

WRITTEN COMMENTS OF TIMES INTERNET LIMITED TO
CONSULTATION PAPER ON ISSUES RELATING TO MEDIA OWNERSHIP
BEING CONSULTATION PAPER NO.1 / 2013 ISSUED BY TRAI ON
15.02.2013.

1. The response to the TRAI Consultative paper is divided into following 3 sections : -
 - (a) Legal Position on Control of Media and relevant case laws;
 - (b) Other Statutes governing the field; and
 - (c) Questions and Answers
2. History: The TRAI had floated a Consultation paper on 23.09.2008 being Consultation paper No.13 of 2008 wherein similar issues with regard to restrictions on cross media control/ownership had been raised and Times Internet Limited had already submitted a reply, a copy of the same is annexed herewith as "**Annexure- A**".
3. The purpose of the Consultation paper, as is being postulated, is for greater regulation of the media and one of the aspects of regulation being cross media control/ownership. However, before discussing the pros and cons of whether cross media control/ownership is required, it is necessary to understand the manner in which the media functions.
4. For any Media Company to operate, the following essential elements are required : -
 - (a) Assimilation of Content;
 - (b) Editorial Control;
 - (c) Vehicles of Dissemination; and
 - (d) Revenue Generation;
5. Media, by its very nature, can either be free or subscribed. An overwhelming part of the media is free for the listening, viewing and consuming by the public. There are some benefits of synergies in these

business verticals. However, most progressive media groups would keep an arms length between these divisions since the Consumer expectations are very different in each vertical and they need to be serviced very differently. In fact, the most fundamental element of differentiation is in Editorial. Each individual Editor decides the line he/ she wants to take on any issue which is relevant for its target audience. Eg. The way a younger audience (on the Internet) would evaluate the Budget is very different from the way the same Budget would be studied by a mature businessman reading the Business Newspaper.

6. The legal position, insofar as media is concerned, is enshrined under Article 19(1)(a) of the Constitution of India. The Right to Freedom of Expression and Speech, 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. Under the garb of restricting cross-media ownership, it would be impermissible to control and regulate the content. Any step towards putting restrictions on cross-media control/ownership would fail to stand the test of judicial scrutiny under Article 19(2) of the Constitution of India.

7. Instead of trying to harm the Media Industry which requires to be present in all different forms of Media in order to be competitive and indeed survive, TRAI must be sensitive to efforts to protect the Media Industry against existing wrong practices like wageboards for newspaper employees, which allows government the power to decide the salaries of journalists and non-journalists. (This is the only instance in India today, where government decides salaries for employees of private companies—even as media is not controlled in such a manner in other countries.)

8. Digital News consumption is growing in India. High quality news production and editorial are cost intensive operations. To recover these costs (to produce news), media groups need to have multiple avenues to monetize this business and recover these. It would be financially very difficult/unviable to sustain standalone media operations.

9. There should be freedom for any Media Company - in a particular media domain business either in Print or Television or Radio or Online Media - to get into another media domain without any restrictions, whatsoever.

10. Media Content comprises of Audio content, Video content and Textual content. Media Groups are better placed to offer Content across media rather than aggregators or Content licensee's who are engaged in the same business without actually "producing" news.

In India today, different media platforms in the same Group are separate, independent, companies, with entirely different editorial teams of their own, and, which, hence, perforce, take an independent view of issues. In fact, very often, the views of one Editor are entirely opposite, or indeed at cross-purposes, to the stand taken by another Editor of another media platform in the same Group. We firmly urge that no person who has or has had any association with any form of Political Party, Government (or a Government Body – local or at the centre) should be allowed to have any association with any editorial work in a Media Group. We strongly believe that vertical integration is very important for economic viability of any enterprise/organization. The challenges that any Industry faces are:

- The costs of doing business have never reduced and on the contrary have always seen an upward trend
- Ever increasing competition has always ensured that the revenue is far more difficult to predict

- The Consumer has definitely become far more unpredictable
- In this scenario, the Media Industry is most heavily exposed due to the constant evolving Technology platforms and Internet enabled devices

To sustain any business model, the Company may consider backward or forward integration – this is not new to any industry. Hospitals have Medical Stores, Automobile Cos have their own retail outlets. Textile Cos have their own stores, Power Cos own their own coal mines.

Obviously, the commercial rationale for this investment will be required with all relevant stakeholders.

The Government should allow vertical integration while putting in place rules that ensure that there is fair play by such vertically integrated media groups and “third parties” are not treated unfairly or disadvantaged with this muscle.

By questioning the logic of horizontal integration (across Newspapers & Broadcasting), the Consultation Paper is indirectly suggesting that a newspaper should not have any video content on its website? Why will an Internet Consumer stay longer on this newspaper website when he can get far more richer content along with video clips attached to the news story on another website? Therefore, for efficiencies of scale, production quality and Consumer preferences, it is critical that Newspaper Groups be allowed to make relevant investments in TV, Radio & Distribution.

The biggest proof of the Consumer migration is the Classifieds business. The below table shows the growth of ONLINE Classifieds in India:

Share of Online and Offline

Classifieds business

% share (online+offli ne)	2006	2012	2013	2014	2015	2016	2017
Offline/Print Classifieds	66.7%	58.9%	57.7%	56.6%	55.5%	54.3%	53.1%
Online Classifieds	33.3%	41.1%	42.3%	43.4%	44.5%	45.7%	46.9%
Total	100.0%	100.0%	%	100.0%	100.0%	100.0%	%

Source:

Netscribes report – online and offline classified market in India, May 2012

http://www.afaqs.com/all/news/images/news_story_grfx/2012/04/33703/Online-classified-spend_big.jpg

<http://anuraggupta.blogspot.in/2006/03/online-listings-classifieds-businesses.html> (Please refer to the pointers below for a note on the 2006 estimates)

11. The Hon'ble Supreme Court has, from time to time in a catena of judgements, held as to what could constitute unreasonable restriction. Such unreasonable restrictions include :-

- a. Any restriction that is directly imposed upon the right to publish including not only its views but views of its correspondents, to disseminate information or to circulate (the matter to be circulated and volume of circulation).
- b. Restriction on the space for advertisements as it would affect the price of the newspaper.

c. Fixing the maximum page or price level, thereby affecting its volume of circulation.

d. Restricting the use of paper which is allotted to a newspaper, so as to affect its volume of production or circulation.

