for the purpose of overseeing of Media ownership to ensure viewpoint plurality does not arise.

Media ownership has nothing to do with viewpoint plurality. All Media companies present in different forms of Media have entirely separate companies and teams to run them and hence, these all have separate viewpoints on the hundreds of issues that crop up in a day's news cycle. Moreover, these companies go out of their way to ensure these different Media outlets do not read or sound the same to ensure differentiated content for the consumer and hence, Media companies owning many forms of Media are perforce, able to ensure view point plurality as a natural consequence.

- It is again submitted that there is a basic fallacy in TRAI's position. It seems to be leading with the premise that ownership of multiple Media platforms by the same entity challenges plurality. This premise is completely wrong because we reiterate that *plurality in Media ownership is not a requirement to ensure plurality in views.* As

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outlined above, different Media products owned by the same Media entity are structured under different companies, run by entirely separate management and editorial teams, are designed to focus on their own differentiated target audiences and are hence usually entirely different in viewpoints from each other. Hence, the same Media entity with different Newspapers or TV channels, for instance, would perforce have different content strategies for each of them to ensure each caters to a different target audience --otherwise there would be no interest/buyers/viewers/readers for the same viewpoints across these different products and these products would invariably flop. In fact, even in the same company within the conglomerate, one news channel would be taking a totally different editorial stance from its own sister TV channel because their journalistic teams, target audiences and content strategy are totally different.

- **Here it must be appreciated that a Media conglomerate present in many different Media segments drives plurality because it can offer a differentiated product matrix to cater to different kinds of audiences and advertisers—something which standalone entities are less able to do as they cannot cross-subsidise and so end up offering the same undifferentiated content "that sells".**

***Combined Response to Q6 and Q7:***

In our opinion, there is absolutely no need to examine, define and measure ownership/control as well as "market" concentration. Hence, flagging any specific genres for the purpose of overseeing of Media ownership to ensure viewpoint plurality does not arise.

To begin with, it is our strong submission (and of many others in the industry as well) that at the outset, there is no threat to viewpoint plurality or diversity of views in the Indian Media context. So the question or need for deriving ways and means to ensure the same does not arise at all. We strongly oppose the TRAI's view and basic premise that cross-media holdings negatively impact viewpoint plurality and hence measures need to be undertaken to devise rules/restrictions that can ensure the same. As detailed in our submissions, we draw attention to the fact that with the kind of fragmentation seen in the Indian Media industry, with so many players competing with one another, (over 1,40,000 publications, over 900 TV channels, over 350 private Radio stations, fast growing OTT and Digital players), there is no threat whatsoever of dilution of plurality or dearth in diversity of opinions as regards any information presented to readers/viewers/listeners. Indian laws that govern Television news Media already contains specific provisions, as part of regulations, license conditions etc., that govern the functioning of Media.

- <u>Already existing massive plurality has increased manifold in last decade:</u> If the primary basis to devise Media ownership rules is to ensure viewpoint plurality, then as far back as 2009, the Administrative Staff College of India (ASCI) Report referred to by TRAI during the earlier consultation, clearly mentioned that as regards the TV market, there was no significant concentration and dominance in the market for Hindi and English language and with local channels also being available, the concern of lack of plurality of news, views and opinions was non-existent. As repeatedly outlined in Note and answers above, today, that scenario has become far, far more competitive and plural,

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especially with the advent of Digital technology. Hence there can be absolutely no concerns about viewpoint plurality in India today.

With that premise being questioned once again, as there exists in our opinion no such concerns as far as Indian Media is concerned, there is no merit in going into in-depth review of the 'methods' to arrive at 'relevant market' and its parameters of measurement. TRAI has sought views on methods without really analyzing the need for measurement itself.

- Convergence has made the concept of market share, specific geographic market redundant: Convergence has made it possible for us to watch content online, on mobile devices, across geographical boundaries and virtually removing any kind of demarcation whatsoever to any given Media platform. Online/Digital Media has made it possible to read text, watch videos, listen to audio and also interact on one single platform, completely dispensing with traditional forms of viewing. The consumer today is making decisions about his/her unique mix, being much more active than conventional Media would allow. In fact, Newspapers, TV and Radio are available on a mobile device and online. Hence, the term "cross-Media" has become irrelevant and so has the concept of "cross-Media restrictions". With the defined borders of platforms diminishing, how can one define a 'relevant market' in light of such trends in Indian Media? With multiple technological methods developing to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium. It is also not possible for a single entity to dominate any given market based on market share in a given geography within a Media segment because with tech, geographical boundaries do not exist. There is no reasonable basis or the need therefore to adopt any kind of measurement techniques that help derive 'relevant markets' based on which Media ownership rules are proposed to be framed by the TRAI.

Thus, any talk of horizontal Media ownership/control/concentration restrictions represent an unnecessary and counterproductive throwback to an era when consumers had far, far fewer choices for news and information than they have today. TRAI needs to take into account the trends in Media consumption caused by the growth of Digital Media and the manner in which viewers/audiences have started consuming information or seeking entertainment, making it impossible and irrelevant to 'measure' or 'define' relevant markets.

- Challenge of defining 'markets' in India viz-a-viz international markets: The Media landscape in India is strongly characterized by significant linguistic diversity. Regional languages have evolved through history and local conditions, and reflect area specific culture. It also reflects local demographics, for example, in historically multi-lingual states such as Karnataka, Andhra Pradesh & Bihar, we have people speaking several different languages within each state and therefore the demand to receive quality programmes, the right to see and express themselves, their culture, their language and their life experiences through Television programmes which affirm their sense of self, community and place in their own preferred language.

