

Times Network's Comments on TRAI consultation paper dated April 12, 2022 on "Issues relating to Media ownership".

Principal View:

We state at the outset that there is absolutely no need to consider any measures concerning ownership and/or control of any media entity by any Government body. The exercise undertaken by TRAI under the Consultation Paper (CP) is not necessary and would produce no benefit for the Nation. On the other hand, the best way to preserve diversity is to ensure Indian media companies have a positive future and can compete effectively against the likes of Google and Facebook. This can only happen when media companies are allowed to be viable and this is possible only when:

- Media companies are allowed to horizontally own different forms of media like newspapers, TV and radio as at present;
- Media companies must be protected from efforts at vertical integration by entities wanting to own and control both content and carriage. Hence, the 20% cap on content and carriage in some parts of broadcasting must be extended to other entities in the distribution space as well;
- Media companies –both content and carriage –must be protected from efforts by telcos wanting to own and control media entities. Hence, there must be the stringent curbs on common ownership of media and telco assets and it is surprising why TRAI has neglected this particular aspect in its Consultation Paper.

Please find herewith other major points:

1. No Jurisdiction under the TRAI Act:

It is submitted – as submitted with all respect in our past submission - that TRAI has no jurisdiction to cover matters in relation to Print media. TRAI Act, 1997 defines functions of TRAI in section 11 and states that TRAI may make recommendations in relation to 'telecommunication services' only. Telecommunication service is defined to include services which are transmitted or received using wire, radio, visual or other electromagnetic means. Broadcasting services were included by way of specific notification in 2004.

Any input that TRAI seeks in relation to Print media, or any recommendations that TRAI may make in relation to Print media, shall not be in accordance with the TRAI Act. Given the fact that TRAI is a Statutory Regulator and has a specific role in terms of TRAI Act, even if a reference has been made by the Ministry of Information and Broadcasting (MIB), which goes beyond the statutory mandate of TRAI, TRAI may limit its consultation and recommendation to its Jurisdiction and may not offer any recommendations on the Print media in this reference.

We are making further contentions in this submission without prejudice to the above statements that TRAI has no jurisdiction to cover matters in relation to the Print media.

Section 11 of the TRAI Act describes the functions of the TRAI. These functions are divided into two broad areas: (i) Making recommendations on certain matters, and (ii) regulatory functions. The regulatory functions largely deal with monitoring compliance with the telecom licenses and other functions of service providers.

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

- (i) need and timing for introduction of new service provider;
- (ii) terms and conditions of licence to a service provider;
- (iii) revocation of licence for non-compliance of terms and conditions of licence;
- (iv) measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

- (v) technological improvements in the services provided by the service providers;
- (vi) type of equipment to be used by the service providers after inspection of equipment used in the network;
- (vii) measures for the development of telecommunication technology and any other matter relating to telecommunication industry in general;
- (viii) efficient management of available spectrum

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

2. Acarpous exercise, in contravention of settled law:

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

With the COVID pandemic not behind us and new scares coming forth regularly, it is highly irregular that TRAI should come up with the CP and put forth its premise at this time.

The Government of India has stated that uninterrupted supply of newspapers is vital to ensure that public gets accurate information and is abreast of the latest developments. Only this can help readers make informed choices. To highlight the importance of the "operational continuity of Print and electronic media" in view of the outbreak, the Government of India has taken out a circular urging all states and union territories to facilitate operational convenience of these services to "ensure timely and authentic information dissemination."

Prime Minister Narendra Modi has also said that newspapers have "tremendous credibility" and, by acting as a link between the government and the people, play a critical role in creating awareness about the Covid-19 outbreak at both the national and regional levels .

In the time of great national distress - following a global pandemic - where knowledge becomes more important with regular Government notifications / advisories, information on location of medical facilities and testing centres, do's and don'ts on health, curfews and numerous other critical and highly important communications, TRAI's attempt at questioning plurality of views in the Indian media is patently wrong and may move towards lack of access to correct and verified news through newspapers.

Fake news is challenging our society at a fast pace and Social media penetration is getting deeper in the masses. Following lack of truly effective regulations on dissemination of information on social media and the internet, our society is in dire need of credible information from well-regulated sources like the print media. Any action by TRAI, through any untoward recommendations following the CP will muzzle the media and availability of credible information will be adversely affected.

It may be noted that a well-rounded media can run effective campaigns against fake news. One of our campaigns – which has gained immense traction – is "Times Verified". You may read about it at <https://timesofindia.indiatimes.com/city/mumbai/times-verified-tracks-viral-fake-news-debunks-48-of-over-24000-messages/articleshow/89029404.cms>.

Through any action which may split the synergies in media entities, public facing activities of the media would also dry up. The CP itself highlights issues on fake news in paras 4.16 to 4.18, which we request be seen in context to the need of continuation of India's pillar of democracy without any unreasonable restrictions.

3. Violation of Constitutional Provisions

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

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

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

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

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

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

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

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

Further, the Hon'ble Supreme Court in **Indian Express Newspapers (Bombay) Pvt Ltd Vs Union of India (AIR 1986 SC 872)**, held that, the law in question was to directly affect the right of circulation of newspapers, which would necessarily undermine their power to influence public opinion. These restrictions will amount to major government interference as they will have the final power and this will constrict the existence of a free Press. It is the primary duty of all the national courts to uphold the said freedom and invalidate all laws or administrative actions, which interfere with it contrary to the Constitutional mandate.

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

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

4. Existing plurality of views:

Indian media sector, especially Print media, is sufficiently well diversified, thereby demonstrating active plurality of views. We note that the CP highlights data on a plethora of newspapers which exist in our country, which may be taken as a singular market for newspapers, with readership only appearing to be different in terms of language, while the content i.e. news and its delivery structure remains the same.

As per the 65th Annual Report Registrar of Newspaper for India, (Ministry of Information & Broadcasting, Government of India) as many as 1,44,520 publications (Newspapers & Other periodicals) have been registered in India till 31st March 2021. During 2020-21, a total of 1,097 new publications were registered. The total circulation of publications has been taken as 38,64,82,373 copies per publishing day in 2020-21. Hindi had 4,349 Dailies, claiming a circulation of 10,36,19,621 copies, while 1,107 Urdu dailies, 1,083 Telugu dailies, and 820 English dailies claimed (2,18,06,994), (1,47,89,526) & (2,05,04,961) copies per publishing day respectively.

As per the data received through Annual Statements submitted by the publishers for 2020- 21, the highest numbers of publications were published in Hindi (16,274) followed by Marathi (2,683), English (2,434), Telugu (2,252), Gujarati (1,834), Urdu (1,698), Kannada (1,151), Tamil (885), Bengali (537), Odia (442), Malayalam (317) etc.

India has been a land of diversity and varied culture, and along with that, there has always been an existence and encouragement of circulation of multiple views on each topic. Furthermore, we have a hierarchical society on many parameters, where notions of complete equality are seldom evident in daily life. This variety of opinion is so apparent that in 2022, Indian Institute for Mass Communication has published a report 'Analysis of Global Media Coverage of Events in India' in the latest issue of its quarterly media journal '*Communicator*' and endeavours to explain the alleged irrational global media coverage of socio-political developments in India through facts and figures.

The report, through in-depth analysis of 3000+ India related Articles by global media, case studies & readership growth pattern, suggests that these questions about the Western media's coverage may have

some legitimacy to them. The report quotes scientific papers, communication experts and journalists associated with these concerned Western media houses to explain how there is a natural tendency to prefer click bait journalism in order to garner more eyeballs which in turn helps grow their business. Senior writer at *New York Times* David Leonhardt says, “Our healthy skepticism can turn into reflexive cynicism, and we end up telling something less than the complete story because we don’t weigh positive news and negative objectively.” Award winning American podcaster Jay Acunzo says that it’s all about business, “Our media is addicted to growing ad revenue. The business model is the illness. Everything else is a symptom.” This is in contrast to our media, which is highly plural in its views, thereby benefitting the public right across the nation.

It is reiterated that there is very extensive language heterogeneity in Print publications in India, which along with the fact that these publications –as many as 1.45 lakh are registered and published- have extremely varied ownership, ensures plurality of views. In fact, the Indian media sector is the most competitive in the world. Consequently, there is no need of any enforced plurality of views in the print media.

Responsible media groups like ours also ensure complete independence and autonomy in our different segments which ensures plurality of views from within one Group as well. For example, the editorial teams of Publishing (*The Times of India*, *The Economic Times*, *Navbharat Times*) are all separate and often have different views on the same subject / developments. Infact, even the Edit pages often carry Views-Counter Views on the topic of the day. Additionally, the Broadcasting company works completely independently (*Times NOW & ET NOW* news channels, etc) and have diverse views on issues, as distinct from the views taken by the Publishing Division, and work as independent entities within our Group. This is a feature which is common right across Indian media houses.

5. Print media is appreciated, but is facing its own challenges:

Prime Minister Narendra Modi recently said that media can play a positive role in changing the lives of people and hailed the contribution of the fourth estate in promoting government's ambitious initiatives like Swachh Bharat Mission, popularising Yoga, fitness and 'Beti Bachao Beti Padhao' scheme, saying these are the subjects beyond the domain of politics.

"I have seen the positive impact the media can play. The example of the Swachh Bharat Mission is well known. Every media house took up this mission with great sincerity", the Prime Minister said, inaugurating online the centenary celebrations of Malayalam daily *Mathrubhumi*.

Yet, the total circulation of periodicals decreased from 18,09,88,756 copies in 2019-20 to 16,01,06,418 copies per publishing day in 2020-21. Weeklies with 11,252 copies, followed by Monthlies 7,472, Fortnightlies 2,997, Quarterlies 677 and Annuals 121 copies per publishing day. Traditional Print media faces growing competition from online sources and apps on Android and iOS systems. News aggregators are challenging the news generators and are taking away a substantial part of advertisement revenue, which is a must for survival of India Media.

Print media has observed lowering in demand in the recent times as readers are drawn to online channels, thereby diminishing advertisement revenues, as advertisers pursue diverse ways to track and target potential customers. Classifieds are seeing digitisation, and it is becoming all the more important for publishers to have online presence to ensure that its readership continues.

As suggested earlier by us, instead of suggesting any cross holding restrictions, the Government policy should be targeted on fair consolidation in each media vertical, whereby quality of views is enhanced in each media vertical, in turn benefitting the Consumer through plurality of quality views.

It is a known fact that India has been ranked in 2022 at a dismal 150 out of 180 countries by the NGO Reporters Without Borders in the annual ranking of countries based upon the organisation's assessment under its Press Freedom Index. The ranking is accessible at <https://rsf.org/en/index>, which

shows that much needs to be done to increase Indian media's freedom. Any further restrictions on the Indian media will only worsen the situation.

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

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

6. Laws already exist to regulate traditional media and there is no need of further regulation:

The Press Council of India (PCI) regulates the Press in India. Its website states: "Press Council is a mechanism for the Press to regulate itself. The *raison d'être* of this unique institution is rooted in the concept that in a democratic society the press needs at once to be free and responsible. If the Press is to function effectively as the watchdog of public interest, it must have a secure freedom of expression, unfettered and unhindered by any authority, organised bodies or individuals. But, this claim to press freedom has legitimacy only if it is exercised with a due sense of responsibility. The Press must, therefore, scrupulously adhere to accepted norms of journalistic ethics and maintain high standards of professional conduct. Where the norms are breached and the freedom is defiled by unprofessional conduct, a way must exist to check and control it. But, control by Government or official authorities may prove destructive of this freedom. Therefore, the best way is to let the peers of the profession, assisted by a few discerning laymen to regulate it through a properly structured representative impartial machinery. Hence, the Press Council."

TRAI has no authority or expertise to question the existing and well-rounded mechanism of regulation for the Press, and any such act would be opposed. It is surprising that TRAI has not given any reference to PCI in the CP. Further, the CP questions self-regulation and its effectiveness in Para 2.30, which is highly irregular and may lead to the question whether TRAI is trying to gain more regulatory power for itself, at the cost of media freedom.

7. Sufficiency of Indian Competition Law:

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

Provisions of Merger Control, under the Act provide for effective regulation in case any combination or merger crosses a threshold. These thresholds may be looked at by the legislature and the CP's intent to reinvent the wheel and try to bring in a parallel mechanism is an exercise of futility.

The Competition Act governs restrictive contracts, pricing and other arrangements and has various checks and balances to allow healthy market practices. Under the Competition Act, *dominant position* is not banned, but its abuse is penalised. Given the fluid nature of media engagement by the consumer, it is practically impossible to establish monopolies / influence over a period of time and, of course this is impossible on the digital global. Consumer preferences are changing constantly and TRAI's indicators in this regard are flawed.

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

Media law – if at all - may focus further on abuse of dominant position and this area is already being looked at by the Competition Commission of India (CCI). CCI is already governing this space and an active example may be seen in the action against Google's alleged abuse of its dominant position. Please see: https://www.business-standard.com/article/current-affairs/cci-clubs-newspaper-body-s-complaints-against-google-with-earlier-order-122032500668_1.html, where it has been reported that "CCI has clubbed the information presented by Indian Newspaper Society – on Google's alleged abuse of its dominant position – with an earlier order to investigate the technology giant's practices in the online news publishing business. After examining the contentions of INS, the representative organisation of newspapers in the country, CCI found that prima facie allegations of abuse of dominant position are under the purview of the Competition Act, 2002 and that it requires a detailed investigation by the Director General. Accordingly, the antitrust watchdog has passed an order to club the information submitted by the INS with the submissions made by the Digital News Publishers Association (DNPA) who filed their complaint before the commission on similar contentions last year."