12. It would be apt to mention the following judgements which clearly recognize the freedom of the media :-

a) 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.

b) 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). However the state cannot seek to place restrictions on business by directly and immediately curtailing any other freedom of the citizen guaranteed by the Constitution and which is not susceptible of abridgement on the same grounds as are set out in Article 19(6). Therefore, the right of freedom of speech cannot be taken away with the object of placing restrictions on the business activities of a citizen. Similar is the situation with restraint on Cross-Media holdings, in the attempt to regulate the business activities the freedom of speech is being curtailed by taking away the right to free press, which is antithetic to the sole purpose of these restrictions of promoting a free press. 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.

13. Putting restrictions on cross media holdings/ownership is nothing but an attempt to regulate the right of the free press and nothing more.

a) 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 affect directly 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.

b) 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. Some relevant extracts of this landmark judgment are as under:-

"Mr. Palkhivala said that the tests of pith and substance of the subject matter and of direct and of incidental effect of the legislation are relevant to questions of legislative competence but they are irrelevant to the question of infringement of fundamental rights. In our view this is a sound and correct approach to interpretation of legislative measures and State action in relation to fundamental rights. The true test is whether the effect of the impugned action is to take away or abridge fundamental rights. If it be assumed that the direct

object of the law or action has to be direct abridgment of the right of free speech by the impugned law or action it is to be related to the directness of effect and not to the directness of the subject matter of the impeached law or action. The action may have a direct effect on a fundamental right although its direct subject matter may be different. A law dealing directly with the Defence of India or defamation may yet have a direct effect on the freedom of speech. Article 19(2) could not have such law if the restriction is unreasonable even if it is related to matters mentioned therein. Therefore, the word "direct" would go to the quality or character of the effect and not to the subject matter. The object of the law or executive action is irrelevant when it establishes the petitioner's contention about fundamental right. In the present case, the object, of the newspaper restrictions has nothing to do with the availability of newsprint or foreign exchange because these restrictions come into operation after the grant of quota. Therefore the restrictions are to control the number of pages or circulation of dailies or newspapers. These restrictions are clearly outside the ambit of Article 19(2) of the Constitution. It, therefore, confirms that the right of freedom of speech and expression is abridged by these restrictions.

*In **Sakal Papers case** (supra) raising the price affected and infringed fundamental rights. In **Sakal Papers case** (supra) this Court said that the freedom of a newspaper to publish any number of pages or to circulate it to any number of persons is each an integral part of the freedom of speech and expression. A restraint placed upon either of them would be a direct infringement of the right of freedom of speech and expression. The impact on the freedom of the press would still be direct in spite of the fact that it is not said so with words. No law or action would state in words that rights of freedom of speech and expression are abridged or taken away. That is why Courts have to protect and guard fundamental rights by considering the scope and provisions of the Act and its effect upon the fundamental rights. The ruling of this Court in **Bank Nationalisation case** (supra) is the test of direct*

operation upon the rights. By direct operation is meant the direct consequence or effect of the Act upon the rights

46. Article 13 of our Constitution states that the State is prohibited from making any law which abridges or takes away any fundamental rights. Again, Article 19(2) speaks of reasonable restrictions on the exercise of fundamental rights to freedom of speech and expression. Our Constitution does not speak of laws regulating fundamental rights. But there is no bar on legislating on the subject of newspapers as long as legislation does not impose unreasonable restrictions within the meaning of Article 19(2). It is also important to notice as was done in earlier decisions of this Court that our Article 19(1) (a) and the First Amendment of the American Constitution are different. The First Amendment of the American Constitution enacts that the Congress shall make no law abridging the freedom of speech or of the press. The American First Amendment contains no exceptions like our Article 19 (2) of the Constitution. Therefore, American decisions have evolved their own, exceptions. Our Article.19 (2) speaks of reasonable restrictions. Our Article 13 states that the State shall not make laws which abridge or take away fundamental rights in Part III of the Constitution.

64. The historical reason given by the Government for fixing the maximum number of pages at 10 is that the effect of the policy on allowing any page increase and circulation increase from time to time has been to help the growth of the Press. This is how newspapers like Ananda Bazar Patrika, Jugantar and Deccan Herald are said to have come up. The Government also relies on the recommendation of the newspaper proprietors in the year 1971 that 8 pages should be considered the national minimum requirement for medium of information. The big English dailies had the number of pages over 12 in 1957. Because of adjustability between pages and circulation they had an actual page level which was higher than the permissible page level of 1957. The petitioners say that this has not impeded the growth of other papers. The policy prescribed by the Government of fixing the maximum page limit at 10 is described by the petitioners to hit the big dailies and to prevent the newspapers from rising above mediocrity. It is true that the Government

relied on an historical reason. It is said to prevent big newspapers from getting any unfair advantage over newspapers which are infant in origin. It is also said that the Government policy is to help newspapers operating below 10 pages to attain equal position with those who are operating above 10 page level. But this intention to help new and young newspapers cannot be allowed to strangulate the freedom of speech and expression of the big dailies.

81. *In the present case, it cannot be said that the newsprint policy is a reasonable restriction within the ambit of Article 19(2). The newsprint policy abridges the fundamental rights of the petitioners in regard to freedom of speech and expression. The newspapers are not allowed their right of circulation. The newspapers are not allowed right of page growth. The common ownership units of newspapers cannot bring out newspapers or new editions. The newspapers operating above 10 page level and newspapers operating below 10 page level have been treated equally for assessing the needs and requirements of newspapers with newspapers which are not then equal, Once the quota is fixed and direction to use the quota in accordance with the newsprint policy is made applicable the big newspapers are prevented any increase in page number. Both page numbers and circulation are relevant for calculating the basic quota and allowance for increases. In the garb of distribution of newsprint the Government has tended to control the growth and circulation of newspapers. Freedom of the press is both qualitative and quantitative. Freedom lies both in circulation and in content. The newsprint policy which permits newspapers to increase circulation by reducing the number of pages, page area and periodicity, prohibits them to increase the number of pages, page area and periodicity by reducing circulation. These restrictions constrict the newspapers in adjusting their page number and circulation.*

83. This Court in **Sakal Papers case** (*supra*) dealt with measures empowering the government to regulate allocation of space to be allotted for advertising matter. This Court held that the measure had the direct effect of curtailing the circulation of the newspaper and thus to be violation of Article 19 (l) (a). It was said on behalf of the Government that regulation of space for

advertisement was to prevent unfair competition. This Court held that the State could help or protect newly started newspapers but there could not be an abridgment of the right in Article 19(1)-(a) on the ground of conferring right on the public in general or upon a section of the public.