This diversity in turn creates a very lucrative market for regional language Media for entertainment, news & information. The Media is dependent on its

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audience/consumers/who decide which Media they will use or subscribe to for their consumption of information. If they don't like what they see on TV or read in the papers, then the ratings and circulation figures fall, and the Media organizations respond by 'giving the public what they want'. For instance a news report on any current event in a state would be effectively understood, consumed and accessed if it is broadcast in regional Media. In terms of relevance and importance, regional news Media plays a very vital role in making more people aware of happenings closer to them.

This is unlike international markets like the US and UK, which do not face such linguistic challenges as it's a completely homogeneous market and English is accepted across its Media environment as a medium for news, information and entertainment. Such a challenge is therefore unique to countries like India which is dominated by diverse cultures and socio-economic factors. In India, the linguistic diversity and presence of multiple channels of Media both at the national level and in the regional space, creates optimum diversified views and Media plurality as it is impossible for a single Media outlet or owner to have 'influence' or 'dominance' and therefore the concept of deriving markets in India is irrelevant.

An average Indian **transits from one Media to the other**, across the day, choosing the Media most suitable to her/his needs & convenience. For a Media entity the focus lies in being able to cater to this audience on as many occasions as possible. Hence, Media needs to be able to effectively cater to the average Indian consumers' Media habits. Media needs to be given the freedom to be able to grow its Media interest in light of changing consumer needs and to be able to cater to societies' interests in providing News and Entertainment to a consumer who is accessing Media 24X7, across physical, Digital and mobile devices. In this scenario, cross-media ownership needs to be encouraged, so that Media enterprises can help the Indian consumer to be informed and entertained in the manner the household chooses. This will preserve Media freedom, ensure plurality and protect the fundamental principles of democracy, which recognizes the importance of the Fourth Estate.

- Content genres and impact on viewpoint plurality: There have been unconvincing submissions made by certain stakeholders in the previous consultation that only news and current affairs genre should be considered while devising ways and means to ensure viewpoint plurality in Media, emphatically suggesting that other genres such as "entertainment" genres are not to be considered for achieving this objective. General Entertainment Channels not being purely news and current affairs channels can also influence 'viewpoint' and have a greater impact as TV news viewership is almost irrelevant in the overall TV viewership landscape.

Non-news content has far more reach and popularity - Even a small opinion conveyed through content has a huge impact on the viewer's viewpoint. Therefore, GECs have often been used as effective platforms to carry social messaging, for promotion by celebrities of various causes and by few political personalities being regularly featured on it to promote their sponsored social causes, in effect, their own political agendas. The BARC Year Book of 2020[22] clearly show that the viewership of GEC channels are 50% and the news (including business news) channel is only 10%.

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In comparison, the news genre is driven by content in the form of reporting on current incidents and developments and primarily broadcasting of views of people involved in a story, comments and reviews of experts, analysts, and reactions from concerned groups, individuals and affected factions. The self-regulatory guidelines imposed on news channels effectively ensure that the channel portrays neutral views and is objective in its reporting. So to presume that only the news and current affairs genres 'influence' public opinion is totally baseless.

- Allowing unrestricted access to a Media entity to voice its views on all available delivery platforms is in fact propagating Media plurality. A Media entity must be allowed to use Print, Television, Radio, or Internet, at the same time, to air its views. Any form of ownership control will restrict the freedom of press and would in fact be a hurdle to achieving 'Media plurality'.
- Restriction on investment (based on equity holding threshold) in the Indian Media sector will restrict companies from achieving technological developments at reasonable costs and deprive companies of optimum use of resources. For efficiencies of scale, production quality and satisfying consumer preferences, it is critical that Media companies are allowed to invest across-media sectors.
- Unlike Indian Media industry, cross-media restrictions were triggered 60 years ago when many international democracies had very few players in the market and wanted to enter terrestrial TV, thereby giving rise to the concentration of power in few hands, which prompted restrictions. In comparison, India hosts over 900 TV Channels (Around 400 news channels amongst them) operated by over 350 broadcasting entities and in any case, terrestrial TV ownership in India has always been monopolized by the Government through Prasar Bharti as is the case with short/medium wave Radio through All India Radio. Currently, this imposes the biggest dominance with its massive influence over Radio & Television broadcasting. Additionally, cable companies must carry these channels at non-commercial rates. This indirectly puts pressure on them to recover revenues from private sector players. For fair play and to ensure an unbiased democratic approach the Government should refrain from controlling Media houses/platforms since the government is the most powerful and influential entity of the country.

- Advancement in technology and convergence has made a big impact on the way news and information is delivered to the consumer. The world is witnessing the growth of alternative service providers in the form of mediums like blogs, social Media platforms like Twitter and Face book that also cater to news and information. News consumption is drifting away from Newspapers and other traditional forms of dissemination and more and more consumers are accessing their need for news and infotainment through such new mediums. Online Media has made it possible for consumers to read text, watch videos, listen to audio and also interact on one single platform completely dispensing with traditional forms of viewing. With the defined borders of platforms steadily diminishing, how can one define a 'relevant market' or calculate 'reach' in light of such changing trends in Indian Media, let alone impose 'ownership' rules?

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We conclude by reiterating that Media ownership rules/controls in cross-Media holdings are unnecessary in India in the absence of demonstrable risk that any Media owner's control of a particular segment presents concerns of spillover effects into other segments of the Media.