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

8. Position under other laws:

In the garb of promoting media plurality, any act following the CP would effectively be against Article 19(1)(a) of the Constitution of India. The action of newspaper establishments being forced to raise the price of its publications to meet the additional financial burden placed on it by being robbed of opportunities to operate multiple platforms, would adversely affect circulation of newspapers, which would inevitably go down. An additional outcome of forced financial burden on the newspaper establishments is raising its advertising tariff, which would adversely affect its advertising revenue. The advertisers would invariably shift to cheaper, newer and more widespread means of marketing such as internet, mass e-mailers, and radio stations, which would lead to major decline in the revenue earning of newspaper establishments. A decline in revenue is bound to throttle the press. This would be a direct interference with the freedom of speech and expression of the Press, as upheld by the Hon'ble Supreme Court in the case of *Sakal Papers (P) Ltd.v. Union of India* [(1962) 3 SCR 842]

TRAI's recommendations, if implemented, are likely to cause unreasonable financial burden on newspaper establishments. Forcible imposition of constricted structures on newspaper establishments is an anathema to the economic liberalization policies of the Government of India. Further, a scattered media would have no say and will not be able to play the role it has been entrusted in our polity. Small entities will be at the mercy of the Government and will be intimidated into submission.

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If the CP results in any proposals to put barriers on media entities to enter more / new platforms to better utilise their content, newspaper industry in India will lose scaling-up benefits of cross-ownership with an internet media / television media company, which may be required for it to remain economically viable. No media company can survive in today's evolving market conditions if it does not have access to medium of presenting content in form of text, audio and video.

It is today's reality that content generators and content aggregators have to work in harmony to ensure a viable media product. Media content is of a certain format, however, its delivery to the consumer is varied and can change formats, in line with consumer demand. Any act to deprive a media entity to have presence across different formats of media would then also be against Article 19(1)(g) of the Constitution of India.

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

As highlighted above, it is a fact that Google and Facebook account for more than 60% of digital advertising (also see: <https://www.businessinsider.in/google-and-facebook-lead-in-digital-ads-market-share/articleshow/70122312.cms>). This matter is being looked at by CCI and TRAI has also come up with a separate consultation paper in this regard. As the matter is sub-judice and needs a separate deliberation, it is not prudent to look at ways to fragment Indian media, which will make it more susceptible to unfair market practices from large internet players and political formations.

It is also our contention that even the limited cross media restrictions are being lifted and/or rolled back Worldwide. This fact has been highlighted in the CP as well. In light of this, current exercise under the CP may be considered as a regressive act.

9. Concept of geographical market –and hence cross media restrictions in age of Big Tech— totally outdated

Convergence has made it possible for us to watch content online, on mobile devices, across geographical boundaries and virtually removing any kind of demarcation whatsoever to any given media platform. Online/digital media has made it possible to read text, watch videos, listen to audio and also interact on one single platform, completely dispensing with traditional forms of viewing. In fact, newspapers, TV and radio are all available on a mobile device and online. Hence, the term “cross-media” is becoming irrelevant and so is the concept of “cross media restrictions”. With the defined borders of platforms diminishing, how can one define a ‘relevant market’ in light of such trends in Indian media?

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

10. Cross media curbs –product of a bygone era and being rolled back in the few countries with remnants

Cross media restrictions were first imposed more than 60 years ago only in countries with very limited media plurality --a handful of newspapers, TV and radio channels –and more importantly, only related

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to entities entering terrestrial TV. Not one of these conditions is true in India –which has thousands of newspapers, hundreds of news tv and FM radio channels, apart from thousands of standalone websites and hence, India is the most complex and competitive media market in the world. Moreover, terrestrial TV in India is the sole monopoly of Prasar Bharati and private sector is not even allowed into terrestrial TV.

Further, these countries with remnants rolled back --or are in the process of rolling back-- these restrictions because the advent of the Internet and the giant monopolies of Big Tech has made concepts like geographical market (and dominance in the same) totally redundant. Moreover, with Print and TV players losing out to Online, these countries wanted to ensure any cross-media restrictions are withdrawn/restricted significantly also so as to ensure the survival of traditional Print, TV and Radio companies. Details are outlined later in the Note, but some examples can be flagged here itself:

- **Australia:** In September 2007, the Australian Government under liberal Prime Minister John Howard passed the Bill that scrapped restrictions such as the “one out of three” rule, which had earlier prevented companies from owning more than one form of media (newspaper, radio and television stations) in the same market. It also abolished the reach rule, which prevented a single TV broadcaster from reaching more than 75% of the population¹.
- **USA:** In 2021, the U.S. Supreme Court unanimously allowed the Federal Communications Commission (FCC) to loosen local media ownership restrictions like removing the newspaper/broadcast cross-ownership rule and the radio/television cross ownership rule as well as to relax the local TV ownership rule so as to facilitate industry consolidation as consumers have increasingly moved online. The court agreed that this would help ensure the economic survival of local television amid heavy competition from internet companies that provide video content. The Supreme Court also agreed that the historical justifications for the ownership rules no longer apply in today’s media market, and that permitting efficient combinations among radio stations, television stations and newspapers would benefit consumers².
- **Hong Kong:** The rapidly changing media landscape and technological advances has prompted a total rethink and it was observed that the proliferation of online infotainment covering a wide range of different tastes, focuses and stances meant any risk of editorial uniformity of traditional media had been significantly reduced. It was also observed that the viewership and revenues of traditional media was decreasing, and the digital media was increasing. Hence, in order (a) to facilitate innovation and investment in the industry to bring greater benefits to the community, and (b) to help traditional media stay afloat amid increasing competition from Internet-based counterparts, ³effective from 2021, Hong Kong eased the rules and permitted the newspaper owners, advertising agencies and other media companies to get into the free TV, pay TV or radio broadcasting business.
- **South Africa:** The government has released a draft policy white paper⁴ to relax ownership rules⁵. As per the paper, “in an environment where markets are disrupted by technology developments, where print media companies are no longer the largest media companies, and with the proliferation of on-demand content services, the proposed policy intervention will allow consolidation and the creation of synergies by various firms”.

At the outset, let us make it abundantly clear that there is no comparison of India’s media & entertainment landscape with the countries mentioned above. With 901 permitted TV channels,

¹ <https://www.abc.net.au/news/2017-09-14/media-law-changes-bill-passes-senate/8946864>

² <https://www.reuters.com/business/finance/us-supreme-court-lets-fcc-loosen-media-ownership-rules-2021-04-01/>

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

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

⁵ <https://advanced-television.com/2020/10/15/south-africa-to-relax-tv-ownership-rules/>

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1,43,423 registered publications (including 14,508 newspapers), and 385 private FM radio stations in numerous genres and in multiple languages, India is far more competitive than any other country. It may be noted, even such less competitive markets where the number of TV channels, registered publications and registered FM are far less and where the language for communication is only English, the respective governments have been liberalizing media ownership rules since 2006. In Australia, for instance, the Government has abolished the reach rule, which prevented a single TV broadcaster from reaching more than 75% of the population. In India, all GEC channels put together has a viewership of 49.8%.

More importantly, since 2021, to encourage innovation and investment in the industry and to enable sustainable development of the traditional broadcasting sector amid fierce competition from Internet based infotainment, the same developed economies like Hong Kong, South Africa and the USA are further liberalizing or doing away with media ownership restrictions. The situation in India is no different. Even in India, the viewership and revenues of traditional media is decreasing, and the digital media is increasing. Under the circumstances, to even thinking of introducing media ownership restrictions in 2022/23 to further stifle the traditional media, will be ridiculous. On the contrary, with a view to encourage innovation and investment in the industry and to enable sustainable development of the traditional media sector amid fierce competition from telecom/Internet, the TRAI must recommend absolutely no horizontal restrictions on media ownership.

Overall perspective:

Without prejudice to our principal position, we give below our overall perspective on the consultation paper. We strongly believe that there is absolutely **NO** need whatsoever to consider or undertake steps of any kind with regard to cross media holdings involving media content.

Indian Media & Entertainment Landscape⁶

- **Television:** India has 901 permitted TV channels owned by 350 (approx.) broadcasters and distributed across India by 1724 MSOs, 4 DTH operators, 10 IPTV operators and 1 HITS operator. Due to the COVID-19 pandemic, the television industry registered a fall of 13% in 2020.
- **Print:** As per the Registrar of Newspapers in India (RNI), the total number of registered publications as on 31st March 2020 is 1,43,423, which includes 14,508 newspapers. From a language point of view, the largest number of newspapers and periodicals – 54,873 are registered in Hindi, followed by 19,766 in English. Due to the pandemic, while the Print segment shrunk by 8.3% in 2020, the Hindi and vernacular newspapers and the English newspapers fell by 20% and 50%, respectively .
- **Radio:** In September 2021, India had 34 private FM Broadcasters operating 385 FM Stations across 112 cities. In addition, Prasar Bharati's All India Radio has 479 stations in 23 languages reaching 92% of India's area and over 99% of India's population. Due to the pandemic, the revenues of the radio segment fell by 54%.
- **Digital Media:** Due to the advent of 4G based telecom service, the number of internet users have grown to 834.29 million in September 2021. Per capita consumption of data has also increased to 14,73 GB per month. Consequently, the consumption of digital news is increasing. The Print media had, from the 1990s, launched e-versions of their Print newspapers, magazines, etc but have unable to tap the benefits due to the massive monopolies of Big Tech giants like Facebook, Google, etc; moreover, there has been a huge increase in the number of standalone news websites which are not connected to traditional newspaper/TV companies; in India alone, these now number in the hundreds. Further, OTT is another segment which has substantially grown since the pandemic. Today, India has 40 OTT players and their user/subscriber base is likely to reach 555 million in the year 2022.

1. No Dominant Position

⁶ Chapter II of the Consultation Paper

It is submitted that the regulatory restrictions are needed in an industry characterized by low or no competition, abuse of monopolistic position by incumbent. However, in India, the media & entertainment industry is the most highly competitive in the world –with the Government of India’s own data specifying this with 901 permitted TV channels, 1,43,423 registered publications (including 14,508 newspapers), and 385 private FM radio stations. This apart, there are thousands of standalone websites based out of India which give news and information. In the present circumstances, the risk of an individual entity owning two or more media outlets and being significantly able to influence public opinion at this stage of growth is totally out of the question. Accordingly, introducing restrictions on cross media ownership/horizontal integration will only stifle the growth of the industry.

Even from a market share perspective, no single player in any category of media has a dominant market share of viewership or readership or listenership. Even post the mega mergers in the Indian television industry, the market share enjoyed by the proposed Sony-Zee and existing Star-Disney combined entities would be 27% and 24%, respectively⁷. There is not even a possibility of dominance in the near future. Moreover, being in a dominant position *per se* is not illegal; the abuse of such a dominant position is. In the entire consultation paper under discussion, no instance of market dominance by an Indian media company has been cited; leave alone the abuse of such a dominant position. In any case, the Competition Commission of India (CCI) exists to address any issue of potential abuse of dominant position. Thus, in the Indian media context, the discussion and deliberation about any cross media restrictions is not warranted at all.

It may be mentioned that the present era is that of globalisation and consolidation by way of mergers and acquisitions so as to access and optimally utilise the resources of capital formation for the growth and development of the media sector. The Indian media industry, specifically Indian broadcasters, have to compete with global media companies in this sector. In order to match the might of these companies, they must have adequate technology, capital and manpower resources. Thus the process of capital formation is one of the key ingredients to acquire and accumulate competitive strength and any kind of restrictions on this front are likely to adversely affect the said process, which would be prejudicial and detrimental to the growth of Indian media companies.

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

2. **⁸International Scenario -rollback of cross-media restrictions even in countries with far, far less numbers/diversity of media outlets**

Cross media regulations had come into play around 60 years ago in a few small countries like the UK, which had only a handful of newspapers or TV channels or radio stations and had hence raised fears of monopoly or control. However, these are now being rolled back, not only because of greater competition, but as they have become irrelevant today. Unlike the Indian media industry, many international democracies had very few players in the market, thereby giving rise to the concentration of power in few hands, which prompted these restrictions—but all these are being rolled back now as they have become totally redundant in the face of Big Tech and evolving technologies.

The Indian media scenario is totally different from the international media scenario and therefore, it is even more unbelievable that outdated foreign concepts which have been rolled back even in the few countries that had them, are being considered here. The Indian media landscape is very different from

⁷ <https://www.thehindubusinessline.com/companies/zee-nears-mega-merger-with-sony/article38006898.ece>

⁸ <https://unesdoc.unesco.org/ark:/48223/pf0000217086/PDF/217086eng.pdf.multi>
<https://rm.coe.int/hf37-study-media-ownership-eng/16809f0272>
<https://scholar.harvard.edu/files/shleifer/files/media.pdf>

other international jurisdictions, and this is evident from the high level of fragmentation and diversity seen in Indian media mainly due to the diverse language and cultural fabric of Indian society, which no other jurisdiction in the world reflects. Any regulation that is attempted to be foisted on the Indian media industry, ignoring the prevalent dynamic and unique factors, will not only be a failure but will be a massively regressive step for the country as a whole. In any case, the Indian legal framework is sufficiently robust and already enshrines in its framework, specific provisions that regulate competition.

