

June 7, 2022

To,

Shri Anil Kumar Bhardwaj,
Advisor (B&CS),
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg, New Delhi: 110 002

Subject: NASSCOM Response to the Telecom Regulatory Authority of India (TRAI) Consultation Paper on Issues Relating to Media Ownership

Dear Sir,

At the outset, we appreciate this opportunity afforded by the TRAI to offer our comments on this Consultation Paper (CP) which contains an account of ownership-related issues in the media industry. In this submission, we focus on the characterization of the issues and the proposed approaches laid out in the first chapter of the CP. This chapter provides an overview of recent developments in the media industry and seeks inputs on the need and design of a regulatory framework for looking into issues of market concentration and media plurality in the media industry (as set forth in Questions 1 to 3 of the CP). We attempt to provide a consolidated response to these questions below.

NASSCOM Response to Questions 1 to 3 of the CP:

The CP raises two broad sets of concerns relating to ownership patterns in the media industry. First, the CP attempts to establish a causal link between market concentration and media plurality, and seeks inputs on measuring both metrics, and the need for an additional regulatory framework to address the same. Second, the CP investigates issues relating to vertical integration in media markets and seeks inputs on regulatory measures on pricing of broadcast channels.

Of these, we recognize that the second set of concerns, relating to vertical integration, fit squarely within the regulatory remit of the TRAI. Further, that these are already addressed through various broadcasting and cable services regulations that impose obligations of fair and non-discriminatory treatment, to preclude any instance of vertical self-preferencing by vertically integrated broadcasters and prevent instances of consumer harm through tariff regulation.

With respect to the first set of concerns, however, we find the connection with TRAI's jurisdiction to be unclear. We also find that, given the existing regulatory frameworks governing various forms of media, the case for additional regulatory interventions, including the introduction of restrictions on crossholding across media channels, is not made out adequately. We discuss this further below:

- 1 A significant portion of the CP deals with defining parameters for regulating combinations in the media industry. We recognize that the TRAI Act, 1997, extends TRAI's jurisdiction to recommending measures to facilitate competition and promote efficiency in the operation of telecommunications services. However, we find it difficult to establish the connection between this function and the regulation of combinations in the broadcasting and media sector.

While the TRAI does play an instrumental role in ensuring competitiveness by regulating tariff arrangements, interconnection, and other quality of service parameters in the industry, we submit that *ex-ante* review of combinations in the broadcasting and media sector is squarely within the regulator remit of the Competition Commission of India (CCI). Existing sector-agnostic frameworks for *ex-ante* review of combinations under Sections 5 and 6 of the Competition Act, 2002, administered by the CCI are sufficient to pre-empt any combination that is likely to give rise to adverse effects on competition in media markets.

2 The CP also discusses issues pertaining to the quality of content available to the public. We note that, firstly, several regulations already exist to address concerns of illegal content made available across various forms of media – be it in newspapers and news media,¹ on broadcasting networks² or on OTT-platforms (whether relating to user generated content, curated online content, or news and current affairs content).³

Secondly, the extant framework for content regulation is built on a co-regulatory approach, involving self-regulatory bodies, and Government oversight bodies, and is adequate to address the harms highlighted in the CP. We believe that more evidence would be required before any additional intervention can be considered. Establishing a strong case for additional regulation is especially significant in this context, given the potential implications that government regulation of content can hold for the fundamental right to freedom of speech and expression.

Additional regulation is also likely to lead to uncertainty and confusion over jurisdictional issues with several regulators such as the Ministry of Information and Broadcasting, CCI, TRAI and any proposed “media regulator” having overlapping jurisdiction.

3 We also note that the CP does not cite adequate data to establish any causal linkage between market concentration and media plurality, and merely extends the hypothesis by citing restrictions on crossholdings in other jurisdictions such as the USA. Here, we worry that proceeding in the absence of adequate evidence can lead to unintended consequences – such as premature regulation. This is not merely a hypothetical concern – we have seen this play out in some of the jurisdictions referred to in the CP, where regulators have rolled back restrictions on crossholdings in view of lack of adequate evidence.