*84. The Additional Solicitor General contended that the business aspect of the press had no special immunity and the incidental curtailment in the circulation could not be freedom of speech and expression of the press. This Court in Sakal Papers case (*supra*) dealt with the measures for the fixation of price in relation to pages and the regulation of allotment of space for advertisement by each paper. These measures were said to be commercial activities of newspapers. This Court said that restrictions could be put upon the freedom to carry on business but the fundamental right of speech and expression could not be abridged or taken away. There could be reasonable restrictions on that tight only as contemplated under Article 19(2).”*

14. In fact, the internet is now a greater and a bigger tool for dissemination of information, more than even the radio and television. Various measures taken by different wings of the State, e.g. –

- (a) All Government Departments being available on websites;
- (b) All Laws, Regulations etc. being available on website;
- (c) Almost every court in the country is now making available its orders and other information on its website;
- (d) Telecast of parliamentary proceedings on website;
- (e) Online/e-filing of returns of individuals and corporates;

Internet has also played a significant role for doing business and fulfilling transactions in India.

- (a) Online Buying/selling of products and services;
- (b) Online Banking transactions facilities by state and public banks

15. All these go to show that the internet is the most powerful medium of communication and any attempt to curb the growth or spread of the internet would, in fact, be counter productive. The internet has also a major role in making available to the general public research tools, educational programmes, music based programs, entertainment, networking etc.

16. The running of a website entails enormous investment in terms of manpower, investment for acquisition of content, software licenses, web hosting, purchase of domains, etc. Such investment would obviously be possible only by those companies who already have interests in related media. For example, all over the world, it is a natural expansion for a printed newspaper to be available online. Similarly, given the reality of convergence, it is natural for a television channel to available digitally. Moreover, conversely, any Online site would require Audio-video content, for which it would need to have a TV and radio channel for this content. Imposing a ban on cross media holding / ownership would mean that 3rd party would have to acquire the content from already established media in order to disseminate the same on the internet. This would have a direct and a prejudicial effect on the free flow of information and the freedom of speech and expression. Imposing bans on cross-media holdings / ownership would encourage rogue websites who can neither be traced and whose origins are unknown and result in complete lack of accountability and transparency. Any restrictions on cross media holdings / ownership would also result in the established media not being able to disseminate its content on the internet as there may be several apprehensions on licensing of copyrighted content. Hence, given the reality of the technologically converging media sector today, where all content is available online –thus making irrelevant the concept of “geographies” and hence any “dominance” or “abuse”—any move to even suggest curbs on cross-media ownership is regressive and out of tune with technological reality.

17. The purposes for which the Consultative Paper seeks to propose a bar on cross media holdings/ownership is effectively dealt with in Competition Act in most countries of the world. Even in India, the Competition Act of 2002 was promulgated with an “object to prevent practices having adverse effect on competition, to promote and sustain competition in the markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets” which in true sense aims at bringing plurality at all levels including media industry. In view of the same, there is no need to bring further regulation for controlling the media and curtailing the freedom it has, that too, without any reasonableness in the action.

I. The said Act restricts

- (a) Anti Competitive Agreements;
- (b) Abuse of Dominant Position; and
- (c) Certain Combinations by way of acquisition, merger or amalgamation.

II. The Competition Act being general in nature, it applies qua media companies as well. Thus, while the Competition Act effectively and sufficiently regulates and occupies the field, the purpose behind restricting cross media holdings/ownership itself appears to be suspect. Beyond the purposes as enshrined in the Competition Act, there can be no other valid reason to seek to restrict cross-media holdings/ownership except to free media as a separate class of business, only in view of the enormous impact it can have on views of the society. A note on the Competition Act, 2002 is annexed herewith, as "**Annexure-B**" in order to establish the point that the said Act is more than sufficient to ensure and cure any ills that may befall a particular cross media holding group or conglomerate.

18. Apart from the Competition Act, the following are the other safeguards that already exist in the prevalent system : -

- (a) The Press Council of India regulates the print media regarding newspapers.

- (b) In the Television sector, the News Broadcasting Standards Association (NBA) has already performed impartially and transparently, being headed by a retired Chief Justice of India.
- (c) The general entertainment industry is governed by the self-regulatory authority set up under the Broadcasting Content Complaints Council (BCCC) headed by an ex-Chief Justice of the Hon'ble Delhi High Court.

19. Thus, insofar as the content of print and electronic media including news channels are concerned, self-regulation has worked well for the industry and there cannot be any grievance on that count.

20. With regard to regulations on internet media distribution, it will be appropriate to refer to Chapter-3 of the Consultation Paper itself wherein TRAI has given the international position regarding restrictions on cross media ownership across the world. However, it would be relevant to point out that in Part-C of the Chapter, it is evident that there is no restriction across the world regarding internet as medium of distribution. The reason being that internet is only an advancement of technology which permits the consumers to access the content, if the consumer so desires on the instrument the consumer so chooses to use [Desk Top, Laptop, Tablets, Mobile phones, Television sets etc.] and internet facility of having e-newspapers is a worldwide phenomena and there are no restrictions on the same and are in fact, promoted for obvious environmental reasons. E-newspapers are nothing but a delivery of the same newspaper that a person would get in the morning on choice of his instrument in the present fast paced life. Similarly, the news clippings are also merely facilitating the consumers to watch their favorite news channel at their own leisure and thus, due to these reasons since the viewership on internet platform is a matter of choice by consumers, it would be wholly improper to have any restriction in any manner whatsoever on the same as it would amount to an intrusion of freedom of speech and expression.

21. Thus, there is enough space for everyone's views to be freely expressed and any control over the same would be antithetic to the freedom of media.

ANSWER TO THE QUESTIONS:

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.

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.

Response

Q 1-2. The licensor should not be permitted to either *suo moto* or based on any recommendation of the Regulator disqualify any entity inasmuch as this would vest the Regulator/Licensor with such powers which are not even exercised by courts which function under the Constitution. The Regulator/Licensor, for example, may use the said power to clamp down upon criticism or contrarian view under the garb of so-called public interest. It would lead to vesting of unbridled powers to control the media which would have a direct effect on the functioning of the democracy.

However, we are fully supportive of the objective of keeping certain persons away from any association with media. This would refer to entities which come from variety of "vested interest lead" backgrounds including the following : -

- (a) Regional;
- (b) Linguistic;
- (c) Political Bodies;
- (d) Non-Governmental Organizations;
- (e) Social Welfare Groups;

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?

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.

Response

Q.3-4. There should not be any pre-prescribed restriction over media control and ownership. It would be best that this issue be decided by the Competition Commission if there arises any situation of cartelization or monopoly. As on date, the Indian media industry is hugely fragmented with thousands of newspapers, and hundreds of TV and radio channels and thus there is no media house which has complete control of all the methods of media distribution. Infact, recognizing this, recently, the I&B ministry had temporarily capped the number of permissions for TV channels as it feared there were already too many. In fact, on the contrary, the biggest and foremost dominant player -which infact, has a monopoly is Government owned and run -Prasar Bharati. Its radio channels (All India Radio) and terrestrial TV channels which are both in the direct control of the

Government, have a monopoly in the FM radio and terrestrial TV space, where private media companies are not even allowed to enter. – .