Most importantly, internationally, many countries which had earlier brought in cross-media regulations have now either relaxed or moved away from such regulatory regime to complete forbearance. **The TRAI’s present consultation also acknowledges the change in regulations in international jurisdictions. For decades, the FCC’s media ownership rules limited common ownership of broadcast radio stations, broadcast television stations, and daily newspapers within the same local market. In 2017, the FCC repealed two of these rules, thereby permitting common ownership of newspapers, radio stations, and television stations within the same local television market. In addition, the FCC relaxed its rule limiting common ownership of television stations within the same market**⁹. To compete globally, Indian media must be viewed similarly and not in a regressive manner.

The table below effectively captures the status of media ownership regulations across several international jurisdictions. As is evident globally, countries are moving away from regulations on cross media holdings to encourage innovation and economic development of the media industry given the ever changing technology and digital proliferation.

□

Name	Cross – Media Ownership Restrictions	Current Status
Hong Kong	In March 2019, the Commerce and Economic Development Bureau introduced the Broadcasting and Telecommunications Legislation (Amendment) Bill 2019 to regulate television broadcasting and sound broadcasting services respectively, so as to implement the proposed measures of the “Review of Television and Sound Broadcasting Regulatory Framework”, including relaxation of the “cross-media ownership restrictions”.	¹⁰ Effective from 2021, Hong Kong liberalized rules on cross media ownership to encourage innovation and investment in the industry and to enable sustainable development of the traditional broadcasting sector amid fierce competition from Internet based infotainment.
Australia	The ban on cross-ownership of Print and electronic media was introduced by the Labour government in 1987, forcing the country’s multimedia owners to choose between their television and newspaper holdings.	However, the Australian government under Prime Minister John Howard enacted a broad package of reforms in July 2006. It abolished restrictions on foreign ownership and permitted cross-ownership starting in 2007, subject to a “diversity test” to ensure a minimum of five owners in metropolitan markets and four in regional markets ¹¹ .

⁹ Annexure III of the Consultation Paper

¹⁰ <https://www.scmp.com/news/hong-kong/economy/article/2133993/hong-kong-ease-restrictions-domestic-tv-licensees-first-major>

¹¹ https://cuts-ccier.org/pdf/Cross_Ownership_in_Media.pdf

<p>USA</p>	<p>In 1975 the Federal Communications Commission (FCC) initiated the newspaper-broadcast cross-ownership rule, which bars a single company from owning a newspaper and a broadcast station in the same market. Media organizations largely opposed the rule since its inception. In 2003 the FCC set out to re-evaluate its media ownership rules specified in the Telecommunications Act of 1996. The FCC in 2007 voted to relax its existing ban on newspaper/broadcast cross-ownership and to eliminate some media ownership rules, including a statute that forbids a single company to own both a newspaper and a television or radio station in the same city¹².</p>	<p>In 2021, the U.S. Supreme Court allowed the FCC to loosen local media ownership restrictions to facilitate industry consolidation as consumers have increasingly moved online. The court agreed that this would help ensure the economic survival of local television amid heavy competition from internet companies that provide video content. The FCC also agreed that the historical justifications for the ownership rules no longer apply in today's media market, and that permitting efficient combinations among radio stations, television stations and newspapers would benefit consumers¹³.</p>
<p>European Union</p>	<p>-</p>	<p>There are no European-wide ownership rules in place. Each member state has treated the issue separately, mostly with a de-regulatory trend.</p>
<p>South Africa</p>	<p>In South Africa, cross media ownership has been subject to limitations by means of section 66, Electronic Communications Act, 2005. As per the section, no person who controls a newspaper may acquire or retain financial control of a commercial broadcasting service license in both the television broadcasting service and sound broadcasting service.</p>	<p>The government has released a draft policy white paper¹⁴ to relax ownership rules¹⁵. As per the paper, “in an environment where markets are disrupted by technology developments, where Print media companies are no longer the largest media companies, and with the proliferation of on-demand content services, the proposed policy intervention will allow consolidation and the creation of synergies by various firms”.</p>

It may be noted, even the developed economies with media in only one language like English and with far less number of players in each segment, have been liberalizing the media ownership rules since 2006. More importantly, since 2021, to encourage innovation and investment in the industry and to enable sustainable development of the traditional broadcasting sector amid fierce competition from Internet-based infotainment, the same developed economies are further liberalizing or doing away with media ownership restrictions altogether. Under the circumstances, to even think of discussing media ownership restrictions in India --which has the world’s most competitive and diverse media landscape with the largest number of media outlets in dozens of separate languages---- is outmoded and irrelevant.

In fact, with a view to encourage innovation and investment in the industry and to enable sustainable development of the traditional broadcasting sector amid fierce competition from

¹² <https://www.reuters.com/business/finance/us-supreme-court-lets-fcc-loosen-media-ownership-rules-2021-04-01/>

¹³ <https://www.reuters.com/business/finance/us-supreme-court-lets-fcc-loosen-media-ownership-rules-2021-04-01/>

¹⁴ https://www.gov.za/sites/default/files/gcis_document/202010/43797gon1081.pdf

¹⁵ <https://advanced-television.com/2020/10/15/south-africa-to-relax-tv-ownership-rules/>

telecom/BigTech, the TRAI must recommend there be absolutely no restrictions on media ownership within the media content universe.

Needless to mention that any regressive policy controlling media ownership would have a negative effect on the media space in the country and not only take away the gains made by the industry in recent decades but would also result in de-growth and contraction of the industry.

We submit that regulations or restrictions on media ownership in the present Indian media environment is nothing but restriction on free trade and commerce while the same practice is prevalent in every sector/ industry/ trade and very much important for the growth of the industry/ commerce and hence, this exercise is totally unwarranted and in fact unthinkable in the circumstances outlined above.

For encouraging healthy competition and non-concentration of monopolistic powers in trade and commerce, there are various laws, rules, guidelines prevalent in India, such as the Competition Act, the Companies Act, the SEBI Guidelines, and the Consumer Protection Act, to ensure that the operation of the economic system does not result in the concentration of economic power in hands of a few.

3. Need to extend vertical integration caps to Telecom Service Providers entering media to ensure level playing field

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

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

*** Policy Guidelines of DTH dated 15.3.2001*

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

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

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

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

The evolving landscape:

- With the advent of OTT, telecom companies have been aggressive in pushing OTT content through their distribution chains, something which the TV sector has not been able to do due to instant regulations. Today, there are over 40 OTT platforms with 400 million customers; According to FICCI-EY Report 2021, digital subscriptions rose by 49% in 2020. Digital and OTT sectors registered a growth of 26%, the highest amongst other M&E segments. According to the PwC Report of Global Entertainment and Media Outlook 2020-2024, with a CAGR of 28.6%, India will be the fastest growing OTT market. It predicts 16% year-on-year decline in TV ad revenue and 59% year-on-year decline in box office revenue while predicting a 16.1% growth in digital newspaper and circulation revenue. The OTT players have been successful in controlling and influencing the entire media distribution chain, primarily due to (1) Lower service costs as compared to cable and satellite services; (2) Leveraging the distribution pipe provided by telecom players more effectively; (3) direct delivery of services to the consumers. On the other hand, broadcast companies incur high costs for distribution of their content through cable operators and DPOs.
- Apart from OTT, a few Indian telcos also own television broadcasting/content production companies, including news channels. Despite the telecom sector directly competing with media in terms of controlling the distribution of such content, unlike broadcasting, there are no restrictions or regulations imposed on telcos which own media content on multiple platforms like TV and Online. Telcos have also acquired cable and satellite service providers and have thus entered the media distribution space in addition to their ownership of content pumped out in different formats and platforms. **Hence, telcos are today one of the biggest distributors of content, data and information in every form which has become a major activity and source of revenue. Their ownership of content for different platforms as well as all parts of the broadcast media value chain from content to carriage, raises hard questions on both dominance as well as possible abuse of dominance.**
- The TV broadcast sector is facing the same and stiffer challenge from OTT players and does not have the liberty or the freedom under extant regulations to effectively deal with this challenge. Any horizontal integration restrictions would effectively deprive the broadcast sector from meeting even the OTT challenge even as telcos have been given a free hand to deal with OTT competition –apart from ensuring the demise of independent media distribution entities since telcos are allowed unrestricted ownership of any content and any distribution platforms, unlike the broadcast sector.
- Specifically in the distribution segment, there is lack of parity in the regulations and laws and is evident from the fact that telecom sector is not subject to regulations such as the Interconnect Regulations, Tariff Orders, etc., that broadcast media is currently subject to, nor is there any mention of the convergence threat that telecom brings with it while even owning broadcast media.
- **The need of the hour therefore is to ensure strict adherence to fair and reasonable restrictions and guidelines within the vertically integrated media value chain and to extend this to telcos as described above --while allowing free operation of media entities across horizontal media sectors. In the absence of such an approach, the media sector and specifically the broadcast media sector, is being unfairly singled out to bear the brunt of unreasonable cross media restrictions (on the basis of purported control and dominance concerns), if they are at all recommended. Exclusionary market power concentrated with telecom companies that dominate the reach and distribution of content would be detrimental to the aim of plurality and diversity of content and outlets in the media market –and especially when the same distribution companies own the same content.** It may also be not out of context here to mention that there are only a handful of players in the telecom sector and the public sector presence has been reduced to a great extent –and hence, this aspect is all the more cause for concern.

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

4. Decreasing revenues of traditional media

As is evident from the Indian media landscape specified above, the revenues of traditional media (including television, Print and radio) are decreasing at a fast pace. Under the circumstances, any additional regulation will turn the Indian media sick.

5. Media already over-regulated

The media and entertainment sector is far more over regulated than any other business sector and any further restrictions will curtail the growth of this sector instead of bringing healthy competition. Under the circumstances, the TRAI may ideally recommend liberalization of current regulations rather than recommending introduction of any further stringent and restrictive regulations on cross media ownership/horizontal or vertical integration (except where it pertains to vertical integration by telcos owning media). This will also support the Government of India's stated position of 'minimum government and maximum governance' and facilitate 'ease of doing business in India'.

SPECIFIC SUBMISSIONS:

Our comments to each of the issues raised by the TRAI in this consultation paper are captured below.

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

Q1. Media industry has expanded in an unprecedented manner. In addition to conventional television and 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.

TN (Times Network) Response :

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

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

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

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

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

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

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

There is a massive amount of competition in the Indian media market, and it is farcical to talk of restrictions on cross media ownerships in India. India's hyper-competitive market has a huge amount of viewpoint plurality, which is proven by the following:

1. There are as many as 1,44,520 registered publications, as on 31st March, 2021¹⁶.
2. The total number of permitted private satellite TV channels as on 30th September 2021¹⁷ is 906, out of which approx. 400 are news channels.
3. There are over 350 broadcasting entities which are permitted to uplink and downlink TV channels and these entities have diverse backgrounds and business interests.
4. Over 40 OTT platforms with 400 million customers; According to FICCI-EY Report 2021, digital subscriptions rose by 49% in 2020. Digital and OTT sectors registered a growth of 26%, the highest amongst other M&E segments. Moreover, there has been a huge increase in the number of websites including standalone news websites which are not connected to traditional

¹⁶ http://rni.nic.in/all_page/pin202021.html

¹⁷ <https://bestmediainfo.com/2022/01/cable-tv-dth-operators-lose-1-5-million-subscribers-in-quarter-ending-september-2021>

Times Network

newspaper/TV companies; in India alone, these standalone news sites now number in the hundreds.

5. It is pertinent to note here that there are over two dozen Doordarshan channels and many AIR radio stations. In fact, it is Prasar Bharati, which is running a total monopoly since DD and AIR have an absolute monopoly over terrestrial TV and AM radio. What is worse, is that AIR has an absolute monopoly over news on radio across the whole of India, as it is the only one permitted to broadcast news, while private FM stations are still not allowed to carry self-generated news content. The Government should revisit this policy which is not in conformance with the plurality of views as suggested in this consultation paper as opening up of the news for private FM radio will in fact promote plurality of views in this sector.

Hence, there is no question of a monopoly by any single entity, or indeed of “dominance” in any single market across any media platform. In fact, the Indian media sector is considered a hyper-competitive one, and any question of regulating on grounds of dominance or monopoly is farcical.

