

Citizens Forum for Civil Liberties (CFCL)

To

Mr. Wasi Ahmad, Advisor (B&CS),
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
New Delhi – 110002

Subject: Comments on Consultation Paper on Issues relating to Media Ownership

Dear Mr. Wasi Ahmad,

This is with reference to the invitation for comments on Consultation Paper on Issues relating to Media Ownership.

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Kindly find attached my comments.

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Thanking You
Yours faithfully
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Comments on Consultation Paper on Issues relating to Media Ownership

General Disqualifications

Q1: In your opinion, are there other entities, apart from entities such as political parties, religious bodies, Government or government aided bodies which have already been recommended by TRAI to be disqualified from entry into the broadcasting and distribution sectors, which should also be disqualified from entry into the media sector? Please elaborate your response with justifications.

Comments: It has rightly been recommended by TRAI that entities such as political parties and religious bodies be disqualified from entry into the broadcasting and distribution sectors. But government or government aided bodies cannot and should not be barred from entry into the broadcasting and distribution sectors.

Q2: Should the licensor, either *suo motu* or based on the recommendations of the regulator, be empowered to disqualify any entity from entering the media sector in public interest? For instance, should the licensor or the regulator be empowered to disqualify (or recommend for disqualification) a person who is subject to undue influence by a disqualified person.

Comments: Regulator can and should disqualify any entity from entering the media sector but strictly in 'public interest' but the term 'public interest' should be pre-defined.

Media Ownership/ Control

Q3: Should ownership/ control of an entity over a media outlet be measured in terms of equity holding? If so, would a restriction on equity holding of 20% (as recommended by TRAI in its recommendations on Media Ownership dated 25th Feb 2009) be an appropriate threshold? Else, please suggest any other threshold value, with justification?

Comments: A restriction on equity holding of 20% will be in public interest.

Q4: In case your response to Q3 is in the negative, what other measure(s) of ownership/ control should be used? Please support your view with a detailed methodology to measure ownership/ control over a media outlet.

Comments: Another consultation paper is required to measure ownership/ control over media outlets.

Media Ownership rules

Q5: Should only news and current affairs genre or all genres be considered while devising ways and means to ensure viewpoint plurality? Please elaborate your response with justifications.

Comments: To begin with only news and current affairs genre be considered while devising ways and means to ensure viewpoint plurality. At a second stage all genres should be considered.

Q6: Which media amongst the following would be relevant for devising ways and means of ensuring viewpoint plurality?

- (i) Print media viz. Newspaper & magazine
- (ii) Television
- (iii) Radio
- (iv) Online media
- (v) All or some of the above

Comments: All

Q7: Should the relevant markets be distinguished on the basis of languages spoken in them for evaluating concentration in media ownership? If your response is in the affirmative, which languages should be included in the present exercise?

Comments: Evaluation of concentration in media ownership should be for all languages including Hindi and English

Q8: If your response to Q7 is in the negative, what should be the alternative basis for distinguishing between various relevant markets?

Comments: Evaluation of concentration in media ownership should not be confined to Hindi and English.

Q9: Which of the following metrics should be used to measure the level of consumption of media outlets in a relevant market?

- (i) Volume of consumption
- (ii) Reach
- (iii) Revenue
- (iv) Any other

Please elaborate your response with justifications.

Comments: For measuring the level of consumption of media outlets in a relevant market, volume of consumption, its reach and revenue generation should be used.

Q10: In case your response to Q9 is “Any other” metric, you may support your view with a fully developed methodology to measure the level of consumption of various media outlets using this metric.

Comments: N/A

Q11: Which of the following methods should be used for measuring concentration in any media segment of a relevant market?

- (i) C3
- (ii) HHI

(iii) Any other

Comments: Any other

Q12: If your response to Q11 is “Any other” method, you may support your view with a fully developed methodology for measuring concentration in any media segment of a relevant market using this method.

Comments: Instead of C3 or HHI, developments among key players in the media market should be assessed for measuring concentration in any media segment of a relevant market. This is very important given the ongoing convergence of information and communication technologies. "[It is not] possible to distinguish between 'numerical' and 'non numerical' algorithms, as if numbers were somehow different from other kinds of precise information," says Donald Knuth who is a computer scientist and Professor Emeritus at Stanford University and the author of the seminal multi-volume work *The Art of Computer Programming*. Knuth has been called the "father" of the analysis of algorithms.

Q13: Would Diversity Index be an appropriate measure for overall concentration (including within media and cross media) in a relevant market?

Comments: No.

Q14: In case your response to Q13 is in the affirmative, how should the weights be assigned to the different media segments in a relevant market in order to calculate the Diversity Index Score of the relevant market?

Comments:N/A

Q15: Would it be appropriate to have a “1 out of 3 rule” i.e. to restrict any entity having ownership/control in an outlet of a media segment of a relevant market from acquiring or retaining ownership/control over outlets belonging to any other media segment? Please elaborate your response with justifications.