**Q8. Which Media segment amongst the following would be relevant for encouraging viewpoint plurality?**

**1. Print Media viz. Newspaper & magazine**

**2. Television**

**3. Radio**

**4. Online Media/Digital Media/OTT**

**5. All or some of the above**

**Please substantiate your answer with appropriate reasons.**

**Response:** All of the aforesaid Media segments are relevant for encouraging viewpoint plurality, as they collectively play a vital role in this. However, since the question is being asked in respect to cross-media ownership, to reiterate, there is absolutely no need to examine, define and measure ownership/control as well as "market" concentration with regard to any/some/all of these areas; hence flagging any specific genres for the purpose of overseeing of Media ownership to ensure viewpoint plurality does not arise.

- We again stress that we strongly oppose the TRAI's view that Media ownership (cross holdings) impact viewpoint plurality and the reasons have been outlined repeatedly in previous answers. Moreover, with the kind of fragmentation seen in the Indian Media industry and so many players competing with one another, (over 1,40,000 publications, over 900 TV channels, over 350 private Radio stations and fast growing OTT and Digital players), there is no threat whatsoever of dilution of plurality or dearth in diversity of opinions in any of the genres outlined above.
- Moreover, it is essential that content Media companies are allowed to own all genres/forms of content media:

- Media companies the world over are facing decreased revenues, as a result of several factors especially the threat from Big Tech large global companies that have become the "go-to" destination for news and entertainment.
- There is a paradigm shift towards relaxing cross-media ownership rules in the few jurisdictions that still had them. Such relaxations were much favored after economic recessions, where one Media sector was growing and the other was facing the crunch. **Experts believe that had cross-holdings been allowed/ implemented, then one business could have saved the other part of the Media by cross investing/ takeovers and creating synergies.**
- Globally, Print Media is on the verge of a shutdown and are facing stiff competition from unregulated Big Tech. The American and other Western newspaper markets have suffered significant reversals in readership and revenue and hence journalism is

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suffering from cost-cutting measures, reduced consumption, declining resources and its accompanying challenges. The Print sector is forced to move into the Digital & Television Media because the consumer is spending more time on these platforms and therefore advertising revenues are moving to these platforms as well. With Newspapers already on the decline globally, and facing stiff challenges from online Media, further restrictions on cross-media holdings across-media sectors will make it impossible for Print Media to survive.

- The Television sector is still grappling with the pandemic-induced slow down and is yet to bounce back fully. With stagnant or slow growth, TV companies are under tremendous pressure to deliver quality content across all genres at high costs.

  Hence, the efficiencies gained from combined Media holdings will allow Media companies to compete better in today's changing marketplace. In addition, the cost savings generated by common ownership allow stations to add local newscasts and other locally oriented programming. Even within the same vertical segment, greater choice in the form of multiple formats can thus be made available to consumers.

- To understand the nature of cross-media holding, it is imperative to take a step back and examine the holding's economic motivations. In the information and communication sector, two broad themes emerge –and none of them impact viewpoint plurality negatively, infact these trigger more plurality.

- The first sees holding in the Media and entertainment sector as reactions to exogenous technological, policy or regulatory changes to the industry's structure. These forces create opportunities for previously distinct operations to combine.
- A second and more "active" interpretation develops the strategic view of cross holding in Media as a continuous drive by companies to consolidate their operations and improve their efficiency through economies of scale and scope and synergies. Please note that ths has nothing to do with viewpoint plurality as the different media require different editorial teams in any case even the attempt is to structure totally different media products so that they are clearly differentiated for different audiences..

Any or all of these factors may combine in a particular case, providing an important backdrop against which to assess the cross holding and any competition issues.

- <u>Competition and pluralism theories distinguished</u>: Competition and pluralism are not the same concepts and should not be confused. They represent two separate issues, yet their assessment will typically be intertwined. Existence of competition denotes existence of plurality. There is massive competition in the Indian Media space and in the event there is a threat to competition or unfair trade practices are being followed, then the CCI comes into play and serves as a redressal forum/mechanism to address issues governing competition or the lack of it. Effective competition today in Media already fosters –and is the only way to foster-- not only economic growth but also plurality.

In fact, it can even be concluded that there exists "excess" plurality in the news genre in Indian Media. In Television for instance, there are currently over 900 channels with around 400 news

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channels. However, the viewership of TV news is almost irrelevant in the overall TV viewership landscape. As per the FICCI-EY Report[24], the viewership of different genres is as under:

GEC – 49.8%

Movies – 23.8%

News – 10.4%

Sports – 1.9%

Kids – 7.4%

| Language | Share of Viewership | No. of Channels |
|---|---|---|
| Hindi | 43% | 175 |
| Telegu | 13% | 50 |
| Tamil | 12% | 65 |
| Multiple | 7% | 43 |
| Kannada | 7% | 36 |
| Marathi | 5% | 27 |
| Bangla | 5% | 36 |
| Malyalam | 3% | 28 |
| Oriya | 2% | 19 |
| Bhojpuri | 1% | 15 |
| Punjabi | 1% | 21 |
| English | 1% | 60 |

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| | | |
|---|---|---|
| Gujarati | 0% | 15 |
| Assamese | 0% | 15 |
| Others | 0% | 8 |

| **Channel Genre** | **Share%** | **No. of Channels** |
|---|---|---|
| Regional GEC | 31% | 101 |
| Hindi GEC | 19% | 31 |
| Hindi Movies | 16% | 38 |
| Regional Movies | 10% | 54 |
| Kids | 6% | 20 |
| Sports | 4% | 31 |
| **Regional News** | **4%** | **127** |
| **Hindi News** | **3%** | **28** |

