

June 7, 2022

Shri. Anil Kumar Bhardwaj
Advisor [B&CS]
Telecom Regulatory Authority of India
New Delhi

Dear Mr. Anil Kumar Bhardwaj,

Sub: Telecom Regulatory Authority of India's ("**TRAI**") request for comments on the Consultation Paper on Issues Relating to Media Ownership dated April 12, 2022 ("**Consultation Paper**")

Greetings from Mathrubhumi.

On behalf of The Mathrubhumi Printing and Publishing Co. Ltd., ("**Mathrubhumi**" / "**We**"), we convey our gratitude for TRAI's initiative to consider safeguards to maintain plurality of media, which is a touchstone of our democracy, and to consult the stakeholders in such process.

Our comments are given below:

1. At the outset, Mathrubhumi welcomes TRAI and MIB's initiative in taking steps to periodically review, examine and analyze media ownership in India with a view to ensure that media plurality is safeguarded and protected. We are of the foremost belief that as a democratic society, each individual has the right to multiple viewpoints / perspectives / opinions such that they can formulate their own informed views / opinions, as this is a part of their fundamental rights granted under Article 19(1)(a) of the Indian Constitution ("**Constitution**").
2. However, our view is that currently in India, there is no reason to impose any restrictions / regulations on cross-media ownership / vertical integration, since media pluralism has not in any way been affected by any cross-media ownership of media house or vertical integration of broadcasters and distributors and is in fact increasing

each day with the advent of new technologies and forms and modes of media and communication. We note that the Consultation Paper has set out a list of 28 (twenty-eight) questions for stakeholders to respond to. Given our view that there is no need for TRAI / MIB to consider any monitoring of cross-media ownership or regulating vertical integration, we have limited our response to discussing why there is no such need. All other related queries in the Consultation Paper automatically fall away.

3. In our view the reasons for stating that no regulation on cross-media ownership / vertical integration are twofold: (i) evidential / practical, and (ii) legal. Each has been discussed below.

4. *Evidential / Practical Reasoning:*

- a. At the outset, we would like to first highlight that the Consultation Paper does not actually show any empirical or other data that shows there is negative correlation between cross-media ownership / vertical integration and media plurality i.e. that presence of cross-media ownership and vertical integration restricts / limits media plurality in India. In the absence of any such correlation, the entire premise on which the Consultation Paper is based, is rendered obsolete and there is no further reason to consider any reasons why there should be no regulation / restriction on cross-media ownership / vertical integration in India. However, for arguments sake, on the basis of the assumption that such negative correlation does exist, we have provided our further reasons below as to why, in our humble opinion, such regulation of cross-media ownership / vertical integration is not required.
- b. Currently in India, the following statistics should be noted: (i) as of March 31, 2021, there are 1,44,520 registered publications (newspapers and periodicals) in India¹, (ii) there are approx. 900 television channels² in India with approx. 892 million viewers

¹ [Content.pdf \(rni.nic.in\)](#)

² TRAI, 'The Indian Telecom Service Performance Indicators, October – December 2021', [QPIR_05052022.pdf \(trai.gov.in\)](#)

across the country³, and (iii) there are 386 FM radio stations⁴ and 470 All India Radio stations operated by Prasar Bharti⁵, which in fact disseminates news in 23 languages and 179 dialects, reaching 92% of the country's area and 99.19% of the country's population⁶. These are only the traditional modes of media and an analysis of their volume alone already highlights that there is an abundance of information / news being disseminated to the public, thus providing the public with a wide option of sources and wide variety of viewpoints. Even for the sake of argument, if it is contended that despite such volumes of print, radio and television in the country, the ownership is concentrated in the hands of few, thus limiting competition and multiple newspapers, televisions and radio are releasing the same information and affecting media plurality, basis the numbers mentioned hereinabove, it is very unlikely (and no data has been shown to prove the same) that the same is actually concentrated in the hands of only 2 – 3 media houses / entities. In any event, the plurality of media is most significant in the news sector, which in India, private radios are not even allowed to broadcast so cross-media ownership of radios would in no way impact media plurality.

