

BY ELECTRONIC MAIL

Dated: 07.06.2022

To,
The Advisor (B&CS)
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
Old Minto Road,
New Delhi – 110 002

Dear Sir,

Re: Submissions to Telecom Regulatory Authority of India (“TRAI”) in response to the Consultation Paper on “Issues related to Media Ownership”.

At the outset, we would like to thank the Authority for giving us an opportunity to tender our views on the **“Consultation Paper on Issues related to Media Ownership”**.

In this regard, we have perused the Consultation Paper carefully. We hereby submit our comments attached as **ANNEXURE-A**. The said comments are submitted without prejudice to our rights and contentions, including but not limited to our right to appeal and/ or any such legal recourse or remedy available under the law.

The same are for your kind perusal and consideration.

Yours Sincerely,

DocuSigned by:

Daphne Menezes

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Ms. Daphne Menezes

Associate Director -Legal Affairs

Encl: As above

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Submissions by Discovery Communications India to the Telecom Regulatory Authority of India (“TRAI/Regulator/Authority”) in response to the Consultation Paper on Issues related to Media Ownership

INTRODUCTION

India prides itself as being the largest democracy and with its rich cultural heritage and diversity our media industry strives to replicate the same. Media isn't just a medium to entertain the audience of our country but it is the fourth pillar of our democracy bringing forth the facts and figures as it is and focuses on informing the general public on important societal issues.

Media Ownership in the country has been a hotly debated topic and the government proposes to put restrictions and regulations in the media industry which is a growing concern within the media industry since it may lead to wide scale suppression and change the way media behaves drastically. The approach of minimum government intervention and allowing the market forces to operate is the need of the hour for growth of this industry. In this backdrop please find below our response.

ANNEXURE-A

RESPONSES TO SUMMARY OF ISSUES FOR CONSULTATION AS RAISED UNDER CHAPTER VII OF THE CONSULTATION PAPER ARE HERE ASUNDER: -

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 YouTube/ 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.

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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.

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

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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?

Ans. India is a country with rich cultural, linguistic, and religious diversity and even the media mirrors this! Like our country, our media is rich and varied with diverse ownership at the national level and concentrated at the regional level. Today, there are approximately more than 17,000 registered daily newspapers, 900 television channels of which more than 400 are news channels in the country including English, Hindi and a variety of other regional languages.

Cross-ownership of media is within the ambit of competition law in India. It has been defined as the “strategic acquisition, alliance and information partnership between companies in order to improve access to consumers”. There exists no specific definition of media concentration in the existing legislations in India nor is the term defined specifically in terms of audience share, circulation, turn/over/revenue, share capital or voting rights. The media concentration has only been defined and understood in terms of maintaining competitive neutrality and preventing adverse competition in the market. However, defining market segments and the parameters for market concentration should be left to the Competition authorities in India. MIB and TRAI have already formulated laws, guidelines and regulations impacting vertical integration, which take into account single person/company or group attempting to “control’ distribution/aggregation in the broadcasting/telecommunications sector. This affects the right to free speech and the right

to freely practice trade and business and furthermore, it has been pointed out that the Internet, which is increasingly gaining prominence as news dissemination platform, invalidates any argument of media concentration.

We don't find the Ld. Regulator's argument that growing cases of cross media ownership shall result in disruption of viewpoint plurality. There is no data to support this argument, nor has the Ld. Regulator furnished any. Today's media market is extremely diverse and is spread across print, television as well as the internet which leads to a lot of heated competition therefore, cross media ownership is the least concerning issue surrounding the market today. Currently, the Competition Commission of India with its varied methods of assessing the competitive scenario in the media and entertainment industry is more than capable enough to monitor any and all matters of cross media ownership and therefore, the Ld. Regulator need not bring in any other mechanism to monitor the same.

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?

Ans. Mass media has a huge influence on how facts are viewed and debated in a society. Independence and pluralism of media, opinions and views safeguards our democratic system. Monitoring and ensuring ownership pluralism supports independence and freedom of choice as well as the media sector's economic strength and efficiency.

The steady growth of the media industry in the country shouldn't be a concerning issue for the government since it's largely a self-regulating industry and further rules and regulations shall hamper not just its content and independence but the faith that our citizens put in media for their daily information consumption.