Economies like India require cross investments within a sector:

6. The Indian media economy requires cross media holdings by which one media segment can augment the growth of the other, considering the adverse growth environment. An economically well-placed media entity should be permitted to invest in Print, Television, Radio, and Online media segments and vice versa. Restricting companies from making investments in other media segments will affect their growth and hinder expansion of business, which are vital for the media industry to progress. It would also deprive companies to extend their expertise and goodwill to other media segments which would otherwise bring in enhanced quality, optimum utilization of resources and most importantly will be able to cater to growing consumer demand for better information & entertainment services.
7. The TRAI should not proceed with any kind of proposal that fixes any threshold limits for holdings across media to conclude that there is ‘control’ over that entity.
8. With the advent of digital/OTT/ On-Line media, convergence is a tangible reality the world over and the term ‘cross-media’ is no longer relevant. Convergence, Internet, and Mobile telephony brings the newspaper (e-newspaper), TV (simulcast live streaming) and radio channel on a single screen and or through mobile apps, and it has become mandatory and inevitable for every business house to adapt these fast changing technologies to cater the fast changing tastes/ needs of its consumers/ reader/ viewers/ listeners etc. for which expansion of business activities is the only solution, failing which the current business activities will become absolute and that will ultimately and adversely impact the economy by increasing unemployment, and poverty, reduction in per capita income and purchasing powers. The digital boom that India is witnessing that allows innumerable content viewing options through online/digital/social media and OTT platforms. Thus, the very concept of specific media markets/geographies has become irrelevant. With multiple technological methods developing to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium. It is also not possible for a single entity to dominate any given market based on concentration, market share in each geography within a media segment. There is no reasonable basis therefore to bring in any kind of cross media restrictions.
9. We do not see the need to measure ownership/control of an entity over a media outlet with respect to cross media holdings. With each media segment being governed by specific laws & regulations there is no need to bring in additional regulations in the form of restrictions such as these that encompass media sectors.

International Scenario:

International markets which have defined the level of concentration in media ownership and cross media holdings have done so based on the peculiar requirements of their respective jurisdictions. Based on prevailing social and economic conditions each country has developed distinct laws for the media sector.

Cross media regulations had come into play around 60 years ago in a few small countries like the UK, which had only a handful of newspapers or TV channels or radio stations and had hence raised fears of monopoly or control. However, these are now being rolled back, not only because of greater competition, but as they have become irrelevant today. Unlike the Indian media industry, many international democracies had very few players in the market, thereby giving rise to the concentration of power in few hands, which prompted these restrictions—but all these are being rolled back now as they have become totally redundant in the face of evolving technology.

Cross media holdings and media plurality:

In the television distribution space, state controlled DTH Service DD Freedish has the highest reach with over 45 million connections. This service is free and the viewers can enjoy the content without any subscription fees. The DD national and main regional news channels are also carried on DD Freedish along with private news channels and other genre channels. This service coupled with terrestrial transmission of the Doordarshan reaches maximum homes in the country. Hence any concern of non-plurality of views whether through broadcasting and distribution does not arise.

In any case, cross-media regulations are being withdrawn from many of the countries as they now recognize that traditional Print/TV/Radio are declining, and media companies necessarily have to diversify into other sectors of the industry. Moreover, digital newspapers require TV content, and TV websites require textual content, for which the presence of media companies in both platforms is necessary. But the most basic point, is that with the internet and the huge monopolies by Big Tech, the traditional concept of geographical markets no longer apply; in fact, the US' FCC also agreed that **the historical justifications for the ownership rules no longer apply in today's media market**, and that permitting efficient combinations among radio stations, television stations and newspapers would benefit consumers¹⁸

As stressed earlier, there is diverse plurality in Indian media, both in terms of geography/language as well as platforms and it is the most competitive media market in the world. The readers and viewers have thousands of options in every region and every language and across technologies. A broadcaster having multiple television channels in a bid to offer better technology to the high-end customers, offers High Definition variant of its main channels. However, the MIB processes and TRAI Regulations treats such variants as separate channels and hence the total number of channels with leading broadcasters goes up and reflects a high number. Suppose, there are some restrictions which are introduced on number of channels with a broadcasters, the broadcaster having SD/HD variants will either discontinue SD or HD feed of a channel. Either situation will result in compromising with the viewer's choice. If HD feed is discontinued, the viewers who wishes to watch content in high quality will not be able to do that. Alternatively, if SD feed is discontinued and only HD variant is retained, then the viewer with normal technology will be deprived of the content. Taking the argument forward, if there are restrictions on the number of channels, the leading broadcasters will reduce its numbers by discontinuing some niche channels where the viewership is not high or may discontinue some of its regional language channels thereby depriving the regional viewers to see good quality content. There were talks of moving the broadcasting to 4K/8K technologies but due to the excessive regulations, no broadcasting entity is now planning to introduce such high end technologies in India.

Hence, there is no need for cross media ownership restrictions. Long term experience in media business helps in maintaining credibility and balance in newer media platforms at a competitive and reasonable pricing, and hence cross media ownership is healthy and should be encouraged and permitted, subject

¹⁸ <https://www.reuters.com/business/finance/us-supreme-court-lets-fcc-loosen-media-ownership-rules-2021-04-01/>

to the provisions of the existing Competition Laws that consider contemporary realities on competition, monopoly, and restrictive trade practices. The law distinguishes between monopoly tendencies by defining permissible market shares and encourages healthy competition. There is no need for a separate law on cross media ownership restrictions.

Q2. Media has the capacity to influence opinion of masses, more so the news media. Should there be a common mechanism to monitor ownership of Print, television, radio, or other internet-based news media?

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

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

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

Here, it must be pointed out that there is a basic fallacy in TRAI's position. It seems to be leading with the premise that news Media is responsible in influencing the opinion of the masses and that ownership of multiple Media platforms by the same entity challenges plurality. This premise is completely wrong because we reiterate that *plurality in Media ownership is not a requirement to ensure plurality in views.* This is obvious from the fact that different Media products owned by the same Media entity are structured under different companies, run by entirely separate management and editorial teams, are designed to focus on their own differentiated target audiences and are hence usually entirely different in viewpoints from each other. Hence, the same Media entity with different Newspapers or TV channels, for instance, would perforce have different content strategies for each of them to ensure each caters to a different target audience --otherwise there would be no interest/buyers/viewers/readers for the same viewpoints across these different products and these products would invariably flop. **In fact, even in the same company within the conglomerate, one news channel would often be taking a totally different editorial stance from its own sister TV channel because their target audiences and content strategy are totally different. Here it must be noted that a Media conglomerate present in many different Media segments drives plurality because it can offer a differentiated product matrix to cater to different kinds of audiences and advertisers—something which standalone entities are less able to do as they cannot cross-subsidise and so end up offering the same undifferentiated content “that sells”.**

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

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

manner. Subject to the prescribed thresholds under the Competition Act, combinations, which may include acquisition of one or more enterprises, mergers or amalgamations, which cause or are likely to cause an appreciable adverse effect on competition within the relevant market in India, are also regulated by CCI.

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

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

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

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

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

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

- (b) This apart, to regulate **news content** alone, there is also over-regulation, with four-five layers of rules relating to content in each individual Media segment. We strongly believe that news Media in India, across platforms and technologies, must be governed by the principles of self-regulation. There already exists robust self-regulation mechanisms across the Media sector

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

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

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

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

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

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

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

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

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

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

The TRAI is proceeding on the premise that Mergers & Acquisitions (M&A) deals in the media sector have a big impact on viewpoint plurality.

It is not necessary that media plurality can be achieved only by fragmented ownership and control. Dissemination of factual information is more important than plurality. Too much emphasis on media plurality may be unwarranted. It is well imaginable that if hundreds of opinions are taken on a particular issue, then effectively no decision making can happen. The country cannot progress if there are too many divergent views on any aspect. In that scenario, there can be no change whatsoever which can be expected. In addition, the all pervasive presence of Government in Television and Radio segments balances the plurality of views. Further, it is wrong to assume that an entity with a cross media ownership will disseminate similar views on issues.

It needs to be understood that each media entity in a media conglomerate is usually a separate company run by a totally separate management as well as editorial team which follows its own editorial path, often on totally opposing sides editorially on most issues with its sister media company. In fact, even in the same company within the conglomerate, one news channel would be taking a totally different editorial stance from its own sister TV channel because their target audiences and content strategy are totally different. Here it must be noted that a media conglomerate present in many different media segments drives plurality because it can offer a differentiated product matrix to cater to different kinds of audiences and advertisers—something which standalone entities are less able to do as they cannot cross subsidise and so end up offering the same undifferentiated content “that sells”.

We do not see the need to bring in additional restrictions on M&A deals in the Indian media sector. M&A deals are integral to any business restructuring exercise, whether in media or other sectors. Specific guidelines and rules govern M&A and any fear of hindrance to competition or abuse of any dominant position by an entity would be adequately addressed under Competition laws. The Competition Commission of India established under the Competition Act, 2002 is empowered to regulate corporate combinations that are anti-competitive and result in abuse of dominant position and is also granted powers to investigate and disallow any mergers or proposed mergers that may cause an adverse impact on competition. For instance, in notice for acquisition filed by the Walt Disney Company, the CCI based on the facts on records and the details provided in the notice came to the conclusion that the proposed combination of the enterprises belonging to Walt Disney Company and Twenty First Century Fox is not likely to give rise to any adverse effect on the competition in India¹⁹. Recently, the CCI also initiated a probe into alleged abuse of dominant position by Star India, Disney Broadcasting India and Asianet Star Communications on a complaint filed by Asianet Digital Network²⁰.

Despite the Small Target Exemption as allowed currently, the Indian Competition law framework is well equipped to deal with issues affecting competition across sectors, including the Media and Entertainment sector. As such a review by the TRAI of M&A in the media sector to protect the need for diversity or market control/concentration is in our view not really needed.

The TRAI has quoted the proposed Sony-Zee merger in the broadcasting sector as an instance of M&A that would threaten competition in the market. According to media reports²¹ and expert views on this merger, the resultant entity after the merger would host 75 TV channels, 2 OTT platforms, and 2 film production & distribution companies. This is believed to be an ideal transaction because of the insignificant common areas that the two giants bring to the table in this deal. To quote, “Zee is a fiction powerhouse while Sony has a strong slate of non-fiction properties. Sony doesn't have a presence in regional markets while Zee is a strong player in key regional markets. Likewise, Zee is not present in sports broadcasting while Sony has a strong foothold in the market”. Another example quoted in the media²² is the AT&T-owned Warner Media and Discovery deal to merge their assets. Despite the deal, the merged entity will not have much of an impact on the Indian TV broadcasting or OTT market as both are niche players. Therefore, despite the large market share that the merged entity will hold, such consolidations and mergers is beneficial to the sector and not vice-versa. The TRAI's premise that merger in media sector, involving large multinational companies with huge resources would negatively impact competition is unsubstantiated.

Other regulators such as SEBI, DPIIT and NCLT/NCLAT have sufficient powers under respective statutes to oversee and regulate M&A deals across sectors. It is our view that there exists viewpoint

¹⁹ https://www.cci.gov.in/sites/default/files/Notice_order_document/C-2018-07-583%20%28foruploading%29.pdf

²⁰ https://www.business-standard.com/article/companies/cci-orders-probe-against-star-india-for-alleged-abuse-of-dominant-position-122030401201_1.html

²¹ <https://www.exchange4media.com/media-tv-news/2021-the-year-mergers-acquisitions-restructured-indias-me-sector-117215.html>

²² <https://www.exchange4media.com/media-tv-news/2021-the-year-mergers-acquisitions-restructured-indias-me-sector-117215.html>

plurality and healthy competition in the Indian media sector and hence there is no need to impose additional restrictions on M&A in media to achieve this objective.

We should appreciate the fact that the right to exit the business is as valuable a right as the right to enter business, and the same should be as smooth as entering the business. This is part of ease of doing business. No entity can be permanently assumed to be carrying on the business for indefinite period of time. There are many business cycles an entrepreneur has to go through. At some point of time, it may not be feasible for the business entity to make further investments or stay afloat. Hence, not to allow any business restructuring in terms of sale, merger, transfer of interest is harmful to the industry. There are enough conditions in the licenses or permissions which ensures entry of serious players. However, once the business is set up and made operational, a business entity should be allowed to get the right value of its investments if such entity decides to exit business due to any reasons. There can be measures to check that the new entity fully meets the eligibility criteria to hold the licenses. However, M&A should not be restricted if it meets the general laws of the land. If M&A are restricted, then it directly affects the valuation of business entities operating in that space. There may be some entities which may not be able to continue with the operations due to financial or other reasons. If there is no exit option, such business entities may be forced to shut down operations resulting in waste of resources. This situation is unwarranted and also directly impacts the new investment in the sector and results in unemployment also. No investor would like to put money where the exit is difficult and uncertain.

CONTOURS OF MEDIA OWNERSHIP/CONTROL

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.

TN Response : We do not see the need to measure ownership/control of an entity over a media outlet with respect to cross media holdings. Please refer to our submissions made to Q1 above.

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

TN Response : In our opinion the Licensor i.e. the MIB (as far as the television media segment is concerned) must, in order to ensure a media free of any kind of influence and in public interest, restrict the entry of certain categories of entities from entering into the newspaper, FM radio and television broadcasting and distribution sectors.

Media is often termed as the fourth estate or the fourth pillar of democracy. Media's inherent ability to reach the masses gives it the ability to present an independent opinion on several issues, be it policies, government performance, etc. The need therefore for media to remain neutral.