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| Regional Music | 3% | 34 |
|---|---|---|
| Hindi Music | 2% | 15 |
| Regional Comedy | 0.8% | 5 |
| Regional Religious | 0.7% | 8 |
| Hindi Religious | 0.6% | 4 |
| Infotainment | 0.6% | 34 |
| Regional Kids | 0.6% | 5 |
| English Movies | 0.2% | 13 |
| **Hindi Business News** | **0.03%** | **2** |
| **English News** | **0.03%** | **11** |
| English Music | 0.03% | 2 |

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| | | |
|---|---|---|
| English GEC | 0.01% | 11 |
| **<u>English Business News</u>** | **<u>0.002%</u>** | **<u>3</u>** |
| Hindi Tele Shopping | 0.002% | 1 |
| TOTAL | 100.00% | 578 |

*Source: BARC | India | NCCS 2+ | Wk10-20'22 | Share%*

**The above figures clearly show that the <u>English News viewership has only .03% share</u>, the Hindi news category has 3% share and all the regional news channels account for 4% share of total TV viewership. The Hindi & regional GEC genre holds 49% share of the total TV viewership. This makes the TV news segment extremely small and insignificant and imposing any kind of restrictions therefore on this segment will impact its chances of survival.**

**Another aspect to be given thought is to the fact that the presence of "excess" or widespread participation of players in the Media sector, specifically in the news segment, may actually give rise to malpractices by a few players thereby reducing the economic value of the segment. The ideal scenario is to have Media entities –whether horizontally integrated or not—which produce credible content which caters to the diverse interests of India. These few groups may in turn have many products/offerings. There is an urgent need to differentiate between number of offerings and the number of such Media groups. The emphasis is to ensure transparency and fair play. Media groups should be allowed to have as wide a spectrum as possible in terms of their offerings across-media sectors, provided, however, there exists no scope for malpractices by virtue of any potential vertical control.**

Hence, we do not see any need to impose restrictions on cross-media ownership holdings, or for that purpose, to identify sectors or genres to devise ways and means to ensure plurality. We therefore must have forbearance as far as imposition of any kind of restrictions on cross-media holdings is concerned. If firms are allowed horizontal integration and growth, they will be able to remain viable and provide better quality content to the consumer. The overall experience of the consumer will improve significantly given the ability of the Media groups to deliver content across multiple platforms.

To cite an example by drawing a parallel to another service: Should there be restrictions placed for providing Internet banking for banks with a physical presence? Surely not. As

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technology progresses and customers accept and shift to new mediums, so too the businesses to evolve. In the same example, it cannot be said that the banks will have to shut down their physical branches if they provide online banking.

As is evident, there is too much competition in the Media sector and the content media needs to see some healthy consolidation across genres.

**Q9. Should the word 'Media' include Television, Print Media, Digital/online Media, and other Media entities? Alternatively, whether 'Television' as a Media segment should include only DPOs (including LCOs) or only Broadcasters or both for ensuring viewpoint plurality in the Television segment? Please justify your answer.**

**Response:** Yes, the word "Media" should include Television, Print Media, Digital Media/online Media entities, as already defined by the existing rules. The word 'Media' per se will convey any means of communications used to store or deliver information or data. However, depending on the type of medium, the different mediums are termed as 'Print Media', 'Television Media', 'Digital/online Media'. Hence, it can be said that all types of Media are a means to deliver information or data to the people.

The activity of 'Television' involves broadcasting and distribution and hence should include both broadcasters and DPOs; the first referring to content creation and transmission, the second to content carriers and distribution/delivery to end users/ viewers. Distribution involves re-transmission of the Television signals through various permitted mediums such as DTH, IPTV, HITS and MSO (including LCOs) whereas broadcasting involves content generation, aggregation and supply of Television signals in a manner that it is made available to the targeted viewers by using satellites.

- TRAI Interconnection Regulations, Tariff Order and QoS Regulations contains elaborate provisions related to the distribution aspects of the 'Television' and there are 'Must Provide', 'Must Carry' clauses and various other provisions to ensure effective interconnection between the broadcaster and the distributor and that there is transparency, non-discrimination amongst the service providers. There are further vertical integration restrictions in case of DTH / IPTV / HITS services wherein a broadcaster entity is not allowed to own more than 20% of the shareholding either directly or indirectly in these distribution platforms and similarly these distribution platforms cannot directly or indirectly own more than 20% in Television broadcasting.
- In this regard, the following measures need to be undertaken:

(i)There are no such restrictions on telecom companies and in order to ensure a level playing field, TRAI must recommend and ensure that no telco can hold/own more than 20% in any broadcasting company whether content or carriage, and vice versa.

(ii) While the aforesaid 20% vertical integration guidelines for some DPOs are already effective, what the TRAI may recommend is the much-needed clarification on the 20% shareholding concept i.e. that shareholding of 20% does not directly or indirectly indicate having "control" in an entity. While equity holding may be the most quantifiable means to measure control, we are however of the view that it is not possible to determine a minimum

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equity holding to determine 'control' of an entity. Our view emanates from the fact that even a shareholder who holds as less as say, 20%, may be in a position to influence the decisions of the entity if the entity is widely held.

