



Telecom Regulatory Authority of India
(IS/ISO 9001-2008 Certified Organisation)



Recommendations
on
Issues Relating to Media Ownership

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Chapter 1 – Introduction

- 1.1 The media is popularly referred to as the “Fourth Estate” as it plays a crucial role in a democracy. It is the watchdog of public interest and its role as witness and commentator on the activities of the Government, various social and political institutions, and society at large, is vital. As the voice of the masses, representing their concerns, the media not only interprets and comments on the present but it also sets the agenda for the future. In India too, the media – press, radio, television and, now, the internet - has certainly played a significant role in the manner in which democracy has evolved over the years.
- 1.2 The right to freedom of speech is essential for sustaining the vitality of democracy. This is why the right is sacrosanct; it is fiercely protected by the media. The question that arises is whether reposing such a right in the media simultaneously casts an obligation on the media to convey information and news that is accurate, truthful and unbiased. The Indian audience - readers and viewers - are entitled to obtain news and information which is the unalloyed truth without any biases in interpretation. The point is: is not the right of readers and viewers to access unbiased and truthful information from the media embedded in the right of the freedom of speech of the media? The media is a repository of public trust and that trust, in turn, is contingent on the media not breaching the rights of readers and viewers.
- 1.3 The media has a unique role in the democratic scheme. As the fourth estate, it is as much a public institution as any of the other three estates. Public institutions, by definition, cannot be prisoner to the pursuit of private profits; they are too precious to be left solely to the vagaries of commercial considerations. Because of the special nature of their “publicness”, media entities thus cannot be seen merely as run-of-the-mill business organizations seeking value maximization for their owners and shareholders. As RBI Governor Bimal Jalan said regarding the importance of corporate governance in the context of banks, *“You may ask – so what? It is up to each corporation or its shareholders – if it does well, they will gain; if they don’t, they*

will lose and so be it. It is their business, why should we collectively worry? Here, banks and financial institutions are in a completely different category. What happens in a particular bank is a concern of all."¹ What is true of systemic risk in the banking sector is truer in the case of the media industry: what happens in the media is the concern of the entire country. Being the depository of facts and information, it is the preeminent instrumentality that moulds public opinion, tastes, and values. The media cannot be allowed to be captured by narrow interests of its titular ownership. It must be ensured that no particular interest is allowed to dominate media, both at the aggregate level and at the level of the individual media entity.

- 1.4 Owing to the significance of the role played by the media, all over the world special rights and freedom have been granted to it so that it can work without interference. But, with special rights and freedom come special responsibilities. As Lord Leveson says "*With these rights (of the press) come responsibilities to the public interest: to respect the truth, to obey the law and to uphold the rights and liberties of individuals.*"² While there is no dearth of instances of the rightful use of these powers in unearthing scams relating to those in power and in airing the *vox populi* in the fight against injustice, there are many occasions when this freedom is misused to serve narrow political or business interests. The possibility of misuse of the rights of the media for interests that are not in the larger public good is very real.
- 1.5 The public has a right to know the unvarnished truth. Every individual has the right to access multiple sources of information and varied view points in the process of reaching their own conclusions in any matter. What is required in a democracy is to strike a balance between the rights and freedom of the media and the rights and liberties of the individual. This principle has underpinned the deliberations and analysis by the Authority during the entire course of the consultation culminating in these recommendations on ownership in the media sector. The objective of these recommendations is not, in any sense whatsoever, to curb the media or deprive it of its rights - that, in fact, would be a disservice to the Indian citizen - but to put in

¹ "Corporate Governance and Financial Sector: Some Issues", speech at NIBM, Pune, 6th January 2002 (available at <http://www.bimaljalan.com/speechesframe.html>).

² Lord Justice Leveson, 'An Inquiry into the Culture, Practices and Ethics of the Press', London: November 2012

place suitable safeguards that would ensure citizens the right to obtain objective, unbiased and diverse views and opinions.

- 1.6 Plurality, in the context of the media, refers to the availability of fair, balanced and unbiased representation of a wide range of opinions and views³. Ensuring both external plurality, namely multiple voices in the national media market, and internal plurality, i.e. presentation of a range of facts and news in an unbiased manner by a media outlet, are fundamental in the working of a democracy. As C P Scott⁴ observed “*comment is free but facts are sacred*”. Restrictions on cross-media holdings seek to ensure external plurality in the media market. If the same media entity controls outlets across different media segments, it raises the concern that similar views and opinions are being disseminated across all segments, thereby limiting plurality. Presentation of a multitude of viewpoints can be achieved if the owners of media entities are diverse. In this context, it must be recognized that different media segments are complementary to each other as each segment performs a different function – for example, television most often performs an “announcement” function, the radio keeps the listener updated while on the move and the print media generally performs the follow-up function by providing in-depth analysis⁵. An individual’s demand for news is generally fulfilled after it is consumed across segments, thus underscoring the need for diversity in ownership across segments to obtain a range of different viewpoints.
- 1.7 The matter of cross-media holding and its implications first came under consideration of the Authority following an initial reference from the Ministry of Information & Broadcasting (MIB) on 22 May 2008, to examine the related issues in their entirety. On 25 February 2009, the Authority gave its Recommendations on issues of horizontal integration; vertical integration; limits on numbers of licences to be held by a single entity; concentration of control/ ownership across media and across telecom and media companies. The Authority had recommended that no restrictions should be imposed on cross control/ ownership across telecom and

³Michele Polo, *Regulation for pluralism in media markets*, in the Economic Regulation of Broadcasting Markets, Paul Seabright and Jurgen von Hagen (eds), Cambridge University Press, 2007, pp 150

⁴ Editor of the Guardian, in his 1921 essay ‘A Hundred Years’.

⁵Mark Cooper, *Media Ownership and Democracy in the Digital Information Age*, Consumer Federation of America, 2003

media sectors at that point in time; however this issue could be reviewed after two years.

- 1.8 On 16 May 2012, the MIB requested the Authority to have a relook at the issue of vertical integration in broadcasting and TV distribution sectors, and cross-media holdings across TV, print, and radio sectors (see **Annex-1**). The Authority was requested to suggest measures that can be put in place to address vertical integration in order to ensure fair growth of the broadcasting sector and to suggest measures with respect to cross-media ownership with the objective to ensure plurality of news and views and availability of quality services at reasonable prices to the consumers.
- 1.9 A Consultation Paper (CP) on Media Ownership was floated on 15 February 2013. Written comments and counter comments on the CP were invited from stakeholders by 22nd April, 2013 and 29th April, 2013 respectively. Comments from 33 stakeholders and counter comments from 6 stakeholders were received, which were posted on the TRAI website. This was followed up with five Open House Discussions, at Ahmedabad, New Delhi, Hyderabad, Bhubaneswar and Indore.
- 1.10 Of the comments received, many put forth arguments against the adoption of cross-media ownership restrictions. Most of them stated that India is different from other countries, as it has hundreds of television channels and thousands of newspapers, which take care of all plurality concerns. The Authority notes that this matter requires deeper analysis. For example, Delhi has 16 dailies in circulation, the largest in any city in the country. But even this market is dominated only by a few – the top three players possess the lion’s share of the market with 70 per cent readership, with the remaining 13 players sharing the rest⁶. Thus, numbers alone don’t matter; influence also does. In addition, many media outlets are controlled by the same media entity and, therefore, the number of diverse and actually independent voices is far fewer. It is not only the number of outlets, but the nature of ownership of these outlets that matters. For the public at large, the concern is not merely the number of voices but also how factual and objective these voices are.

⁶ IRS 2012

- 1.11 Arguments were also raised on the rapid growth of new media platforms like the Internet and the mobile. Restrictions only on the traditional media could be rendered meaningless if simultaneously nothing is done about these new media platforms. The Authority notes that while only twenty per cent of Indians have internet access, broadband subscription is only at five per cent. Hence, the vast majority of individuals still depends on the television and print for access to news and information. Nevertheless, the impact of the new media platforms on plurality could be reviewed at a later stage when their penetration becomes deeper and usage substantial.
- 1.12 Another opinion expressed by stakeholders was that competition concerns pertaining not only to media but to all sectors in the country are under the purview of the Competition Commission of India (CCI). The CCI watches over the markets for goods and services and ensures that competition in these markets is not adversely affected, viz. market dominance is not abused. The Authority is of the view that the media cannot, and should not, be bracketed with general commodities and services. The market for ideas is very different from that for, say, shoes or biscuits. The media serves a higher purpose and needs separate consideration. The principles adopted in the competition law may not serve the special purpose of addressing the need for plurality of news and views. Besides, interventions of the CCI are *ex-post* in nature. The intention of the Authority in the current recommendations is to put in place, *ex-ante*, a framework that will ensure plurality and diversity in the media.
- 1.13 Though the CP primarily addressed the issue of external plurality, the Authority, during the consultation process, has come across issues, practices and trends that may jeopardize internal plurality of media outlets that place news in the public domain. The upshot is that such threats are in no way less pernicious to plurality than the cross-media ownership issues being discussed. Political and corporate control of the media to serve vested political and business interests; the insidious practice of “paid news”; and threats to editorial independence are manifestations of the menace that has severely compromised the rights of individuals to truthful and objective information.

- 1.14 Concerns in this regard have been expressed at the highest levels in India. The President of India, Pranab Mukherjee, recently said “... *it is distressing to note that some publications have resorted to “Paid News” and other such marketing strategies to drive their revenues. There is need for self-correcting mechanisms to check such aberrations. The temptation to “dumb down” news should also be resisted. The nation faces critical challenges that go well beyond the pressure of ‘Breaking News’ and immediate headlines. ... It is your responsibility and your bounden duty to ensure that ideas are debated dispassionately and thoughts articulated without fear or favour so that opinion is always well informed.... The highest standards of ethics must be maintained at all times. Sensationalism should never become a substitute for objective assessment and truthful reporting. Gossip and speculation should not replace hard facts. Every effort should be made to ensure that political or commercial interests are not passed off as legitimate and independent opinion.*”⁷
- 1.15 Vice-President Hamid Ansari has also expressed concern over paid news, cross-media ownership and the declining role of editors and their editorial freedom at various fora. He has stressed the need for corrective action to restore the credibility of the media. In this context, at the National Union of Journalists, he observed “*The need for comprehensive corrective action is imperative and must be undertaken without delay. A failure to do so would lend credence to widely expressed apprehensions about ‘special interests’.*”⁸ He has also said that the involvement of big business in the media and market domination are posing a serious threat to media freedom⁹.
- 1.16 The Parliamentary Standing Committee on Information Technology in its 47th Report, presented in the Lok Sabha on May 6, 2013, covered *Issues Related to Paid News*. The Committee has identified corporatisation of media, desegregation of ownership and editorial roles, decline in autonomy of editors/journalists due to emergence of contract system and poor wage levels of journalists as key reasons for the rise in the incidence of paid news. The Committee has *inter alia* found the existing regulatory set-up dealing with paid news inadequate. Describing the voluntary self-regulatory industry bodies like the News Broadcasting Standards

⁷ Platinum Jubilee celebrations of INS, Vigyan Bhavan, New Delhi, 27 February 2014

⁸ Inaugural address at the Biennial Session of National Union of Journalists at Hathras on 15 June 2013

⁹ Speeches of the Vice President available at <http://vicepresidentofindia.nic.in/searchp.asp>

Authority (NBSA) and Broadcasting Content Complaints Council (BCCC) as an 'eye wash', the Committee has also found the punitive powers of statutory regulators like the PCI and Electronic Media Monitoring Centre (EMMC) to be inadequate. Expressing concern that the lack of restriction on ownership across media segments (print, radio, TV or internet) or between content and distribution could give rise to monopolistic practices, the Committee has urged the Authority to present its recommendations and the MIB to take conclusive action on those recommendations on a priority basis.

- 1.17 The Law Commission of India, while considering issues related to electoral reforms, felt the need to address media-related issues connected to elections, such as the phenomenon of paid news and opinion polls. Recognising that issues relating to the media are not solely limited to elections, the Law Commission in May 2014 floated a Consultation Paper putting forward several issues relating to the media seeking responses thereon. The issues covered include - paid news phenomenon; fake sting operations; trial by media; breach of privacy; etc.¹⁰
- 1.18 In making these recommendations, the Authority has considered, discussed and included a wide range of issues affecting internal plurality in the news media given their inter-linkages and complexity. These *Recommendations* have been organized in the following manner - this chapter introduces the subject. Chapter-2 defines the concept of ownership and control in detail. Chapter-3 discusses the issues relating to cross-media ownership. The fourth chapter deals with the issues of vertical integration. Chapter-5 discusses issues affecting internal plurality and privacy in media coverage. The final chapter summarises the recommendations contained herein.