In this backdrop, we submit that the following must be restricted from entering the media sector:

1. Political parties/groups ; Political Bodies
2. Religious Bodies
3. Urban and local bodies, Panchayati Raj bodies and other publicly funded bodies
4. Central Government Ministries and Departments, Central Government owned companies, undertakings, Joint Ventures of the Central Government funded entities
5. State Government Departments, State Government owned companies, undertakings, Joint Ventures of the State Government funded entities

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

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

For fair play and to ensure an unbiased democratic approach it is imperative that all media is not only devoid of the above categories of entities but also the Government should refrain from controlling media houses/platforms since the Government is the most powerful and influential entity of the country. As a first step, Doordarshan should not enjoy any advantage or preferential treatment of its products/channels in carriage across platforms, which it compels by way of rules and regulations framed by it.

While media has tremendous potential to inform citizens about events and issues that occur in their world, it also has unparalleled potential for abuse by political partisans to propagate and further their own agenda. The goal of any rule or regulation brought upon the media must necessarily achieve the objective of preventing abuse and dominance of the media by such forces and to ensure serious coverage of public issues. Government’s attempt to regulate the media would directly affect this principle and against public interest.

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.

CROSS MEDIA OWNERSHIP

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.

TN Response to Q6 and Q7:

We feel that there is absolutely no need to examine, define and measure ownership/control as well as “market” concentration.

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

Hence, the term “cross-Media” has become irrelevant and so has the concept of “cross-Media restrictions”. With the defined borders of platforms diminishing, how can one define a “relevant market” in light of such trends in Indian Media? With multiple technological methods developing to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium. It is also not possible for a single entity to dominate any given market based on market share in a given geography within a Media segment because with tech, geographical boundaries do not

exist. There is no reasonable basis or the need therefore to adopt any kind of measurement techniques that help derive “relevant markets” and “concentrations” for the same.

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

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

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

The primary basis of the TRAI’s recommendations to devise media ownership rules is to ensure viewpoint plurality. The Administrative Staff College of India (ASCI) Report of 2009 as referred to by the TRAI during the earlier consultation, itself clearly mentioned that as regards the TV market, there was no significant concentration and dominance in the market for Hindi and English language and with local channels also being available, the concern of lack of plurality of news, views and opinions is non-existent. As is evident from EY FICCI Frames Report of 2022²³, the scenario has not changed even today. Today, there are 906 television channels of which 390 are news television channels.

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

Changing scenario in media consumption and viewing:

1. With the advent of technology, the consumer today is exposed to a wide array of options which he/she can chose to satisfy the need for information and entertainment, which until a few years ago was dominated by traditional forms of media.
2. To keep oneself updated about current affairs or to know more about upcoming projects, launches, events, etc. media exerts profound influence on our lives. There has been a paradigm shift in viewing choices with the proliferation of Digital/social media and online platforms. Traditional media such as Print, TV and Radio are facing extreme competition from such new media as is evident from market data in the Media and Entertainment sector in India.
3. Convergence has made it possible for us to watch content online, on mobile devices, across geographical boundaries and virtually removing any kind of demarcation whatsoever to any given media platform. Online/digital media has made it possible to read text, watch videos, listen to audio and also interact on one single platform, completely dispensing with traditional forms of viewing. The consumer today is making decisions about his/her unique mix, being much more active than conventional media would allow. In fact, newspapers, TV and radio are available on a mobile device and online. Hence, the term “cross-media” is becoming irrelevant and so is the concept of “cross media restrictions”. With the defined borders of platforms diminishing, how can one define a ‘relevant market’ in light of such trends in Indian media?
4. Thus, any media ownership restrictions represent an unnecessary and counterproductive throwback to an era when consumers had far, far fewer choices for news and information than

²³ https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2022/ey-ficci-m-and-e-report-tuning-into-consumer.pdf

they have today. The TRAI needs to take into account the trends in media consumption caused by the growth of digital media and the manner in which viewers/audiences have started consuming information or seeking entertainment making it impossible and irrelevant to 'measure' or 'define' relevant markets in order to formulate media ownership/control rules.

Challenge of defining 'markets' in India viz-a-viz international markets:

5. The media landscape in India is strongly characterized by significant linguistic diversity. Regional languages have evolved through history and local conditions, and reflect area specific culture. It also reflects local demographics, for example, in historically multi-lingual states such as Karnataka, Andhra Pradesh & Bihar, we have people speaking several different languages within each state and therefore the demand to receive quality programmes, the right to see and express themselves, their culture, their language and their life experiences through television programmes which affirm their sense of self, community and place in their own preferred language.
6. This diversity in turn creates a very lucrative market for regional language media for entertainment, news & information. The media is dependent on its audience/consumers/who decide which media they will use or subscribe to for their consumption of information. If they don't like what they see on TV or read in the papers, then the ratings and circulation figures fall, and the media organizations respond by 'giving the public what they want'. For instance a news report on any current event in a state would be effectively understood, consumed and accessed if it is broadcast in regional media. In terms of relevance and importance, regional news media plays a very vital role in making more people aware of happenings closer to them.
7. This is unlike international markets like the US and UK, which do not face such linguistic challenges as it's a completely homogeneous market and English is accepted across its media environment as a medium for news, information and entertainment. Such a challenge is therefore unique to countries like India which is dominated by diverse cultures and socio-economic factors. In India, the linguistic diversity and presence of multiple channels of media both at the national level and in the regional space, creates optimum diversified views and media pluralism as it is impossible for a single media outlet or owner to have 'influence' or 'dominance' and therefore the concept of deriving markets in India is irrelevant.
8. An average Indian **transits from one media to the other**, across the day, choosing the media most suitable to her/his needs & convenience. For a media entity the focus lies in being able to cater to this audience on as many occasions as possible. Hence, media needs to be able to effectively cater to the average Indian consumers' media habits. Media needs to be given the freedom to be able to grow its Media interest in light of changing consumer needs and to be able to cater to societies' interests in providing News and Entertainment to a consumer who is accessing Media 24X7, across physical, digital and mobile devices. In this scenario, Cross Media Ownership needs to be encouraged, so that Media enterprises, which have built expertise and rich experience in domains of News and Entertainment, can help the Indian consumer to be informed and entertained in the manner the household chooses. This will preserve Media Freedom, ensure Plurality and protect the fundamental principles of Democracy, which recognizes the importance of the Fourth Estate.
9. In light of our submissions concerning cross media restrictions, we question the TRAI's view on the very need for media ownership rules with respect to cross media holdings.
10. With convergence becoming a huge reality the world over, the term 'cross-media' has lost relevance. With multiple technological methods developing to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium. It is also not possible for a single entity to dominate any given market based on market share in a given geography within a media segment because with tech, geographical boundaries do not exist. There is no reasonable basis or the need therefore to adopt any kind of measurement techniques that help derive 'relevant markets' based on which media ownership rules are proposed to be framed by the TRAI.

Content genres and impact on viewpoint plurality:

11. There have been unconvincing submissions made by certain stakeholders in the previous consultation that only news and current affairs genre should be considered while devising ways and means to ensure viewpoint plurality in media, emphatically suggesting that other genres such as “entertainment” genres are not to be considered for achieving this objective.
12. To begin with, it is our strong submission (and of many others in the industry as well) that at the outset, there is no threat to viewpoint plurality or diversity of views in the Indian media context. So the question or need for deriving ways and means to ensure the same does not arise at all.
13. We strongly oppose the TRAI’s view and basic premise that cross media holdings negatively impact viewpoint plurality and hence measures need to be undertaken to devise rules/restrictions that can ensure the same. As detailed in our submissions, we draw attention to the fact that with the kind of fragmentation seen in the Indian media industry, with several players competing with one another, (over 1,40,000 publications, over 900 TV channels, over 200 private Radio stations, fast growing OTT and Digital players), there is no threat whatsoever of dilution of plurality or dearth in diversity of opinions as regards any information presented to readers/viewers/listeners. Indian laws that govern television news media already contains specific provisions, as part of regulations, license conditions etc., that govern the functioning of media. Additionally, with two dozen Doordarshan channels and many AIR radio stations, we do not see any threat at all to media plurality or viewpoint plurality (whether by way of market concentration or control or otherwise), which in our view already exists.
14. Foremost, it should not be ignored that the Indian media industry is the most complex and competitive in the world and has tremendous potential to grow. With the sheer number of players in the market today, in every media segment, there is not even the remotest possibility of viewpoint scarcity.
 - v General Entertainment Channels not being purely news and current affairs channels can also influence ‘viewpoint’ and therefore cannot be left out of consideration while devising means to ensure diversity of views in media.
 - v General Entertainment Channels have greater impact: It is a known fact that GEC’s have a greater impact on viewers than news channels. TV news viewership is almost irrelevant in the overall TV viewership landscape.
15. Non-news content has far more reach and popularity - Even a small opinion conveyed through content has a huge impact on the viewer's viewpoint. Therefore, GECs have often been used as effective platforms to carry social messaging, for promotion by celebrities of various causes and by few political personalities being regularly featured on it to promote their sponsored social causes, in effect, their own political agendas. The BARC Year Book of 2020²⁴ clearly show that the viewership of GEC channels are 50% and the news (including business news) channel is only 10%.
16. In comparison, the news genre is driven by content in the form of reporting on current incidents and developments and primarily broadcasting of views of people involved in a story, comments and reviews of experts, analysts, and reactions from concerned groups, individuals and affected factions. The self-regulatory guidelines imposed on news channels effectively ensure that the channel portrays neutral views and is objective in its reporting. So to presume that only the news and current affairs genres ‘influence’ public opinion is totally baseless.
17. Television, Radio, Internet, and Print are different mediums by which news, views, information, and entertainment are disseminated to the public. The right to disseminate ideas, views or news by the media is protected under Article 19 of the Indian Constitution. Any restriction on means to disseminate would amount to infringement of this right.
18. Allowing unrestricted access to a media entity to voice its views on all available delivery platforms is in fact propagating media pluralism. A media entity must be allowed to use Print, television, radio, or internet, at the same time, to air its views. Any form of ownership control will restrict the freedom of press and would in fact be a hurdle to achieving ‘media pluralism’.
19. Restriction on investment (based on equity holding threshold) in the Indian media sector will restrict companies from achieving technological developments at reasonable costs and deprive

²⁴ <https://bestmediainfo.in/mailler/nl/nl/BARC-India-%20YEARBOOK.pdf>

companies of optimum use of resources. For efficiencies of scale, production quality and satisfying consumer preferences, it is critical that media companies are allowed to invest across media sectors.

20. Unlike Indian media industry, many international democracies had very few players in the market, thereby giving rise to the concentration of power in few hands, which prompted restrictions. In comparison, India hosts over 900 TV Channels (Around 400 news channels amongst them) operated by over 350 broadcasting entities.
21. The need for cross media restrictions internationally arose over 60 years ago because Print players moved into terrestrial TV, which is not possible in India as the terrestrial TV ownership has always been monopolized by the Government through Prasar Bharti as is the case with short/medium wave radio through All India Radio. Currently, this imposes the biggest dominance with its massive influence over Radio & Television broadcasting. Additionally, cable companies must carry these channels at non-commercial rates. This indirectly puts pressure on them to recover revenues from private sector players. For fair play and to ensure an unbiased democratic approach the Government should refrain from controlling media houses/platforms since the Government is the most powerful and influential entity of the country.
22. Advancement in technology and convergence has made a big impact on the way news and information is delivered to the consumer. The world is witnessing the growth of alternative service providers in the form of mediums like blogs, social media platforms like Twitter and Facebook that also cater to news and information. News consumption is drifting away from Newspapers and other traditional forms of dissemination and more and more consumers are accessing their need for news and infotainment through such new mediums.
23. The Internet and new digital mediums are posing stiff competition to Print and television across the world. There is no denying the obvious advantage that Internet companies have over other media forms. An internet company can launch an exclusive platform for news without any permission from the Government. Chris Goodall²⁵ aptly said - "*In ten years' time the threat is not going to be BSkyB, it's going to be the influence of Google over mass media*". What Goodall said was in context of media plurality in the UK but keeping in view the emphatic rise of new media in the field of information, news and current affairs, the same holds true for the entire world.
24. Online media has made it possible for consumers to read text, watch videos, listen to audio and also interact on one single platform completely dispensing with traditional forms of viewing. With the defined borders of platforms steadily diminishing, how can one define a 'relevant market' or calculate 'reach' in light of such changing trends in Indian media, let alone impose 'ownership' rules?

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

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

1. Print media viz. Newspaper & magazine

2. Television

3. Radio

4. Online media/Digital media/OTT

5. All or some of the above

Please substantiate your answer with appropriate reasons.

TN Response : To begin with, we strongly oppose the TRAI's view that media ownership (cross holdings) impact viewpoint plurality. With the kind of fragmentation seen in the Indian media industry

²⁵ Chris Goodall is an English businessman, author and climate change expert.

and several players competing with one another, (over 1,40,000 publications, over 900 TV channels, over 200 private Radio stations and fast growing OTT and Digital players), there is no threat whatsoever of dilution of plurality or dearth in diversity of opinions as regards any information presented to readers/viewers/listeners. Indian laws that govern television news media already contains specific provisions, as part of regulations, license conditions etc., that govern the functioning of media. We do not see any threat at all to media plurality or viewpoint plurality (whether by way of market concentration or control or otherwise), which in our view already exists.