(iii)The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (as amended in 2020) notified by the TRAI has also addressed some of the issues on vertical integration in the form of introducing a transparent regime based on MRP price declaration by the broadcasters and by introducing provisions of interconnection (including 'must provide' and 'must carry') between the service providers (broadcasters and distributors) on transparent and non-discriminatory terms etc. There is a need to ensure restrictions imposed under the extant regulations apply to all service providers who are vertically integrated. For instance the reserving of operational channel capacity of not more than 15% for a vertically integrated operator as recommended by the TRAI and prescribed by the I&B Ministry for DTH, similar threshold needs to be put in place for other distribution platforms as well.

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**Q10. What should be the basis of classification of relevant geographic markets for evaluating concentration in Media ownership? Should it be aligned with state or a region/ Metro/ Non-metro cities or the whole country? Please support your answer with reasons.**

**Response:** In our opinion, there is absolutely no need to examine, define, measure or evaluate ownership/control as well as market concentration and hence there is neither any need nor any basis for classification of "geographic" markets. **As we have already stated in Overall Note and in response to previous questions, Digital technology has totally erased any concept of "geographic" markets.**

**Convergence has made the concept of "market", "geographic market" and hence "concentration" totally redundant:** Convergence has made it possible for us to watch content online, on mobile devices, across geographical boundaries and virtually removing any kind of demarcation whatsoever to any given Media platform. Online/Digital Media has made it possible to read text, watch videos, listen to audio and also interact on one single platform, completely dispensing with traditional forms of viewing. The consumer today is making decisions about his/her unique mix, being much more active than conventional Media would allow. In fact, Newspapers, TV and Radio are available on a mobile device and online and are read in every corner of the globe.

Hence, the term "cross-Media" has become irrelevant and so has the concept of "cross-Media restrictions". With the defined borders of platforms diminishing, how can one define a "relevant market" in light of such trends in Indian Media? With multiple technological methods developing to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium. It is also not possible for a single entity to dominate any given market based on market share in a given geography within a Media segment because with tech, geographical boundaries do not exist. There is no reasonable basis or the need therefore to adopt any kind of measurement techniques that help derive "relevant geographic markets" and "concentrations" for the same.

**Q11. Should the relevant geographic market be defined on linguistic criteria? If yes, please list the languages which may be included in this exercise, along with justifications.**

**Response:** In our opinion, there is absolutely no need to examine, define, measure or evaluate ownership/control as well as market concentration and hence there is no need or basis for classification of "relevant geographic markets". As we have already stated, Digital technology has totally erased any concept of "geographic markets.

**Convergence has made the concept of "market", "geographic market" and hence "concentration" totally redundant:** Convergence has made it possible for us to watch content online, on mobile devices, across geographical boundaries and virtually removing any kind of demarcation whatsoever to any given Media platform. Online/Digital Media has made it possible to read text, watch videos, listen to audio and also interact on one single platform, completely dispensing with traditional forms of viewing. The consumer today is making decisions about his/her unique mix, being much more active than conventional Media would allow. In fact, Newspapers, TV and Radio are available on a mobile device and online and are read in every corner of the globe.

Hence, the term "cross-Media" has become irrelevant and so has the concept of "cross-Media restrictions". With the defined borders of platforms diminishing, how can one define a "relevant market" in light of such trends in Indian Media? With multiple technological methods developing to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium. It is also not possible for a single entity to dominate any given market based on market share in a given geography within a Media segment because with tech, geographical boundaries do not exist. There is no reasonable basis or the need therefore to adopt any kind of measurement techniques that help derive "relevant geographic markets" and "concentrations" for the same.

**Q12. Should the relevant geographic market be defined uniformly for the whole country? Is there a need to adopt separate criteria for certain states and/or Union Territories in light of their peculiar circumstances such as difficult terrain, hilly region, huge distance from mainland, low Media penetration etc.?**

**In case you support the need of a separate criteria for certain states and/or union territories, please specify such states and/or union territories and the criteria suitable for them along with appropriate justifications.**

**Response:** Not in our opinion. There is absolutely no need to examine, define, measure or evaluate ownership/control as well as market concentration and hence there is no need for classification of "geographic" markets. As we have already stated, Digital technology has totally erased any concept of "geographic" markets.

**Convergence has made the concept of "market", "geographic market" and hence "concentration" totally redundant:** Convergence has made it possible for us to watch content online, on mobile devices, across geographical boundaries and virtually removing any kind of demarcation whatsoever to any given Media platform. Online/Digital Media has made it possible to read text, watch videos, listen to audio and also interact on one single platform,

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completely dispensing with traditional forms of viewing. The consumer today is making decisions about his/her unique mix, being much more active than conventional Media would allow. In fact, Newspapers, TV and Radio are available on a mobile device and online and are read in every corner of the globe. Also it is pertinent to note that Indian readers do not only have access to Indian newspapers but also digital version of leading newspapers across the globe, which is a glaring example of irrelevance of the terms 'geographic/al markets'.

Hence, the term "cross-Media" has become irrelevant and so has the concept of "cross-Media restrictions". With the defined borders of platforms diminishing, how can one define a "relevant market" in light of such trends in Indian Media? With multiple technological methods developing to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium. It is also not possible for a single entity to dominate any given market based on market share in a given geography within a Media segment because with tech, geographical boundaries do not exist. There is no reasonable basis or the need therefore to adopt any kind of measurement techniques that help derive "relevant geographic markets" and "concentrations" for the same.

