

IAMAI response to TRAI consultation paper on Media Ownership

The Internet and Mobile Association of India (“IAMAI”) is a not-for-profit industry body and we play a key role in ensuring the growth and sustainability of the digital industry. We firmly believe that the digital industry is going to be a major driving force in the economic and social development of the country which includes job creation, innovation, contribution to the GDP, inclusion and empowerment of our citizens, etc.

India is the world’s most competitive and plural media content market and in any case, with convergence, the very concept of “geographic market” is irrelevant. Hence we are not clear why this consultation paper has been issued; there is, in any case, no cor-relation between ownership and plurality. We would like to acknowledge that the entire framing of the CP and all the issues for consultation are hinged on the premise that there is an ‘desired’ level of media plurality for India. However, TRAI has not identified this desired level of media plurality, the linkage between media ownership and media plurality, and more importantly how the regulatory tools i.e., restrictions on cross media ownership and vertical integration, can be used to affect this desired level of media plurality in India. This makes it difficult for any stakeholder to objectively answer the questions raised by the CP.

We have answered questions which are relevant to IAMAI’s mandate and are within IAMAI’s areas of expertise.

Preliminary Submissions.

1. At the outset, we state that any entity doing business in India should enjoy rights, privileges and functions as determined in the context of market conditions, without any restrictions and curbs on the ownership and/or market concentration. It is important that choice to consumer and sufficient competition should always remain paramount to maintain plurality as well as for growth of Media & Entertainment (“M&E”) sector. We note that the Ministry of Information & Broadcasting (“MIB”) follows a light-touch regulatory approach in preference to any prescriptive measures or stipulations and would suggest a similar approach for all forms of mediums in M&E sector (including television and broadcasting).
2. We note that MIB in its reference dated 19 February 2021 as well as TRAI in the present consultation paper on issues relating to media ownership dated 12 April 2022 have alluded to various aspects of media and entertainment (“M&E”) sector with focus on print, television, radio and Internet (including over-the-top (“OTT”)). We are submitting the present response on various aspects of / issues raised in consultation paper to honour the consultation exercise being conducted by TRAI. However, it is respectfully

submitted that the present exercise (where statutory recommendations have been sought and are contemplated to be provided by TRAI) ought to have been restricted only to those aspects and segments of M&E sector as envisaged in proviso to Section 2(1)(k) read with Section 11(1)(a) of the Telecom Regulatory Authority of India Act 1997 (as amended) ("TRAI Act").

3. It is submitted that MIB's reference as well as TRAI's current consultation paper delve into various aspects relating to media, e.g., control and ownership of media, cross-ownership in media, horizontal integration, and vertical integration. However, it is respectfully submitted that TRAI ought to consider that media enables citizens to exercise their rights enshrined under Articles 19(1)(a) and Article 19(1)(g) of the Constitution of India. As such, no measures ought to be considered / recommended that may have an impact of restricting dissemination of content as a form of freedom of speech and expression and right to carry on trade or occupation. Further, in addition to stakeholders' (including broadcasters' / content creators') aforesaid rights, TRAI also ought to keep in mind rights of consumers under Article 19(1)(a) to receive and consume content of their choice and to be informed and entertained.

4. It is also submitted that Article 14 of the Constitution of India underscores the fundamental doctrine of treating dissimilar entities differently. There are several services that enable content consumption through variety of mediums and in different formats / stages. Further, each such service / medium has different capabilities to *inter-alia* make available content in differing manner thereby providing differing consumer experiences. Considering that discrimination also occurs when persons who are in unequal position are being treated in the same (equal) way therefore, any framework facilitating non-discrimination and enabling a level playing field to promote fair competition would necessarily need to identify all the relevant parameters and aspects for classification and categorisation as similar, or equal, or within the same relevant market. In any event, the possibility of concerns regarding competition, ownership, control, and plurality or lack thereof in one or more markets cannot be the cause for recommending regulation in any and all markets.

M&E sector overview.

5. The Indian M&E industry is a sunrise sector for the economy. It has shown tremendous growth over the years. The sector grew from INR 1.026 trillion in 2014¹ to INR 1.38 trillion

¹ Source: #shootingforthestars FICCI-KPMG Indian Media and Entertainment Industry Report 2015

in 2020². Further, with digitization and evolution of broadband networks, the sector offers huge potential for increased demand and business revenues.

6. We note that in general the Consultation Paper focuses on print, radio, television and Internet as the four segments forming M&E sector. The same is also evident from chapter on cross media ownership in the Consultation Paper³. However, the Consultation Paper does not analyse or factor the impact, relevance and importance of other important segments of M&E sector (such as, theatres, plays (including street plays), music, live events (e.g., stand-up comedies, lectures, debates, talks), films and music)) as well as non-M&E related aspects (such as, social interactions (including at schools, colleges)). It is submitted that the other segments of M&E sector as well as non-M&E related aspects also immensely facilitate exposure of a person *inter-alia* to plural and diverse views, opinions and perspectives. In this background, it is submitted that impact of four segments of M&E sector (i.e., print, radio, television and Internet) ought not be looked into in isolation, and that it is imperative impact analysis of all other remaining segments of M&E sector is carried out along with an impact analysis of non-M&E related aspects.
7. It is respectfully submitted that in so far as the aforesaid four identified segments of M&E sector are concerned, there is more than sufficient competition and plurality of views in each such segment. The same is *inter-alia* evident from the following:
 - (a) There are ~1,43,500 registered publications with a total of ~1,500 new publications registered in 2019-20.⁴
 - (b) There were ~900 permitted TV channels with ~350 broadcasters⁵ and that ~65% of all TV channels are free-to-air as on 31 December 2021.
 - (c) There were ~725 FM and community radio stations in September 2021 in addition to ~480 radio stations operated by All India Radio.⁶
 - (d) There are ~40 over-the-top online curated content providers (OCCP)⁷. It may however be noted that in terms of a press report relying on MIB's response to right to information ("RTI") query, it is claimed that there are 2,100 OCCPs and