¹⁰Consultation Paper on Media Law, May 2014

Chapter 2 – Defining Ownership and Control

- 2.1 Concentration of control has a negative impact on media diversity and plurality. Identification of who controls a media outlet is the first step in documenting plurality. There may be thousands of newspapers and hundreds of news channels in the news media market, but if they are all “controlled” by only a handful of entities, then there is insufficient plurality of news and views presented to the people. Thus, it is essential to know the actual number of *independent* voices in the market to determine the extent of plurality. Also, there are numerous ways by which “control” can be exercised over a media outlet. Therefore, it is imperative to clearly define what constitutes or can amount to ownership and/or control of a media owning entity.
- 2.2 Shielding the media that forms public opinion from government interference and control as well as from the control of political parties and business entities is critical for the proper functioning of a democracy. However, the media can do harm if it propagates biased information. The plurality of views and opinions must be ensured and the factual integrity of information must be protected. This is why one has to clearly identify - who owns a media outlet and who in effect controls its output?
- 2.3 To obtain views on ownership/ control over media, the CP discussed the need for regulating ownership of media outlets. Apart from citing the cap of 20% of the equity, recommended by the Authority with regard to vertical integration in a media segment¹¹, the CP also noted that in the telecom sector the license agreement for Unified Access Services (UASL) defines ‘substantial equity’ as equity of 10% or more. Though the definition of ownership and control have largely been based on equity holding, the CP discussed the possibility of control being exercised in terms of influence over the way in which the company is run such as for example by control over the number of directors represented on the board of the company. The CP raised two specific questions - if the ownership/control of the media outlet could be measured in terms of equity holding and, what would be an appropriate threshold to impose restrictions. The stakeholders were also asked to suggest other

¹¹Recommendations on Media Ownership dated 25.02.2009

measures of control/ownership that could be used to measure control/ownership over a media outlet.

- 2.4 Most stakeholders argued that “control” as defined in the Competition Act (2002) is adequate for the purpose and is applicable to all industries; therefore, there is no need for a separate definition of control for the media industry. Some other stakeholders have suggested different percentages to determine the threshold equity level, like 10%, 15% etc. as alternatives to the 20% cap proposed in the CP, but none of these stakeholders have provided the justification or the analysis used to arrive at the numbers. A few stakeholders cautioned about the insufficiency of the equity criterion as there are numerous other ways by which an entity can exercise control over another. These include the possibility of entities investing in companies indirectly through sister concerns or subsidiaries; undisclosed contracts or agreements that bind the parties involved to obligations not mentioned in the official agreements; direct or indirect loans to media companies and accompanying agreements which provide for conversion of loans not repaid into equity – all of these could lead to control that can profoundly influence content broadcast or published. Hence, identifying and defining who has control over the medium through which content is broadcast or published is crucial, especially in cases where these are not the majority shareholders. Stakeholders have also suggested ways in which these aspects can be incorporated in the definition of control – disclosure of information regarding all layers of equity holding in order to trace indirect ownership, disclosure of all agreements signed by media companies, details of loans received and advanced by media companies and agreements signed.
- 2.5 There is a clear distinction between the terms ‘ownership’ and ‘control’. Ownership implies a pure economic interest in the form of equity or shareholding in a company. Control implies the ability to influence decision-making in the company, which is of greater significance in the media context, as those who exercise control over management and operations of the company could also control content. As ownership of equity beyond a threshold level can contribute to control and influence over content, the ownership clause is subsumed in the definition of control. Control of a media company can be acquired through capital ownership

either directly or indirectly through associates, subsidiaries or relatives of the entity (the definition of an entity is provided in the CP).

International Practices

2.6 That control over media outlets can impact the news and views carried by a media outlet is an international phenomenon is clearly brought out in the 1st Report (2007-08) of the Select Committee on Communication (House of Lords) UK.¹² As has also been cited in the CP, this Report identifies four methods by which ownership can impact news output: (i) direct intervention by an owner; (ii) indirect influence of an owner through the appointment of an editor who shares his view; (iii) the influence of the business approaches that an owner can take; and (iv) different approaches to journalism. Most democratic countries with a free and vibrant media have adopted comprehensive definitions for ownership/ control in their media ownership regulations. South Africa makes a distinction between ownership interest and control interests. While a shareholding of more than 5% will be deemed to be ownership interest, “control” is considered to be a much broader concept and as compared to ownership, can be exercised in many ways other than just by equity holding. In the UK, in addition to voting rights and other direct methods of ownership/ control, more subtle methods to influence news content and plurality of views while avoiding any direct/indirect control over media outlets is also covered. In Australia, the emphasis is on control over content generation as the main criterion for investigating and determining control over media outlets. While the threshold equity level for determining control over a media enterprise in Australia is 15%, in addition to equity ownership, lenders and loans as a means for backdoor control are also considered. While this is not a comprehensive round-up of the global position, the purpose here is to highlight that equity holding; loans; agreements; power to appoint directors; *de facto* control over content creation *et al* go into identifying ownership and control over media.

¹² The Ownership of the News: Volume I: Report (HL Paper 122-I)

Domestic Position

- 2.7 As has been extensively discussed in the CP, the issue of *de jure* and *de facto* control of corporate entities has implications beyond the media sphere. Both the Competition Act 2002 and the Companies Act 2013 contain definitions/ provisions on ownership and control of corporate entities for various purposes such as in cases of mergers and acquisitions, investments; market dominance; etc. Control is deemed to be exercised through equity ownership, appointment of directors, shareholding and loan agreements. In addition, recognising the possibility of *de facto* control of a business entity through debt instruments, the definition for ‘associate enterprises’ has been extended in the Income Tax Act 1961. Clause 2 (c) of Section 92A in Chapter X of the Income Tax Act 1961 provides that “*Two enterprises shall be deemed to be associated enterprises if a loan advanced by one enterprise to the other enterprise constitutes not less than 51% of the book value of the total assets of the other enterprise.*”
- 2.8 It may be noted that in addition to definitions provided in various laws, the Orders of the Competition Commission of India (CCI) also provide meaningful guidance on the determination of control for our purposes (see **Box 1**).

Box 1 - Orders of CCI on ‘Control’

1. In the case of the Business Partnership Agreement signed between Century Tokyo Leasing Corporation (‘CTL’C’) and the Leasing Division of Tata Capital Financial Services Limited (TCFSL) the CCI declared the Leasing Division to be under joint control of both parties via acquisition of joint managerial rights, despite absence of acquisition of shares, voting rights or assets, i.e. control could result from mutual agreements between entities; it also listed the functions, control over which could be considered as control over management and affairs of the company. **(Combination Registration No C-2012/09/78 Order dtd 04 Oct.2012)**

2. In the case of Independent Media Trust (IMT), which is controlled by Reliance Industries Limited, when it subscribed to Zero Coupon Optionally Convertible Debentures (ZOCs) of six companies promoted and owned by Mr. Raghav Bahl, who also controls Network18 with a 40% shareholding which was proposed to be transferred to the six companies (the ZOCs also had the option of being converted to equity with voting rights anytime within ten years from the date of subscription), the CCI concluded that these provisions bestowed IMT, and in turn RIL, with the ability to exercise decisive influence over the management and affairs of each of the target companies and thus the same would amount to control. Thus, not only the provision for conversion of options into equity but the very act of acquisition of an option is concluded to confer *de facto* control on the acquirer. **(Combination Registration No C-2012/03/47 Order dtd 28 May 2012)**

- 2.9 In view of the sensitivity surrounding the diversity of news and views in a

democracy, it is important to frame rules to include all possible mechanisms by which an entity can influence a media outlet. For this, we may have to go beyond the definition of control in the Companies Act. Based on stakeholder comments, international practices and the existing Indian laws, a comprehensive definition of control can be arrived at exclusively for the media industry.

- 2.10 Since the Companies Act 2013 provides the threshold level of equity holding that defines control, it would be appropriate to consider the same as the threshold for defining an entity with significant influence in a media company. Such a shareholding might be directly held in a media company or indirectly through associates, subsidiaries and/or relatives. The definitions for *associate*, *subsidiary* and *relative* may be considered as given in the Companies Act 2013. The definition for *associate* for media entities may be extended in line with the definition provided in the Income Tax Act 1961, as mentioned in Para 2.7 above, to include control through loan and debt instruments.
- 2.11 In order to trace indirect equity ownership of a media company through a chain of associates and subsidiaries, the multiplicative rule may be used. For example, an entity which owns, say, 30% equity in Company A, which in turn owns 20% equity in Company B, then the entity's indirect holding in Company B is calculated as $30\% * 20\%$, which is 6%.
- 2.12 As the primary objective is to enhance plurality of opinions in the media, control should be defined in terms of ability to control the content generated by a media entity. A comprehensive definition of 'control' has been adopted in the Authority's Recommendations on "Monopoly/Market Dominance in Cable TV Services" dated 26.11.2013 and "Recommendations on Issues related to New DTH Licenses" dated 23.07.2014. The same is recommended for adoption in this case.
- 2.13 **The Authority recommends that the following definition of control should be adopted for all issues concerning media ownership discussed in this paper:**
An entity (E1) is said to 'Control' another entity (E2) and the business decisions thereby taken, if E1, directly or indirectly through associate companies, subsidiaries and/or relatives:

- (a) Owns at least twenty per cent of total share capital of E2. In case of indirect shareholding by E1 in E2, the extent of ownership would be calculated using the multiplicative rule. For example, an entity who owns, say, 30% equity in Company A, which in turn owns 20% equity in Company B, then the entity's indirect holding in Company B is calculated as 30% * 20%, which is 6%.; Or
- (b) exercises de jure control by means of:
- (i) having not less than fifty per cent of voting rights in E2; Or
 - (ii) appointing more than fifty per cent of the members of the board of directors in E2; or
 - (iii) controlling the management or affairs through decision-making in strategic affairs of E2 and appointment of key managerial personnel; or
- (c) exercises de facto control by means of being a party to agreements, contracts and/or understandings, overtly or covertly drafted, whether legally binding or not, that enable the entity to control the business decisions taken in E2, in ways as mentioned in (b) (i) (ii) and (iii) above.

For this purpose:

- (i) The definitions of 'associate company', 'subsidiary' and 'relative' are as given in the Companies Act 2013.
- (ii) An 'entity' means individuals, group of individuals, companies, firms, trusts, societies and undertakings.

2.14 Stakeholder comments emphasised that indirect control in the media sector for influencing the news content can also be achieved through extending loans to media organisations. Accordingly, **the Authority recommends that the following proviso be added to the definition of control as provided in the 'Recommendations on Issues related to New DTH Licenses' dated 23.07.2014:**

- ***"Provided that if E1 advances a loan to E2 that constitutes not less than - [51%] of the book value of the total assets of E2, E1 will be deemed to 'control' E2."***

Chapter 3 – Cross-Media Ownership

- 3.1 The previous chapter described the various ways by which control could be exercised over a media entity. This was needed to measure the extent of diversity of independent entities in the market. This chapter focuses on answering the next question, i.e., to address the cross-media ownership issue – how does one measure plurality of opinions in the marketplace? Should this be in terms of the number of voices or in terms of influence that the media entities enjoy in the marketplace of opinions and viewpoints?
- 3.2 Countries like the USA have imposed cross-media ownership restrictions based on the number of independently owned media voices in the market. Restrictions in countries like the UK are based on influence, which prevent one person from owning different types of media over specified market share levels. Other countries, like Australia and Canada, impose blanket restrictions on entry into more than one or two media segments.
- 3.3 India is unlike any other country in the world because of its huge linguistic diversity as well as in terms of the number of media outlets in operation. Though with numerous outlets, India is influenced to a large extent by a few major players, who have the ability to significantly influence public opinion. Further, only some markets such as the printed press in Hindi are characterized by the presence of a large number of outlets; many others as in Odia and Punjabi have less than five players in their television markets. Therefore, in the Indian context, it is vital to consider both the number of voices in the market as well as their influence in order to ensure competition at the horizontal level.
- 3.4 We first discuss the concepts of relevant markets and metrics that are crucial to devising ownership restrictions and later move on to framing the rules.

Relevant Markets

- 3.5 The demarcation of relevant markets for media consumption is essential to determine the true extent of media concentration. This will help in identifying the players within the market that are capable of behaving independently in the

absence of effective competitive pressure, thereby affecting plurality. Not all media outlets in the market are relevant for all consumers. For example, for a person who knows only Kannada, only the Kannada television channels, newspapers and radio channels would be relevant. Media outlets of other languages cannot be consumed by him, even though they may be available to him. Thus defining the relevant market becomes important. The concept has two dimensions viz. the relevant product market and the relevant geographic market.

- 3.6 The *relevant product market* means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use. In the present context, the relevant product market could be characterized with respect to two parameters – genres (as media outlets within a genre, say news, would be substitutable by the consumer) and segments, such as television, radio, print, etc. as each media segment has a different focus.
- 3.7 The genres listed out in the CP were - News and Current Affairs, General Entertainment (Hindi), General Entertainment (English), General Entertainment (Regional), Sports, Infotainment, Music, Kids, Movies, Lifestyle and Religious/Devotional. Of these, the CP noted that the News and Current Affairs genre is the most relevant from the perspective of informing and influencing public opinion. It is, therefore, of the greatest significance when judged from the angle of safeguarding democratic processes. Television, print, radio and online media were the relevant media segments discussed in the CP.
- 3.8 The *relevant geographic market* refers to a market comprising the area in which the conditions of competition for supply of goods and services and demand for goods or services are distinct and homogenous and can be distinguished from conditions prevailing in neighbouring areas. The CP had proposed language as the basis for determining the relevant geographic market. For this purpose, it was suggested to use English and eight regional languages (Bengali, Hindi, Kannada, Odia, Malayalam,

Marathi, Tamil and Telugu). This was also suggested by ASCI¹³ in their study report on cross-media ownership.