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.

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**

Response

Q.5-6. There should be no restrictions on any genre where entertainment or news or current affairs to be put under cross media ownership restrictions. In a market like India, there are about 841 TV channels and a large number of newspapers i.e. 14508 across the country. It is, therefore, evident that there is sufficient competition in the sector which itself shows plurality of views. It is also relevant to point out here that Indian media market is also pre-dominantly honest by linguistic factor and thus, none of the media houses have any control over Indian Media Market. Plurality is, in fact, ensured by not tinkering with the current system wherein there is no restriction on expression of any views. Under the garb of attaining plurality, content ought not to be regulated.

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?

Response

Q.7. No. If each regional language is to be treated as a separate market, even then any ban on cross-media holding / ownership would not make any sense. For example, a newspaper which is published in Telugu would also want to publish the online version of the newspaper by the same company or a group company. Thus, division into markets is not an intelligible division.

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

Response

Q.8. There cannot be any basis for distinguishing between relevant markets inasmuch as within the same market also one company can cater to different segments. For example, in the market relating to music, one company can own an English Music Channel and a Hindi Music Channel and the regional language channel and the same would not be detrimental in any manner. Even in the case of a Hindi News channel, there can be two channels, one aimed at the younger strata of society and one at the general middle-aged and older strata of society. In the case of internet, a website can be purely be news-based and another website could be based on health, nutrition, horoscopes, entertainment etc.

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.

Q10: In case your response to Q9 your view with a fully developed methodology to measure the level of consumption of various media outlets using this metric.

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

Q12: If your response to Q11 with a fully developed methodology for measuring concentration in any media segment of a relevant market using this method.

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

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?

Response

Q.9-14. The method of measuring the consumption of media in general can be by any of the listed factors or other factors, such as, subscription charges, language, population, content, etc. Those would be relevant only in the context of understanding the media rather than trying to impose restrictions on them. This should be best left to the Competition Commission to decide the relevant concentration to determine the measure of the level of consumption of the media in the market. It is relevant to point out that the Parliament has already given guidelines for determination of these issues. There is no need to put any restriction on concentration of control of ownership across media as no one constituents of the media and no particular mode of media delivery can control or influence the consumers/public. More competition will result in better and cheaper technologies. This will help in spreading the information revolution.

Q15: Would it be appropriate 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.

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

Response

Q.15-16. These so-called rules contained in the questions do not have any reasonable basis or rationale, especially when the numbers of delivery systems are multiplying with the growth of technology. On the one hand, Radio, Television, Print, Internet/Online are traditionally thought of as separate mediums but due to convergence, all these and more, e.g. music, movies, photography etc. are all accessible on a single device. Thus, these rules are out of sync with modern day technology.

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.

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.

Response

Q.17-18. The apprehension contained in this query is well answered and addressed by Section 19 of the Competition Act which also equally applies to media companies.

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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.

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.**

Response

Q.19-20. The application of HHI from a US context to India is completely inexplicable. HHI which at paragraph 5.39 of the Consultation Paper is clearly derived from the US Anti Trust Law is nothing but the competition law in the US. Competition Law in its evolved form, is codified in India and is contained in the Competition Act, 2002. To make an effort to impose principles of US Anti-Trust Law when there already exists a codified Competition Law in India, would be completely incorrect. These issues fall within the domain of the Competition Commission. It is evident from the Consultation Paper that as on date, there are more than 14500 newspapers in the country and more than 300 news channels. Therefore, as on date,

there is no occasion for having any restriction on cross media ownership. Further, the issue would be best addressed by the Competition Commission which has the mandate of Parliament to address these issues and the Parliament itself has laid guidelines for the Competition Commission to determine these issues. Any intrusion or restriction other than the ones placed by the Parliament would fail to stand the test of Article 19(1)(g) of the Constitution and would be null and void. There is no need to put any restriction on concentration of control of ownership across media as no one constituents of the media and no particular mode of media delivery can control or influence the consumers/public.

The imperative in any democracy is to ensure a pluralistic environment with multiple views and a thriving, competitive media industry that can compete globally. In any case, globally and locally, the facts show that a plurality of ideas thrive, irrespective of cross-media ownership. Moreover, today, technology is forcing media companies across the world to diversify across mediums as the digital revolution flowers into convergence. TV, newspapers and radio are all converging onto digital platforms of the computer and mobile phone - and to be relevant, a media company must offer access to all forms of content (text, audio and video). Diversification across different media is hence a necessity for survival in order to remain viable in the digital and mobile environment. Hence cross-media ownership is a necessity and any restrictions on it totally unwarranted.

Instead, it is necessary to have safeguards - laws and checks and balances on the last mile of the consumer - to ensure last mile neutrality, which has now become the global movement across mediums. Net neutrality, for instance, has become a heated issue in US and Europe, with significant momentum across civic groups, regulators and governments. Services like Netflix and Hulu have revolutionized digital content consumption and given users enormous flexibility, but they are coming under pressure by copycat services developed by cable companies, such as Comcast Xfinity. These services take advantage of owning the cable connection by offering better, unlimited connectivity when using their service, while offering limited or

capped connectivity when accessing Hulu or Netflix. This is an anti-competitive move that stifles innovation and competition. The internet has thrived because of its freedom of competition and ability for anyone with a connection to change the world. Taking advantage of last mile ownership throttles such innovation.

Worse, it sets a precedent that broadband providers can choose the content you should access, by making it easier or harder to get that content. On the Net, ISPs can use differential bandwidth caps, speed limits and pricing on broadband consumption. But on mobile, telecom operators can offer further favouritism towards preferred services, with additional benefits like selective billing integration and marketing/promotion. And since bandwidth on mobile is more limited than over broadband, restrictions or favouritism in bandwidth consumption offer telecom operators an even stronger, anti-competitive advantage.

This is easily seen in the Indian internet ecosystem versus the mobile Value Added Services (MVAS) ecosystem today. While the internet only has nearly 100 million users, its users can access vast amounts of content even as industries like e-commerce and travel have blossomed, creating economic value and real utility to consumers. Compare it to the MVAS world, where despite over 900 million users, the most common consumer sentiment is that they are being unfairly billed for irrelevant services. So what is the difference? On the internet, anyone can start a company and compete fairly for the consumers' attention, spurring innovation and value. But in the mobile VAS world, only five major telecom operators control the services and choose the only ones they want to exist. The result is less competition, and operators selling the same services (like caller ringback tones) increasingly aggressively to their customers, but with little or no innovation.