Our reasoning against cross media restrictions are as under:

1. Media companies the world over are facing decreased revenues, as a result of several factors, majorly, pandemic induced economic hardships, competition from online/digital media players and user generated video programming providers and most significantly due to increased competition from new media players, especially Big Tech large global companies that have become the “go-to” destination for news and entertainment, unregulated new media players, etc have impacted the economic value of this industry.
2. There is a paradigm shift towards relaxing cross media ownership rules in several jurisdictions. Such relaxations were much favored after economic recessions, where one media sector was growing and the other was facing the crunch. Experts believed given that cross-holding was allowed/ implemented one business could have saved other part of the media by cross investing/ takeovers and creating synergies.
3. Globally, Print media is on the verge of a shut down and localized newspapers are facing stiff competition from global on-line businesses with global footprint, a domain that is not regulated. The American and other Western newspaper markets have suffered significant reversals in readership and revenue. In countries like the United States, Greece and the United Kingdom, the business of journalism is suffering from cost-cutting measures, reduced consumption, declining resources, consolidation and its accompanying challenges.
4. The Print sector is forced to move into the Digital & Television media because the Consumer is spending more time on these platforms and therefore advertising revenues are moving to these platforms as well. Countries with high broadband penetration allows readers to access to information and therefore popular websites more easily are seeing higher traffic and increase in digital revenues. India is facing a similar trend. With increasing shift to on-line advertising, Print is facing the dual challenges of falling subscriptions and ad revenues. With newspapers already on the decline globally, and facing stiff challenges from online media, further restrictions on cross media holdings across media sectors will make it impossible for Print media to survive.
5. Television sector is still grappling with the pandemic induced slow down and is yet to bounce back fully. With stagnant or slow growth TV companies are under tremendous pressure to deliver quality content at high costs.
6. The efficiencies gained from combined media holdings will allow media companies to compete better in today’s changing marketplace. In addition, the cost savings generated by common ownership allow stations to add local newscasts and other locally oriented programming. Even within the same vertical segment, greater choice in the form of multiple formats can be made available to consumers.
7. To understand the nature of cross media holding it is imperative to take a step back and examine the holding's economic motivations. In the information and communication sector, two broad themes emerge.
 - (i) The first sees holding in the media and entertainment sector as reactions to exogenous technological and policy or regulatory changes to the industry's structure. These forces create opportunities for previously distinct operations to combine.
 - (ii) A second and more “active” interpretation develops the strategic view of cross holding in media as a continuous drive by companies to consolidate their operations and improve their efficiency through economies of scale and scope and synergies.

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

8. **Competition and pluralism theories distinguished:**

Competition and pluralism are not the same concepts and should not be confused. They represent two separate issues, yet their assessment will typically be intertwined. Existence of competition denotes existence of plurality. There is competition in the Indian media space and in the event there is a threat to competition or unfair trade practices are being followed, then the Competition Commission of India enacted under the Competition Act, 2002 comes into play and serves as a redressal forum/mechanism to address issues governing competition or the lack of it. Effective competition today in media will foster not only economic growth but also plurality.

In fact, it can even be concluded that there exists “excess” plurality in the news genre in Indian media. In television for instance, there are currently over 900 channels with around 400 news channels today. However, the viewership of TV news is almost irrelevant in the overall TV viewership landscape. As per the FICCI-EY Report²⁶, the viewership of different genres is as under:

GEC – 49.8%
 Movies – 23.8%
 News – 10.4%
 Sports – 1.9%
 Kids – 7.4%

□

Language	Share of Viewership	No. of Channels
Hindi	43%	175
Telegu	13%	50
Tamil	12%	65
Multiple	7%	43
Kannada	7%	36
Marathi	5%	27
Bangla	5%	36
Malyalam	3%	28
Oriya	2%	19
Bhojpuri	1%	15
Punjabi	1%	21
English	1%	60
Gujarati	0%	15
Assamese	0%	15

²⁶ https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2022/ey-ficci-m-and-e-report-tuning-into-consumer.pdf

Others	0%	8
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□

Channel Genre	Share%	No. of Channels
Regional GEC	31%	101
Hindi GEC	19%	31
Hindi Movies	16%	38
Regional Movies	10%	54
Kids	6%	20
Sports	4%	31
<u>Regional News</u>	<u>4%</u>	<u>127</u>
<u>Hindi News</u>	<u>3%</u>	<u>28</u>
Regional Music	3%	34
Hindi Music	2%	15
Regional Comedy	0.8%	5
Regional Religious	0.7%	8
Hindi Religious	0.6%	4
Infotainment	0.6%	34
Regional Kids	0.6%	5
English Movies	0.2%	13
<u>Hindi Business News</u>	<u>0.03%</u>	<u>2</u>
<u>English News</u>	<u>0.03%</u>	<u>11</u>
English Music	0.03%	2
English GEC	0.01%	11
<u>English Business News</u>	<u>0.002%</u>	<u>3</u>
Hindi Tele Shopping	0.002%	1
TOTAL	100.00%	578

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

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

Another aspect to be given thought is to the fact that the presence of “excess” or widespread participation of players in the media sector, specifically in the news segment, may actually give rise to malpractices by a few players thereby reducing the economic value of the segment. Ideally there is a dire need only for a few media groups who can focus and assure the creation and dissemination of credible content which caters to the diverse interests of India. These few groups may in turn have many products/offerings. There is an urgent need to differentiate between number of offerings and the number of such media groups. The emphasis is to ensure transparency and fair play. Media groups should be allowed to have as wide a spectrum as possible in terms of their offerings across media sectors, provided, however, there exists no scope for malpractices by virtue of any potential vertical control.

We do not see any need to impose restrictions on cross media holdings in the media sector or for that purpose identify sectors or genres to devise ways and means to ensure plurality. We therefore must have forbearance as far as imposition of any kind of restrictions on Cross-media holdings is concerned. If firms are allowed horizontal integration and growth, they will be able to save on costs and provide better quality content to the consumer. The overall experience of the Consumer will improve significantly given the ability of the Media Groups to deliver content across multiple platforms. To cite an example by drawing a parallel to another service – Will it be ideal situation if there are restriction placed for providing internet banking to its customers on banks which have been operating through physical presence? As the technology progresses and customers acceptance and shift to new mediums, so as the businesses to evolve. In the same example, it cannot be said that the banks will have to shut down their physical branches if they enter into online banking as there will be requirement of physical branches as well atleast in the foreseeable future. Of course, there will be separate set of rules which may be applicable for online banking.

As is evident, there is too much competition in the Media sector and the industry needs to see some healthy consolidation. Currently, the irrational practices of some new players are affecting the logical long-term-oriented-growth of the Media Industry.

Q9. Should the word ‘media’ include television, Print media, digital/online media, and other media entities? Alternatively, whether ‘television’ as a media segment should include only DPOs (including LCOs) or only Broadcasters or both for ensuring viewpoint plurality in the television segment? Please justify your answer.

TN Response : The word ‘media’ per se will convey any means of communications used to store or deliver information or data. However, depending on the type of medium, the different mediums are termed as ‘Print media’, ‘television media’, ‘digital/online media’. Hence, it can be said that all types of media are a means to deliver information or data to the people. For eg. when a marketing campaign is launched for say a new product or service, the advertiser and the advertising agencies work on a plan to reach to their target consumers. Hence, keeping in mind the various factors, the advertiser and the advertising agency decides a media planning and may use a mix of media say Print, television, online etc. to reach the targeted consumers. Hence, the different media cannot be seen in isolation and it may be natural or imperative for say a television broadcaster to also have its digital presence so as to ensure that the requirement of his viewer to watch program/content on digital medium is met. The same viewer may like to watch a particular TV channel at home in linear transmission whereas he may like to catch up with some program or content irrespective of time and place on digital mode.

‘Television’

The activity of ‘television’ will involve the broadcasting and distribution. However, these two aspects are entirely different activities wherein the first refers to the content creation and transmission, the second is related to content carrier and distribution/ delivery to end users/ viewers. The distribution involves re-transmission of the television signals through various permitted mediums such as DTH, IPTV, HITS and MSO (including LCOs) whereas broadcasting involves content generation, aggregation and supply of television signals in a manner that it is made available to the targeted viewers by using satellites.

TRAI Interconnection Regulations, Tariff Order and QoS Regulations contains elaborate provisions related to the distribution aspects of the ‘television’ and there is ‘Must Provide’, ‘Must Carry’ clauses and various other provisions which ensures that there is effective interconnection between the broadcaster and the distributor and there is transparency, non-discrimination amongst the service providers.

There are further cross media holding restrictions in case of DTH / IPTV / HITS services wherein a broadcaster entity is not allowed to own more than 20% of the shareholding either directly or indirectly in these distribution platforms and similarly these distribution platforms cannot directly or indirectly own more than 20% in television broadcasting.

Hence, though television services will definitely include broadcasters and the distributors but from the point of view of the plurality of views in the sector, the question may not arise as broadcasting and distribution are totally different aspects as one relates to the content and the other relates to the carrier and it is agnostic to the content being re-transmitted.

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.

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.

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.

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.

TN Response to Q10 – Q13: Please refer to our submissions made above in addition to submissions to Q6 & Q7.

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.

TN Response: Not relevant in view of our clear view that there is no need to measure reach/consumption as there is no lack of plurality. There is absolutely no need to examine, define,

measure or evaluate ownership/control as well as so called concentration. All Print entities have Online editions and this Digital tech in any case negates the very concept of “relevant market” as these are available globally. Please see our previous answers.

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.

TN Response : The bouquet system of channel distribution benefits the entire value chain of the broadcasting industry, be it the broadcasters, distributors or the consumers. Under the present TRAI regulations, the broadcasters are obligated to offer their channels on a-la-carte basis. In addition, they can offer the mix of channels in form of bouquets. However, the consumer interest is fully protected as there is a complete choice available to the consumer to select channels on a-la-carte basis or in the form of bouquets of the broadcasters/DPOs. Further the MRP based regime also protects consumer interest as the price payable by the subscribers for subscribing a particular TV channel is clearly known to him. The price comparison of a channel on a-la-carte / bouquet is also clearly made known. Then it is purely a consumer choice to pick a-la-carte or a bouquet of channels.

Further the consumer has full freedom to select or de-select any a-la-carte channel or any bouquet without any restrictions or hindrances.

The Broadcasting sector is identified as Champion Sector by the Government of India which has the potential to become global champion and grow at double-digit rates. However, due to over-regulation, inconsistency and frequent changes in regulations by the sector regulator, this sector is observing de-growth and cord-cutting by consumers. Such frequent changes also invite consumer ire and angst against the system and takes them away to alternate mediums which and lead to loss of revenue for stakeholders and government as well.

It may not be correct to assume that the bouquet system of channel distribution negatively impacts the viewership of television channels. In fact, the truth is other way round as bouquet system of channel distribution positively impacts the viewership of the television channels while providing benefits to the viewers.

- Discounting and clubbing of product and services is a practice followed across all industries;
- Practice of giving higher discount and making more number of channels available to viewers to suit their budget cannot be termed as “practices not in consumer interest”. The broadcasters try to create different products for the sake of consumer interest and choice and thereby makes the channel available to viewers for sampling at a negligible or nil incremental cost in Bouquet. Eventually, the choice of watching the channel or not is in consumer’s hand only.
- Further nature of channels whether pay or FTA is not affecting in any terms to consumer choice of watching the channel.
- The consumer behaviour needs to be understood in the right perspective as it is assumed that a consumer is happy and content with just few channels. However, an Indian viewer, due to various reasons generally likes to have access to a large no. of TV channels, even when he is actually spending viewing time on fewer channels. But these fewer channels keep on changing as the consumer loyalty is generally not towards the channel per se but towards the program or the content being available on a channel at the time when the particular viewer watches the TV the consumer generally likes to surf a lot of channels before settling to watch a particular channel unless he has some predecided choice. Even in the News channels, the viewer to get latest update or a different perspective surfs many news channels and does not generally stick to one channel especially during the breaking news or during important news events.
- TRAI has assumed viewer to be a passive stakeholder. In today’s age of technology and information, the consumer is well aware about the choices available to him and takes a conscious decision after examining the pros and cons. With many alternate mediums available

to him, the broadcasting industry or for that matter any industry cannot take consumer for granted or cannot assume that consumers are unaware. Hence when free choice is available to consumer with full information on the price on both a-la-carte basis or bouquet basis, it is not correct to assume that if 75% of the viewers have opted for bouquet, it is due to perverse pricing. This is definitely due to the consumer choice and preference to opt bouquets which apart from offering more value also takes away the burden of selecting 200-300 channels individually.