- 3.9 The above issues were raised in the CP to elicit comments from the stakeholders. As regards the relevant genre, many stakeholders agreed with the proposition in the CP that only the News and Current Affairs genre has to be considered while devising cross-media ownership regulations. Only news media outlets influence opinion-making of citizens and it is mainly in respect of such outlets that a plurality of viewpoints is desired. If other genres have to be included then sufficient evidence has to be adduced to prove that they too are affecting viewpoint plurality. Some stakeholders pointed out that controllers of genres like sports and music have no control over the content and hence, should not be regulated. Many opined that relevant genres should be selected based on the number of viewers they command, since a large viewership, as is true for General Entertainment Channels, would mean greater ability or potential to influence consumers.
- 3.10 Others said that programs across all genres possess embedded points of view, which get expressed in various forms. For example, media outlets could focus only on advertisement of certain products depending on choice of the corporation funding them or make political statements through entertainment programs. Programs of non-news genres can also express views on many social and behavioural issues, thereby directly or indirectly contributing to viewpoint generation. Some stakeholders pointed out that many programs of social relevance are being aired on television and they have considerably high viewership. They seem to have a decisive impact on opinion formation and should therefore be taken into consideration.
- 3.11 The Authority has considered the inputs of the stakeholders. It is true that the General Entertainment genre does have high viewership and therefore has the potential for influencing views through its programs. But, any opinion disseminated through this genre is informal and indirect in nature as the prime objective of programs in this genre is entertainment and any perceived social and political influence cannot be determined objectively. In popular perception, it is the News and Current Affairs genre, including business and financial news and information,

¹³ASCI Study Report entitled "Cross Media Ownership in India", July 2009.

that is the direct purveyor of authentic news and opinions based on extensive research, first-hand reporting, analysis and editorial checks. Further, most programs of the General Entertainment genre and other genres like music, movies, kids etc., largely involve aggregation of content generated by various production houses. It would be inappropriate to regulate these media outlets as most of the content that is broadcast is outside the control of the owner of these media outlets. As regards programs of social relevance, it has to be borne in mind that programs of this type are a small proportion of all the programs aired on channels of this genre and are also not aired by all entertainment channels, thus their impact on opinion formation is limited. Such programs have a high appeal only in the television segment. Opinion formation through entertainment content on radio and in the print media is negligible.

- 3.12 From a survey of international practice also, it is seen that countries like UK, Canada and USA regulate only the News and Current Affairs genre in their cross-media ownership rules in order to provide for diversity in news and opinions.
- 3.13 Based on the above, **the Authority recommends that the News and Current Affairs genre, including business and financial news and information, is of utmost importance and direct relevance to the plurality and diversity of viewpoints and, hence, should be considered as the relevant genre in the product market for formulating cross-media ownership rules.**
- 3.14 On the issue of relevant segments to be considered for formation of rules, many stakeholders stated that all four segments, i.e., television, print, radio and internet, should be considered while devising rules for cross-media ownership given the blurring of lines between different forms of media. The different segments represent different modes of distribution of content which are independent and not substitutes for each other. Other stakeholders asserted that only television and print need to be considered as they are the dominant segments for news generation and opinion formation.
- 3.15 Opinions are divided on the inclusion of Internet as a relevant medium. While some stakeholders stress on the Internet's growing importance as a medium for opinion formation, others dismiss it as merely a mode of distribution of content generated in

other media segments, which allows the consumer to consume news at their own leisure, and thus, need not be considered as a separate segment. Some stakeholders are of the view that blogs and opinions debated and discussed on social networking sites contribute significantly to opinion formation in the Internet medium and this may be a more significant factor than the presence of players in the online print and television segments.

- 3.16 The Authority has analysed the issue. Different media segments form separate markets as they meet distinct needs and are consumed in different ways. Each is equally important as each performs a unique function – the television provides news in an audio-visual format as it unfolds, the radio supplies news on the move and the print media follows up with in-depth analysis.
- 3.17 Findings of the Indian Readership Survey (IRS - Q4, 2012) show that out of all users of any media segment, a whopping 87.6% of them use the television, 53.55% subscribe to the press, 24.2% tune in to the radio, 12.7% go to the cinema and merely 6.8% of them use the Internet. It is evident from these findings that television and print are the most influential media segments. It is essential to note that within the print segment, only daily newspapers would be of relevance as news magazines and newspapers are not perfect substitutes and hence cannot be included in the same relevant market. It would, however, not be appropriate to consider magazines as a separate segment owing to their relatively smaller readership and influence as compared to newspapers.
- 3.18 Radio, though a popular segment, is not of current relevance since private radio channels are not allowed to air their own news content. But once airing of own-news is permitted on private radio and becomes significant in the relevant market, this could be reviewed.
- 3.19 Access to news and opinions on the Internet can be through various ways. Many news websites belong to those entities already present in the television and print mediums. This is a cause for concern as usually the same content generated on the other platforms are included on the website as well, thereby affecting plurality across segments. Online media also hosts many content aggregators who only put together content produced by other entities and thus cannot be directly controlled.

The Internet is also considered to be an important platform for opinion formation because of the presence of numerous bloggers and social networking sites, where opinions are openly put forth, debated and discussed. However, people may not perceive viewpoints on blogs and social media to be as trustworthy, accurate or authentic as those of the press or television as the former only portray personal opinions and are not backed by adequately resourced news gathering platforms. There is no dominant news entity in the Internet segment, as any player in the news genre who so desires has a place on the internet. Though the Internet is gaining popularity, the number of Internet users is still very small and the consumers of news on Internet even smaller. Thus, at present, the Internet does not seem to be a relevant segment owing to low penetration, the existence of a multitude of sources for news and opinions on the medium, and a general lack of authenticity surrounding opinions shared on the web.

- 3.20 **The Authority recommends that television and print should be considered as the relevant segments in the product market. For print, only daily newspapers, including business and financial newspapers, should be considered. Once private radio channels are allowed to air news generated on their own and become significant in the relevant market, a review of the cross-media ownership rules should be undertaken.**
- 3.21 On the issue of the parameters to be considered for defining the relevant geographic market, many stakeholders agreed to language being the basis for the same. Some suggested adding a few more languages to the list provided in the CP, namely Punjabi, Gujarati and Urdu.
- 3.22 Some stakeholders said that along with language, other parameters need to be taken into consideration. Many suggested defining geographic boundaries to the market. Some advocated the inclusion of demographic factors as well, though the type of factors and method of adopting them were not explained. Other stakeholders opined that language might not be the right parameter to demarcate relevant markets and restrictions on ownership across language markets are not appropriate. According to them, India's market is heterogeneous, unlike other countries, where the same

- language is spoken throughout the country. In India, consumer preferences and media consumption habits are very different even within a small geographical area.
- 3.23 The Authority has carefully considered the comments of the stakeholders. Language is an important factor that can help demarcate markets as knowledge of the language is crucial for consumption of the content of a media outlet. As pointed out by stakeholders, Punjabi and Gujarati are important lingual markets with respect to their size and number of players. Urdu, on the other hand, is still a developing market with very few players, especially in the television segment.
- 3.24 The Authority is inclined to agree that, apart from language, the geographic parameter is also significant. A relevant geographic market is defined as one where the conditions of competition for demand for and supply of news are homogenous. If language alone was considered, then all news consumers of a language all over the country would be considered. But this would not be correct as market conditions of demand and supply of news vary across States. Thus, defining a geographic boundary for the relevant market is important.
- 3.25 Therefore, the relevant geographic market may be defined in terms of the language and the State(s) in which that language is spoken by the majority of people – Assamese and Assam; Bengali and West Bengal; Gujarati and Gujarat; Kannada and Karnataka; Punjabi and Punjab; Odia and Odisha; Malayalam and Kerala; Marathi and Maharashtra; Tamil and Tamil Nadu; Telugu and Andhra Pradesh and Telangana; Hindi and Bihar, Chhattisgarh, Delhi, Haryana, Himachal Pradesh, Jharkhand, Madhya Pradesh, Rajasthan, Uttarakhand, Uttar Pradesh; English – pan India. With respect to other languages and States (including in the North Eastern States), defining the relevant geographic market is complicated by factors such as non-contiguity; limited footprint; and the resulting lack of homogeneity.
- 3.26 Defining the geographic market in the above fashion would make the markets homogeneous, as each would largely consist of consumers demanding news in the same language. Supply conditions with respect to media outlets would also be similar.
- 3.27 **In view of the above, the Authority recommends that the relevant geographic market should be defined in terms of the language and the State(s) in which**

that language is spoken in majority. Thus the twelve relevant geographic markets would be as follows –

- (i) Assamese and Assam (meaning, Assamese newspapers read and Assamese television channels watched in Assam, and similarly henceforth);
- (ii) Bengali and West Bengal;
- (iii) English pan-India.
- (iv) Gujarati and Gujarat;
- (v) Hindi and Bihar, Chhattisgarh, Delhi, Haryana, Himachal Pradesh, Jharkhand, Madhya Pradesh, Rajasthan, Uttarakhand, Uttar Pradesh (these ten States together should be considered as a single market);
- (vi) Kannada and Karnataka;
- (vii) Malayalam and Kerala;
- (viii) Marathi and Maharashtra;
- (ix) Odia and Odisha;
- (x) Punjabi and Punjab;
- (xi) Tamil and Tamil Nadu;
- (xii) Telugu and Andhra Pradesh and Telangana;

In this list, the other languages included in the Eighth Schedule of the Constitution, namely – Bodo, Dogri, Kashmiri, Konkani, Maithili, Manipuri, Nepali, Sanskrit, Santhali, Sindhi and Urdu, to be considered based on the growth of newspaper circulation and television viewership in these languages in the future.

- 3.28 Combining the relevant product and geographic markets, the relevant markets would be, for example, the Bengali newspaper market and Bengali television news channel market in West Bengal. Cross-media ownership rules would restrict ownership within a relevant market, i.e. between the newspaper and television outlets, and not across different relevant markets. Thus, in this example, cross-media rules would specify how entities in the Bengali newspaper market in West Bengal can/cannot control entities in the Bengali television news channel market in

West Bengal and vice-versa. The rules would not restrict entities in the Bengali market from controlling entities in other relevant markets, like say, the Odia newspaper or the television news channel market in Odisha.

Choosing a metric

3.29 In order to determine the concentration of markets and entities, an appropriate metric has to be chosen for measurement of market share. The CP proposed three metrics that could be used to measure the influence that a media entity has in the relevant market:

- (i) Volume of consumption - minutes of viewing, listening and reading in case of television, radio and print media outlets respectively.
- (ii) Reach - the percentage of people who are exposed to a media outlet in a given period of time.
- (iii) Revenue – in the absence of data regarding the above two measures, revenue as a measure of relative level of consumption of a particular media outlet.

3.30 The CP suggested that circulation data of newspapers published by the Registrar of Newspapers for India (RNI) and television viewership data from TAM Media Research could be possible sources of data for measuring reach. The problem of inadequate information on ownership pattern of the media entities was also raised.

3.31 In response to the questions in the CP eliciting answers about the suitable metrics that could be used for determining market concentration, many stakeholders felt that reach and volume of consumption are good measures of influence but pointed out that obtaining accurate and reliable data might be problematic. Though some stakeholders felt that revenue would be a good metric as higher revenues could imply greater ability to exercise market power, a majority of them opined that revenue is not a good proxy for reach. Some stakeholders quoted revenue data for the print industry, showing that the revenue share of the top three newspapers to the whole industry is 39% while their reach is merely 6%. Some others observed that the bouquet system of distribution of television channels implies similar (subscription) revenue to all broadcasters but their popularity and hence reach may vary widely. Some pointed out that revenue generated is purely an outcome of the

business model adopted and is therefore not an appropriate measure of influence of a media entity.

3.32 Some stakeholders suggested that a combination of different metrics need to be used to arrive at a measure of influence of a media entity. A combination of reach and minutes of viewing or reading would suggest popularity as well as extent of influence.