² Source: Playing by new rules - India's Media & Entertainment sector reboots in 2020 FICCI-EY March 2021

³ Source: Paragraph 4.2 of the Consultation Paper

⁴ Source: Paragraph 2.6 of the Consultation Paper

⁵ Source: Paragraph 2.4 of the Consultation Paper

⁶ Source: Paragraph 2.14 of the Consultation Paper

⁷ Source: Paragraph 2.17 of the Consultation Paper

publishers of News and current affairs content on digital media that have furnished details with MIB.⁸

8. In addition, Indian digital consumers have access to content created by global creators as well, which adds to plurality of voices. It may be noted that there is myriad of players as can be seen from Consultation Paper itself in all the four segments of media, which also shows there is no case of monopoly or market failure warranting the present exercise. It is submitted that there are hardly any entry barriers and the operation of principles of free market economy ensures that even small players are present and are able to compete in the aforesaid four segments of media. As such, in case of media, India as a whole ought to be treated as the relevant market.

Broadcasting services overview.

9. In broadcasting sector too there is sufficient competition in the market as well as plurality. Further, market forces have ensured that there are large number of channels, broadcasters as well as distribution platform operators (“DPO”) in the market for consumers to choose from. It is submitted that broadcasting sector encompasses 357 broadcasters as on 31 August 2021⁹. Further, in the year 2019, out of ~900 TV channels, 65% were free to air (“FTA”), and that only 35% of all channels were pay channels¹⁰.
10. There were 1,733 registered MSOs as on 1 September 2021, 1,55,303 cable operators as on March 2021, 1 HITS operator, 4 pay DTH operators and few IPTV operators, in addition to the public service broadcaster –Doordarshan–providing a free-to-air DTH service in India¹¹. The number of registered MSOs has increased significantly from 159 in 2015 to 1,733 in September 2021. The following chart shows the pattern of increase in the number of registered MSOs¹²:

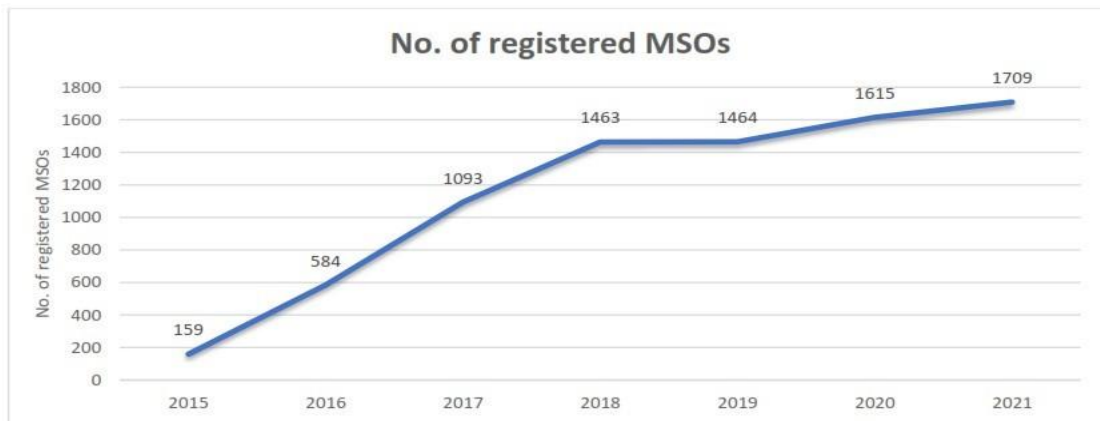
⁸ Source: <https://internetfreedom.in/revealed-two-thousand-news-publishers-furnished-details-to-mib/>

⁹ Source: Paragraph 2.17 of TRAI’s consultation paper dated 25th October 2021

¹⁰ Source: Paragraph 3.30 read with Figure 3.4 and paragraph 3.43 of TRAI’s consultation paper dated 16th August 2019

¹¹ Source: Paragraph 2.17 of TRAI’s Consultation Paper dated 25th October 2021

¹² Source: Paragraph 2.20 read with Figure 2.2 of TRAI’s consultation paper dated 25th October 2021



11. As per the data of subscriber base of top 15 DPOs (MSOs and HITS) (as reported to TRAI), a large percentage of subscriber base of MSOs comes through LCOs. Further, out of the total number of subscribers of MSOs, approximately 97.5% of the subscribers are secondary subscribers, i.e., through LCOs. This is an important factor since, LCOs are not dependent on any single MSO, and that LCOs have the flexibility to shift to another MSO seeking additional profit or in case of any unfavourable circumstances. In addition, LCOs can also reach remote far-flung areas through HITS operators as telecom bandwidth has become far more economical in the recent few years¹³.