Comments: Yes. This is required for internal and external pluralism. Internal pluralism reflects how social and political diversity is reflected in media content. The representation of different cultural groups in the media as well as divergent political or ideological opinions and viewpoints. Internal pluralism plays an important role in news and public affairs coverage, and also for public broadcasting and media landscapes dominated by one (monopoly) or two (duopoly) players. Governments can not only stimulate internal pluralism by facilitating public service broadcasting, but also by means of financial support such as grants, press funds, reduced tax rates, etc.

External pluralism covers the number of owners, media companies, independent editorial boards, channels, titles or programmes. This type of pluralism refers to the 'plurality' of suppliers. From the perspective of the 'free marketplace of ideas', competition between these media content suppliers is considered to be essential in order to ensure a free choice of media content and the

availability of a wide variety of opinions and ideas. Policies on media concentration are most concerned with the market power that owners or companies may gain and the subsequent possibility of exerting influence.

Q16: Alternatively, would it be appropriate to have a “2 out of 3 rule” or a “1 out of 2 rule”? In case you support the “1 out of 2 rule”, which media segments should be considered for imposition of restriction? Please elaborate your response with justifications.

Comments: No. If this is done internal and external pluralism will be eroded and corroded.

Q17: Would it be appropriate 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 (say 20%) 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.

Comments: To begin with yes but one media outlet should not be allowed to have presence in other outlet at later stage.

Q18: In case your response to Q17 is in the affirmative, what should be such threshold level of market share? Please elaborate your response with justifications.

Comments: Same as above

Q19: Would it be appropriate to lay down restrictions on cross media ownership 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.

Comments: It should be based on the most recent developments in the relevant markets.

Q20: In case your response to Q19 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. (For methodology of calculation please refer para 5.42)

(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.

Comments: N/A

Q21: Would it be appropriate to lay down the restrictions on cross media ownership only in highly concentrated relevant markets using Diversity Index Score as a tool to measure concentration? Please elaborate your response with justifications.

Comments: Diversity Index Score has limitations. Its endorsement by US Federal Communications Commission, 2003 had ramifications. There was outcry from both the public and members of US Congress. The Commission's media ownership decision was challenged in court by public interest advocates arguing that the rule changes had gone too far in allowing increased consolidation.

Q22: In case your response to Q21 is in the affirmative, 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.

Comments: N/A

Q23: You may also suggest any other method for devising cross media ownership rules along with a detailed methodology.

Comments: Supplier concentration, editorial concentration and diversity are concepts on the supply side of media markets. On the demand side of markets we may measure audience (or exposure) concentration: the degree to which audience media preferences and usage are distributed over channels and titles. This is measured by means of media consumption time and a medium's reach. By comparing the supply and demand on media markets, the match between media offered and users' preferences may be assessed.

Q24: In case cross media ownership rules are laid down in the country, what should be the periodicity of review of such rules?

Comments: These rules should be reviewed every six months.

Q25: In case media ownership rules are laid down in the country, how much time should be given for complying with the prescribed rules to existing entities in the media sector, which are in breach of the rules? Please elaborate your response with justifications.

Comments: They should be given six months to eleven months

Mergers and Acquisitions

Q26: In your opinion, should additional restrictions be applied for M&A in media sector? Please elaborate your response with justifications.

Comments: Yes. Additional restrictions need to be applied for M&A in media sector for external pluralism.

Q27: In case your response to Q26 is in the affirmative, should such restrictions be in terms of minimum number of independent entities in the relevant market or maximum Diversity Index Score or any other method. Please elaborate your response with justifications.

Comments: Horizontal concentration and cross-media ownership is a great concern in policies that strive to safeguard a minimum number of suppliers in one or more media markets. This needs to be mapped by visualizing changes in these types of ownership, monitors relationships in the media sector and outlines trends that may influence the independence and diversity of the media. In relation to the supply chains of the media production process, various types of media concentration can be identified that may occur in media markets. These include supplier concentration, editorial or programming concentration, concentration of media content and audience concentration.

Vertical Integration

Q28: Should any entity be allowed to have interest in both broadcasting and distribution companies/entities?

If “Yes”, how would the issues that arise out of vertical integration be addressed?

If “No” , whether a restriction on equity holding of 20% 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?

You are welcome to suggest any other measures to determine “control” and the limits thereof between the broadcasting and distribution entities.

Comments: Vertical concentration in two or more links of the media value chain should not be allowed. There is need to pay attention to diagonal concentration wherein a publisher or a broadcaster enters into other media types in addition to its usual operations; for instance a publisher that becomes active in a radio or television station in addition to a daily paper.

Mandatory Disclosures

Q29: What additional parameters, other than those listed in para 7.10 (i), could be relevant with respect to mandatory disclosures for effective monitoring and compliance of media ownership rules?

Comments: Media companies should be brought under the ambit of Right to Information Act which is the case in some of the countries.

Q30: What should be the periodicity of such disclosures?

Comments: Once they come under Right to Information Act, they would be under compulsion to make certain disclosures proactively.

Q31: Should the disclosures made by the media entities be made available in the public domain?

Comments: Yes

Other Issues

Comments: Integration of print and electronic media is not a healthy phenomenon. There should be an absolute ban on integration.