3.33 The Authority has considered the various inputs received from the stakeholders. Reach reflects the percentage of people exposed to a media outlet. Higher reach of a media outlet implies influence over a large population and potential market dominance by the entity, which would also have the ability to impose entry barriers to new media voices, thereby curbing plurality. Thus, reach is an important metric for measuring media consumption, as also the volume of consumption. Reliable data is available for these metrics and there is no need to use revenue as a proxy measure of influence. The various sources of data that are available for computing the required metrics are given below:

- (i) Circulation details of all newspapers in the country are published by Registrar of Newspapers for India (RNI), Ministry of Information and Broadcasting. It also provides details of owners of the newspapers (but not their shareholding pattern). Circulation can be taken as a proxy for readership in calculating reach. This is because a newspaper owner prints just as many copies as are demanded as costs of newsprint and printing are high. The circulation figures are also checked by RNI and MIB based on the import of newsprint.
- (ii) Television viewership is measured by rating agencies. At present, TAM Media Research is one agency involved in such measurement. Apart from viewership (defined as percentage of households that watched at least one minute of the channel in a week), TAM also calculates Time Spent by Universe (average minutes of viewing) and Gross Rating Points (GRP), calculated as the sum of Television Rating Points (TRP) of 48 half-hour slots per day, averaged over a week, where TRP for a 30-minute slot is the number of households that watched the full program (a combination of reach and volume of consumption). TAM uses the people-meter system, which tracks every minute of viewing by a household.

Their present sample size is 9600 households. With the passage of the *Guidelines/Accreditation Mechanism for Television Audience Measurement (TAM)/Television Rating Points (TRP) Agencies in India* which TAM has to adhere to, data of this agency can be used.

- (iii) Indian Readership Survey (IRS), an annual survey carried out by Hansa Research for the Media Research Users' Council, surveys households on their media consumption patterns. It provides data on reach and volume of consumption of television viewership and print readership and is widely used and cited by various media research studies. Their sample size is 250,000 households and their survey questions on media consumption are based on one-day recall method.

3.34 For deciding on the suitability of different metrics, data from all three sources was collected by the Authority for the most recent time periods available (FY2012-13 for TAM, calendar year 2012 for IRS, FY2011-12 for RNI). In the case of television viewership, it was interestingly observed that though the values of reach were almost the same for all the news channels in a particular market, minutes of viewing of the channels varied widely. This could possibly be attributed to the bouquet system of channel distribution. A viewer who subscribes to a bouquet might skip through channels, watching some channels for a short while only and others for a longer duration. All these channels would be counted under reach, but the channels that he chooses to watch for a longer duration obviously would have greater influence on him. Therefore, measuring reach as well as volume of consumption is important while measuring market share for television. GRP would be the relevant metric for the television segment.

3.35 For newspapers, minutes of consumption are not directly related to the extent of influence as much also depends on the reader's speed of reading, level of understanding etc. For print, the reach metric alone would be sufficient to reflect extent of influence.

3.36 **The Authority recommends that a combination of reach and volume of consumption metrics should be used for computing market shares for the**

television segment. For the print segment, using only the reach metric is sufficient.

3.37 The Authority also recommends that for calculating market shares, in the relevant market for the television segment, the GRP of a channel* should be compared with the sum of the GRP ratings of all the channels* in the relevant market and the market share of an entity# would be the sum of the market shares of all the channels* controlled by it i.e. :

$$\Rightarrow \text{Market share of a channel} = \frac{\text{GRP of the channel}^*}{\sum \text{GRP of all channels}^* \text{ in the relevant market}}$$

$$\Rightarrow \text{Market share of an entity}^\# = \sum \text{Market share of all channels}^* \text{ controlled by it}$$

(*In the television segment, apart from pure news channels, some regional markets are characterized by the presence of news-cum-entertainment channels, which broadcast news bulletins for only some parts of the day in 30-minute slots, amidst various entertainment programs. The GRP of only the news content aired on these news-cum-entertainment channels is taken into account so that they are comparable, for the purpose of analysis, with the pure news channels.)

3.38 Similarly, in the relevant market for the print segment, the market share of a newspaper would be the circulation of that newspaper compared with the combined circulation of all newspapers in the relevant market, and the market share of an entity# would be the sum of the circulation of all the newspapers controlled by it i.e.:

$$\Rightarrow \text{Market share of a newspaper} = \frac{\text{Circulation of the newspaper}}{\sum \text{Circulation of all newspapers in the relevant market}}$$

$$\Rightarrow \text{Market share of an entity}^\# = \sum \text{Market share of all newspapers controlled by it}$$

(# this entity may be a media entity itself, which is operating the television channel(s) and/or daily newspaper(s) in the relevant market or an entity which is controlling many media entities, which in turn are operating the television channel(s) and daily newspaper(s).)

3.39 Further, if more than one entity has ownership/control in a media outlet the contribution to concentration of that media outlet would be attributed in full to each of the entities owning/controlling the outlet.

Measuring Concentration

3.40 The CP discussed C3 (sum of the three largest market shares in a relevant market) and the Herfindahl Hirschman Index (HHI- sum of squares of market shares of all entities in a relevant market) as two possible measures of concentration within a media segment, and the Diversity Index as a measure of overall concentration in a relevant market. Questions were posed to the stakeholders on the suitability and appropriateness of choosing any of the above as measures of concentration. Stakeholders were also open to suggest any other measure.

3.41 Most stakeholders opined that HHI would be an appropriate measure of concentration as it is widely used and well-accepted. Some criticized HHI, stating that it does not reflect influence over opinion formation directly and that it is inaccurate and poses a high risk of distorting the market.

3.42 Several stakeholders felt that the Diversity Index should not be used as it is impossible to assign relative weights to the different media segments, especially using weights based on popularity. The Federal Communications Commission of the US, which developed this Index, is also moving away from it. A few stakeholders proposed that the Diversity Index is a good measure for cross-media considerations as it brings all the segments onto a single platform, but they did not suggest ways in which relative weights may be assigned to the different media segments.

3.43 The Authority has considered the stakeholder inputs. HHI, unlike C3, reflects the market scenario in totality. It considers the market shares of all entities in the market, and hence it reflects diversity both in terms of number of voices present, as well as influence (by way of market shares of the entities). Relevant data required for computing market shares are available; hence computation of the index would not be problematic.

- 3.44 As no suggestions on plausible ways of determining relative weights to be assigned to the media segments have been proposed by the stakeholders, the Diversity Index is not being considered for measuring concentration in a relevant media market.
- 3.45 **The Authority recommends that the Herfindahl Hirschman Index (HHI) be adopted to measure concentration in a media segment in a relevant market.**

Devising Cross-Media Ownership Rules

- 3.46 The CP proposed four ways in which cross-media ownership rules could be framed. The first method is that of restricting ownership based on mere presence, i.e., a blanket ban on control over media outlets in more than one media segment. The second method is that the restriction be based on market share in media segments, where media entities exceeding prescribed market share thresholds in both television and print – herein the media entity would have to withdraw from one of the segments. The third approach could be imposition of a restriction based on concentration of the market, i.e., if the market concentration exceeds the threshold concentration level, then that entity whose contribution to concentration exceeds a defined limit in both segments would have to withdraw from one of them. Finally, restrictions could be imposed based on the Diversity Index that considers the overall concentration in a relevant market.
- 3.47 Regarding questions on the choice of restriction and possible thresholds for market share and concentration that were asked in the CP, the majority of the stakeholders insisted that no ownership restrictions across media segments be imposed. Some have suggested that initially the restrictions could be based on market share, where an entity with market share greater than 20% in one segment is restricted from controlling outlets in other segments, but eventually the “1 out of 3” rule¹⁴ based on mere presence should be implemented to ensure plurality and diversity of opinion.
- 3.48 Some others have suggested that the same could be done using HHI instead of just market share. They propose that the threshold level for a highly concentrated market should be 2500, and not 1800 as suggested in the CP.

¹⁴ Rule restricting presence of the entity in only one of the three media segments

- 3.49 The Authority has considered the matter. Rules based on mere presence would not be appropriate as they do not consider the market scenario actually prevailing – an entity might be present in a market that has many other players who are at least as influential; in such a case market dynamics would ensure plurality. The problem arises where markets are concentrated with one or a few players dominating the market and hindering other voices from being heard, affecting plurality and diversity of opinion. It makes sense, therefore, to apply rules only to concentrated markets, where concentration of a media segment in a relevant market is calculated using HHI and dominant presence exists across concentrated markets.
- 3.50 HHI thresholds of 1800 as an indication of a highly concentrated market are suggested by economic theory and considered by US Department of Justice and the Federal Trade Commission in the Horizontal Merger Guidelines (1997). They are based on what HHI figures may result if the market is highly concentrated, i.e., if it is a monopoly, duopoly or an oligopoly with five to six entities. The HHI thresholds of 2500 defining a highly concentrated market suggested in the Horizontal Merger Guidelines (2010) are based on empirical and practical experience of markets in the US and are not media-market specific. The main objective of framing cross-media ownership rules is to ensure plurality of opinion. As Eli Noam points out¹⁵, people do not mind an HHI as high as 4000 for the video game market as preference for diversity is not as high as in the case of media, where more diversity is demanded by the public. Media markets therefore need the test of a lower HHI.
- 3.51 The threshold level of contribution to HHI by an entity in a relevant market should be fixed at 1000, which approximately translates into a market share of 32%. As the media markets are highly dynamic, restrictions should apply only in cases of violation of the rule by media entities for a consecutive two-year period.
- 3.52 As only two media segments – television and print are being considered as part of the relevant market, the “1 out of 2” rule can be applied above the defined levels of concentration. This means that if the television as well as newspaper markets are concentrated (HHI> 1800 in each), then, an entity contributing more than 1000 to the HHI of the television market, cannot contribute more than 1000 towards HHI in

¹⁵ *How to Measure Media Concentration* by Eli Noam; FT.COM, August 30, 2004

the newspaper market as well, and vice-versa. If it does so, it will have to dilute its control in one of the two segments.

- 3.53 **The Authority recommends that a rule based on HHI be implemented i.e. if the television as well as newspaper markets are concentrated in a relevant geographical market (HHI > 1800 in each), then, an entity (as defined in Para 3.37 & 3.38) contributing more than 1000 to the HHI of the television market, cannot contribute more than 1000 towards HHI in the newspaper market as well, and vice-versa. If it does so, it will have to dilute its control (as defined in paragraph 2.13 & 2.14 above) in one of the two segments. This rule applies only if the HHI thresholds are violated consecutively for two years.**

Example: Let Q_{Ai} represent the controlling interest(s) (control as defined in paragraph 2.13 & 2.14 above) of entity Q in media entity(ies) A_i operating in the television market and Q_{Bi} represent entity Q's controlling interest(s) in media entity(ies) B_i operating in the newspaper market. Let the HHI of the relevant television market be HHI_{TV} and that of the relevant newspaper market be HHI_{NP} . Further, let all A_i 's contribution to HHI_{TV} be X and all B_i 's contribution to HHI_{NP} be Y. Then,

- (1) If $HHI_{TV} = 2000$ and $HHI_{NP} = 2500$ and $X > 1000$ and $Y > 1000$ for more than two years, then Q must dilute either Q_{Ai} or Q_{Bi} to a level that does not constitute control;
- (2) If $HHI_{TV} = 1600$ and $HHI_{NP} = 2500$ and $X > 1000$ and $Y > 1000$, then Q need not act to dilute either Q_{Ai} or Q_{Bi} ;
- (3) If $HHI_{TV} = 2000$ and $HHI_{NP} = 2500$ and $X \leq 1000$ and $Y > 1000$, then Q need not act to dilute Q_{Bi} .

Mergers and Acquisitions

- 3.54 The CP sought comments on whether additional restrictions would be necessary for Mergers and Acquisitions in the media sector within a segment as well as between segments, with a view to protect plurality.
- 3.55 Some stakeholders opined that additional restrictions need to be imposed for Mergers and Acquisitions. This could either be in the form of minimum number of

- independent entities or could be addressed on a case-by-case basis, depending on the extent of threat to plurality that the Mergers and Acquisitions are likely to cause.
- 3.56 Some other stakeholders were of the opinion that no additional restrictions need be imposed. As other institutions like the CCI already regulate such combinations, it would lead to confusion if additional restrictions were put in place.
- 3.57 After careful consideration of the matter, **the Authority recommends that Mergers and Acquisitions (M&A) in the media sector will be permitted only to the extent that the rule based on HHI, as recommended in Para 3.53 above, is not breached.**

Periodicity of Review and Time for Compliance

- 3.58 Countries usually conduct periodic reviews of their rules governing the media sector, in order to accommodate for market dynamics, technological advancements or changing consumer preferences. The CP had proposed that the periodicity of such reviews could be three years¹⁶. The CP also sought suggestions on the time required by the existing players for compliance to the new regime.
- 3.59 The Recommendations on “Monopoly/Market Dominance in Cable TV Services” dated 26.11.2013 recommended a six-month period for compliance to the rules once enforced. Many stakeholders agreed with the three year time period for review proposed in the CP. Other suggestions vary between six months and five years.
- 3.60 As for time for compliance to the new regime, the time frames suggested vary between three months and five years. While some suggest that compliance be reported while submitting the quarterly reports, some others argue that considering that equity dilutions may be required to comply with the new rules, a minimum period of five years would be necessary.
- 3.61 **The Authority recommends that the cross-media ownership rules be reviewed three years after the announcement of the rules by the licensor and once every three years thereafter. The existing entities in the media sector which**

¹⁶ The ASCI Study Report of July, 2009 also recommended that market survey and analysis needs to be made every 3-4 years and ownership rules changed accordingly (See Annex 1).

are in breach of the rules, should be given a maximum period of one year to comply with the rules.