International trends.

12. Evidence from other countries, as mentioned in the Consultation Paper, supports the thesis of light-touch regulation, and forbearance. A forbearance approach may naturally nudge the industry towards an optimal equilibrium of competition across the media industry. Regulators must place trust in the invisible but tried and tested hands of market forces for the industry to achieve its maximum potential. In this regard, we note that in case of News, even TRAI acknowledges¹⁴ that in light of the increased decentralisation of News sources countries are moving away from cross-media ownership restrictions. For example, in USA, restrictions on cross-ownership rules for Newspaper / broadcast and radio/television have been removed in 2017. Similarly, in UK, Media Ownership (Radio and Cross media) Order 2011 removed all local cross-media ownership restrictions. In any case, these curbs had been introduced more than half a century ago when there were only a handful of media and they were wanting to enter terrestrial TV. The situation is totally the opposite in India –it is the most competitive and plural media market in the

¹³ Source: Paragraph 2.27 read with Table 2.3 of TRAI's Consultation Paper dated 25th October 2021

¹⁴ Source: Paragraph 4.39 of the Consultation Paper

world, and in any case, private sector is barred from entering terrestrial TV which is the monopoly of the government-run Prasar Bharati.

Existing checks and balances.

13. There are various laws and other mechanisms already in place that ensure sufficient and comprehensive checks and balances with respect to content being made available through media and ensure level playing field on various aspects related thereto. Further, there are arduous compliance requirements that are already in place, and it will not be out of place to state that the sector is already overly regulated. Media companies not only have their own S&P guidelines as well as robust industry level self-regulatory frameworks (*please see para 21 below*) but also, comply with various stipulations that set out contours of regulation of speech and expressions, whether directly or indirectly. These include four-five layers of content regulation including regulations and guidelines under the Press Council, the Cable TV Networks (Regulation) Act, IT Act, etc. The business side is also highly regulated on all fronts from FDI and stringent entry norms to rules mandated by Competition Commission of India, SEBI, RBI, etc as detailed below. The M&E sector needs a forbearance based light touch regulatory environment that will allow it to grow into a profitable venture and will also help in bringing in investments that in turn will support creation of quality content.
14. The Policy Guidelines for Downlinking of Television Channels provides that all TV channels shall comply with the Programme Code and Advertising Code prescribed under the Cable Television Networks (Regulation) Act, 1995. Further, broadcasters are also required to adhere to any other code/standards guidelines/restrictions prescribed by Government for regulation of content on TV channels from time to time. Additionally, broadcasters also comply with the code for self-regulation in advertising, as adopted by the Advertising Standards Council of India.
15. The Election Commission of India provides for guidelines for broadcast media to observe during elections, which *inter-alia* deal with the availability of accurate, objective, and complete information to enable citizens to exercise their franchise. The guidelines *inter-alia* provide for News channels to disclose any political affiliations, for News broadcasters to resist all political and financial pressures, and for distinction to be maintained between editorial and expert opinion. Further, norms and guidelines on paid News have been framed which seeks to curb the malpractice of fake/paid News in relation to elections.
16. There are principles laid out in various statutes like Information Technology Act, 2000, Indian Penal Code, 1860, Emblems and Names (Prevention of Improper Use) Act, 1950,

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. Further, norms of journalistic conduct of the Press Council of India established under the Press Council Act, 1978 regulates the conduct of Newspapers, News agencies and journalists.

17. There are already many agencies, authorities and ministries regulating different aspects of ownership and other issues of media entities such as, Competition Commission of India (“CCI”), Securities Exchange Board of India (“SEBI”) for listed media companies, Department for Promotion of Industry and Internal Trade (DPIIT), Foreign Investment Promotion Board (under Department of Economic Affairs, Ministry of Finance), MIB, Ministry of Electronics & Information Technology (MeitY), National Company Law Tribunal (“NCLT”) and National Company Law Appellate Tribunal (“NCLAT”). Press Council of India is mandated to preserve the freedom of the press and to maintain and improve the standards of Newspapers and News agencies in India.
18. The TRAI has *inter-alia* in Chapters 2 and 4 as well as in Appendix I to the Consultation Paper set out roles and jurisdiction of various regulators e.g., CCI established under Competition Act, SEBI established under SEBI Act, NCLT and NCLAT established under the Companies Act. For the sake of brevity, we are not delineating the relevant provisions of the aforesaid statutes as well as roles and responsibilities of the aforesaid regulators. However, it is submitted that perusal of aforesaid portion of Consultation Paper itself shows that there are sufficient checks and balances in place and as such, introducing any additional / other measure and/or regulatory oversight will only lead to jurisdictional overlaps and regulatory complexities. The same would also have an adverse impact on key endeavours of the Government of India specially ‘Ease of Doing Business’, ‘Digital India’ and ‘Make in India’ initiatives.