**Q13. Which of the following metrics should be used to measure the level of consumption of one type of Media (Media outlet) in a relevant market?**

**13.1 Volume of consumption**

**13.2 Reach**

**13.3 Revenue**

**13.4 Any other**

**Please elaborate your response with justifications.**

**In case you find "Any other" metric to be suitable for the said purpose, you are requested to support your view with a detailed methodology.**

**Response:** Not relevant in view of our submissions to previous questions.

**Response to Q10 – Q13:** Please additionally refer to our submissions made to Q6.

**Q14. Whether circulation details of Newspapers should be used as a proxy for readership to measure the reach of Media outlet in Print segment in a relevant market? In case you disagree, kindly provide a detailed methodology to measure the level of consumption of Print Media segment.**

**Response:** Not relevant in view of our clear view that there is no need to measure reach/consumption as there is no lack of plurality. There is absolutely no need to examine, define, measure or evaluate ownership/control as well as so called concentration. All Print entities have Online editions and this Digital tech in any case negates the very concept of "relevant market" as these are available globally. Please see our previous answers.

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**Q15. According to you, what measures should be adopted to discount the impact of the bouquet system of channel distribution on the viewership of Television channels? Please support your suggestion with reasoning.**

**Response:** No detailed comment. However, the fact is that the bouquet system of channel distribution benefits the entire value chain of the broadcasting industry, be it the broadcasters, distributors or the consumers. Under the present TRAI regulations, the broadcasters are obligated to offer their channels on a-la-carte basis. In addition, they can offer the mix of channels in form of bouquets. However, the consumer interest is fully protected as there is a complete choice available to him/her to select channels on a-la-carte basis or in the form of bouquets of the broadcasters/DPOs. Further the MRP based regime also protects consumer interest as the price payable by the subscribers for subscribing a particular TV channel is clearly known to him. The price comparison of a channel on a-la-carte / bouquet is also clearly made known. Then it is purely a consumer choice to pick a-la-carte or a bouquet of channels. Further, the consumer has full freedom to select or de-select any a-la-carte channel or any bouquet without any restrictions or hindrances. Hence, we strongly feel that the positive aspects of the bouquet system of channel distribution should be emphasized, in no manner the bouquet offerings should be further restricted and there is no question of discounting the impact of bouquet system on Television viewing.

**Q16. Would it be appropriate to put restrictions on cross-media ownership in one or more type of Media segment based on mere presence of an entity in any segment in a relevant market?**

**Response:** No, in our opinion, it would be totally inappropriate to put restrictions on cross-media ownership in one of more type of Media segment based on mere presence of an entity in any segment in a so called “relevant market”. In fact, such a restriction would be unfair, arbitrary and against the spirit of a free, fair and open market, in addition to being violative of Article 19(1)(g) of the Indian Constitution.

**Q17. In case you support the restriction based on mere presence in the relevant market, what all segments should be included for imposition of restrictions?**

**Further, in how many segments, presence of an entity should be allowed i.e. should it be “2 out of x” or “1 out of x ”, x being the total number of segments?**

**Response:** Not applicable in view of previous comments.

**Q18. Would it be suitable 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 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. In case you support such restriction, please suggest the threshold level of market share for the purpose of imposing cross-Media ownership restrictions.**

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**Response:** We vehemently state that we do not support any restrictions on horizontal cross-media ownership and the reasons have been outlined in detail in the Overall Note as well as preceding answers.

Restriction on horizontal ownership has a hugely adverse impact on market competition and Media plurality; restricting an entity in a specific Media segment solely on the ground of its presence in another segment is totally arbitrary and does not provide sufficient ground to impose restrictions. Mere presence in one horizontal segment does not justify the restriction since it seems to operate on the ridiculous assumption of adverse impact in the event the entity makes entry to another content segment.

**Q19. Whether in your opinion, the restrictions on cross-Media ownership should be imposed 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.**

**Response:** We vehemently state that we do not support any restrictions on cross-media horizontal ownership and the reasons have been outlined in detail in the Overall Note as well as preceding answers.

**Q20. In case your response to the above question 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.**

**(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.**

**Response:** Not Applicable in view of previous comments. We vehemently state that we do not support any restrictions on horizontal cross-media ownership.

**Q21. Please provide your inputs on the suitability of imposing restrictions on cross-Media ownership only in highly concentrated relevant markets using Diversity Index Score as a tool to measure concentration. In case you find the abovementioned criteria of restricting cross-media ownership appropriate, 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**

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**the contribution of the entity in the Diversity Index Score of the relevant market reduces below 1000 within three years.**

**Response:** Not Applicable in view of previous comments. We vehemently state that we do not support any restrictions on horizontal cross-media ownership.

**Q22. In case you consider any other criteria for devising cross-media ownership rules to be more appropriate, please suggest the same with sufficient justifications.**

**Response to Q16 – Q22:** Not Applicable in view of previous comments. We vehemently state that we do not support any restrictions on horizontal cross-media ownership. Please refer to our submissions made to Q6 as well as other relevant questions.

**Q23. Considering the fact that sectoral regulators have played important role in bringing necessary regulations to facilitate growth and competition and to promote efficiency in operations of Telecom Services (Telecommunications and Broadcasting), in your opinion, should Merger & Acquisitions in Media sector be subjected to sector specific regulations? Please justify your response.**

**Q23a. If yes, which among the following should be taken as the criteria for the same- (i) minimum number of independent entities in the relevant market**

**(ii) maximum Diversity Index Score**

**(iii) any other measure**

**Q23b. If no, what mechanism would you suggest for regulator to use for ensuring smooth and equitable growth of the sector?**

**Response:** No, Merger & Acquisitions in Media sector should not be subjected to sector specific regulations because SEBI, CCI and ROC are already regulating the same and applicability of additional regulations might result in creating overlap with all the existing regulations. Further, Chapter XV of the Companies Act, 2013, titled "Compromises, Arrangements and Amalgamations" lays down the procedure for the merger or amalgamation of two or more entities, and in doing so ensures that multiple safeguards are in place so as to prevent an improper, illegal and anti-competitive take-over of an entity or the exploitation of a smaller player by an entity having a larger market share. Thus, there is no requirement of sector-specific regulations for mergers and amalgamations.