- c. The Consultation Paper has not shown any evidence / provided any data with respect to whether there is currently a monopoly in the media sector and whether there is any one player who is able to control the entire market and dissemination of news and information. We note that the Consultation Paper discloses certain examples of cross-media ownership, including information provided by us on our various businesses in media, however, such data does not show either any monopolistic practices, nor does it show that such cross ownership has negatively impacted media pluralism. In fact, in our view the Indian media market is sufficiently competitive and diverse and that in itself satisfies media plurality as no competitors are not colluding together to control the information / news being

³ [Tv-owning Households Grew 6.9% In 2018-2020, Says Barc | Mint \(livemint.com\)](#)

⁴ TRAI, 'The Indian Telecom Service Performance Indicators, October – December 2021', [QPIR_05052022.pdf \(traigov.in\)](#)

⁵ [All India Radio | Prasar Bharati](#)

⁶ [All India Radio | Prasar Bharati](#)

published. Additionally, with respect to vertical integration if the broadcaster and distributor are owned by the same entity, it could be suggested that such integrated company will better be able to cater to the needs of a consumer as it can create and distribute content per the tastes and preferences of its consumers.

- d. Introduction of any restrictions on cross-media ownership / vertical integration, could also have the undesired effect of restricting competition if the regulations make entry into such sector difficult which would ironically end up restricting media plurality. Moreover, all media houses, whether involved in radio, television or print, are structured on an extremely capital-intensive model and thus tend to model their businesses on multiples revenue streams. In the event of any restrictions, such media houses may be constrained to reduce their future funding activities, which would further affect their economic viability and may lead to closures, which in turn will once again reduce consumer choice and competition.
- e. TRAI / MIB's formulation of any policy / regulation could also potentially lead to many companies / entities / individuals engaging in complex corporate structures with offshore entities, etc. who try to circumvent the regulations, leading to part of the media sector operating in a grey area, over which TRAI / MIB / any other regulatory authority, may have even less control.
- f. Significantly, the aforesaid discussion has not yet taken into consideration the growing advent of digital media in the country. The growth of the internet between the First Reference and today itself makes the discussion being had with respect to the Consultation Paper and cross-media ownership obsolete. Over the years internet usage and consumption has grown multifold and as at December 31, 2021, the number of internet subscribers in India stood at 829.30 million⁷. In addition to this, there has been exponential growth in OTT platforms and even during the

⁷ TRAI, 'The Indian Telecom Service Performance Indicators, October – December 2021', [QPIR_05052022.pdf \(traigov.in\)](#)

pandemic, as noted by the Consultation Paper, digital media was one such market sector that remained resilient. There has also been a growth in digital publications, news disseminators (with even social media becoming a source of news – for e.g. Facebook, Instagram, Snapchat, etc.) thus providing consumers an even larger variety of sources from which they can glean / absorb information. With the entry and growth of the internet or the 'digital age' in India, the media landscape has already drastically changed as a multitude of services can now reach consumers via multiples modes (including televisions, tablets, mobile phones, laptops, etc.), new services such as video on demand, catch-up tv etc. are now being provided, and consumers are able to access content anytime and any place.

- g. In fact, as stated in the Consultation Paper, *'The consequences of rapid technological development for informational diversity and media pluralism are mixed. An increasingly digital media environment gives internet users access to information from more and more sources, increasing the opportunities for people to use diverse sources and encounter different perspectives. with the emergence of social media platforms and Apps which depend on user generated content, the news and facts do not depend on any media organization for its conveyance to the public. The emergence of digital media has increased the potential of media to raise the voice of the powerless and marginalized by multiple times, thereby acting as a gloss over the role played by the traditional sources of media in the society....'*⁸ We wholeheartedly agree with such view and are not perturbed by the views that digital media is being consolidated by acquisition of smaller players by established players simply because the barriers to entry into digital media are so few, that everyday there are new digital media entities coming up in every nook of the country. We therefore are of the view that especially in the light of the constant growth and evolution of the media landscape in India and the rest of the world, it is automatically impossible for competition to be restricted to such an extent such that media

⁸ Consultation Paper, pg.15 – para 2.22

houses will be able to control the information / news being disseminated and consumers will only be provided with few views / opinions. For better clarity, the example of YouTube can be taken, it is very simple for any individual / entity to set up their own YouTube channel and share content / news, etc. Further, access to such channels is also easy and therefore consumers constantly have a growing base of sources from which they can access / obtain information.

- h. Fake news / lack of authentication of news being disseminated due to growing digital media is also a concern that restrictions on cross-media ownership / vertical integration can curb as per the Consultation Paper. However, the restrictions on ownership will in no way have any impact on the quality of content being disseminated and the risk of fake news, etc. remains. Additionally, the Consultation Paper has also observed that algorithms being used by social networking platforms and search engines to provide users with a personalized experience based on their individual preferences represents a challenge to media pluralism. Once again this problem cannot be solved by regulating cross-media ownership as even if there are 100 (hundred) different social networking platforms, each one will yet apply such algorithm to provide personalized information based on users preferences. Therefore, rather than considering any recommendations on cross-media ownership / vertical integration, policies / guidelines could be investigated to battle fake or unauthenticated news.
- i. While we appreciate the importance of drawing from the experience of other jurisdictions and their laws on the same, we would urge TRAI to bear in mind that ultimately each country has to create its own policies / regulations based on their on-ground situation and based on our response herein it is clear that India does not require any restrictions on cross-media ownership or vertical integration.
- j. Lastly, it should also be noted in this regard that while media plurality is a generic term applying to all forms of information