- In view of the multi-lingual society, family system, large no. of genres, different socio-economic-educational strata, consumers generally likes to have a large number of channels in their TV package so that they can surf and choose the content e.g. the viewer who is not a regular viewer of Discovery channel may like to watch PM with Bear Gryll on discovery channel, may like to watch KBC on Sony, IPL matches on Star etc. and may like to see various news channels to get different perspective and not just subscribe to a single news channel and hence does like to have access to large no. of channels, than just a few 25-30 channels as generally assumed by TRAI. Even children at home are not satisfied with 1-2 kids channels and demands that maximum kids channels are available so that they surf and watch different programs. Similarly, an elderly person in the family watching devotional channel will be frustrated if only one such channel is subscribed by the family and other channels of his/her liking is left out. When the country has already built the capacity both in terms of number of home-grown TV channels and the large channel carrying capacity of the distributors and correspondingly meeting the aspirations of its people and when the habit of people have developed to have large number of TV channels, there is no point in going back and restricting the choice of consumers and also in the process giving jolt to the domestic industry which successfully grown despite the prowess of foreign media houses and have contributed immensely in the Atmanirbhar Bharat in the broadcasting sector.
- Further there is no channel carrying capacity constraint with digitization. There is no space crunch with the DPOs and any network can easily carry 300-400 channels. Post digitization, the channel carrying capacity of the distributors have increased multi-fold. In this situation, if the channel offerings are envisaged to be restricted to 25-30 channels, there will be a gross under-utilization of the capacity already created and will harm the stakeholders such as MSO, LCO, DTH operators etc. After digitization, when the industry is able to offer hundreds of channels with clear audio video signals, restricting the number through regulatory measures will also be a complete waste of national resources. It will be a complete undoing of the entire DAS rollout which aimed at digitization of TV services with a view to offer enhanced capacity to viewers and introduce addressability. To draw a parallel, such restrictions will be like building a 16 lane highway and then putting enormous restrictions so that public is only able to use say 2 or 4 lanes and the rest of the lanes remain unused.
- TRAI while making reference to the “Must Carry” provisions has itself acknowledged under Para 91 of EM to the Interconnection Regulations 2017 that there is enough capacity with distributors by stating that –
“There are six private DTH operators which are having capacity of carrying around 400-600 channels on their platform. The majority of MSOs are having capacity ranging from 300-600 channels”. If a broadcaster who has mix of channels across genres/languages and it offers discount on bouquet, there is no harm caused to the consumer. The viewer is actually getting more services for less. It also makes business sense for the broadcaster as he can bundle his services even at the time of advertisement sales.

In other industries, even in a critical industry such as pharmaceuticals, there isn't any cap on the discount. There can be a cap on the MRP but there cannot be a cap on discount in a economy model adopted by India. If such caps are introduced, then the entire booming online industry will collapse. Discounts and attractive prices to consumers have become norm of trade in India and drives the economy. The right of one industry in bundling its services and offering a better value proposition to the consumers cannot be taken away just because a regulatory TRAI has not perceived the things in right perspective or has based its analysis on assumptions and presumptions.

Times Network

Let us go back to the 1980s wherein only one TV channel i.e., Doordarshan, was available to certain limited fortunate people in the country. With the economic liberalization process started in early 1990s, the private TV services in the form of satellite TV also started in the country. Over the next two decades, there was a great boom in this industry and the TV services grew by leaps and bounds. The Indian viewers got the taste of live coverage of events during the Gulf War. When an industry and particularly the service industry grows at such astronomical rate, it is actually due to the fulfilment of a gap which exists. With the economic prosperity and the rising income level of the people, the aspirations of people also rose and they wanted to have entertainment in their homes. There was a great penetration of TV services in homes of the people in all strata of society. After the Government of India allowed uplinking of TV channels from India, there was exponential growth in the number of TV channels in India. There was a huge growth in the news and current affairs channels which offered different views. The growth of channels in different genres were started, for example a GEC channel which used to offer movies as part of GEC started a separate movie channel. The regional language picked up and many mainstream broadcasters introduced their TV channels in many regional languages and there was growth of number of regional broadcasters which offered regional language channels. All along this growth path, basically the aspirations of the viewers to watch TV services propelled the growth of the industry.

Similarly, the distribution ecosystem also witnessed major growth. From analog, the system moved to Digital Addressable System and the TV services to subscribers are managed through CAS and SMS systems enabling servicing of the exact requirement of the subscriber. There was huge growth in the channel carrying capacity of distribution platforms which moved from analog to digital. The country progressively introduced technologies like DTH, HITS and IPTV. The country has spent billions of dollars in foreign exchange to import the equipments for digitization in the country.

Today, with the abundance of choice, the viewer has developed a habit of watching or surfing different TV channels before settling to watch a particular program. For eg. If a viewer in Sunday afternoon, with a wish to watch a Hindi Movie will surf many Hindi movies channels and will then finally settle on to watch a particular movie being played on a particular channel at that point of time. It may not be out of context here to mention that there is a great demand from viewers for newly released movies and the viewership for such movies is very high. However, a viewer cannot with certainty subscribe to one particular movie channel to fulfil this particular viewing preference as the movie rights for broadcast of such movies on TV are bagged by different broadcasters. Hence if a viewer has subscribed to only one or two movie channels as assumed by TRAI, then the viewer is losing out on watching many new releases if he is so interested. Then the TV viewing experience of the consumer is being compromised primarily due to the regulatory restrictions and not due to non-availability of content or due to non-accessibility of content.

If a bundled service offers value, a consumer generally chooses that. The fact that “Combos” are prevalent in other industries to offer value to consumer while at the same time increasing sales and operational efficiencies for the businesses. The consumer choice is only restricted if the offering is made only in form of “Combo” and not individually. However, when both options are available and with a clear indication on the pricing and the components forming the combo/bouquet, comparative price analysis etc. there cannot be any illusion regarding misleading the consumer. The very fact that there is higher uptake of bouquets by the consumers vis a vis a lower uptake of a-la-carte channels shows consumer preference towards bouquets. This is in spite of the fact that there are quite a few restrictions which are already in place for bouquets. When a consumer whether on its own, or being facilitated by the DPOs is choosing options for TV channels, may like to pick bouquets of leading broadcasters which generally offers a mix of content like GEC, Movies, News, Kids etc. rather than just selecting one GEC or movie channel of that broadcaster. Some viewer may just choose of one of the channel if he so desires. Hence the higher uptake of bouquet cannot be assumed to be the forced choice, it is due to the natural choice of the consumer as he is likely to pick bouquet as it offers context mix and a better value proposition.

Presently, the subscriber can choose from the following options or a mix of any:-

Times Network

1. Bouquets offered by the DPO.
2. Bouquets offered by the Broadcasters.
3. A-la-carte channels. A subscriber if so chooses, can independently create the pack of only required channels.

The DPO who has signed agreement with broadcaster is mandated to carry the broadcasters' channels on a-la-carte basis and he is also not allowed to break the broadcaster bouquet. This ensures that the real choice of selection remains with the subscribers. In addition, a DPO can form his bouquets keeping in view the preferences of his target viewers. There is a clear information on the MRP and DRP (Distributor Retail Price) of the channel and bouquets being made available to the consumer.

The subscriber has complete freedom to select and choose his package except the mandatory DD channels which are being carried in national interest. A subscriber choice is not affected rather his choice is widened as bouquets are also available to him along with a-la-carte and he can make his informed choice and selection on the basis of his requirement and costs.

A bouquet besides offering varied mix of content, also larger discounts. It offers convenience of selection and ease of operations in terms of activation and deactivation by the DPOs. It also helps in sampling of the product at nil or incremental pricing.

In case, the channels are only subscribed on a-la-carte basis, the price of subscription will go up. The bundling of products helps in lowering down the prices.

Present mechanism of Broadcaster/DPO bouquet is for facilitating the consumer to avail choices at his favourable price points.

Consumers who do not want to pay more are already going with the lower price bouquet or ala-carte selection to keep their pay-out in control.

TRAI has mandated that all channels should be available on a-la-carte basis so that the consumer choice is not restricted and the consumer can select the channel which he wishes to watch without any artificial restrictions being placed in form of clubbing or grouping of channels. Further such channel's individual prices in the form of MRP of each channel is to be declared by the Pay Broadcaster is also mandated.

This is well accepted and implemented by the industry. Further TRAI has also placed certain restrictions in the formation of bouquets such as a ceiling of Rs. 19/- as MRP of the channel to be included in the bouquet, Non-combining of HD and SD variant of the same channel, non-combining of PAY and FTA channels in the same bouquet in the form of new regulations. All such conditions are duly complied by the service providers. TV is a powerful medium of communication in a country like India where the education level is still not high as TV is able to communicate to all alike irrespective of their socio-educational status. In fact the growth of TV services in India have immensely benefitted in the socio-economic upliftment of the people. Hence, we should try to protect and promote the industry rather than taking steps which curtail its growth and take it backwards.

Hence, we strongly feel that the positive aspects of the bouquet system of channel distribution should be emphasized and in no manner the bouquet offerings shall be further restricted and there is no question of discounting the impact of bouquet system on television viewing.

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

TN Response: No, in our opinion, it would be totally inappropriate to put restrictions on cross-media ownership in one of more type of Media segment based on mere presence of an entity in any segment in a so called "relevant market". In fact, such a restriction would be unfair, arbitrary and against the

spirit of a free, fair and open market, in addition to being violative of Article 19(1)(g) of the Indian Constitution.

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

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

TN Response: Not applicable in view of previous comments.

Q18. Would it be suitable to restrict any entity having Ownership/Control in a media segment of a relevant market with a market share of more than a threshold level in that media segment from acquiring or retaining Ownership/ Control in the other media segments of the relevant market? Please elaborate your response with justifications.

In case you support such restriction, please suggest the threshold level of market share for the purpose of imposing cross-media ownership restrictions.

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

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

Q19. Whether in your opinion, the restrictions on cross media ownership should be imposed only in those relevant markets where at least two media segments are highly concentrated using HHI as a tool to measure concentration? Please elaborate your response with justifications.

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

Q20. In case your response to the above question is in the affirmative, please comment on the suitability of the following rules for cross media ownership:

(i). No restriction on cross-media ownership is applied on any entity having Ownership/ Control in the media segments of such a relevant market in case its contribution to the HHI of not more than one concentrated media segment is above 1000.

(ii). In case an entity having Ownership/ Control in the media segments of such a relevant market contributes 1000 or more in the HHI of two or more concentrated media segments separately, the entity shall have to dilute its equity in its media outlet(s) in such a manner that its contribution in the HHI of not more than one concentrated media segment of that relevant market remains above 1000 within three years.

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

Q21. Please provide your inputs on the suitability of imposing restrictions on cross media ownership only in highly concentrated relevant markets using Diversity Index Score as a tool to measure concentration.

In case you find the abovementioned criteria of restricting cross-media ownership appropriate, please comment on the suitability of the following rules for cross media ownership in such relevant markets:

- (i) *No restriction on cross media ownership is applied on the entities contributing less than 1000 in the Diversity Index Score in such a relevant market.*
- (ii) *In case any entity contributes 1000 or more in the Diversity Index Score of such a relevant market, the entity shall have to dilute its equity in the media outlets in such a manner that the contribution of the entity in the Diversity Index Score of the relevant market reduces below 1000 within three years.*

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.

TN Response: Not Applicable in view of previous comments. We clearly state that we do not support any restrictions on horizontal cross-media ownership. Please refer to our submissions made to Q6.

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

Q23a. If yes, which among the following should be taken as the criteria for the same-(i) minimum number of independent entities in the relevant market (ii) maximum Diversity Index Score (iii) any other measure

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

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

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

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

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

VERTICAL INTEGRATION

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

Q24a. If “Yes”, how would the issues of vertical integration be addressed?

Q24b. If “No”, whether a ceiling of 20% equity holding would be an adequate measure to determine “Control” of an entity i.e. any entity which has been permitted/ licensed for television broadcasting or has more than 20% equity in a broadcasting company shall not have more than 20% equity in any Distributor (MSO/Cable operator, DTH operator, HITS operator, Mobile TV service provider) and vice-versa?

TN Response : Vertical integration, though not inherently wrong, has the capability of allowing for market capture and resultantly for anti-competitive market conditions. Hence, the current ceiling of 20% equity holding for vertical integration is an adequate measure to determine “Control” of an entity i.e. any entity which has been permitted/ licensed for Television broadcasting or has more than 20% equity in a broadcasting company shall not have more than 20% equity in any Distributor (MSO/Cable operator, DTH operator, HITS operator, Mobile TV service provider) and vice-versa.

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

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

TN Response to Q24 & Q25:

Vertical integration often manifests in the form of ills of monopolies. Vertically integrated entities negotiate mutually beneficial deals amongst the integrated entities and at the same time put up offers for the same deals which may be detrimental to the business interests of entities which are not vertically integrated. In India, media distribution industry, in the absence of effective competition at the last mile, is highly monopolized.

The reason why vertical integration is particularly relevant competition issue in the media sector is because many media companies have during the past years actively sought to take vertical integration as far as possible. This has been a constant feature of the concentrations in the media sector.

India television caters to about 180 mn subscribers and the market share of the distribution companies are as under²⁷:

□

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

²⁷ Chrome SES Nov '21

Times Network

KCV	2%		
ARASU	1%		
FASTWAY	1%		
IN	1%		
HITS	1%		
SCV	1%	Sun TV	TV, DTH, MSO
VK DIGITAL	1%		
Kable First	1%		
UCN	1%		
Sri Sai Communications	1%		
Asianet	1%		
Radiant	1%		

As may be noted from above, about 49% of the market share is held by 5 major television broadcast companies/telecom companies. Disney owns 12% of market share, Airtel owns 11% of market share, Zee owns 10% of the market share, Reliance owns 9% of the market share and Sun TV owns 7% of the market shares. This is not healthy for competition and proper growth of the media industry. What is especially problematic is the telcos' ownership of all parts of the broadband and mobile value chain from content to carriage and the same owners' similar and growing ownership in media content and carriage as well.