Self-regulatory mechanisms.

19. It is submitted that there are many effective, proactive and robust industry level self-regulatory mechanism operating in the sphere of broadcasting and digital sector. These self-regulatory mechanisms *inter-alia* provide for guidelines to be adhered to by channel / online content providers as well as provide for a clear, transparent and structured grievance redressal and escalation mechanism for reporting non-compliance with the prescribed guidelines. For example – IAMAI – Digital Publisher Content Grievances Council, Digital News Publishers Association, News Broadcasters Association – News Broadcasting & Digital Standards Authority, Digital Media Publishers & News Portal

Grievance Council of India, Working Journalist Media Council, DIGIPUB News India Foundation, Media9 Digital Media Federation, Confederation of Online Media (India) - Indian Digital Publishers Content Grievance Council, WJAI- Web Journalists Standards Authority, Indian Broadcasting & Digital Foundation – Broadcasting Content Complaints Council as well as Digital Media Content Regulatory Council, etc.

TRAI recommendations on entry of certain entities.

20. In a free market economy, and to maintain plurality, there should be few or no limitations on people and organizations entering the media business. However, in order to ensure that media remains independent, we agree with the sentiment in the Recommendations on Issues relating to entry of certain entities into Broadcasting and Distribution activities, issued by TRAI dated November 12, 2008 and reiterated in Chapter III and Appendix II of the Consultation Paper that: (a) political bodies, (b) religious bodies, (c) urban and local bodies, central and state government entities and entities controlled and/or funded by the above do not enter into the business of media. Further, wherever permission has already been granted to such bodies, then suitable exit route should be provided to them.

Conclusion.

21. We believe that all interests would be best served by market enabled competition forces and a very light touch / forbearance based regulatory approach. On the contrary, there is a need to remove the existing restrictions and move towards a light-touch forbearance-based framework. Doing so, will further encourage growth, investments and competition in M&E sector, which would importantly, serve consumers' interests since, they would have diverse and quality content options.

IAMAI Submission:

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.

The rapid and unprecedented expansion of the media industry, driven in part by the creation of new avenues for media consumption such as internet, has primarily been an outcome of cheap and accessible data and affordability of mobile phones. The advent of OCCPs and Digital News media organisations, has also allowed consumers to access more diversified, unique and personalised content, and has enabled consumers to access a wider choice of content overall. The threshold for entering the media business has only reduced with time due to the increased

availability of resources, a widening talent pool, and a rising consumer base with means to access different types of media among other factors. These changes erode the basis for suggesting any market intervention. However, TRAI in 2022 continues to focus on cross-media ownership and vertical integration, much as it did in its 2013 and 2008 Consultation Papers.

Any discussion around owning cross media ownership must be prefaced by establishing clarity regarding what the term 'media' entails, particularly in the digital context. From our understanding, media in the digital sphere can broadly be categorised into four categories.

First, the tech platforms which have assumed a critical role in the discourse and distribution of media. Such platforms are already regulated by numerous pieces of legislations and policies, included but not limited to the IT Act, The IT Rules 2011 and the IT Rules 2021. Most importantly, it is imperative to note that many of the technology platforms which have assumed a crucial role in popularising and promoting content over the internet are not media entities at all, rather these websites (such as YouTube, Facebook, Instagram, twitter) are aggregators, which act as intermediaries to transmit content between independent users. Such platforms are required to strictly maintain their position as an intermediary. Such platforms have a myriad of use, such as personal messaging, social interaction, advertising, and making and consuming user generated content (UGC). It must be understood that these are not media entities or houses and are not responsible for promoting or distributing any form of media, which the users are not promoting or distributing independently.

The second type is OCCP which has curated content. They too are now regulated through Self-Regulatory Bodies under the IT Act Rules. It must also be noted that with the proliferation of accessible hardware, low cost/advertising based OCCPs, and social media intermediaries, the creative economy has become significantly more democratised. The low barrier to entry and high demand manifested through personal devices has created a huge amount of opportunity and employment for content creators and creative workers, opportunities which were previously heavily reliant on Cinema and TV for employment.

The Third type is independent online media like 'The Wire'. Under the changed MIB policies, they too have restrictions of FDI and are required to be registered and the fourth type is online arm of offline Print and TV media which are already heavily regulated.

Considering that media pluralism, as noted in paragraph 1.3 of the CP, "is the founding stone on which the fourth pillar of democracy rests", it is important to highlight the **multiple legal, economic, political, and social facets** of media plurality and their intersection. By focussing on cross-media ownership and vertical integration alone (an investment-based regulatory tool), TRAI misses out on key nuances of media plurality and other indicators of a robust fourth estate.

While media concentration is one of the factors that *could* impact plurality, **TRAI has not provided any evidence that anomalies in media ownership are adversely affecting media**

plurality in India. We are very clear that there is no concentration of ownership in the media and (ii) in any case, concentration does not impact media plurality. This is because different media products in the same entity are structured under different companies, have separate editorial/content and management teams and have totally differentiated content strategies designed to address different target audiences. Hence, common ownership actually builds up plurality as there is a conscious effort to have differentiated products with entirely differing viewpoints.