Even in the CP, TRAI acknowledges that even if the (so-called) dominant Media groups acquire some platforms (in Digital Media or other segments), this cannot hinder the dissemination of plurality of viewpoints, as a variety of viewpoints will be available in the Digital Media segment.

In our opinion M&A in Media sector is not required to be subjected to sector specific regulations at all. Please refer to our submissions made to Q3.

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**Q24. In your opinion, should any entity be allowed to have an interest in both broadcasting and distribution companies/entities?**

**Q24a. If "Yes", how would the issues of vertical integration be addressed?**

**Q24b. If "No", whether a ceiling of 20% equity holding 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?**

**Response:** Vertical integration, though not inherently wrong, has the capability of allowing for market capture and resultantly for anti-competitive market conditions. Hence, the current ceiling of 20% equity holding for vertical integration is 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.

- In our opinion, for a level playing field, this must be extended to the telecom sector as well, and 20% equity holding cap should be applied to both vertically integrated telcos as well as telcos which own broadcasting and Media assets whether in content or carriage.

**Q25. Please suggest any other measures to determine "Control" and the limits thereof between the broadcasting and distribution entities.**

**Response to Q24 & Q25:** Vertical integration often manifests in the form of ills of monopolies. Vertically integrated entities negotiate mutually beneficial deals amongst the integrated entities and at the same time put up offers for the same deals which may be detrimental to the business interests of entities which are not vertically integrated. In India, the Media distribution industry, in the absence of effective competition at the last mile, is highly monopolized. The reason why vertical integration is particularly relevant to the competition issue in the Media sector is because some Media companies have during the past years actively sought to take vertical integration as far as possible.

- India Television caters to about 180 mn subscribers and the market share of the distribution companies are as under[26]:

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| DPO | Market Share | Owner | Vertical Integration |
|---|---|---|---|
| Free Dish | 22% | | |
| Tata Sky | 12% | Disney | TV, DTH |
| Airtel DTH | 11% | Airtel | Telecom, DTH |
| Sun Direct | 6% | Sun TV | TV, DTH, MSO |
| D2H | 5% | | |
| SITI | 5% | Zee | TV, DTH, MSO |
| Dish TV | 5% | Zee | TV, DTH, MSO |
| GTPL | 4% | Reliance | Telecom, TV, MSO |
| Hathway | 3% | Reliance | Telecom, TV, MSO |
| DEN | 2% | Reliance | Telecom, TV, MSO |
| TCCL | 2% | | |
| KCV | 2% | | |
| ARASU | 1% | | |
| FASTWAY | 1% | | |

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| | | | |
|---|---|---|---|
| IN | 1% | | |
| HITS | 1% | | |
| SCV | 1% | Sun TV | TV, DTH, MSO |
| VK DIGITAL | 1% | | |
| Kable First | 1% | | |
| UCN | 1% | | |
| Sri Sai Communications | 1% | | |
| Asianet | 1% | | |
| Radiant | 1% | | |

As may be noted from above, about 49% of the market share is held by five major TV broadcast/telecom companies: Disney owns 12% of market share, Airtel 11%, Zee 10%, Reliance 9% and Sun TV 7%. This is not healthy for competition and proper growth of the Media industry. This apart, the recent challenge has been telcos' ownership of all parts of the broadband and mobile value chain from content to carriage and the same owners' unfettered entry to won and control Media content and carriage as well.

For vertical integration not to be misused and serve as a detriment to the growth of this industry, certain pertinent and critical decisions need to be taken. The need of the hour is to bring in strictly and strongly enforceable fair practices, transparency and non-discrimination between entities in a vertically integrated Media segment, the absence of which will give rise to malpractices and discrimination by dominant entities viz-a-viz other constituents within the segment.

The I&B Ministry and TRAI, recognizing this issue, had already imposed certain restrictions on vertical integration. The DTH guidelines restricts broadcasting companies and/or cable network companies to own more than 20% of the told equity of the DTH company and vice versa. Likewise, the HITS Guidelines restricts broadcasting companies and/or DTH companies to own more than 20% of the told equity of the HITS company and vice versa.

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The following measures now need to be undertaken:

(vi) There are no such restrictions on telecom companies and in order to ensure a level playing field, TRAI must recommend and ensure that no telco can hold/own more than 20% in any broadcasting company whether content or carriage, and vice versa.

(vii) While the aforesaid guidelines are already effective, what the TRAI may recommend is the much-needed clarification on the 20% shareholding concept i.e. that shareholding of 20% does not directly or indirectly indicate having "control" in an entity. While equity holding may be the most quantifiable means to measure control – however we are of the view that it is not possible to determine a minimum equity holding to determine 'control' of an entity. Our view emanates from the fact that even a shareholder who holds as less as 20% (say) may be in a position to influence the decisions of the entity if the entity is widely held.