being disseminated by media houses, the main concern when media plurality is discussed is dissemination of the news. Therefore, if any cross-media ownership / vertical integration restrictions are implemented, it will actually be with a view to preserve media plurality of news but will impact all forms of information including entertainment, sports, food, fashion, etc. which is not proportionate or reasonable.

5. *Legal Reasoning:*

- a. In addition to our above views, we are also of the view that there is strong legal reasoning that supports our stance that no regulatory changes / restrictions need to be introduced on cross-media ownership / vertical integration in India.
- b. At the very outset it should be noted that if the concern is anti-competitive behaviour due to such cross-media ownership or vertical integration, there are already regulatory bodies existing in India – the Competition Commission of India (“**CCI**”) and the Securities and Exchange Board of India (“**SEBI**”) – which govern all such kinds of transactions, including any mergers and acquisitions of / by media houses. The presence of the CCI and SEBI and the laws established under the Competition Act, 2002 (“**CA 2002**”) and Securities and Exchange Board of India Act, 1992 (“**SA 1992**”) are sufficient by way of a safeguard to prevent any anti-competitive or monopolistic practices.
- c. Under s. 3 and 4 of the CA 2002, anti-competitive arrangements and abuse of dominant position is prohibited and per s. 19 and 20, ex-post investigations of violations are allowed. Additionally, the CA 2002 empowers the CCI to regulate mergers and acquisitions based on whether any combination is going to cause or is likely to cause an appreciable adverse effect on competition. CCI can investigate violations of the CA 2002 and impose restrictions or modify such arrangements or impose a penalty or in case of mergers, can disallow a proposed merger if the proposed merger may have an adverse effect on competition. Similarly, under the SA 1992, SEBI has been granted the power

of regulating the stock market. Under such provisions and regulations, SEBI has promulgated the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, which provides the process / laws to be followed in the event of a takeover of 25% or more of voting rights of a target company, and includes public disclosures, minimum price, etc. Any non-compliance with such provisions can lead to investigations and penalties.

- d. In addition to SEBI and CCI, under the Companies Act, 2013, the National Company Law Tribunal has also been provided power to sanction the arrangements and amalgamations and also examine issues related to rights of shareholders / stakeholders during mergers / amalgamations.
- e. Further, as the Consultation Paper has also drawn attention to, the Department for Promotion of Industry and Internal Trade has issued orders appointing an advisory committee for its Open Door Network for Digital Commerce project that is aimed at curbing “digital monopolies” by democratizing digital commerce in India and other related strategies⁹.
- f. The aforementioned laws / guidelines all cover any media ownership / control of another media entity and therefore there is already a clear and functional mechanism to regulate ownership and control in the media sector and further regulations would not be required. Additionally, it is pertinent to note that presently in India, separate sectors of industry do not have separate regulatory bodies governing their ownership and control, and all sectors fall under the purview of the CCI / SEBI.
- g. In addition to the laws on ownership / control, there are also sufficient laws present within the media sector with respect to the content being disseminated by media. Under the Press Council Act, 1978 (“**PCA**”), the Press Council of India (“**Council**”) has been incorporated, which has been incorporated

⁹ Consultation Paper, pg. 18 – para 2.28

to preserve the freedom of the press and to maintain and improve standards of newspapers and news agencies in India. Under the PCA, the Council inter alia has the following responsibilities: (i) to build a code of conduct for newspapers, news agencies and journalists, (ii) to keep under review any development likely to restrict the supply and dissemination of news of public importance; and (iii) to encourage a sense of responsibility and public service amongst those engaged in journalism¹⁰. Similar to the PCA, cable television networks are regulated under the Cable Television Networks (Regulation) Act, 1995 ("**Cable TV Act**"). Under s. 5 and 6 of the Cable TV Act, no person is entitled to transmit or re-transmit through a cable service and programme unless such programme is in conformity with the programme and advertisement codes. The Programme Code which is a mandatory guideline to be followed is set out in Rule 6 of the Cable Television Network Rules, 1994 and states that no programme should inter alia: (i) offend against good taste or decency, (ii) contain criticism of friendly countries, (iii) contain anything that would amount to contempt of court, (iv) encourages superstition or blind belief, (v) denigrates women in any manner, etc. The provisions of the PCA and Cable TV Act provide an additional layer of comfort that all entities / owners involved in print or cable tv sectors have to comply with certain restrictions with respect to the content they are publishing / broadcasting. This further ensures that the content being disseminated to the consumers is not misleading / false in any way, while yet providing an opportunity for free opinions / multiple views, etc. to be disseminated to the public, thus ensuring media plurality.