Mandatory disclosures

3.62 The CP listed out the parameters that would be useful in monitoring and enforcing compliance of restrictions with respect to cross-media holdings. These pertain to ownership and control structure, and data that would be helpful for computing the metrics and concentration. The list of disclosures suggested in the CP was:

- (i) Shareholding pattern of the entity
- (ii) Foreign direct investment pattern of the entity
- (iii) Interests of the entity in other entities engaged in media sector
- (iv) Interests of Entities/companies, having shareholding beyond 5% in the media entity under consideration, in other media entities/companies
- (v) Shareholders Agreements, Loan Agreements and any other contract/agreement
- (vi) Details of Key executives and Board of Directors of the entity/ company
- (vii) Market share of the entity/ company
- (viii) Viewership / Readership details
- (ix) Subscription and Advertisement Revenue of the entity/ company.

3.63 In their response, some stakeholders agreed with the list of disclosures and opined that this allows for case-by-case reviews as they reflect company-based and market-based characteristics. Some others suggested inclusions to this list in the form of advertisement rates as this, on comparison with the reach and popularity of the media outlet, would determine that fair advertisement revenues are accruing to the entity based only on its popularity and no other considerations. Another stakeholder suggested disclosure of the top ten advertisers per outlet for a similar purpose.

3.64 Many stakeholders argued that such disclosures are not necessary as they are already being made to the respective licensor/registrar as required by the Guidelines, and also according to the requirements under Companies Act and Income Tax Act. Any additional disclosures, especially in the public domain, restrict

the right to trade and profession and also curb freedom of expression. It would jeopardise the strategic advantage that some players have over others. Some stakeholders agreed to the disclosures being placed in the public domain as this would increase transparency.

- 3.65 The Authority has examined the stakeholders' suggestions. Most of the disclosures listed above have already been mandated to be disclosed by various Acts of the Parliament like the Companies Act and Competition Act, as well as by rules and Guidelines issued by MIB. It is only with respect to certain disclosures, especially relating to indirect ownership reporting, that the Authority is of the view that disclosure is necessary as this information is crucial for determining extent of diversity in the news media market. What is more, while studying the sector and analyzing the data available from the present set of reports, gaps in information were found, which obviously need to be addressed.
- 3.66 The inclusion of advertisement rates and top ten advertisers per outlet in the list of disclosures would be useful in monitoring whether certain entities exhibit undue influence over a media entity by means of advertisement revenue. Though some of the disclosures provided in the list are already required to be submitted to the licensor and Registrar of Companies, it has been observed that these disclosure norms are not being met by a majority of the entities. Also, the present set of disclosures seeks more comprehensive information even on existing disclosures. Many other countries in the world not only have elaborate disclosure norms but these disclosures are also in the public domain and accessible on the websites of the regulator, Australia for example. However, the Authority does recognise that some information is confidential in nature and can adversely affect the commercial interests of the media entities. The disclosures shall accordingly be divided into two – (i) those that are for public information and promote transparency– these would be made available openly and online; and (ii) those that would be submitted only to the regulatory authorities and kept confidential.
- 3.67 **The Authority recommends the following list of reporting requirements for this section. These reports are to be made on an annual basis to the licensor and the regulator.**

A. Transparency Disclosures (to be placed in public domain)

- (i) Shareholding pattern of the entity**
- (ii) Foreign direct investment pattern of the entity**
- (iii) Interests, direct and indirect, of the entity in other entities engaged in media and non-media sectors**
- (iv) Interests of entities, direct and indirect, having shareholding beyond 5% in the media entity under consideration, in other media entities/companies**
- (v) Shareholders Agreements, Loan Agreements and any other contract/ agreement**
- (vi) Details of key executives and Board of Directors of the entity.**
- (vii) Details of loans made by and to the entity**
- (viii) For all channels registered as news channels with MIB – Registered language(s) of operation, actual language(s) of operation, time slots for news programs**

B. Reports to be submitted to the Licensor and regulator (confidential)

- (ix) Subscription and advertisement revenue of the entity/ company**
- (x) Advertising rates**
- (xi) Top ten advertisers for each media outlet of the entity**

Changes in any of the parameters (i) to (vi) listed above must be reported to the licensor and regulator within thirty days of implementation of the change.

3.68 Along with the list of reporting and disclosure requirements necessary for Chapter 5, list of all reports/ disclosures to be mandatorily made by the media entities and the formats in which they have to be submitted is provided in **Annex-2**.

Chapter 4 – Vertical Integration amongst Media Entities

- 4.1. The main issue for the Authority is the need to ensure that the broadcast and distribution sector is free and able to provide, from a wide range of sources, factual news and information to the consumers. Ownership and control must not be allowed in any way to restrict this. Vertical integration of broadcasters with Distribution Platform Operators (DPO), i.e., cable/ HITS/ DTH operators, can restrict horizontal competition. However, in addressing this concern it is as much the intention of the Authority to create and nurture an environment that will promote innovation and invite investments into this sector.
- 4.2. Wide variations exist in the present policy framework on cross-holding. At one extreme, there are no restrictions on the cable operators while at the other extreme, there are strict restrictions on the HITS operators. The restrictions on DTH operators lie somewhere in between. There is a need to bring in policy uniformity on cross-holding/ 'control' restrictions across the broadcasters and the DPOs. The restrictions provided for at present in various licenses/ guidelines have had limited success. In some cases, cross-holding/ 'control' by a common entity, both in the broadcaster and multiple categories of DPOs have been reported. This has given rise to complaints, litigation as well as concerns pertaining to a skewed playing field, adversely affecting the non-integrated broadcasters/ DPOs. The problem arises not only due to the structural imbalance of 'no regulation' on the one hand and excessive regulation on the other, but also because even where regulation exists, it has not been able to prevent vertical integration. This is evident from the fact that Zee TV, Sun, & STAR TV groups have controlling interests in DTH operators, namely, Dish TV, Sun Direct and Tata Sky, respectively.
- 4.3. MIB had first sought recommendations of the Authority on the approach towards cross-media and ownership restrictions for future growth of the broadcasting sector in 2008. The Authority had forwarded its "Recommendations on Media Ownership" to the Government on 25 February 2009. The recommendations, with respect to the vertical integration in the broadcasting sector, were as under :
- i) *The broadcaster should not have "control" in the distribution and vice-versa.*

- ii) *Definition of Control: 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.*
- iii) *The existing broadcasters who may have “control” in distribution (MSO/Cable/DTH) and entities in the distribution sector who may have similar “control” over broadcasting should be given sufficient time of three years for restructuring.*
- iv) *For the purpose of putting in place effective safeguards to prevent vertical integration between the broadcasting sector and its distribution platforms as recommended above, the word “entity” be given a broad meaning so as to include any person including an individual, a group of persons, a public or private body corporate, a firm, a trust, or any other organization or body and also to include “inter-connected undertakings” as defined in the Monopolistic and Restrictive Trade Practices Act, 1969 (54 of 1969).*

4.4. Subsequently, the Authority in its CP on ‘Issues relating to Media Ownership’ dated 15th February 2013, raised the following issues’ for stakeholder comments:

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.

4.5. The responses received from the stakeholders can broadly be classified into the following categories – (a) TRAI regulations and provisions under the Competition Act can adequately address issues that may arise out of vertical integration; (b) vertical integration should be allowed; (c) vertical integration should be allowed while putting in place rules that ensure that there is fair-play; (d) vertical integration be analysed on a ‘case to case’ basis; and (e) broadcasters should not be allowed to invest in distribution platforms and *vice versa*.

4.6. Some stakeholders opined that the Indian television industry is not susceptible to the negative effects of vertical integration because of the structure of the industry as

well as the existing TRAI regulations which ensure there is no barrier to entry. The stakeholders mentioned that the issues that may arise out of vertical integration, can be adequately addressed by existing TRAI regulations and provisions of the Competition Act.

- 4.7. Some stakeholders have stated that vertical integration should be allowed as it brings in production efficiency, savings in operation and transaction costs and competitive pricing of the product that would ultimately benefit the end consumer. One stakeholder opined that in the current digital delivery scenario, there is no dearth of capacity or channels and multiplicity of content can always be maintained. With up to 1000 channel capacity, no case is made out for vertical integration or horizontal integration with respect to either content generation or distribution platforms. A few stakeholders suggested that 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 are disadvantaged. One of the stakeholders opined that if an entity is allowed to have such an interest, it must be along with strict common carriage regulations and close monitoring by the regulator to ensure that there is no abuse of market power.
- 4.8. A few stakeholders opined that any outright restriction on an entity having ownership or control in a media segment from retaining or acquiring ownership or control over an entity in another media segment would be a highly unusual, disproportionate and dangerous regulatory intervention. Whether such a situation is automatically anti-competitive or poses threats to plurality or other public interests has not been developed by the Authority itself, by economic theory nor by international regulatory best practices. Another suggestion received was that the anti-competitive aspects of vertical integration be analysed on a ‘case to case’ basis, within the ambit of the existing regulatory regime concerning competition in India.
- 4.9. Some stakeholders were of the view that broadcasters should not be allowed to invest in DPOs like DTH, MSO, IPTV, HITS, Mobile TV and Broadband and vice versa. A few stakeholders mentioned that DTH Operators, HITS, MSOs, Mobile TV, IPTV operators also should not be investing in each other’s business. They also advocated restricting Venture capital (VC) and foreign institutional investors (FIIs) from

investing in more than one media/ broadcasting / distribution company. One of the stakeholders opined that the background of the investors, particularly the foreign investors should be checked.

- 4.10. A few stakeholders have opined that a clear distinction is required to be maintained between broadcaster and the distributor. One of the stakeholders opined that there should be a cross-holding restriction between broadcaster and distribution companies so as to avoid any creation of monopolies through vertical integration by the broadcaster. Any broadcaster having more than 20% equity in a company could block the content of a competitive broadcaster in the DTH distribution network by citing the reason of insufficient bandwidth. Similarly with more than 800 channels that are being broadcast, a similar anti-competitive behaviour is possible from the broadcasters who may have a stake in DTH/ MSO/ Cable operators. It was also mentioned that since the distribution mediums/companies are merely distributing the content provided by the broadcasting companies and do not form any individual public viewpoints of their own, the cross-holding restrictions be removed amongst all distribution mediums like MSO/ LCO/ DTH/ HITS.
- 4.11. Another stakeholder has mentioned that vertical Integration is detrimental for the end consumer and the industry itself. The restriction on equity holding (as a measure of control), does not guarantee the absence of malpractices. Another stakeholder opined that the threshold limits of 20% were permitted under the guidelines of Government which included FDI guidelines, DTH license conditions. Since the issuance of Press Note 7, this limit has been raised. Changes would then have to be made to take care of the threshold limits to be in line with the FDI policy.
- 4.12. Analysis of stakeholders comments show that one set of stakeholders are in favour of vertical integration. This set of stakeholders holds the view that vertical integration provides incentives to invest and innovate. Another set of stakeholders is concerned about the non-level playing field, monopolies, foreclosures etc. A third set of stakeholders is in favour of vertical integration with certain rules and regulatory checks to address the concerns that crop up because of vertical integration.