For example, as acknowledged in the CP,⁴ the Federal Communications Commission (**FCC**) did indeed maintain cross-holding restrictions with a view to ensure diversity of viewpoints at local levels (that is, smaller geographic markets, where traditionally local news/radio networks flourished) – and protect smaller networks from acquisitions by large national networks which could potentially reduce diversity of viewpoints. However, the FCC itself in 2017, rolled back what it termed as an “antiquated rule” in the face of lack of demonstrable impact of market concentration on media plurality. The Supreme Court of the United States (**SCOTUS**) has subsequently upheld the FCC’s decision.⁵

Resultantly, and in the absence of any evidence, the TRAI should refrain from recommending any structural restrictions on crossholdings in the media industry. In any event, drawing parallels with FCC and similarly placed regulators in other jurisdictions would be inappropriate, since unlike the TRAI, the FCC has been expressly vested with rulemaking powers vis-à-vis mergers and acquisitions in the broadcasting and media space.⁶

¹ See, Press Council of India, “Norms of Journalistic Content”, Edition 2020, Available at URL: <https://www.presscouncil.nic.in/WriteReadData/Pdf/TWOZEROTWOZERONORMS.pdf>; See also, Sections 13 and 14, The Press Council of India Act, 1978, Available at URL: <https://legislative.gov.in/sites/default/files/A1978-37.pdf>.

² See, Sections 5 and 6 of the Cable Television Networks (Regulation) Act, 1995 (**CTNR Act**), Available at URL: <https://www.indiacode.nic.in/bitstream/123456789/1928/1/A1995-07.pdf>; See also, Cable Television Networks (Regulation) (Amendment) Rules, 2021, Available at URL: https://mib.gov.in/sites/default/files/25-6%20CTN%20Appl%205.5X8.5inch%281%29_o.pdf.

³ The Norms of Journalistic Conduct have been made applicable on digital news media (publishers of news and current affairs content) by way of the Code of Ethics prescribed under the Information Technology (Intermediaries Guidelines & Digital Media Ethics Code) Rules, 2021 (**IG & DMEC Rules**). Similarly, the Program Code and Advertising Code under the CTNR Act have been made applicable to publishers of curated content under the Code of Ethics contained in the Appendix to the IG & DMEC Rules.

⁴ At Pages 95 to 98 of the CP.

⁵ See, A. Liptak, Supreme Court Lets F.C.C. Relax Limits on Media Ownership, New York Times, 2021. Available at URL: <https://www.nytimes.com/2021/04/01/us/supreme-court-media-ownership.html>

⁶ *Ibid.*

- 4 Further, we also note that the growth in online media, coupled with greater levels of internet penetration and significantly lower data rates than other countries, has enabled the creation of a diverse variety of content expressing diverse viewpoints within India. Most OTT platforms engender plurality and diversity organically in their content strategy, by expanding viewership base and tailoring content that engages newly acquired viewers. Moreover, user generated content, a segment of the media industry valued at USD 2.97 billion in 2020 and set to grow at a CAGR of 26% till 2028, continues to be a key driver of media consumption.⁷

Conclusion

As discussed above, we find that the CP puts forth certain misconceived presumptions relating to the media industry in India – both in terms of competitiveness of media markets, and the diversity of viewpoints presented by the Indian media industry. Moreover, it fails to establish an adequate basis for regulation, and appropriate jurisdiction for the TRAI vis-à-vis ownership patterns in the media industry.

We may conclude by noting that the CCI has previously investigated several combinations in the media industry, and consistently noted the existence of adequate competitive constraints upon players in this sector. Today, the Indian media industry is represented by a diverse set of media channels ranging from conventional media (television, print and radio), online media outlets (news websites, entertainment content portals), and over-the-top (OTT) platforms to social media platforms. With the advent of internet-based channels of publication and broadcasting, the entry barriers for media organizations have been lowered significantly. As has been seen with the proliferation of multiple competing OTT platforms in India itself, the media and entertainment industry in India remains a vibrant and competitive space.

Therefore, and in the absence of adequate evidence in the CP to demonstrate any market failures, we wish to submit that proposals for *ex-ante* structural restrictions in the media industry, let alone proposals of establishing a dedicated regulator and regulatory framework to oversee issues of market structure and concentration in the media industry, are either premature or lack credible evidence to be considered at this stage.

Resultantly, we would urge the TRAI to forbear from recommending any additional regulation, without demonstrated evidence of market failures.

We remain available to address any queries in relation to the present response.

Thank you.



Sincerely,
Ashish Aggarwal

⁷ See, Grand View Research, “User Generated Content: Market Analysis Report”, 2020, Available at URL: [https://www.grandviewresearch.com/industry-analysis/user-generated-content-platform-market-report#:~:text=The%20global%20User%20Generated%20Content%20\(UGC\)%20Platform%20market%20size%20was%20USD%203.58%20billion%20in%202021.](https://www.grandviewresearch.com/industry-analysis/user-generated-content-platform-market-report#:~:text=The%20global%20User%20Generated%20Content%20(UGC)%20Platform%20market%20size%20was%20USD%203.58%20billion%20in%202021.)