As connectivity grows across the internet and mobiles, it is crucial that the government allows the same flourishing that has currently existed on the Web to continue across devices. India's huge population and strong

technical talent have the potential for global scale entrepreneurship and innovation, and can create a new dynamic India in the way IT had done in the 1990s. But it requires an infrastructure and atmosphere that is not controlled by last-mile connectivity providers who abuse their dominance.

One should not confuse this with cross-media ownership. This is a non-issue, prompted by political motivations that fear a strong media. The real issue is whether or not we have enough safeguards to ensure that the ecosystem for content is a healthy and thriving one, and is not abused by distributors or last-mile operators aiming to create anti-competitive practices by expanding into content.

This is a very real threat indeed, because while content may be king, distribution is the kingdom - and the thousands of content owners are at the mercy of a few last mile owners who have become far more powerful than any media conglomerate could ever be. It is high time, then, that the government and regulators wake up to the fact that the only way to ensure a competitive media landscape with equal voice for all content, is to ensure there are enough rules whereby customer connectivity is neutral to the content that rides on it. **There has to be a strong set of rules on fair play & “must carry” for all last mile owners so that they don’t monopolize their control to push only their content**

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.

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.**

Response

Q.21-22. The Diversity Index Code, as stated in the Consultation Paper itself is formula suggested by the Federal Communication Commission (FCC). FCC is again a US body which has devised the formula depending on the situation prevailing in the said country and the demographics of the said country. A look at paragraph 5.43 and the contents thereof would reveal that these very factors are codified and mentioned in the Competition Act, 2002. Thus, applying either IHH or the Diversity Index Code from the US Regulations would be contrary to law which is codified in the Competition Act, 2002. All the powers with respect to whether there is any violation or anti-competition position which is prevalent, any media is liable to be examined only under the Competition Act, as supervised by the Competition Commission.

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

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

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.

Response

Q.23-25. There should be no bar on cross-media holdings/ownership nor any rules or details of methodology. If cross-media holdings/ownership leads to creation of a monopoly then the same is liable to be dealt with under the Competition Act...

Mergers and Acquisitions

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

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.

Response

Q.26-27. This is in the domain of Competition Commission and reference may be made to Section 20 of the Competition Act, 2002. Thus, it would be best that this issue is left with the Competition Commission which is specialized to deal with such issues.

Vertical Integration

Q28: Should any entity be allowed to have interest in both broadcasting and distribution companies/entities? If how would the issues that arise out of vertical integration be addressed? , whether a restriction on equity holding of 20% would be an adequate 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 limits thereof between the broadcasting and distribution entities.

Response

Q.28. This is in the domain of Competition Commission and reference may be made to Section 19 of the Competition Act, 2002. Thus, it would be best that this issue is left with the Competition Commission which is specialized to deal with such issues.

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?

Q30: What should be the periodicity of such disclosures?

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

Response

Q.29-31. Most of the big media houses are public limited companies and all the data as per para 7.10 (i) of Consultation paper on page 77 are available in the Annual Reports filed before the Registrar of Companies on annual basis. There is no further requirement of filing any other disclosure before any other authority. If at all required, the Competition Commission can always summon and take records from the respective Registrar of Companies.

It would be relevant to state here that there is no change in the market scenario from the year 2008 to the year 2013. The companies and

the media houses that were functional in the year 2008 are also currently functional and are in all the sectors as they were in the year 2008. Therefore, in that view of the matter, there is no occasion to revisit the issue especially in the light of earlier recommendations made by TRAI in the year 2008. Any indirect control tried to be exercised by the Government or TRAI on media and current affairs would invite challenge for violation of Article 19(1)(a) and Article 19(1)(g) of the Constitution of India. The issue of monopoly/ cartelization/ vertical integration are all entrusted by an Act of Parliament, is the jurisdiction of Competition Commission under the Competition Act, 2002 and it would be best that the said authority decides these issues.

Shri N. Parameswaram
Pr. Advisor (RE)
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New Delhi – 110 002

Dear Sir,

Re: TRAI's consultation paper on Media Ownership

This is with reference to the Consultation paper dated September 23, 2008 issued by TRAI on Media ownership.

Times Internet Ltd would like to bring the realities of digital convergence to TRAI's attention whereby newspapers, TV, radio, etc are all available on mobile and Internet screens, thus totally making the very concept of cross-media irrelevant.

On behalf of TIL our views on the consultation paper are below.

Thanking you,

Yours truly,

**Sunil Rajshekhar
President & COO
Times Internet Limited**

Cc Mr Nripendra Misra, Chairman, TRAI

Introduction:

1. Concept of “cross-media” totally irrelevant in Mobile, Internet age

As the country's premier Internet organization, we are surprised that the TRAI consultation paper on media has not taken note of the Internet and mobile telephony, which is encompass Print, TV and Radio on one screen. Our websites, for example, and those of thousands and thousands of companies across the world, carry Newspaper, TV news/ entertainment as well as radio content in full, hence making the CONCEPT OF “CROSS-MEDIA” TOTALLY IRRELEVANT.

Hence, for example, a Malayali newspaper in Kerala, has an online Internet edition (“e-paper”) that is accessible in every nook and corner of the world. The same Internet website would carry TV as well as radio clips from many different sources. How can one call this website “cross-media”?!

2. Cross-media restrictions totally redundant in Mobile, Internet age

Hence, the definition of media markets to include only newspapers, television and radio is out of date by more than 15 years. In fact, as TRAI might be aware, media growth is accelerating only in the Internet and mobile space right across the world, while traditional media like newspapers are a dying, sunset industry. Very soon, then, the Internet and mobile will overtake traditional media in terms of reach, usage and impact on the population.

In fact, this, as TRAI very well knows, has already started happening in mobile telephony with mobile phone users over 315 million across India, which is far more than that of any other media in private hands be it Print (30 million circulation), TV (71 million C&S HHs) or radio (150 million).

Hence, new technologies that are available across ALL markets, indeed all regions or even countries, have already bypassed the old, outdated regulations, thus making the POSSIBILITY OF “CROSS-MEDIA” RESTRICTIONS TOTALLY REDUNDANT. The question of MONITORING the Print, TV and Radio “cross-media” available online, is obviously out of the question.

3. Indian media companies will be crushed if they do not turn digitally convergent & hence ownership of different media is a business necessity.

For internet companies competition is just a URL away, so geographic boundaries are not relevant.