- 4.13. The Authority notes that most of the leading democratic countries have media ownership safeguards in one form or another. The *ex post* nature of anti-competition action offers no safeguards against distortions in the media industry. This is all the more important in India, where developmental challenges make it imperative that appropriate measures be put in place to address the issues arising out of vertical integration so as to provide a level-playing field to all the service providers and ensure growth. In doing so, a proper balance needs to be struck between the conflicting needs of promoting a vibrant and competitive sector; lower costs; and high quality service to consumers; and maintaining a level-playing field for all competing broadcasters and DPOs viz., ensuring that horizontal competition is not compromised.
- 4.14. The issue of vertical integration amongst broadcasters and DPOs as discussed above has been comprehensively considered in the Authority's "Recommendations on Issues related to New DTH Licenses" issued on July 23, 2014.
- 4.15. **Based on an examination of the issues and analysis of the comments received in this exercise, the Authority reiterates its recommendations on vertical integration amongst broadcasters and DPOs as contained in its "Recommendations on Issues related to New DTH Licenses" dated July 23, 2014 and recommends early notification and implementation of the same. For ease of reference these are annexed at the end of these recommendations as Annex-3.**

Chapter 5 – Issues Affecting Internal Plurality

- 5.1 While examining issues relating to cross-media ownership, it became increasingly clear that cross-media ownership regulations on their own are not sufficient to ensure diversity and plurality of news. At best, ownership regulation would address the issue of ensuring external plurality, i.e. a sufficient number of diverse voices in the overall media market. The Authority’s attention was drawn to a number of other factors impinging on the nature and quality of content generated by the media outlets. The influence of these factors on the expression of fair and balanced opinions was observed to be overwhelming. Thus, it is of equal, if not greater, importance to also ensure internal plurality, i.e., the presentation of factual and unbiased news and a variety of opinions by a media outlet, without, at the same time, pandering to merely commercial compulsions that could have deleterious consequences for the public interest. Ensuring internal plurality would have the effect of attenuating partisan or lobbying motivations of media entity owners as well as their biases towards the government; political parties; and towards powerful business entities.
- 5.2 While dealing with the issue of media ownership, there are two vexatious questions that need to be answered – what (media outlets) can be owned and who can own them. While rules restricting ownership across media segments will answer the first question, this chapter seeks to answer the second. Should there be limits on who can own media in the first place? If yes, why? Is it a matter of concern if a political party or a corporate house controls media outlets? How are privacy issues affected by sensation-seeking behaviour flowing from commercialisation?
- 5.3 In this regard, the Authority is mindful of the Supreme Courts’ directions on how airwaves can be used. The Supreme Court has held that *“Airwaves constitute public property and must be utilised for advancing public good. No individual has a right to utilise them at his choice and pleasure and for purposes of his choice including profit. The right of free speech guaranteed by Article 19 (1) (a) does not include the right to use airwaves, which are public property. The airwaves can be used by a citizen for the purpose of broadcasting only when allowed to do so by a statute and in accordance*

with such statute. Airwaves, being public property, it is the duty of the State to see that airwaves are so utilised as to advance the free speech right of the citizens which is served by ensuring plurality and diversity of views, opinions and ideas. This is imperative in every democracy where freedom of speech is assured.”¹⁷

- 5.4 Control of the media by political parties, politicians, their surrogates, media corporates and non-media corporate entities has long been in vogue, that too in various forms. Though the media interests of corporate entities have usually been justified on the grounds of the funds they bring to this capital-intensive sector and the right to invest in a line of business of their choice, a *quid pro quo* deal with the media entity guaranteeing favourable coverage can almost never be ruled out. Instances abound of political ownership of media entities all across the country. While their eagerness to enter the news media business is obvious, its impact on a democracy can be ruinous. Not only do they need the media outlets as a propaganda instrument during elections but after that too, as a lobbying and self-promotion device.
- 5.5 There is some recognition that the malaise of ‘paid news’; ‘private treaty’; ‘private self-censorship’; advertorials etc., has spread largely as a result of unrestricted ownership and the commercialisation of the media. Editorial independence arguably has also been compromised, with the business and marketing divisions of the media entity taking the central role in dictating the editorial stance. Unrestricted ownership has led to the colouring of the news and distorting the true picture of the political and business environment in the country. Within the media there has been intense debate on both the manifestations and the consequences of such ownership.
- 5.6 Institutional recognition of the impact of many of these practices has resulted in interventions that have however largely proved inadequate, and often ineffectual, in ameliorating their ill effects on the individual and the polity. A discourse has nonetheless developed around key issues and the volume of material thus generated forms the basis for this chapter. Though the Authority is conscious that some of the issues discussed above may fall within the jurisdiction of other regulatory agencies, it nonetheless feels compelled to raise these pressing issues that are having a

¹⁷ Secretary, Ministry of Information and Broadcasting vs. Cricket Association, Bengal AIR 1996 SC1236

deleterious effect on the functioning of our democracy. The issues relating to media ownership cannot be completely addressed if these were to be ignored. It is simply not possible for the Authority to remain a mute spectator especially when the issues have been repeatedly raised during the consultation process. They need immediate policy attention.

Genesis of Media Ills

- 5.7 In India, complete freedom of the press has been stressed upon since independence. Jawaharlal Nehru, our first Prime Minister, said¹⁸ *“To my mind, the freedom of the press is not just a slogan from the larger point of view, but it is an essential tribute of the democratic process. I have no doubt that even if the government dislikes the liberties taken by the press and considers them dangerous, it is wrong to interfere with the freedom of the press. By imposing restrictions, you do not change anything; you merely suppress the public manifestation of certain things, thereby causing the idea and thought underlying them to spread further. Therefore, I would rather have a completely free press with all the dangers involved in the wrong use of that freedom, than a suppressed or regulated press.”*
- 5.8 However, the Indian news media has undergone dramatic changes in the post-independence era, particularly when compared to its pre-independence objectives. According to Shivaji Sarkar, National Secretary of Indian Media Centre,¹⁹ *“the press in the Indian subcontinent developed precisely for awakening of the masses in the pre-independence era, pitted against colonialism and imperialist tyranny. However, the evolution of the press took place in the subcontinent on a totally different line after the country’s independence.”*
- 5.9 The transformation has been rapid as the first Press Commission drew attention to it as early as in 1955 when it reported,²⁰ *“Formerly, most of the Indian Press had only one objective and that was political emancipation of the country. Most of the journalists of that era were actuated by fervent patriotism and a feeling that they had*

¹⁸Speech at the Newspaper Editor’s Conference on 3/12/1950,
https://www.sarcajc.com/Nehru_on_Indian_Press.html

¹⁹Shivaji Sarkar, *Cross Media Ownership – A Threat to Vibrant Democracy*, Vivekananda International Foundation, 22nd August 2013

²⁰Press Commission, p. 482

a mission to perform and a message to convey. Political emancipation having been achieved, the emphasis has shifted and the newspapers are no longer run as a mission, but have become commercial ventures." The Commission expressed its concern over the commercial interests that many newspapers had at the time, and the resulting tendency to suppress facts that were not favourable to these interests, thus giving media ethics and social responsibilities a backseat. The Commission was pointing to the inherent conflict of interest involved when the press develops commercial interests beyond the media. The Second Press Commission, in its report in 1982 too declared that a responsible press could also be a free press and *vice versa*: "*Freedom and responsibility are complementary but not contradictory terms*".

5.10 Consequently, other than the limited regulation implemented through the establishment of the Press Council of India in 1977, press freedom has hardly ever been interfered with. The guiding belief is that self-regulation works best. And this practice continues to this day.

5.11 Without doubt, numerous cases of exceptional journalism and reporting have been witnessed over the last six decades, especially during the Emergency. As the Emergency proceeded and the government tightened its hold over dissemination of information, many newspapers succumbed to the government line. Their subservience was perhaps best described by L K Advani, who aptly remarked after the Emergency, "*You were asked to bend, but you began to crawl.*" Some other newspapers struggled to maintain their independence; among these were the *Indian Express* and *The Statesman*. Both refused to toe the government line, resisting threats and blandishments alike. When their own stories were censored, they chose to leave white spaces rather than fill them with propaganda material.²¹ The censors were vigilant but the odd joke or two escaped their eye. An anonymous democrat was able to place an advertisement in *The Times of India* announcing the '*death of D. E. M. O'Cracy, mourned by his wife T. Ruth, his son L. I. Bertie, and his daughters Faith, Hope and Justice*'²².

²¹Ramachandra Guha, *India After Gandhi – The History of the World's Largest Democracy*, Picador, 2008, p. 502

²²*Ibid*, p. 501-2

- 5.12 In 1987, allegations of bribery in purchase by the Indian Army of the Bofors Field Guns were investigated and brought to light by the media. The ensuing Bofors scandal is a landmark in investigative journalism. Print and television media have represented the voices of the distraught and the oppressed and helped them in seeking justice. The Jessica Lal case, for example, saw the media support the public in opposing a blatant miscarriage of justice. The media has played a crucial role in not only informing the public about the affairs of the government but also in giving voice to those who have no one else to speak for them. In the recent Nirbhaya case the media helped ensure prompt action in arrest of the culprits, appropriate medical treatment to the victim and the rapid dispensation of justice.
- 5.13 Despite instances of responsible journalism and the assurance of the Press Commissions that self-regulation works best for the media, unrestricted ownership and the overweening commercialisation of the media has, in most cases, compromised the media's primary objective and responsibility of fair and unbiased news dissemination, thereby severely affecting its credibility. The various forms of ownership that have affected media standards in such a manner are discussed below.

Should Government own media entities?

- 5.14 Regarding ownership, the Authority, in response to earlier references from the MIB, has recommended that (i) Political bodies; (ii) Religious bodies; (iii) Urban and local bodies, Panchayati Raj and other publicly funded bodies; (iv) Central and State government ministries, departments, companies, undertakings, joint ventures and government-funded entities; and their affiliates should not be allowed to enter into broadcasting and TV channel distribution activities. In case permission to any such organisations have already been granted an appropriate exit route is to be provided.²³
- 5.15 If government organisations are permitted extensive and unrestricted presence in the media, their influence in moulding public perception can be potentially deleterious to democracy. Joseph Goebbels, the German Minister of Propaganda in

²³ TRAI's "Recommendations on Issues relating to entry of certain entities into Broadcasting and Distribution activities", issued on 12 November 2008 and 28 December 2012.

Adolf Hitler's government, propounded that if one told a lie big enough and kept repeating it, people will eventually come to believe it.²⁴ As is well-known, this is precisely the method followed by the Nazi government to militarize and mobilize the German people. That is why all media, including the public broadcaster, needs to be independent of the government. As much has also been asserted by the Supreme Court of India *"The broadcasting media should be under the control of the public as distinct from Government. This is the command implicit in Article 19 (1) (a). It should be operated by a public statutory corporation or corporations, as the case may be, whose constitution and composition must be such as to ensure its/ their impartiality in political, economic and social matters and on all other public issues. It/they must be required by law to present news, views and opinions in a balanced way ensuring plurality and diversity of opinions and views. It/they must provide equal access to all the citizens and groups to avail of the medium"*.²⁵

- 5.16 The Authority emphasises that the presence of a strong, independent public broadcaster is essential for a democracy, to set the benchmark for quality of content, media practices and ethics. The role of the public broadcaster is misunderstood by many – it does not exist to throttle and get rid of competitors but, in fact, to nurture healthy competition in the media market in order to maintain high standards. Though funded by the government, the public broadcaster has to be insulated from government interference on news and editorial policy. A similar scenario is essential for news on radio. In this context, the Authority recalls its 28 December 2012 recommendations²⁶, wherein it had *inter alia* recommended that the arm's length relationship between Prasar Bharati²⁷ and the Government be further strengthened and that such measures should ensure functional independence and autonomy of Prasar Bharati.

²⁴"The Goebbels Diaries", collected by Ludwig "Louis" Paul Lochner, 1948

²⁵ Op. cit., Secretary, Ministry of Information and Broadcasting vs. Cricket Association, Bengal AIR 1996 SC1236

²⁶ TRAI's "Recommendations on Issues relating to entry of certain entities into Broadcasting and Distribution activities", issued on 28 December 2012.

²⁷ Prasar Bharati is a statutory autonomous body established under the Prasar Bharati Act. It is the Public Service Broadcaster of the country covering both Radio and TV broadcast.

Political Ownership

- 5.17 The influence of political parties/ politicians in the media sector is huge and growing. This has been captured in various articles/ programs in the Indian media. Much of the following narration has been sourced from an article entitled *The Broken Estate*, by Suhrith Parthasarathy²⁸ and from the documentary *Brokering News: Media, Money and Middlemen* produced by the Public Service Broadcasting Trust in partnership with Doordarshan, Prasar Bharati Corporation²⁹.
- 5.18 According to the article, political parties/ politicians control newspapers, television channels and distribution systems either - (i) directly in their own name, as for example the Communist Party of India (Marxist)'s newspapers *Deshabhimani* in Malayalam and *Theekkathir* in Tamil; (ii) through relatives, for example the Sun Group owned by the grand-nephews of DMK leader M Karunanidhi; (iii) through front companies like Mavis Satcom Limited that owns Jaya television channels in Tamil Nadu. Irrespective of explicit or masked political ownership, such channels and newspapers have been observed to promote the political leaders, propagate the agenda of these political parties, and exercise considerable control over the flow of information to their constituencies.
- 5.19 The documentary titled *Brokering News: Media, Money and Middlemen*³⁰, provides numerous instances of political ownership and influence over the media in the country. The most apparent are the ones in Tamil Nadu as many of them are directly named after the politician - Kalaingar TV owned by M Karunanidhi's wife, Dayalu Ammal; Jaya TV is controlled by the AIADMK party; Captain TV owned by actor-turned politician Vijayakanth; and Makkal TV is controlled by the Pattali Makkal Katchi (PMK). As reported in the *Caravan* magazine by Suhrith Parthasarathy, in Tamil Nadu, each of the State's five major political parties own at least one television channel, and all of these run at least one hour-long news program. In addition, the AIADMK led government now supplies cable television to nearly half the State's homes. In other States the situation is similar. In Andhra Pradesh, there has been a

²⁸ The Caravan Magazine, 1 December 2013

²⁹ available at <http://tinyurl.com/oshsl8u>

³⁰ Ibid

flurry of recent acquisitions of media companies by political parties. Each of the State's 15 news channels is now politically affiliated in one way or another. In 2009, the Sakshi Group, under the chairpersonship of Y. S. Bharati, the wife of Jaganmohan Reddy, commenced telecast of Sakshi TV. Not to be left behind, in December 2012, friends of the then Chief Minister, Kiran Kumar Reddy, picked up a 51 percent stake in I-News, according to a Firstpost report. Since then, the channel became distinctly pro-Congress in its coverage, the report explains. The documentary³¹ provides further examples - while Chandrababu Naidu's son controls Studio N, Eenadu TV is loyal to his party, the Telugu Desam. The Telangana Rashtra Samiti controls T News.