Without establishing an objective relationship between media concentration and plurality, the CP proposes in paragraph 1.5 to analyse the “anomalies caused by media concentration” through cross-media ownership and vertical integration. Attempting to use tools such as regulation or restriction of vertical integration or cross-media ownership, without showing *how* they influence the theoretical “desired level” of media plurality is an exercise in futility.

In addition to the above, TRAI may also take into account the advantages that accrue to end-users on account of cross media ownership. Increase in consumer choices is one of the main commercial advantages that would arise as a result of cross media ownership for the end-users. While players within the media sector could successfully function without cross media ownership, companies that do choose to operate in multiple media avenues are likely to reap benefits such as advantages in expenses owing to the scale of operation (also known as economies of scale). Profits from high-performing businesses can be reallocated to offset low-performing assets that are in their initial stages of development, such as over-the-top (“OTT”) platforms which specifically cater to regional or vernacular audiences. Any restrictions in the media market may act as a barrier for investment, which may consequently affect the resources available to develop diverse content, which would - in turn - adversely impact viewpoint plurality. In fact, cross-media ownership allows media segments in decline to be cross-subsidised by other segments performing better, hence allowing them to stay viable. Experts have pointed out cross-media curbs should have been lifted far earlier in the few countries that still had them, to enable media companies to survive by expanding into other, more viable media segments. These countries realised this reality only later, and have hence been rolling back the cross-media restrictions subsequently.

In our view and as set out above, cross media ownership is not an issue per se and holds certain benefits. To compete in the saturated media market, companies are also likely to generate diverse content which can attract the attention of diverse demographics in India. Thus, competitive market forces are likely to ensure that companies continue to reinforce viewpoint plurality by creating diverse content. If TRAI’s concern is to prevent abuse of dominant position and other anti-competitive practices in media market with respect to ownership, this can be addressed through already existing frameworks such as the Competition Act, 2002 (“**Competition Act**”) or alternatively by way of the regulation of takeovers of listed companies

by the Securities and Exchange Board of India (“SEBI”), thereby negating the need for any additional restrictions with respect to cross media ownership and control.

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?

Any biased and coordinated media narrative which may emerge out of cross ownership of media would damage the consumer’s best interests. However, owing to the nature of competition in the industry, companies uphold viewpoint plurality by generating and disseminating diverse content to retain and grow their market share among diverse demographics in India, which have their own cultural and political preferences.

If TRAI’s concern is to prevent abuse of dominant position and other anti-competitive practices in the media market with respect to ownership in favour of consumer interest, then the appropriate mechanism to address such concerns would be the Competition Commission of India (“CCI”) established under the Competition Act. The preamble of the Competition Act and Section 18 mandates the CCI to “protect the interest of consumers”. The CCI already has well established processes, expertise and the bandwidth to conduct market research. In fact, news reports indicate that the CCI is planning on undertaking market studies in the media sector from an antitrust lens. Given that the CCI is tasked with balancing consumer interest and promoting competition, such issues should be left to the CCI and its internal workings to be dealt with as they seem fit. The CCI is currently actively involved in evaluating practices in the media sector in relation to abuse of dominant position of entities.

Apart from the CCI, SEBI is empowered to regulate listed companies and is well-positioned to oversee any takeovers of such companies, including companies in the media sector. Further, under the changed rules of business and new IT Rules, the Ministry of Information and Broadcasting (“MIB”) has emerged as a single point of regulation of print, television, radio and internet media.

Beyond the existing regulatory framework, no additional regulators should be created to address these problems. In our view, establishing additional regulators would serve to cause jurisdictional conflicts and regulatory overlap with existing regulators. There have been jurisdictional conflicts in the past, such as conflicts between the CCI and TRAI, which had to be escalated before the Supreme Court.

Apart from this, parallel regulatory frameworks may also result in business uncertainty if different regulators impose different approaches and standards on companies in the media sector. Companies may have to postpone the launch of new media and entertainment forms and services as they await certainty from regulation and regulators. Consequently, this is likely to decrease customer choice and adversely impact viewpoint plurality.

- 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?

Self-regulation has often emerged as an effective mechanism to regulate highly nuanced sector specific problems. The MIB prescribed the [Information Technology \(Intermediary Guidelines and Digital Media Ethics Code\) Rules, 2021](#) last year (though the validity / applicability of the same is pending the outcome of certain proceedings before the Hon'ble courts.). The rules provide for a grievance redressal mechanism through a three-tier mechanism and several businesses are compliant with these regulations. Relying on MIB's response to right to information ("RTI") query, it is claimed that there are 2,100 OCCPs and publishers of News and current affairs content on digital media that have furnished details with MIB.¹⁵ Similarly, a self-regulatory body, if anything, may be most effective at overseeing such sector specific issues.

Such a body could publish advisories, transparency reports and directives, particularly directed at consumers to make them aware of any media houses which may be influencing mass opinion owing to cross media ownership.

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?