To remain competitive in the Internet space, Indian Internet companies have to compete with companies spread all over the world and have to offer products and services as per the requirement of consumers who are continuously evolving. We are heading towards digital convergence and consumers are expecting convergence from their websites.

Most of the top international internet companies viz. Google, Yahoo, NYTimes.com, Ebay etc work in an environment of no restrictions and hence keep on enhancing their offerings to their customers. They naturally provide newspapers, TV and radio in whole on their websites.

International companies viz. Google, Yahoo etc offer text, data, images, multimedia, mail, VoIP, instant chat, video, audio, tv, radio, films, news, music, shopping etc on their websites.

These website offer their content on desktops, mobile platforms, cable etc.

Only way Indian media companies can compete with them, is by offering content across platforms and in various forms viz. text, audio, video, TV, radio, shopping, VoIP etc without any restrictions.

Indian companies should not only match their global counterparts in their offerings but should also offer unique content as that provides competitive edge.

This would necessarily mean that media houses have to endeavor in creating multimedia environment without restrictions. These multimedia offerings can then be showcased on the media group's internet properties which need to compete with global giants.

Government should allow internet companies to display streaming media, news views etc without any restrictions.

Hence ownership of different media is not just a business reality across the world but a business necessity.

4. TRAI itself has recommended a Unified License to provide Broadcasting and Telecom services, which has been adopted by Government

TRAI's recommendations of Jan 13, 2005, on Unified License state:

"Unified License :All Public networks including switched networks irrespective of media and technology capable of offering voice and/or non-voice (data services)

including Internet Telephony, Cable Television (TV), Direct To Home (DTH), TV & Radio Broadcasting shall be covered under this category. Unified License implies that a customer can get all types of telecom services, from a Unified License Operator. The operator can use wire line or wireless media”.

... ”The New Telecom Policy 1999 (NTP'99) recognised that convergence of markets and technologies is a reality that is forcing realignment of the industry. At one level, telephone and broadcasting industries are entering each other's markets, while at another level, technology is blurring the difference between different conduit systems such as wire line and wireless, and is forcing re-alignment of the industry. In line with NTP'99 and to keep pace with technological and market developments, TRAI considers that Unified Licensing Regime should be introduced in India. This is also in line with the prevalent international practices, which is to move towards simplified Authorisation/Converged licenses. Unified Licensing regime would enable the provision of various services, both existing and new, by the service providers without the need for separate additional licenses, with the same media being used for different services which would build economies of scale and scope. As a result, better services would be made available to the consumers at cheaper price”.

In such a situation, how can the Authority ask for revisiting its own policy creation, and that too, scarcely within 2 years of its implementation?

5. Substantial growth only in Internet, Mobile; traditional media are dying industries”

This development, in turn, has consequences for the business models of traditional media companies which all have Internet divisions that reach right across the world and are not just limited to their traditional narrow markets, where in any case, there is huge competition, plurality and diversity in India.

In fact, this is proved by advertising revenues moving towards Internet; The Indian Entertainment & Media Industry Report 2008 [FICCI & PWC] points out, for instance, that online advertisement has witnessed a growth of 67% standing at Rs. 1 billion. On the other hand, the number of traditional media outlets has remained largely static even as online-only outlets have grown exponentially.

As a result:

- Traditional media entities are now dinosaurs
- With attention turned to the online and digital environment, the stability of once-storied newspaper publishing companies shall become open to question. The

latest IRS Round 2 2008 data has shown only 8% growth for print, while growth for Internet is over five times this.

Hence, In India, the power of traditional media houses to influence what topics people considered important, even if they had less power to shape the positions people took on those topics, has been hugely reduced.

Queries raised by TRAI

In addition to the above, our comments in response to the queries raised by TRAI are:

Issue 1: Should the Authority adopt the relevant markets identified as above in paras 5.22.8 and 5.22.9 and assess these markets in the context of this consultation?

If not, provide your classification of the relevant markets with appropriate reasoning.

No. For the simple reason that in this era of the Internet, mobile phones and convergence, no such markets exist today.

This is because today's consumer wants news and entertainment at one place, which means on a mobile phone or the Internet. The news and entertainment on mobile phones and the Internet, are drawn from newspapers & magazines, from TV and radio in the form of video and audio clips. Often, they actually consist of the entire newspaper, radio or TV channels. (All large newspapers, and many TV and radio channels in India today are available on the Internet and their Net versions). Sometimes, they consist of segments of newspapers and sections of TV and radio programs.

These Internet sites and mobile services do not have any market and instead are accessible across India in the case of mobile phones, and across the world in the case of the Internet. These are the new distribution forms of Print, TV, radio, etc.

Moreover, this TV and radio content is not just available over traditional distribution methods like cable, but also over newer pan-Indian technologies like DTH, IPTV, satellite radio, etc. A corollary to this is that these technologies are converging, hence not just are traditional TV and radio available throughout the country and not just in one local market, but also they would be available in one place. TRAI has itself pushed for this by way of unified license.

Hence, new technology has rendered the segmentation of markets even for traditional media, as redundant.

Issue 2: (a) What restrictions should be imposed on cross-media control/ ownership across Print, radio and television media to ensure plurality?

(b) What should be criteria for measuring cross-media control/ ownership?

Please elaborate your comment with appropriate reasoning.

There is already more than adequate plurality in the aforementioned media categories (details below). Hence, we are of the opinion that there should be no cross media ownership restrictions.

(i) In fact, it is surprising that TRAI is raising this issue when it had itself, in early 2005, **recommended Unified Licensing** which would allow any licensee to provide any or all broadcasting and telecom services by acquiring a single license. These include voice, data, cable TV, DTH and radio broadcasting through a single wire or wireless medium from a Unified license operator at affordable prices.

(ii) Moreover, India does not necessitate any restrictions as there are huge numbers of diverse media, providing more than adequate plurality:

- **Fragmented consumer behavior** –

With more than 1500 dialects across the country, there is no single media entity which can cater to the information / entertainment needs of the entire nation. A small unit of geography like a - state - would also have multiple dialects and varying media consumption patterns.

Mobile telephony in India has reached 30% in a very short period of time. Internet penetration is at 5% but is growing exponentially. DTH service providers are able to provide 150-175 channels through a single pipe. Mobile television would allow viewing television on the mobile phone. The Indian consumer is getting more, getting better information and entertainment from more sources. In this environment, which is also constantly evolving, it is almost impossible for a single medium/source of information/entertainment to dominate or mould the opinions of the masses.

- **Fragmented industry** –

The Indian media industry is growing fast. Not only are numerous Indian companies making forays in the media space, there are lots of foreign entities which are also setting up joint ventures and establishing a footprint here. The industry across all its entities – print, TV, outdoors is growing in numbers. The result is that audiences for every medium are split and spread across various mediums and various brands in each medium – thus no single entity is dominating the space.