5.20 The aforementioned article in the *Caravan* magazine elucidates the extent of political ownership of the media with lesser known examples from other States. In Punjab, the Chief Minister's family owns three news channels—PTC News, PTC Punjabi and PTC Chak De—in which the State Government has often advertised its own achievements, triggering a notice from the Election Commission in January 2012. The same family also partially controls Fastway, the leading cable company in the State. In Karnataka, a former Chief Minister has invested in the Kasturi channel through a private company managed by his wife. In Orissa, the dominance of a single politically owned news media-house across the State is more than apparent. As the documentary *Brokering News: Media, Money and Middlemen* elaborates, the Reddy brothers of Bellary own Janashri TV. In Kerala, CPI(M) backed Malayalam Communications owns Kairali, People and We channels, apart from its publications mentioned earlier; Congress controls Jai Hind TV; and the Muslim League owns India Vision TV. Many media outlets in the North-East, like News Live in Assam, are controlled by political entities.

5.21 It is observed that not only do prominent political entities have interests in the media, but many politicians, MPs and MLAs, also control media outlets in their respective regions. That political entities have media interests is not always unwholesome; indeed, it could be argued that by explicitly presenting their case to their constituency, political entities serve the public interest. Often, however, due to such ownership, the media becomes a propaganda tool to serve narrow political and

³¹ Ibid

commercial interests of the owners, adversely impacting the flow of accurate and unbiased information to the public. Such ownership far from helping the media in discharging its functions as the fourth estate in a democracy, can, and in some instances has, led to a fall in journalistic standards and media ethics. Undoubtedly, political ownership of the media has mixed effects – greater political awareness on the one hand and providing another platform for electoral malpractices on the other. See **Box 2** for the excerpts of a report of such misuse.

Box 2 - Excerpts from “The Broken Estate”, by Suhrith Parthasarathy

In September 2007, ... the Dravida Munnetra Kazhagam leader M Karunanidhi launched a new television channel, which became the DMK's new informational wing. Karunanidhi and his grand-nephews (the Marans, owners of the Sun Group) ... use Sun and Kalaaignar to advance their political interests.

In the run-up to the 2009 general elections, for instance, the two channels virtually blanked out reports of the ongoing genocide of Tamils in Sri Lanka. The DMK had been decrying Tamil victimhood in order to rally the electorate, but the coverage would have roused anger over the inaction of the country's governing UPA coalition, of which the DMK was a part, and over the party's inability to stem the violence. At the same time, the Marans, who also ran the dominant cable distribution system in the state, Sumangali Cable Vision, were blocking the telecast of Makkal TV. Makkal—owned by S Ramadoss, the leader of a rival party that had broken off an alliance with the DMK because of differences over the civil war in Sri Lanka—had been spearheading coverage of the island's bloodbath.

At the polls, DMK and its UPA allies bagged 27 of the state's 39 seats. Although it's impossible to determine the precise effect that the DMK's censorship efforts had on the outcome, the party was clearly able to exert considerable control over the flow of information to voters.

The Caravan Magazine, 1 December 2013

Corporate Ownership

5.22 There are two facets to the problem of corporate ownership of the media. First, many non-media corporate entities with varied commercial interests are increasingly interested in controlling media outlets. Second, many media corporates diversify into other, non-media, businesses by leveraging their clout and visibility. The reasons for their respective diversifications differ, but, in both cases, the media entity has multiple business interests, and the inherent conflict of interest raises questions about the extent to which this affects the balance in the presentation of news and opinions. Clearly, this requires close scrutiny.

Non-media corporates in the media

5.23 Non-media corporates provide several reasons to explain their investments in the media sector. For some, it may be a forward or a backward linkage to their existing businesses while for others it is just another business, an opportunity to reap profits. But in most cases, as journalists and media experts point out, the intent of owning the news media goes far beyond returns on investment, given that the media itself complains about the financial difficulties they face. Arguably, it is the easiest and quickest path to reach a position of power. As Pradyuman Maheshwari, editor-in-chief, *MxM India* puts it, *“Many years back when I asked a leading industrialist why he was keen on starting a news channel he replied with the famed Deewar dialogue: Aaj mere paas buildingey hai, gaadi hai, bank balance hai, but even then these guys owning newspapers and channels are ruling the world.”*³² Shekhar Gupta, former Editor-in-Chief of *The Indian Express*, also points to a similar trend, *“If you have a couple of news channels and newspapers, a few well known (and well connected) journalists as your employees, give them a fat pay cheque, a Merc, and they solve your problem of access and power. They also get you respect, as you get to speak to, and rub shoulders with top politicians, even intellectuals, at awards and events organised by your media group. It is the cheapest ticket to clout, protection and a competitive edge.”*³³ There are some others who invest, rather bail out, those media companies that are not doing well financially, and thereby enter into a *quid pro quo* deal that gives their companies favourable media coverage. On the whole, it would be entirely naïve to believe that such ownership does not influence the content produced by the media outlet.

5.24 In an Economic and Political Weekly article it is explained that in India, as in the world over, large media corporations are clearly playing a bigger role in the political economy that they report on³⁴. Corporates also find the need to invest in the media to counter the attacks made against them with a view to advancing their commercial

³² <http://www.mxmindia.com/2012/07/is-news-media-ownership-a-cause-for-worry/>

³³ Shekhar Gupta, *National Interest: Mere paas media hai*, *The Indian Express*, 27th April 2013, <http://tinyurl.com/o7twxbl>

³⁴ *Corporatization of the Media – Implications of the RIL-Network18-Eenadu Deal*, Paranjoy Guha Thakurta and Subi Chaturvedi, *Economic and Political Weekly*, Vol XLVII No 7, February 18, 2012

interests. As reported in the *Frontline* magazine³⁵, in the 1980s and early 1990s, Reliance Industries Limited (RIL) ventured directly into the media business by buying the daily *Business and Political Observer*. There is some speculation in the public domain that RIL did so to counter another leading newspaper that had carried many stories attacking their group's policies.

- 5.25 Thus, as in the case with political ownership of media, corporate ownership is often driven by vested interests. Media is used for corporate propaganda in order to alter the business environment to one's advantage. This is not only detrimental to investors but also the economy as a whole. Alex Carey, an Australian writer and social psychologist who pioneered the study of corporate propaganda said, "*The 20th century has been characterized by three developments of great political importance - the growth of democracy; the growth of corporate power; and the growth of corporate propaganda as a means of protecting corporate power against democracy.*"³⁶ In India, the problem of corporate ownership is further aggravated by the lack of publicly available ownership records of media entities.
- 5.26 There are many ways by which non-media corporates control a media entity. Some corporates directly own equity in media groups. The KK Birla group, for example, own HT Media Ltd that publishes *The Hindustan Times*. In other cases, corporate control over media is inconspicuous and is exercised indirectly through indirect equity ownership via a chain of companies or Trusts. A few such instances that are available in the public domain are those of RIL's control over News X³⁷; the Aditya Birla group's control over the TV Today network (see **Box 3**); and ADAG's investments in UTV Bloomberg via Reliance Capital³⁸. Corporate entities also use loans to exercise control over media entities, a practice that became evident from RIL's financial arrangement with Network18 in January 2012 (discussed earlier in **Box 1**). Non-media corporate can also influence editorial and business decisions of media entities by being members on the Board of Directors. **Box 3** containing

³⁵Ajoy Ashirwad Mahaprashastha, *Behind the Scenes*, Frontline, March 21, 2014, p. 26

³⁶*Taking the Risk out of Democracy*, University of Illinois Press, 1997, Ch. 2, p 18

³⁷Paranjay Guha Thakurta, *A 'sham' transaction?*, The Hoot, November 13, 2013, <http://tinyurl.com/q98wqda>

³⁸The PSBT in partnership with Doordarshan, Prasar Bharti Corporation, *Brokering News: Media, Money and Middlemen*, <http://tinyurl.com/oshsl8u>

excerpts from an article entitled “Media Ownership Trends in India” provides some examples of this phenomenon.

Box 3 - Excerpts from “Media Ownership Trends in India”, by Paranjoy Guha Thakurta

On May 19, 2012, the Aditya Birla group announced that it had acquired a 27.5 per cent stake in Living Media India Limited, a company headed by Aroon Purie. Living Media acts as a holding company and also owns 57.46 per cent in TV Today Network, the listed company that controls the group’s television channels (Aaj Tak and Headlines Today) and a host of publications (including India Today). On December 21, 2012, Oswal Green Tech, Formerly Oswal Chemicals & Fertilizers, acquired a 14.17 per cent shareholding in New Delhi Television in two separate block deals from the investment arms of Merrill Lynch and Nomura Capital. ...

According to research conducted by Dilip Mandal and R. Anuradha, that has been published in Media Ethics (Oxford University Press, 2011), the boards of directors of a number of media companies now include (or have included in the past) representatives of big corporate entities that are advertisers. The board of Jagran Publications has had the managing director (MD) of Pantaloon Retail, Kishore Biyani, McDonald India’s MD Vikram Bakshi, and leather-maker Mirza International’s MD Rashid Mirza; besides the CEO of media consulting firm Lodestar Universal India, Shashidhar Sinha, and the chairman of the real estate firm JLL Meghraj, AnujPuri. The board of directors of HT Media, publishers of Hindustan Times and Hindustan, has included the former chairman of Ernst & Young K. N. Memani and the chairman of ITC Ltd Y C Deveshwar. Joint MD of Bharti Enterprise Rajan Bharti Mittal and MD of Anika International Anil Vig are a part of the TV Today’s Board of Directors. The board of directors of DB Corp (that publishes Dainik Bhaskar) includes the head of Piramal Enterprises Group, Ajay Piramal, the MD of Warburg Pincus, Nitin Malhan, and the executive chairman of advertising firm Ogilvy & Mather, Piyush Pandey. NDTV’s Board of Directors has Pramod Bhasin, President & CEO of the country’s biggest BPO company GenPact as a member of its board of directors.

The Hoot, 3 July 2012

- 5.27 The case of RIL, Network18 and Eenadu groups is interesting due to the complexity of the investment transaction. See **Box 4** for details of the arrangement. Initially, RIL denied management control over the media entity. However, in this case, the Competition Commission of India (CCI) concluded³⁹ that the “... *acquisition of the right to convert the ZOCDs into equity shares, at any time before the expiry of ten years from the date of subscription, confers on IMT (Independent Media Trust) the ability to exercise decisive influence over the management and affairs of each of the target companies. Since control over the target companies is being acquired by IMT, the subscription to ZOCDs in-turn would also result in indirect acquisition of control over Network18 and TV18 as these companies would be under the control of the target companies.”*”

³⁹CCI Order dated 28th May, 2012; Combination Registration No. C-2012/03/47.

Box 4 - Excerpts from “Corporatization of the Media”, by P Guha Thakurta & Subi Chaturvedi

On 3 January, the Mukesh Ambani-led Reliance Industries (RIL) – India’s biggest privately-owned corporate entity – announced that it was entering into a complex, multilayered financial arrangement that involved selling its interests in the Hyderabad, Andhra Pradesh-based Eenadu group founded by Ramoji Rao to the Network18 group headed by Raghav Bahl and also funding the latter through a rights issue of shares.

RIL said that its group companies, by investing Rs 2,600 crore, will hold the following stakes in various ETV channels: 100% in regional news channels operating in Uttar Pradesh, Madhya Pradesh and Bihar, in ETV Urdu, in entertainment channels in the Marathi, Kannada, Bengali, Gujarati and Oriya languages and 49% in two Telugu channels, ETV Telugu and ETV Telugu News. TV18 Broadcast said it is acquiring 100% stake in ETV’s regional news channels, 50% in non-Telugu entertainment channels and 24.5% interest in two Telugu channels.

The Network18/TV18 group would get control over the board of directors and the management of all the ETV news channels as well as ETV’s non-Telugu entertainment channels. As if to assuage apprehensions that RIL’s association would exert an influence on editorial policies, statements issued by both groups stated that funding from RIL would not alter promoter, management or editorial control of Network18 entities.