There is already an all-encompassing statutory framework enacted by the Parliament of India for monitoring ownership and control in markets including media – the Competition Act, 2002 ("Competition Act"). Considering the fact that the Competition Act occupies the legislative field on the subject matter under consideration, an important question before the TRAI considers ex-ante sectoral regulation is whether any separate regulatory framework can be introduced and if so, whether it would add any value.¹⁶ The Competition Commission of India is the designated expert body to regulate, investigate and act upon anti-competitive activity which could threaten media plurality. The Competition Council of Canada [notes](#) that, "For economic policy, appropriate application of competition law enforcement in digital markets should be the

¹⁵ Source: <https://internetfreedom.in/revealed-two-thousand-news-publishers-furnished-details-to-mib/>

¹⁶ Strowel, A. and W. Vergote (2016), "Digital Platforms: to Regulate or Not to Regulate? Message to Regulators: Fix the Economics First, Then Focus on the Right Regulation", Responses to the Public Consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy.

first defence and direct regulation the last resort.” In case of Indian media market regulation, *general competition law enforcement is already addressing these issues*. Additionally, other agencies monitor and regulate mergers, acquisitions and takeovers as highlighted below. There are also limitations placed on ownership and control of media companies through the Foreign Direct Investment (FDI) Policy.

The pre-existing regulatory framework under the Competition Act also enables consultation between regulators and the ability to refer issues to other regulators for deliberation. Therefore, where the CCI is of the view that TRAI or MIB’s perspective and expertise would be required in relation to a matter before it, it can engage in inter-regulatory consultations.

Considering that there are already bodies which are overseeing mergers, acquisitions and takeovers, there is no requirement for an additional body to achieve the same purpose.

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.

The CCI and SEBI are well established and capable organisations which have already been allotted the mandate to overlook mergers, acquisitions and takeovers and ensure that they are being conducted transparently, fairly and in the best interests of the market. Any plans to create a new body would first require extensive duplication of effort to develop processes, capacity and expertise. Aside from this, the addition of such a body to the regulatory framework of media businesses in India would significantly impact ease of doing business and create duplicity of regulation. In a fast-moving sector such as M&E, the ability to be dynamic and adaptable is paramount, something which is dependent on the ease of doing business.

Competition Law: The Competition Commission of India (CCI) is designated as the regulator and subject matter expert to regulate, investigate and act upon any anti-competitive activity across sectors. The CCI’s oversight over consolidation covers **all mergers that significantly affect**

competition. It has the authority to take suo-motu cognizance of issues under Section 19 of the Competition Act, to enquire into an alleged contravention of Section 3 (anti-competitive agreements) or Section 4 (abuse of dominant position) if it causes or is likely to have an appreciable adverse effect on competition. The CCI also defines the ‘relevant market’ when identifying competitors for a product or service that could throttle competition.

The CCI has also in the past demonstrated its ability to understand the nuances of the media sector. It looked into seven merger notifications in the media, entertainment, and broadcasting space between 2011 and 2019, adopting a holistic approach and conducting a case-by-case assessment for each. For example, the CCI used different fit-for-purpose parameters to understand market share when looking at different types of media. The CCI used ‘gross office receipts’ to understand the film production and supply market, and ‘number of TV channels and viewership data’ for the TV market to understand the combined market share of the Walt Disney Company and Twentieth Century Fox.¹⁷ In the Sony Pictures/Aqua Investment combination¹⁸, the commission adopted a different approach for calculating market share in the sports broadcasting businesses. The CCI examined bidding data for a 5-year period and examined the market share of the transacting parties in terms of number and value of the contract, Gross Rating Points (GRPs) and advertising revenue. When looking at broadcasting, in the matter between DishTV and Videocon, the CCI looked at the substitutability of various categories of distributors (MSO, DTH, IPTV, and HITS) and concluded that they are not substitutable.

The CCI has also proven its ability to conduct appropriate market studies when analysing competitive behaviour in the media. In the Prime Focus Limited/Reliance MediaWorks Limited combination¹⁹, the competition regulator conducted a market investigation and concluded that there were no AAEC concerns due to the presence of several competitors. In 2017, the CCI approved the combination between AT&T Inc. and Time Warner Inc.²⁰ and observed that there were several players in the streaming services market and in the audio-visual content distribution market thereby providing a choice to customers.

In addition to investigative experience and depth, the CCI maintains a strong consumer welfare perspective. In a note by India on *Vertical mergers in the technology, media and telecom Sector* for the OECD, it was acknowledged that when assessing vertical mergers, the CCI considers efficiency gains while “ensuring that the consumers not lose out”²¹.

¹⁷ Combination Registration No. C-2018/07/583.

¹⁸ Combination Registration No. C-2016/09/436.

¹⁹ Combination Registration No. C-2014/08/198.

²⁰ Combination Registration No. C-2016/11/456.

²¹ Organisation for Economic Co-operation and Development, Directorate for Financial and Enterprise Affairs – Competition Committee, “[Vertical mergers in the technology, media and telecom sector – Note by India](#)”, 2019

Company Law: Under Chapter XV of the Companies Act, the National Company Law Tribunal (NCLT) examines issues related to the rights of shareholders and stakeholders before approving a merger or amalgamation. Under this framework, the NCLT has the power to send a notice to sectoral regulators and other authorities and seek their opinions before approval.²²

Securities Law: The Securities Exchange Board of India (SEBI) under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 may mandate public disclosures, open offers, and decide the minimum price in case an acquirer acquires more than 25% voting rights or ‘control’ of a company.

