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By E-mail/Speed post

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To

The Chairman,
Telecom Regulatory Authority of India,
Jawaharlal Nehru Marg,
New Delhi – 110 002.

Sir,

Sub : Response to the consultation paper titled “Issues relating to Media
Ownership”

Ref : Consultation paper no. 01/2013.

Kindly find my comments to the aforesaid Consultation paper. The
comments therein may be considered on the subsequent recommendations to the
Central Government.

Thanking you

Yours Truly,

R.L.Saravanan

Comments of R.L.Saravanan

While I sincerely thank the efforts of the hon'ble Authority in bringing out the extant consultation paper, the seriousness of the issues discussed herein are imperative and would warrant immediate attention to enforce strict regulations in the larger interest of the stake holders.

Earlier I had the privilege of participating in the consultation paper of the hon'ble Authority bearing no 13/2008, titled "Consultation paper on Media Ownership" and also participated in the "open house discussion" on the said paper.

As much of water has flown under the bridge since then, may I discuss the the present consultation paper on its maintainability and jurisdiction of the hon'ble Authority in handling the issues mentioned there in the consultation paper bearing No. 01/2013 and titled "Consultation Paper on Issues relating to Media Ownership".

The hon'ble Authority may consider the following preliminary objections before processing the consultation paper and act accordingly. The discussions would go as follows:

Seeking of Recommendations:

The need of the present consultation paper would emanate from the communication from The Secretary, Ministry of Information and Broadcasting dated 16-05-2012 with ref D.O.No. 9/9/2012-BP&L as exhibited as Annexure-I in the consultation paper under discussion.

A bare perusal of the said communication would reveal that the Central Government has invoked the provisions of Section 11(1)(a)(ii) & (iv) of The Telecom Regulatory Authority of India Act, 1997 (TRAI). Para no 3(I) of the said letter would *inter alia* recite as follows:

..... This type of vertical integration can seriously affect competition and promote monopolistic practices.....

Further para 3(II) envisages the present scenario on non restriction of ownership across Radio, Television and Print Mediums. Thereby, loading the hon'ble authority to study and involve itself in print medium too.

For the purpose of discussion I would like to anchor myself on two primary issues namely

- Issues of competition & monopolistic practices &
- Inclusion of Print medium in TRAI's Consultation paper.

Scheme of TRAI Act-1997:

The pre-amble of the TRAI act would *inter-alia* go to say in its own words as

.....” and to protect the interests of service providers and consumers of the telecom sector, to promote and ensure orderly growth of the telecom sector”.....

The definition of “telecommunication service” as defined in section 2(k) of TRAI Act, was expanded with an option to include broadcasting services by an amendment in the year 2000. Further, by a notification dated 9-01-2004 in S.O. 44(E) the broadcasting and cable services have been brought under the ambit of TRAI.

The Central Government has invoked the recommendatory Jurisdiction of the hon’ble authority in seeking the extant recommendations through section 11(1)(a)(ii) and (iv) of the TRAI Act. Whereas the former section deals in recommendation of terms and conditions of licence to a service provider and later section deals in facilitation of telecommunication services.

Whereas it is beyond doubt that the print medium is out of the purview of the hon’ble Authority.

Scheme of The Press Council Act, 1978:

Though the Press Council of India is created to preserve the freedom of press, maintain & improve the standards of news papers and agencies, Section 13(2)(i) of “The Press Council Act, 1978” would recite as follows as one of the function of the press council of India:

- (i) To concern itself with developments such as concentration of or other aspects of ownership of newspapers and news agencies which may affect the independence of the Press.**

The above provision would lead to show that PCI is statutorily empowered to act upon the issues discussed in the extant consultation paper with respect to news papers and the hon’ble authority’s discussion on the said issues would usurp the jurisdiction of the Press Council of India.

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Hence, the present discussion while exercising the recommendatory jurisdiction, the hon'ble authority ought have either done a joint exercise along with the press council of India or might have referred the issues relating to newspapers to the right authority and therefore the inclusion of newspapers in the current consultation paper is without jurisdiction.

Scheme of "The Competition Act, 2002"

The Competition Act, 2002 was enacted by the Parliament by following the guiding principle of the Pre ample of the Constitution and to perform its duty in establishing Directive Principles of State Policy as envisaged in Article 39 (C) of the Constitution, according to the statement of Objects and Reasons accompanied to The Competition bill, 2001.

Though the scheme of the Act would more focus on anti-competitive agreements (including vertical agreements), abuse of Dominant position, regulating combinations and mergers , it is imperative to note that section 21 of The Competition Act, 2002 would open upon the recommending (opining) jurisdiction of the Competition Commission of India (CCI).

Any statutory Authority, including and not less than TRAI or the Minsitry of Information and Broadcasting, may send a reference to the CCI for its opinion.

When the hon'ble Authority has done its exercise on the consultation paper with even issues in 2008, the CCI was not fully functional and however many important provisions of the said act were brought to force from 20-05-2009 only and subsequently by 1-06-2011 all the provisions have brought into force.

In fact the CCI has a separate "Anti Trust" division to examine the issues related to the extant consultation paper. CCI being a body specialized in governing competition and the very reference by the Ministry of Information and Broadcasting to the hon'ble authority ought have to be referred to CCI as section 21 reference. It is noteworthy to state that CCI is fully functional now and does an exemplary work in enforcing the provisions of the said Act.

Though TRAI Act, 1997 might have empowered the hon'ble authority to recommend on the conditions of license, When it comes to analyzing competition, it is expedient for the Authority to refer the matter to CCI.

Further, Section 60 of "The Competition Act-2002" would give an overriding effect of all laws on the subject matter seized by CCI. Hence, the said recommendatory jurisdiction of the hon'ble Authority in respect to recommending a competitive issue is otiose.

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As CCI has a well connected network with other such forums all over the world, it may also analyse such international practices while opining about any issue including the present issues raised in the consultation paper under discussion.

generalia specialibus derogant:

The above legal maxim is one of the guiding principles of interpretation of statutes which would go to say that a special provision normally excludes the operation of a general provision. The Competition Act, 2002 being a special enactment for special purposes, the same would be derogant to the general provisions of TRAI Act, 1997. Further, the Competition law being the latest one, the extant maxim shall play its role in eliminating the jurisdiction of the hon'ble Authority in examining the present issues.

Conclusion:

In conclusion of the foregoing discussion, I humbly pray to the hon'ble Authority to kindly refer the matter to "The Competition Commission of India" under Section 21 of "The Competition Act, 2002" for want of jurisdiction.

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