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

The MIB and the TRAI, recognizing this issue, have already imposed certain restrictions on vertical integration. The DTH Guidelines restricts broadcasting companies and/or cable network companies to own more than 20% of the total equity of the DTH company and vice versa. Likewise, the HITS Guidelines restricts broadcasting companies and/or DTH companies to own more than 20% of the total equity of the HITS company and vice versa. **However, there are no such restrictions on telecom companies and in order to ensure level playing field, TRAI must recommend and ensure that no broadcasting company is permitted to hold/own more than 20% equity share in any distribution company (including cable, DTH, IPTV, HITS, telecom and internet companies), and vice-versa and that no telco can hold/own more than 20% in any broadcasting company whether content or carriage, and vice versa.**

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

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

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

CURRENT LEGAL REGIME VIS-À-VIS MEDIA OWNERSHIP IN INDIA

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.

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.

TN Response to Q26 & Q27:

In our opinion, the current guidelines/compliance structure, including disclosure of requisite information by licensees are adequate to ensure effective compliance of the existing legal regime. The existing mandatory disclosure requirements for DTH, FM Radio, IPTV, HITS, Broadcasters (under Uplinking and Downlinking guidelines) and Print Media are sufficient and no further mandate on periodic disclosure requirements need be formulated for media ownership as is being sought by the TRAI.

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

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

Key Aspects:

<input type="checkbox"/> Constitutional Freedom:	<ul style="list-style-type: none"> Any cross-media curbs on media will put media’s Right to Freedom of Speech and Expression at risk. It will also put artificial fetters in carrying on business.
<input type="checkbox"/> Convergence and Media	<ul style="list-style-type: none"> TRAI has ignored the impact of common ownership of broadcasters and telcos as well as vertical integration in telcos.

Media Ownership/Control: Is there a need?	<ul style="list-style-type: none"> • TRAI has not been able justify the control measures under discussion.
Diversity – Indian Media Context	<ul style="list-style-type: none"> • TRAI has ignored the hugely diverse Indian media landscape –the most competitive in the world.
Impact Analysis of regulations	<ul style="list-style-type: none"> • TRAI has not undertaken the important exercise of analyzing the regulatory impact of its proposals.
Media Plurality	<ul style="list-style-type: none"> • There exists ample media plurality in India – in fact, one could argue that there is too much competition.
Concurrent Laws- Competition law and TRAI’s proposed regulations	<ul style="list-style-type: none"> • TRAI has in its efforts confused competition laws with sectoral regulations, creating overlapping jurisdictions.
Consumer Impact	<ul style="list-style-type: none"> • TRAI has not undertaken any consumer study and has assumed certain aspects of consumer behavior whereas in reality the situation is different.

I. Constitutional Freedom:

Television, Radio, Internet and Print media are various medium of dissemination of news, views, information, and entertainment. These media are essential to the democratic process and the right to disseminate ideas, views or news is protected under Article 19 of the Indian Constitution. Putting any restriction on means to disseminate would amount to infringement of this right. ***Any horizontal cross media restrictions under discussion for the media sector would amount to imposition of an unreasonable restriction on the rights of the Press and media to choose or seek an alternative medium of dissemination of information and therefore infringes the fundamental right guaranteed under Article 19 (1) (a) of the Indian Constitution. Allowing unrestricted access to a media entity to voice its views on all available delivery platforms is in fact propagating media pluralism.***

The current condition of this industry is such that media companies have very few survival options. The challenges have manifested even more strongly due to digital/OTT proliferation and rapid growth and posing a serious challenge to traditional media businesses and the ever changing consumer choices and preferences. It is very unlikely that the presence of multiple players in the industry would salvage the situation as very few media groups have the ability to survive in the current challenging economic conditions and capable of leveraging their monies and skill by investing in other media segments. Due to continuous change in technology, it has become mandatory for every corporate house to keep expanding its business activities in new upcoming sectors, technologies so that they can survive, continue in business instead of being outdated and absolute and to compete with other business entities.

TRAI would be restricting media companies from investing in other horizontal media sectors if it recommends restrictions on ownership and control. For efficiencies of scale, production quality and satisfying consumer preferences, it is critical that media companies are allowed to invest across media sectors.

II. Convergence and Media:

- 1) With convergence becoming a huge reality the world over, the term ‘cross-media’ is steadily losing its relevance. Convergence, Internet and Mobile telephony brings the newspaper, TV and radio channel on a single screen, thus making the very concept of specific media markets/geographies irrelevant. ***With multiple technological methods developing to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium.*** It is also not possible for a single entity to dominate any given market based on market share in a given

geography within a media segment. There is no reasonable basis therefore to bring in any kind of cross media restrictions except for the vertical integration curbs so as to restrict telcos owning media by applying the 20% vertical integration rule.

- 2) The world is witnessing a future that would be dominated by converged media and there is a clear shift in the manner in which information, specifically, news is being consumed. The consumption pattern has already moved towards online/digital sector in a big way with the internet platform redefining the way in which news is disseminated and consumed. ***It is important to have a regime that is flexible to changing needs of the media space and it appears that the TRAI has not considered the impact of such convergence on media in its consultation paper.*** Any discussion therefore, that even contemplates imposing control on media ownership without factoring in the impact of such convergence on the media sector as a whole, would be completely inaccurate and flawed.

III. Media Ownership/Control: Is there a need?

Broadcasting is the main source of information and for most people around the world is a cheap, accessible form of entertainment. Governments and dominant commercial interests have historically sought to control broadcasting. In many countries the public broadcaster operates largely as a mouthpiece of the government and still is a state monopoly in many countries. With private broadcasting becoming increasingly important, a variety of mechanisms have been used to try to control it.

A. Indian Scenario:

1. The Indian scenario is quite unique, where even though the Government exercises control through licensing process, content regulation and price regulations, media companies have been successful in providing low cost quality entertainment to consumers. Government has exerted control through the licensing process and through Prasar Bharati, has monopolised terrestrial TV as well as AM Radio –with private sector not allowed entry into either. In fact on radio, the government has a total monopoly on news and current affairs, as only All India Radio is allowed to broadcast news while private FM radio stations can only re-broadcast AIR news bulletins.
2. Despite increase in literacy levels, television in India remains the cheapest and the most widely accessed mode of entertainment and information medium and hence attracts maximum eyeballs in the Indian M&E industry, even though there is no monopoly and effective market competition amongst the media companies. The need is for a vibrant independent broadcasting sector free from any form of control that serves all regions and groups in society. The economic viability and the overall development of this sector must be safeguarded before any kind of restriction is even thought about.

B. International Scenario:

3. International markets which had in the 1940s and 1950s defined the level of concentration in media ownership and cross media holdings had done so on the basis of there being only very few media outlets and existing players moving into terrestrial TV (which is not allowed for private sector in India even today).
4. International media markets have significantly more developed regulatory regimes unlike India and international democracies having such media markets have in fact relaxed the extent of cross media restrictions imposed as they have become irrelevant today even though, unlike the Indian media industry, they still have very few players in the market.
5. A perusal of the restrictions in other countries would show that such curbs invariably relate to media entities diversifying only into terrestrial TV (which had limited channels) in view of its reach and

not in satellite, cable and DTH services (which were not matured) have scattered and fragmented viewership. Hence, regulators and authorities in established markets have ratified the elimination of the blanket ban on cross media ownership. *The need for cross media restriction in developed democracies arose because Print players moved into terrestrial TV, which is not possible in India as the terrestrial TV ownership has always been monopolized by the government* through Prasar Bharti as is the case with short/medium wave radio through All India Radio. Hence any move to extend cross media restrictions to Indian media is totally unjustified.

6. *TRAI is proceeding on the wrong assumption that media control or ownership restrictions are necessary for viewpoint diversity and that owners of media outlets are in a position to influence how and what is disseminated. As outlined in Note, this is totally flawed as different entities in each media house often have the most sharpest varying editorial stances and viewpoints as they all have separate editorial teams and managements.*

Hence, TRAI has not been able to establish the compelling circumstances which call for such regulations that are being discussed in this consultation paper.

7. **There is absolutely no risk of influence by any entity in the news segment. Indians consume news through multiple languages and across different platforms. The combined reach of all news generating platforms is between 5% to 7% of the population. This leaves out a gigantic 95% of the population which does NOT CONSUME ANY NEWS. This factor, added to the fact that there are thousands of newspapers and hundreds of TV news channels makes it impossible to believe that common ownership of newspapers & news Broadcasting can ever cause any influence through the country.** Currently, the number of newspapers & news Channels is so large that even common ownership will not dent the market positioning of any player.
8. **A few years ago, the regulator had taken a view that there was enough competition and therefore, plurality in the industry and there was no need to regulate horizontal and vertical integration. From the industry perspective, the situation has actually changed dramatically and now there is far more competition in each segment apart from the giant monopolies of Big Tech and the thousands of news sites digital technologies have spawned.**

India – As a diverse market:

9. Indian media as a market has a pluralistic character in terms of diverse cultures, languages, demographics etc. The Indian constitution recognises 22 languages in its schedule as official languages in India but surveys show over 300 languages actually spoken by the population in the country. *The Indian media market therefore has to cater to this enormous and diverse mix of audiences that has various nuances to its cultural, social and economic fabric.* This is one of the major reasons why the Indian media market is highly fragmented and scattered and this is aptly reflected by the presence of over 900 channels that caters to this diverse audience. Any kind of restriction or proposal to control media ownership therefore will not be complete or accurate without assessing its impact on a fragmented media such as in India.

IV. Media Plurality:

- 1) The TRAI has emphasized on media pluralism as a cornerstone of democracy and said that it should reflect the plurality of independent and autonomous media and diversity of media content. While, agreeing to the same, it must also be emphasised here that media pluralism has two “faces”: internal (which may also be called content pluralism or diversity) and external (or structural). The first presupposes a variety of voices that should be presented in the media. The second one assumes that there must be a diversity of media ownership, i.e. a number of media providers.
- 2) If we take the Ofcom (the Office for Communications, UK’s communications regulator) example, Ofcom undertook a 7 months public consultation exercise on measuring plurality. Its consultation

involved stakeholder engagement, academic seminars, international benchmarking, extensive consumer research, an in-depth study of the provision of news and a review of the academic literature. Ofcom's stark observation on the assessments of media plurality was that media plurality should not be boiled down to simple market share measures and that:

*"The literature suggests that qualitative factors, including the type of ownership, should also be considered when thinking about plurality. Some writers in this area, including Barnett, have suggested that regulation to promote quality journalism (a form of positive content regulation), rather than a focus on media ownership rules, may be a way to secure outcomes in the public interest."*²⁸

Significantly, Ofcom said on media plurality:

"Ownership plurality does not always ensure a plurality of news sources. For example, local commercial radio stations often have separate owners but obtain their national news programming from the same source.

*Ownership plurality does not necessarily ensure editorial or viewpoint diversity. Journalists, editors and producers may have a more direct impact on the views expressed in a media outlet than the outlet owners. Editorial viewpoint and agenda setting is not always dictated by ownership. For example, ITV and Channel 4 have different news agendas, but they both source their national news from ITN. Also relevant is the argument that, in some cases, different sources of news offer similar perspectives, thus reducing the diversity of voice sought by ensuring different ownership."*²⁹

- 3) ***As highlighted in our specific submissions above, with the kind of fragmentation seen in the Indian media industry and several players competing with one another, (over 1,40,000 publications, over 900 TV channels, over 200 private Radio stations and fast growing Digital/OTT players), there is no threat whatsoever of dilution of plurality or dearth in diversity of opinions as regards any information presented to readers/viewers/listeners.***
- 4) The TRAI has already recommended restrictions on certain entities from entering the media sector i.e. political, religious and government owned/influenced entities etc. If these restrictions are effectively implemented, ***there is no further need to have sweeping regulations covering all media sectors, which the TRAI is attempting to do.***

V. Concurrent Laws- Competition law and TRAI's proposed regulations:

- 1) A concerning issue emerges with proposed regulations; that there will be concurrency of competition laws and media regulations. India has a fairly robust competition law framework and a specialist body (i.e. CCI) that is charged with competition law enforcement. This does not necessarily mean that enforcement policy should be more lenient. Rather it should preserve the flexibility to adapt to the particular challenges of media and communications markets where the blunt instrument of rigid *ex ante* controls in the absence of observable harm risks being counterproductive.
- 2) ***The TRAI's approach to the issues concerning competition in the media sector poses a significant problem of duplication of regulations and lack of synergy with the existing competition law framework in India.***

²⁸ <http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/statement/Annex7.pdf>

²⁹ <http://stakeholders.ofcom.org.uk/binaries/consultations/morr/summary/morrcondoc.pdf>

Conclusion:

1. There is no requirement or justification for any cross-media restrictions on horizontal ownership of media.
 2. There does, however, exist a need to extend the 20% vertical integration ownership rule present in broadcasting, to telcos owning content and vice versa, as well as to telcos owning any part of the media distribution value chain.
 3. There is a need to bar certain kinds of entities from ownership of media.
-