- h. Uplinking and Downlinking Policy Guidelines for TV channels provide for security clearance by the Ministry of Home Affairs and also require prior permission of the Ministry of I&B for appointment of a new director. It also provides for intimation regarding change in shareholding pattern and FDI. Further transfer of permission of a Television channel or teleport to

¹⁰ s. 13, PCA

another entity can be done only with the prior approval of the Ministry of I & B.

Every year, in the first issue after the last day of February, a statement regarding the ownership and other details of the newspaper / magazines are to be published in Form IV in the Schedule to the Registration of Newspaper [Central] Rules, 1956.

Every publisher furnishes to the Press Registrar an annual statement regarding the newspaper in Form II in the Schedule to the Registration of Newspaper [Central] Rules, 1956. Failure in timely submission of the annual statement is liable for penal action under the Press and Registration of Books Act.

TV channels, and FM Radio have to strictly comply with the licensing conditions issued by the Ministry of I&B. Newspapers and Magazines have to strictly comply with the PRB Act.

All these would clearly show that there are several statutes aimed at monitoring and tracking the ownership of media organisations engaged in printing, publishing, and broadcasting. Imposing more restrictions by way of policy / regulation on cross-media ownership / vertical integration will only result in hindering the growth of the sector and will curtail media plurality in India.

- i. Even with respect to digital media, the government has taken steps to regulate the same and legislate provisions in accordance with the ever-evolving digital landscape. In this respect the Information Technology Act, 2000 ("**IT Act**") was enacted and under the aegis of the IT Act, in 2021, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("**IT Rules**") were brought into effect.
- j. Under Part III of the IT Rules (Code of Ethics and Procedure and Safeguards in Relation to Digital Media), publishers of news and current affairs have to observe and adhere to the Code of Ethics, which include: (i) the Journalistic Norms as under the PCA, (ii) the Programme Code under the Cable TV Rules, and (iii) any

Content which is prohibited under any law for the time being. Additionally, in order to ensure observance and adherence to the Code of Ethics and for addressing any grievances, there is to be a three-tier self-regulation structure as follows: (i) Level 1 – Self-Regulation by the publishers, (ii) Level 2 – Self-regulation by the self-regulating bodies of the publishers, and (iii) Level 3 - oversight mechanism by the Central Government. Further, under Rule 18, a publisher of news and current affairs content and a publisher of online curated content operating in the territory of India, shall inform the MIB about the details of its entity by furnishing information along with such documents as may be specified, for the purpose of enabling communication and coordination. The publisher of news and current affairs content shall also publish a periodic compliance report every month mentioning the details of grievances received and action taken thereon¹¹.

- k. It is clear from the above that even without any further policy / regulation there are a multitude of laws that are applicable to the media industry that both regulate control and ownership and content of information being disseminated. In addition to this, it is our view that any regulation of media ownership / vertical integration will be contrary to the fundamental rights granted under Article 19 of the Constitution.
- l. Freedom of speech and expression is a fundamental right granted to all citizens of India, and is enshrined in Article 19(1)(a) of the Constitution of India, which states '*All citizens shall have the right – (a) to freedom of speech and expression..*'. However, such fundamental right is not absolute, and per Article 19(2) the following restriction is set out '*Nothing in sub-clause (a) of clause (1) shall affect the operation of any law, or prevent the State from making any law, in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-*

¹¹ Rule 19, IT Rules

clause.' The preamble of the Constitution also states that liberty of thought and expression should be secured for all citizens. It is therefore clear that the right to free speech and expression is an important canon of the Constitution and one of the foundational ideals of the country. The protection under Article 19(1)(a) extends to communication in the form of oral words, written text or any other form. The Supreme Court held the same in *PUCL v. Union of India*¹², where they stated that '*Freedom of Speech & Expression guaranteed under Article 19(1)(a) means the right to express one's convictions and opinions freely by word of mouth, printing, picture or in any manner.*'¹³, this was further extended to the cyberspace, when the Supreme Court held that freedom of speech and expression through the medium of the internet also enjoyed constitutional protection under Article 19(1)(a)¹⁴.

m. While the freedom of the press has not been explicitly included within the Constitution as a fundamental right accorded to citizens, it is a settled principle of law that the freedom of press is a part of the fundamental right of the freedom of speech and expression. Some of the seminal cases on this principle include:

- i. *Romesh Thappar v. State of Madras*¹⁵: The Supreme Court held that enforcement of pre-censorship on a journal constituted an infringement of the freedom of press, which is an essential part of Article 19(1)(a) and stated '*...freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion, no public education, so essential for the proper functioning of the process of Government, is possible*'¹⁶.
- ii. *Indian Express v. Union of India*¹⁷: The Supreme Court held that the purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Freedom of press is at the heart of social and political

¹² (1997) 1 SCC 301

¹³ Ibid, para 19

¹⁴ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637

¹⁵ 1950 SCR 594

¹⁶ Ibid, para 9

¹⁷ (1985) 1 SCC 641

intercourse and it thus the primary duty of courts to uphold the freedom of the press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate.

- iii. *Sakal Papers Ltd. v. Union of India*¹⁸: In this case, an order was challenged which had the effect of fixing the number of pages and size which a newspaper could publish. The Supreme Court held this to be violative of the freedom of press and not a reasonable restriction under Article 19(2) of the Constitution.
- n. Therefore any restriction / policy on media ownership / vertical integration shall simply erode the freedom of the press, which has clearly been recognized as a fundamental right, and given that the data / evidence does not show either any cross-media ownership / vertical integration issues in India or any link between cross-media ownership / vertical integration leading to reduced media plurality, any restriction / policy imposed would not be considered a reasonable restriction under Article 19(2) of the Constitution.
- o. Further, as stated earlier, it is our view that any regulation of cross-media ownership / vertical integration could in fact lead to media entities shutting down / curbing their business, which would in turn have a negative impact on media plurality. Such effect would then affect the fundamental rights of all citizens under Article 19(1)(a) since there will be a restriction / impediment to their freedom to information which has been explicitly recognized by the Supreme Court of India as a fundamental right of all citizens¹⁹.
- p. Additionally, any restriction on media ownership / vertical integration shall also affect the fundamental rights granted under Article 19(1)(g). Per Article 19(1)(g) all citizens are granted the right to '*practice any profession, or to carry on any occupation, trade or business*'. While we acknowledge that Article 19(1)(g) is

¹⁸ (1962) 3 SCR 842

¹⁹ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212

qualified by Article 19(6) of the Constitution which states that the state can '*make any law imposing, in the interests of the general public, reasonable restrictions*' on the right protected under Article 19(1)(g), as per the above discussion, given that restrictions on cross-media ownership / vertical integration can lead to reduced number of media players / media houses shutting down due to business considerations, etc. there could actually be a decline in the media pluralism, which is definitely not in the interest of the public and would not be seen as a reasonable restriction given that the link between cross-media ownership / vertical integration and media pluralism has not even been empirically proven.

- q. Finally, it is worthy to note, that under various Indian laws, for e.g. Companies Act, 2013, certain disclosures with respect to the shareholding, annual returns, etc. of companies already have to be made and some of this information (especially with respect to public companies) is also available in the public domain. This means that the information with respect to cross-media ownership, is not a closely held secret, but it is in fact quite open and transparent as to which media conglomerates own different verticals of the media, thus reducing the chance of any consumers / individuals being surprised that the newspaper they read and the channel they watch are owned by the same entity.
- 6.** In view of the above, we request TRAI to give no further consideration to any restriction / policy on cross-media ownership / vertical integration and instead TRAI / MIB could consider examining whether creating economic and regulatory flexibility in the media sector would in fact attract investments and encourage innovations, which would ultimately lead to increasing media plurality through the continuous entry of new players in the market. TRAI / MIB could also consider setting up a self-regulatory body to oversee any such issues / complaints, and provide such body with powers of correction on a case-by-case basis, rather than introducing outright restrictions on cross-media ownership / vertical integration.

Conclusion:

Mathrubhumi is cognizant of the efforts being made by TRAI and MIB to ensure that media plurality is safeguarded in India and the canons of freedom of speech and expression as envisaged under Article 19(1)(a) of the Constitution are protected for each and every citizen. However, for the reasons stated above, we do not think that there is, at present, any threat to media pluralism in India, and if anything, with the rapid technological growth and increasing dissemination of news and information from a variety of sources, media pluralism has only increased in India. There is therefore no reason for any policy / regulation on cross-media ownership / vertical integration as the problem such regulation will be implemented to solve, does not exist.

We are hopeful that the comments we have provided on the Consultation Paper are critically analysed, examined and taken on board.

We remain available for any further discussion / information at TRAI's request.

for The Mathrubhumi Printing & Publishing Co. Ltd.,

[G. Anand]
Senior General Manager-HRD