(viii) The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (as amended in 2020) notified by the TRAI has also addressed some of the issues on vertical integration in the form of introducing a transparent regime based on MRP price declaration by the broadcasters and by introducing provisions of interconnection (including 'must provide' and 'must carry') between the service providers (broadcasters and distributors) on transparent and non-discriminatory terms etc. There is a need to ensure restrictions imposed under the extant regulations apply to all service providers who are vertically integrated. For instance the reserving of operational channel capacity of not more than 15% for a vertically integrated operator as recommended by the TRAI and prescribed by the I&B Ministry for DTH, similar threshold needs to be put in place for other distribution platforms.

In order to ensure a level playing field for all participants in a given Media sector, it is imperative that specific and strict measures are put into place, in the absence of which vertically integrated groups/entities could dominate the market and render it uncompetitive, thus leaving the industry in bad health.

**Q26. Do you think that the disclosures/ compliance reports for different type of licensees as described in Part II of Chapter VI are sufficient to ascertain the Media Ownership/ Control by certain entity(ies)? If no, please specify, what additional details should be sought by the licensor or the regulator for effective monitoring.**

**Response to Q26 & Q27:** In our opinion, the current guidelines/compliance structure, including disclosure of requisite information by licensees are adequate to ensure effective compliance of the existing legal regime. The existing mandatory disclosure requirements for DTH, FM Radio, IPTV, HITS, Broadcasters (under Uplinking and Downlinking guidelines) and

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Print Media are sufficient and no further mandate on periodic disclosure requirements need be formulated for Media ownership as is being discussed by TRAI.

**Q27. What additional parameters, other than those listed in this consultation paper, could be relevant with respect to mandatory disclosures for effective monitoring and compliance of Media ownership rules? Further, what should be the periodicity of such disclosures? Please justify your answer.**

**Response:** Not applicable in view of previous comments. We vehemently state that we do not support any rules/restrictions on cross-Media horizontal ownership.

Having addressed specific issues raised by the TRAI as above, we submit below our overall perspective on the broader issues concerning Media ownership and control:

**Key Aspects:**

| | |
|---|---|
| Constitutional Freedom: | • Any cross-Media curbs on Media will put Media's Right to Freedom of Speech and Expression at risk. |
| Convergence and Media | • TRAI has ignored the impact of common ownership and control of broadcasters and telcos as well as vertical integration in telcos. |
| Media Ownership/Control: Is there a need? | • TRAI has not been able to specify where there is a problem to justify the control measures under discussion. |
| Diversity – Indian Media Context | • TRAI has ignored the hugely diverse Indian Media landscape –the most competitive in the world. |
| Media Plurality | • There exists ample Media plurality in India – in fact, India is the most diverse, competitive and plural Media market in the world as far as content is concerned. |

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| Concurrent Laws- Competition law and TRAI's CP | • TRAI has in its efforts confused competition laws with sectoral regulations, creating the prospect of overlapping jurisdictions. |
|---|---|

**Q28. Stakeholders may also provide their comments on any other issue relevant to the present consultation.**

**Response:**

- There is absolutely no threat to Media plurality in India --the most competitive, diverse and pluralistic Media market in the world as far as content is concerned. Digital technologies have, infact, made it far more pluralistic since the previous TRAI recommendations of 2014. In fact, TRAI has not provided any evidence that cross-media ownership is adversely affecting Media plurality in India.
- In any case, TRAI has been considering the wrong premise that concentrated horizontal ownership may result in an absence of plurality. The opposite is actually true.
- Any restriction on horizontal cross-Media ownership would have a hugely adverse impact on market competition and Media plurality; restricting an entity in a specific Media segment solely on the ground of its presence in another segment is totally arbitrary and does not provide sufficient ground to impose restrictions. Mere presence in one horizontal segment does not justify any restriction since it seems to operate on the ridiculous assumption of adverse impact in the event the entity makes entry to another horizontal content segment.
- TRAI had already recommended restrictions on certain entities from entering the Media sector i.e. political, religious and government owned/influenced entities etc. If these restrictions are effectively implemented –and we support the same—then there is no further need to have sweeping regulations covering Media, which the TRAI is attempting to do.
- There is absolutely no need for any horizontal cross-media ownership restrictions, and on the contrary it is most important for Media companies to be allowed to be viable; this is possible in the following manner:

(i) **Media companies must be allowed horizontal integration so that they can survive by owning different forms of Media like Newspapers, TV, Digital and Radio as at present, most of which are in decline;**

ii. **Media companies must be protected against Big Tech monopolies and abuse of dominance by them;**

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(iii) **Digital Media publishers must be protected against any abuse of dominance by owners of the pipe;**

(iv) **Media broadcasting companies must be protected against vertically integrated entities like telcos owning and controlling both content and carriage. Hence, for a level playing field, the DTH (Direct-to-Home) broadcasting rules not allowing applicants more than 20% equity share cap in a broadcasting and/ or cable network company and vice versa, must be extended to other owners of the pipe like telcos which already own and control both content as well as distribution--and it is surprising that TRAI has neglected this particular aspect of common ownership of broadcasting and telecom in its CP. There are other checks and balances for DTH, including a limitation of 15% capacity reservation for vertically integrated broadcasters.**

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[1] https://www.abc.net.au/news/2017-09-14/Media-law-changes-bill-passes-senate/8946864

[2] https://www.reuters.com/business/finance/us-supreme-court-lets-fcc-loosen-Media-ownership-rules-2021-04-01/

[3] https://www.scmp.com/news/hong-kong/economy/article/2133993/hong-kong-ease-restrictions-domestic-tv-licensees-first-major

[4] https://www.gov.za/sites/default/files/gcis_document/202010/43797gon1081.pdf

[5] https://advanced-Television.com/2020/10/15/south-africa-to-relax-tv-ownership-rules/

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