The total number of TV channels downlinked into India is around 400 and another 100 are expected to be added by 2009. The number of TV channels in the entertainment (GEC) space have grown two-fold in the last 2 years alone. TV news channels have diversified and now many TV news broadcasters offer a bouquet of news channels some of them even in regional languages. In fact there are almost 50 national news and business channels in English and Hindi alone. Number of registered newspapers in India is 62483. Out of these the number of newspapers which filed annual statements is 8512..These numbers are very very small considering we are a nation of almost 1100 mn people.

- **New technologies** –

There are new technologies being introduced in the media space each day. There is also a convergence of different mediums happening. Mediums like internet and mobile phones are competing for time and wallets of consumers. With the introduction of mobile TV, DTH and IPTV and with the emergence of new technology standards like 3G, the way media is consumed is changing everyday. The emergence of all these technologies means that a consumer would get information not from one or two but multiple sources – at different places and different times of the day. This is leading to alliances getting created between companies owning different platforms. No single entity on its own therefore can create a position which gives it an undue dominant advantage over others.

- **Cross-media regulation has led to limited growth and diversity in media** –

Countries which have very regulated environments have had limited growth and diversity in media. A case in point is Australia and Japan. Both these nations have highly regulated media industries. As a result many of the media industries there haven't developed well. Japan has only 110 daily newspapers and in Australia this figure is 48. (Source: *World Association of Newspapers and Zenith Media World Press Trends*). Compared to this India in 2006 had almost **8600** daily newspapers (for which annual statements were filed). This has been possible because the media industry here has not been restricted with regulations like cross media ownership. In the US, at least 300 daily papers have stopped publishing during rule of media ownership restriction. We therefore reiterate that cross media ownership restrictions in India should not be imposed as it could stall the pace of media growth and evolution here.

- **India – a unique media market where the only monopolist is Prasar Bharati**–

The Indian media industry is different from the media industries in other countries in a number of ways. This necessitates the creation of rules and regulations here which are not adaptations of the regulations in other countries, but regulations which are created specifically for India.

Certain verticals of the Indian media industry are very different from those abroad. Many of the regulations that have been created in these countries (specially pertaining to local markets) have been created considering the existence and influence of terrestrial TV there. In India, private terrestrial TV does not exist. The reach of all private broadcasters put together (the entire C&S universe) manages to reach only 28% of the population as compared to 54% reach for the public broadcaster. Thus the only TV entity that can actually be considered a monopoly here is Prasar Bharati.

- **India has more media diversity than the entire developed world put together**

India is very diverse. There isn't any other country which has the diversity in language and cultures that India has. In most of the other countries, there is one national language which is dominant. Regulation in these countries have been created to ensure plurality in this non multi language environment. India has over 1500 dialects. There are media voices in many languages. It is therefore unlikely that any single media voice can dominate the opinions of the masses and create a compromise in terms of media plurality.

The Indian media industry is growing at a very fast pace. There are newer mediums and content getting added everyday. The consumer therefore is getting information and entertainment from a number of sources. While this is true for other countries also, the pace of this evolution, with newer technologies having been introduced and adopted, has happened over a longer period of time. The regulations in India therefore should reflect this very important difference.

Issue 3: (a) Are the current restrictions adequate to address the concerns regarding vertical integration in the television segment? If not what modifications/additions do you suggest?

The government must ensure there are adequate rules like must- carry-clauses in place to protect TV broadcasters in case there is misuse by companies who also own distribution platforms like cable, DTH, etc, in order to favour the channels they have a stake in.

(b) Should similar restrictions be imposed to address the concerns regarding vertical integration in other segments of the media?

Satellite radio providers should not be allowed to own content, ie, they should only be a medium for broadcast of content. Also, the must-carry clause that applies to the TV industry should be applicable to satellite radio and they should mandatorily broadcast radio channels also.

(c) What parameters should be used to measure vertical integration?

We do not have any comments on this.

Issue 4: (a) Are the current limits imposed on the number of media licenses in FM radio adequate? If not, what modifications/additions do you suggest?

We believe that there should not be ANY restriction on the number of media licenses in the FM radio space. There should not be restrictions either at the level of national presence (number of licenses in the country) nor at the level of a single geography (Number of licenses in a city). The reasons for the same are as follows:

- 1) Limits on licenses would stop plurality –

When a broadcaster is allowed multiple frequencies, it will naturally offer diverse programming.

- 2) Sustenance of Radio business –

FM radio is perhaps the most regulated media industry right now. This is not only stalling the growth of the industry but is actually a threat to the very existence of the industry.

The FM radio industry has sunk more than Rs 2000 crores in the last couple of years in setting up infrastructure across the country. They are bleeding profusely because of high costs of operations and high investments. Just as an example, the amortization of the OTEF paid to the government alone is about Rs 130 crores per annum. Annual License fees in a full year could be more than Rs 75-80 crores in FY08. So costs on account of the license itself directly account for 35-40% of the current industry revenues. Music royalty is another 20% or so.

(b) Should similar limits be imposed in the other broadcasting media segments?

No.

(c) What criteria should be used to determine these limits?

Please elaborate the comments with appropriate reasoning.

Not applicable

Issue 5: Should restrictions be imposed on concentration of control/ ownership across media? If yes,

What restrictions should be imposed?

(b) What criteria should be used for measuring concentration of control/ ownership across media?

We believe that there should NOT be any restrictions on concentration of control/ownership across media.

Please elaborate your comments with appropriate reasoning.

The elaborations have been outlined earlier in this note. In brief, however, it is thus obvious that no one constituent of the media and no particular mode of media delivery can control or influence the consumers/public either in theory or in present reality. More competition will result in better and cheaper technologies. This will help in spreading the information revolution

Issue 6: Should restrictions be imposed on Cross control/ ownership across Telecom and Media segments? If yes,

(a) What restriction should be imposed?

As outlined earlier, the TRAI itself recommended that broadcasting and telecom services could be provided not just by the same company, but facilitated the same by putting into place the concept and details for a Unified License.

There should be strict controls applied to telecom companies to limit them from creating broadcasting content and owning multiple channels of distribution.

Currently there is no guideline for telecom operators for revenue share with content providers. Absence of policy makes internet companies vulnerable as the revenue that they can get as a share from telecom companies for showcasing their content on mobile platform totally depends on their ability to negotiate with each operator.

Telecom Operators are monopolistic. Since a mobile user consumes telecom services only from a particular telecom operator, the mobile user or the content owner has no choice but to work with that particular telecom operator.