We are of the view that there should be little to no government interference in an industry capable of influencing the masses and that the oversight mechanism to control the media

by the Government may rob the media of its independence and the fourth pillar of democracy may not at all be there.

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? 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.

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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.

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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.

Ans. The Media and Entertainment Industry has, in recent years, witnessed an exponential growth in India. The rise will continue through various mergers and acquisitions between different media companies as they aim to expand, diversify and aim for better efficiencies with the ever-growing consumer base. The Indian Media and

Entertainment sector is expected to grow at a much faster pace than the global average rate thanks to its increasing subscribers and their constant need for diverse content.

Over the years, the Competition Commission of India has gained significant expertise in assessing complex mergers and acquisitions since the merger control provisions of the Competition Act, 2002 were enforced in 2011. The substantive test to evaluate mergers in India is to determine if there is any appreciable adverse effect on competition in the relevant market. Since 2011, the CCI has reviewed substantial number of merger notifications pertaining to media, entertainment and broadcasting and has demonstrated its ability to understand the nuances of the sector, thereby enhancing its sector specific knowledge. There is no one-size-fits-all approach when it comes to analyzing the diverse media and entertainment companies in India for market dominance. So, in order to compute the “*appreciable adverse effect on competition*”, the CCI firmly adopted methods such as; calculating significant presence of competitors, **varying metrics of market shares**, nature of the broadcasting industry and presence of a sector specific regulator.

We strongly believe that at this stage, regulators should strive to adopt a lenient view when considering devising regulations, monitoring takeovers or acquisitions of media companies and not clog up an already complex set of rules and regulations in a heavily regulated Media & Entertainment Industry.

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.

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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.

Ans. The Ld. Regulator's concern regarding the maintenance of viewpoint plurality is in regards to news media outlets that have the capacity to influence the masses. An access to a plurality of editorial lines is essential for citizens to be able to confront ideas, to make their own informed choices and to conduct their life freely. The non-news media market has little to no influence on the viewers since they are solely involved with entertaining their audience and satiating their curiosity.

TRAI shouldn't shift their focus towards the non-news media market since they pose no adverse threat to the consumer's conscience and instead direct their attention towards the uniqueness and diversity of the Indian media that simply cannot be regulated with a one size fits all approach.

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?

Ans. Integration between companies in the media and entertainment industry is generally aimed at a strategic acquisition, alliance and information partnership between the companies with an aim to improve access to consumers, improve efficiencies for the stakeholders and is sometimes the only way to survive. This benefits everyone and putting up restrictions like the ones suggested by the TRAI does no good for the growth of this industry. TRAI needs to understand that vertical integrations in the media market does not automatically mean an anti-competitive behavior or an abuse of dominant position by the acquiring company, instead it is beneficial in terms of the diverse range of content one company can offer to the consumer under one umbrella after an integration takes place.

The concerns regarding market concentration, abuse of dominant position and mergers and acquisitions in the media and entertainment sector have been ably addressed by the

Competition Commission of India. As discussed in detail in response to Q.3, the CCI has considerable role and experience in handling the ever-changing competitive scenario in the several industries in India and this includes the heavily regulated media and entertainment industry. The CCI heavily investigates every nook and cranny of this industry including but not limited to large vertical integrations between companies and agreements between broadcasters and digital TV services providers in narrower geographies.

The CCI has made it evident through an assortment of its decisions that it is indeed adept in including into its assessment the various peculiarities of the varying sectors when it comes to the assessment of combinations in the Media, Entertainment and Broadcasting Sector. It becomes increasingly evident with the advent of the excessive investigation during the assessment, that not only the submissions made by the parties concerned but as well as the participants in the market and other affected parties are also a part of the consideration while CCI ponders over the approval of the combination.

Note: Please note that we reserve all our rights. We also wish to state that owing to the constrained timeline Discovery Communications India reserves its right to respond at a later stage to the questions pertaining to the technical aspects not limited to the methods and metrics. However, Discovery Communications India emphasizes on the need for a Free Market where market forces are allowed to operate for an organized growth of the media sector.

You are requested to take the same on record and oblige.

Thanking You,

Discovery Communications India