Foreign Direct Investment: Under the [Consolidated FDI Policy 2020](#), for Broadcasting Content Services, 100% FDI is allowed for uplinking of non-news and current affairs TV channels through the government approval route, while 26% is allowed for uplinking news and current affairs as well as terrestrial broadcasting FM through the approval route. The MIB recently extended this FDI restriction to digital news. For Broadcasting Carriage Services, up to 49% FDI is allowed for DTH through the automatic route and with further (49%-74%) requiring approval. For cable networks FDI through the automatic route is allowed up to 49%.

Transfer of uplinking/downlinking licenses: The Uplinking/Downlinking Guidelines do not allow transfer of license between two companies. In case of a merger or acquisition, the licensee can transfer the license only after security clearance, NCLT approval, and approval from other authorities like SEBI.

All the above shows that authorities in India are already comprehensively monitoring issues related to ownership and control throughout the economy, including the media sector. There is no need for a separate / additional monitoring framework specifically for the media, particularly when it has not been shown that the existing systems have failed in any way. Creating additional regulatory structures would be a drastic overstep, especially in the absence of proven market harms or institutional failure.

It is also crucial to note that media, and particularly News media has a crucial role to play in exercising free speech in a country and is considered the fourth pillar of democracy. The way media shapes public discourse is tantamount to the polity’s ability to practice democracy effectively. Considering this, any additional mechanism monitoring the News and media ecosystem may also make public discourse and free speech subject to additional scrutiny. By focussing on cross-media ownership and vertical integration alone (an investment-based regulatory tool), TRAI misses out on key nuances of media plurality and other indicators of a robust fourth estate. Many of the desired principles for a plural media, such as editorial autonomy and media independence, would be better evaluated by looking at media conduct

²² Section 230(5), Companies Act, 2013.

and India already has a regulatory framework for each media. The Constitution of India provides the fundamental principles which set out the contours for speech and expression – the wide ambit of speech and expression and the specified grounds on which it can be (narrowly) regulated. Guided by the Constitution principles, the stakeholders (across mediums) operate the specific frameworks. For instance, newspapers are subject to the Press Council of India's Norms of Journalistic Conduct, television to the Cable Television Networks (Regulation) Act and Rules, and digital media to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The existing frameworks being more than comprehensive, there hardly remains permissible room for any additional stipulation.

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.

The Companies Act 2013 Defines Control as 'control shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner'. Similarly, The Companies Act has also given cognizance to what comprises a beneficial owner of a company. Keeping this in mind, there seems to be no incentive to develop new definitions for these concepts. These are issues which fall squarely within the purview of corporate affairs, and are defined for corporations as a whole, creating such definitions specifically for the Media industry also seems counterproductive.

From an antitrust perspective, the CCI already has the necessary expertise to determine parameters to measure ownership and control. Any approach followed by the CCI in developing a definition for 'control' is not limited to a particular sector, and can also be applied to the media sector to address antitrust issues. The Competition Act defines 'control' in a manner which allows the CCI to consider antitrust issues on a case-by-case basis and make determinations regarding 'control' on the basis of this factual analysis. To protect the interest of shareholders and ensure transparency in company affairs, SEBI is also empowered under relevant frameworks to consider questions of control and ensure that companies follow certain restrictions and requirements during acquisitions, such as public announcements when certain thresholds have been met.

Notably, it would be pertinent to take into consideration the fact that the ability for a company to 'control' another company in the media sector may not result in the consequences envisaged by TRAI, i.e., adverse impact on viewpoint plurality. As mentioned before, common ownership enables multiple media products which are created by entirely different teams both managerial and journalistic, and they ensure products are differentiated and pluralistic so as

to ensure maximum reach in a wide array of differing target audiences. For technology service providers and aggregators identified in our response to Question 1, the primary form of content available on such platforms is UGC. Given the decentralized nature of sourcing UGC and the lack of editorial control exerted by platforms in shaping UGC, any change in control at the company level is unlikely to adversely impact the UGC on the platform or the narratives being presented. Therefore, we would recommend against an all-encompassing attempt to regulate cross media ownership and impose definitions of control that do not take into consideration the nature of the platform as it would fail to meet the intended objective of ensuring viewpoint plurality. Instead, such restrictions may limit investment opportunities in the industry and reduce the services and content being offered to consumers.

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.

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.

Outside IAMAI's purview

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.

At the outset, please note that in our view, oversight of cross media ownership may not be required. The development of technology has created a new class of UGC creators that create content spanning multiple genres, such as entertainment and even citizen journalism. The Internet provides such users with the ability to promote diverse narratives, thereby, underscoring viewpoint plurality. Market forces also play a role by encouraging companies to invest in multiple avenues of content creation and dissemination to improve accessibility to

content for consumers and to generate content which would satisfy the diverse demographics in India.

It should also be noted that such content does not carry the expectations of credibility and accountability. Oversight and restrictions may stifle the freedom of speech and expression and adversely impact the diverse narratives that are developed and shared through UGC.

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.