A framework that provides guidelines to Indian telecom operators in terms of share of fees that they can charge to an internet company for downloads of their content can give a tremendous advantage to Indian internet companies and will fuel development of the industry. Presently Indian internet companies are seeing dominance from mobile operators, where the revenue share on content to content companies is very small, compared to any developed market.

A clear right way should be defined for content deployment on telecom networks. This can be facilitated by segregation the role of access and role of content in the telecom networks. Telecom operators should have right to access (i.e., distribution) only, while clear guidelines / framework should be defined to interconnect 3rd party content on telecom operators network

(b) What should be the criteria for measuring control/ownership across the telecom and media segments?

Please elaborate the comments with appropriate reasoning.

Not applicable

Issue 7: Any other relevant issue you would like to suggest or comment upon.

TRAI must recommend that the prevailing restrictions in FM radio viz 15% national cap be removed so as to start the process of liberalizing the media industry at a time when the Mobile telephone is the biggest media and Internet the fastest growing –both of which allow Print, TV and Radio to ride on them.

As outlined above, ownership of multiple media is not just a business reality across the world, but a business necessity in the age of Internet and Mobile.

COMPETITION ACT 2002

1. The Government of India in the year 2002 promulgated “The Competition Act, 2002” with an “object to prevent practises having adverse effect on competition, to promote and sustain competition in the markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets” which in true sense aims at bringing plurality at all levels including media industry.
2. The Competition Act, 2002 restricts:
 - (a) Anti Competitive Agreements;
 - (b) Abuse of Dominant Position; and
 - (c) Certain Combinations by way of acquisition, merger or amalgamation.
3. The Competition Act, 2002 is applicable to media entities as well. This along with the fact that several hundred media players are present in each and every segment / region in each media vertical make the motive of Cross

Media restrictions suspect. No public purpose would be served in bringing additional regulation on media where the Competition Act serves the purpose of diluting the ‘Concentration’ and bringing ‘Plurality’.

4. The Competition Commission has been established under the Competition Act, 2002 by the Parliament in order to ensure that there is adequate competition in the market and all the industries are developed simultaneously. The Competition Commission of India has already undertaken certain investigations regarding the broadcasting sector and has also given its findings.
5. In order to highlight how the Competition Act, 2002 is a wholesome piece of legislation in itself, sufficient to encompass the positive features of Cross Media and negate the negative features of Cross Media, the salient features of the Competition Act (note how they regulate combinations without curbing them or letting them loose, thus promoting businesses) are given below-

- a) Prohibition of certain agreements,
- b) Abuse of dominant position and
- c) Regulation of combinations.

6. **Prohibition of Agreements**

Under the Act, the whole agreement would be void if it found to have anti-competitive covenants (explained hereunder) having appreciable adverse effect on competition.

Following kinds of agreements are restricted which:

- a) Directly or indirectly determines purchase or sale price,
- b) Limits or controls production, supply, markets, technical developments, investment or provision of services,
- c) Shares the market or source of production or provision of services by way of allocation of geographical area, type of goods, or services or number of customers,
- d) Directly or indirectly results in bid rigging or collusive bidding

However the above restrictions shall not apply on joint ventures, which increases efficiency in production, supply, distribution etc.

Anti competitive Agreements considered under the Act are-

- a) Tie-in agreements- E.g. if one buys product X, he has to buy product Y.
- b) Exclusive supply agreements- E.g. if forced not to deal in other person's goods as a consideration for dealing with such supplier
- c) Exclusive distribution agreements- E.g. if output or supply of goods is restricted or area of sale of goods is allocated
- d) Refusal to deal- E.g. agreement restricting persons to whom goods are sold or from whom goods are brought
- e) Resale price maintenance- E.g. if condition fixed on reseller to sell at a price not lower than a particular price

7. **Abuse of Dominant position**

This provision prohibits an enterprise from abusing its dominant position

Following cases would be considered as abuse of dominant position

- a. Directly or indirectly imposes unfair or discriminatory condition in purchase or sale of goods or services or price in purchase of goods or services
- b. Limits or restricts production of goods or provision of services or technical or scientific development relating to goods or services
- c. Indulges in a practice resulting in denial of market access
- d. Concluding a contract by putting supplementary obligations on other party where such supplementary obligations have no connection with the subject of such contracts
- e. Uses its dominant position in one relevant market, in order to enter into or protect other relevant market

8. The Combinations and the Threshold Limits are defined below

The Act for the purpose of regulation envisages three kinds of combinations in the business activity. The Act also lays down the ‘Threshold limits’ of the combinations. Threshold Limits lay down the limit of individual and group turnovers, when intimation to Competition Commission of India (hereinafter ‘CCI’) becomes compulsory.

TABLE SHOWING THRESHOLD LIMITS

Threshold Limits For the Type of Combination	Enterprise		For the Group	
	In India	World-wide	In India	World –wide
Acquisition Dominant Position Mergers & Amalgamations	Assets: Rs.1000 crore Turnover: Rs.3000 crore	Assets 500 million US\$ (Indian presence of at least 500 crore) Turnover 1500 million US\$ (Indian presence of at least 1500 crore)	Assets Rs.4000 crore Turnover Rs.12000 crore	Assets Rs.2 billion US\$ (Indian presence of at least 500 crore) Turnover Rs.6 Billion US\$ (Indian presence of at least 1500 crore)

Acquisition: The parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired. (The joint assets and turnover shall be relevant for ascertaining the Threshold Limits).

Dominant Position: Acquiring control by a person over an enterprise engaged in production, distribution, trading of similar, identical or substitutable goods/services. (The joint assets/turnover of acquirer and the enterprise over which control has been acquired shall be relevant).

Merger & Amalgamations: The enterprise remaining after merger or the enterprise created as a result of amalgamation. (The assets/turnover of the enterprise created).

9. Thus, it would suffice to say that the issue of vertical integration or cartelization in the media and broadcasting sector sought to be addressed by the Consultation Paper has already been addressed by the Parliament itself by way of the Competition Act, 2002. It would be relevant to

state that the issues regarding the relevant market and competition are within the ambit of Competition Commission and the Parliament in its wisdom in Chapter-4 of the Competition Act has given duty to the Commission to eliminate practices that have adverse affect on competition and to promote and sustain competition as well as to protect the interest of consumers and ensure freedom of trade in the markets in India [Section 18]. Section 19 of the Act gives power to the Competition Commission to enquire into dominant position of enterprises and Section 20 of the Act dealing with the enquiry into acquisitions. Thus, all the issues raised in the Consultation Paper regarding cross media ownership have already been addressed by the Parliament itself by enacting Competition Act.