All segments of M&E sector are equally important (including the four segments identified in the question above) since, each segment is unique in its own way and has its own strengths. In so far as OCCPs are concerned, diversity of content is imperative for OCC platforms to succeed. Expansion of one's subscriber base is a crucial element of the content commissioning strategy of online platforms. It is necessary to balance consumer preferences for mass entertainment movies, niche and/or indie content, and regional content when an online platform makes content available on its platform. A platform with more diversity and plurality widens and deepens the platform's reach. A research commentary on '[The Effect of Information Technology on Product Variety and Sales Concentration Patterns](#)' makes two findings that support this:

- Platforms organically offer a diversity of products as it gives them a competitive advantage towards their competitors.
- Online platforms offer a wide repertoire of niche products and supply the relevant filters to discover these products

A recent report by Nielsens [finds](#) that *"brands seek out platforms that authentically engage a diverse customer base and avoid content that is not well received by the diverse audiences represented in storylines."*

Key trends in the OCCP segment also shows the segment's expansion into regional markets, a sign of the segment's movement towards more diversity.

- o Many language OCCP products like aha (Telugu), Koode (Malayalam), Letsflix (Gujarati) and City Shor TV (Gujarati) entered the market in 2020.
- o The share of regional languages in overall OCCP video content will double from 27% in 2020 to 54% by 2024.
- o Currently there are more than 40 OCCP platforms (61 according to some reports), of which around 12-15 consist of exclusive regional language platforms. Further, in a press report relying on MIB's response to RTI query, it is claimed that there are 2,100 OCCPs and publishers of News and current affairs content on digital media that have furnished details with MIB.²³
- o According to the EY FICCI report, more than 50% of the total time spent on OCCP platforms will be on regional content in India.

It should also be noted that viewpoint plurality is extremely high for digital content outside of the OCCP landscape. Intermediary platforms have empowered millions of content creators of diverse backgrounds, mindsets, scale and geographies. YouTube alone has provided creators with the equivalent of 683,000 full time jobs in 2020 alone. Considering that intermediaries are creating these opportunities with zero editorial input whatsoever, it is safe to assume that viewpoint plurality of this segment is quite high, as it is determined solely by market forces.

IAMAI would also like to highlight the fact that TRAI's assumption that '*The business model pursued by social networking platforms and search engines encourages the production of information that is 'click-worthy', independently of its accuracy or public interest. It is being readily observed in the contemporary society that while information is becoming more diverse and easily available, many individuals seem less likely to access material that challenges their pre-existing views.*' does not account for the fact that the fake news phenomenon has been combatted by intermediaries to the best of their abilities. It also fails to account for the fact that most fake news is propagated by end users and that media entities online have a limited role to play in their spread. Oversight of media ownership would not have any bearing on the scenario of fake news online which can only be combatted by better informed and more discerning end users.

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

²³ Source: <https://internetfreedom.in/revealed-two-thousand-news-publishers-furnished-details-to-mib/>

(including LCOs) or only Broadcasters or both for ensuring viewpoint plurality in the television segment? Please justify your answer.

Outside IAMAI's purview

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.

Outside IAMAI's purview. In any case, **with convergence and the Internet**, there is no concept any longer of "relevant geographic market" or "concentration". Hence the question is irrelevant.

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.

Outside IAMAI's purview, In any case, with convergence and the Internet, there is no concept any longer of "relevant geographic market" or "concentration". Hence the question is irrelevant.

.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.

Outside IAMAI's purview, In any case, **with convergence and the Internet**, there is no concept any longer of "relevant geographic market" or "concentration". Hence the question is irrelevant.

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.

Outside IAMAI’s purview

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.

Outside IAMAI’s purview

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.

Outside IAMAI’s purview

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?

.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?

Outside IAMAI’s purview

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.

Outside IAMAI’s purview

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.

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.

Outside IAMAI's purview

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

Outside IAMAI's purview

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.

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.

As IAMAI has outlined in Q3, Q3.1 and Q3.2, there is no need to duplicate the effort and cost of establishing and developing a new regulator for mergers and acquisitions within the media sector when regulators already exist for this purpose.

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

Outside IAMAI's purview

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

Outside IAMAI's purview

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

The Broadcasting and Cable Services (B&CS) sector is a hypercompetitive landscape comprised of multiple industry stakeholders .



- 45 lacs directly and indirectly employed in the creative sector comprising millions of artists, writers,
- 350 private TV broadcasters that produce content or acquire the broadcasting rights for the 901 TV channels.
- 1724 MSOs
- 155000 odd cable operators
- Four Direct-To-Home
- 89.2 crore TV viewers or 21 crore households

composers, line producers, cine workers, sportsmen, commentator etc.

- *The 901 channels are further divided into 327 pay channels and 574 Free-to-Air (FTA) channels*
- *One public broadcaster i.e. Doordarshan.*

(DTH) operators

- *DD Free Dish*

Competition in the sector today vitiates the potential concerns from entities having interest in both broadcasting and distribution and hence there is no need for any restriction on vertical integration in B&CS today. Any such restriction in today world would be an artificial barrier that prevents these natural complementary services from playing out in the industry to the benefit of consumers and growth of the industry.

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?

Outside IAMAI’s purview

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

Outside IAMAI’s purview

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.

Outside IAMAI’s purview

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.

Outside IAMA's purview

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