Economic and Political Weekly, February 18, 2012

- 5.28 Thinning of the line between the boardroom and the newsroom significantly impacts the output of the media entity. Examples of such corporate influences are aplenty. When the CBI named Kumar Mangalam Birla in its Coalgate investigations, the only major broadsheet that did not carry the news on its front page was the Hindustan Times⁴⁰. So was the case when Subrata Roy was arrested recently – the Sahara Group did not carry the news on its TV channels. With the takeover of the Network18 media Group by RIL in May 2014, many journalists quit the Network 18 media group, including the editor-in-chief of one of the network’s English news channels CNN-IBN, who in a note to his staff is reported to have written “*Editorial independence and integrity have been articles of faith in 26 years in journalism and maybe I am too old now to change!*”⁴¹

⁴⁰Samanth Subramanian, *P for Pappu*, The Caravan Magazine, 1 December 2013

⁴¹ <http://www.dnaindia.com/india/report-rajdeep-sardesai-s-parting-words-to-staff-editorial-independence-and-integrity-have-been-articles-of-faith-i-m-too-old-to-change-1999618>

Media Corporates

5.29 Many media houses are now primarily run with a business motive, which more often than not, supersedes the objective of providing accurate and unbiased news and information to the public. As much has been accepted in an interview to Ken Auletta, by Vineet Jain, Managing Director of BCCL who has said, *“We are not in the newspaper business, we are in the advertising business. If ninety per cent of your revenue comes from advertising, you’re in the advertising business.”* Bhaskar Das, who was then serving as President and Principal Secretary to Vineet Jain said in the same interview, *“We are a derived business. When the advertiser becomes successful, we are successful. The advertiser wants us to facilitate consumption.”*⁴² This is non-adherence to even the fundamental objective of the news media - the mission of the news media is not to promote the advertiser’s interest by facilitating “consumption” but to promote the citizens’ interest by facilitating unbiased dissemination of information. Even if a more benign view is taken of the tendency of media owners to assume increasing control over the newsroom, questions regarding where the line should be drawn to separate ownership and editorial independence persist. This is reflected in the recent ‘exodus’ of senior editors from *The Hindu* after the owners decided to directly run the newspaper. One of the editors describes the circumstances of his departure: *“It began to feel a little bit like working for Pol Pot, and I didn’t want to hang around until I was executed or sent off for re-education.”*⁴³ **Box 5** illustrates how the objectivity of news is compromised upon when the profit motive assumes priority.

5.30 Many media entities use the profits earned from the media business to diversify into other businesses. Thus, as they have wider commercial interests, there is a clear incentive to bias reporting in support of these commercial interests. This phenomenon is not new to the Indian media. As Paranjoy Guha Thakurta explains, the country’s first Prime Minister Jawaharlal Nehru and his Defence Minister V.K. Krishna Menon would castigate the ‘jute press’ in a clear reference to BCCL which was then controlled by the Sahu-Jain group which also controlled New Central Jute

⁴² Ken Auletta, *Citizens Jain*, The New Yorker, October 8, 2012

⁴³ See <http://www.firstpost.com/living/p-sainath-praveen-swami-quit-the-hindu-citing-unpleasant-working-conditions-1620013.html>.

Mills. Then came references to the 'steel press'. The Tata Group, which had a substantial presence in the steel industry, and used to be a part-owner of the company that published the once-influential *The Statesman*. Ramnath Goenka, who used to head the Indian Express Group, made an aborted attempt in the 1960s to control the Indian Iron and Steel Company (IISCO). What was being clearly suggested by leading politicians was that particular family-owned groups could and would use their news companies to lobby for their other business interests. Today, the situation described by Jawaharlal Nehru has intensified manifold. In India at present, promoters of media companies have subsidiary business interests in sectors as varied as aviation, hotels, cement, shipping, steel, education, automobiles, textiles, cricket, information technology, and real estate. For example, the *Dainik Bhaskar* Group owns seven newspapers, two magazines, 17 radio stations, and has a significant presence in the printing, textiles, oils, solvent extraction, hotels, real estate, and power-generation industries⁴⁴. The *Sun* group has diversified into sectors ranging from film distribution to airlines.

Box 5 - Excerpts from "Citizens Jain" by Ken Auletta

The paper's (Times of India) innovation began in its eight-page second edition, which is titled the Bombay Times. (Vineet) Jain explained that it was written by members of the reporting staff and paid for by the celebrities or their publicists. Most of the section was filled with ads or stories that were ads. Tucked under the section's masthead four words in small type inform the reader that the contents are an "advertorial, entertainment promotional feature." Jain says, "It says 'advertorial' clearly. All newspapers in the world do advertorials." But in the Jains' newspapers the advertorials are written by staff reporters, and a reader needs a magnifying glass to be alerted...

Palagummi Sainath, of the Hindu, offered an example of how the Times sometimes bends news to favor its advertisers. A full-page article, titled "REAPING GOLD THROUGH BT COTTON," published on August 28, 2011, declared that Monsanto's genetically modified BT-cotton seeds have "led to a social and economic transformation of the villages." It appeared to be a news story, complete with a byline, but close inspection of the small print revealed that it was a "marketing feature," paid for by Monsanto. Reporting for the Hindu, Sainath noted that the advertisement had run "word for word" three years earlier as a news story in the Nagpur edition of the Times. And, he said, both the story and the ad were misleading: in fact, the Bt seeds did not grow cotton as promised; the land lay fallow, and farmers went bankrupt. Since 2003, more than thirty-three thousand farmers had committed suicide in the state of Maharashtra, including nine in the "model farming village" depicted in the story and the ad.

The New Yorker, October 8, 2012

⁴⁴Paranjoy Guha Thakurta, *Media Ownership Trends in India*, The Hoot, 3 July 2012

5.31 In the early 2000s, a national media company unveiled a new way of doing business. It entered into “private treaties” with its advertising clients, where it offered advertising space in exchange for equity and thus became part-owner of that corporate entity. In effect, the treaty entailed a *quid pro quo*, namely, that the media entity not only provided favourable editorial coverage to the corporate clients but also blacked out adverse comments against them. Such arrangements also disallow their corporate clients from advertising in rival media outlets, thereby blocking out revenue to competitors and ensuring dominance in the market. The Parliamentary Standing Committee on Information Technology noted in its 47th Report⁴⁵ that *“Private Treaties’ between the media companies and corporate entities is one of the most dangerous manifestation/precursor of ‘Paid News’. ‘Private Treaties’ is referred to as an agreement between the media company and another non-media company in which the latter transfers certain shares of the company to the former in lieu of Advertisements, space and favourable coverage. The Committee note that the phenomenon blatantly violates the journalistic ethics and gives rise to the menace/malpractice of ‘Paid News’/‘Advertorials’. Today, this phenomenon which was initially devised for marketing, has reached the level of giving favourable coverage/editorial and adverse comments against the opponents”*. The Authority notes that “private treaties” could be in various forms, such as advertising in exchange for equity of the advertising company or in exchange for favourable coverage. They could also take the form of giving favourable coverage to companies in exchange for exclusive advertising rights. Other innovative forms of private treaties could also exist.

5.32 “Private treaties” seemed lucrative to others in the media business as well and they soon followed suit. Due to such extensive investments by the media in the non-media market, P Sainath has opined⁴⁶ that these are no longer media firms if they have invested in over 350 companies in the market, but are indeed equity firms. *“The media is too heavily invested in the market to ever tell you the truth about it. ... The media are no longer a bunch of pro-corporate newspapers. They are the*

⁴⁵ Op. cit.

⁴⁶ P Sainath, *“Pay-to-print”: How Media Corruption Undermines Indian Democracy*, The Inaugural Maharaj Kaul Memorial Lecture, Centre for South Asia Studies, University of California, Berkeley, April 11, 2011

corporates. They are the big business. ... The media-houses have a structural compulsion to lie", he says. The implication is self-evident: it would be irrational on the part of the media corporate to write or speak ill of companies they owned. This heavily compromises the most basic ethical principle that the media has to publish accurate, objective and unbiased news.

5.33 In the wake of "private treaties" gaining prominence in the media market, the Securities and Exchange Board of India communicated⁴⁷ to the Press Council of India (PCI) that a *"free and unbiased press is crucial for the development of the securities market, particularly with respect to aiding small investors to take a well informed decision"* and urged the PCI to address this issue at the earliest. The Parliamentary Standing Committee too noted⁴⁸ the contents of the PCI Report that as early as July 1999, SEBI *"expressed its concern that many media groups are entering into agreements, called "Private Treaties" with companies which are listed or coming out with a public offer for stake in the company and in return providing media coverage through advertisements, news reports, editorials etc."*, and that *"such private treaties help to promote and build "brand" of the company through print or electronic media, which the media group owns in exchange of shares of such company"*. During the 2008 recession, these media entities refused to admit that the recession had indeed hit the country and instead called it a "temporary slowdown" in order to prevent the stock prices of the companies they owned and companies that owned them from falling; else they were likely to lose big money. Also, as the media entities still had to pay tax on advertisement space, they were actually paying tax on money that they were losing in the form of falling share prices. This, media experts argue, propelled numerous media entities to resort to "paid news" as a method of extorting from political entities in the 2009 Lok Sabha and Assembly elections, to help them recover their losses⁴⁹.

5.34 In recent years, several cases have come to notice in which huge payments in cash or kind have been made by political and corporate entities to media entities to

⁴⁷*Paid News: How Corruption in the Indian Media Undermines Democracy*, Press Council Sub-Committee Report, 2010, pp14

⁴⁸ Op. cit., 47th Report, p. 22.

⁴⁹ P Sainath, *"Pay-to-print": How Media Corruption Undermines Indian Democracy*, The Inaugural Maharaj Kaul Memorial Lecture, Centre for South Asia Studies, University of California, Berkeley, April 11, 2011

publish or broadcast favourable content as “news” instead of advertisements. News is meant to provide information that is accurate, truthful and neutral, unlike advertisements that are paid for. When the distinction between news and advertisement gets blurred, advertisements begin to masquerade as news. When such paid news is published or broadcast, the reader or the viewer is misled into believing that an advertisement or a sponsored feature is a news story that is truthful, fair and objective. The phenomenon of “paid news” is not new to the Indian media; what is new is that in place of isolated instances of corruption by individual journalists, the practice has now escalated to an institutional level where large segments of the media entity are involved. The media’s muscle coupled with the lack of conclusive evidence to prove such violations have acted as barriers in the way of punishing the guilty and checking this malpractice.

- 5.35 The Press Council of India’s Sub-Committee ‘Report on Paid News’ brings together numerous such cases, which throw light on the nature and extent of the problem. One such example involving the ex-Chief Minister of Maharashtra is given in **Box 6**.

Box 6 - Paid News Instance quoted by PCI

“A news item headlined, ‘Young, dynamic leadership’, eulogising the Maharashtra Chief Minister Shri Ashok Chavan appeared using exactly similar words from beginning to end in three competing Marathi newspapers – Lokmat, Pudhari and Maharashtra Times. If a question were posed to these three newspapers as to how the exactly same articles appeared in their pages, their reply would be customised. They would say that accidentally one of the press releases of the Congress party went directly to the press without passing through the copy desk and therefore the same news appeared in a similar manner in all three newspapers. But, had it been a press release, it should have been circulated to all newspapers and not just three. The question, therefore, arises as to how the press release found its way only to three newspapers. The news was published by Pudhari on October 7, 2009, whereas, the other two newspapers had carried it on October 10. Is there a practice among these newspapers to carry three-day-old press releases?”

The Press Council Report has detailed several similar cases based on its investigations. But, in only one such instance was the accused politician actually proved guilty and disqualified – Umlsh Yadav, an MLA from Bisauli in Uttar Pradesh. For the first time in the electoral history of India, an elected representative lost her seat for purchasing publicity in the guise of news. However this punishment

was not for the unethical practice but for suppression of election expenditure⁵⁰. The media entity was let off scot-free.

- 5.36 The problem lies in gathering substantive evidence as circumstantial evidence is what is largely available while investigating such cases. Also, though the politicians own up to their malpractice in some cases, the media never does so and incessantly claims its innocence. Investigations by journalists reveal that in many cases, it was the media that had resorted to blackmail of politicians by threatening to block them out of their election coverage or worse still, provide negative coverage, if they failed to enter into a financial arrangement with them. P K Rama Rao of the Loksatta Party from Andhra Pradesh faced such a threat (see **Box 7**). And in only one instance⁵¹, did the media entity acknowledge that it had made an error. On 30th April 2009, the day of the elections, the Varanasi edition of the *Hindustan* newspaper carried an article that looked deceptively like a news item on top of its front page. The headline suggested a “wave in favour of the Congress”⁵². The following day, the newspaper apologized to its readers. The representatives of *Hindustan* told the PCI that when they realized their mistake they were “quick” to point this out to their readers the following day; by then of course, polling was over.

Box – 7 Excerpts from PCI’s Sub-Committee Report on Paid News, p. 45

Shri Parcha Kodanda Rama Rao of the Loksatta Party, in a letter to the Chairman of the Press Council of India dated February 10, 2010 and his subsequent deposition before Press Council of India members on February 10, 2010, stated: –I made (a) representation to the Returning Officer of my constituency to include the expenditure on paid news in respective candidates expenditure account, all in vain. ... Further as the Telugu newspapers were completely ignoring my campaign and my expenditure, in their coverage, I called up the *Eenadu* advertorial executive on April 10, 2009 to cover my campaign. For the remaining days he demanded Rs 1 lakh but I agreed to pay Rs 50,000 and paid it there and then in cash. He neither gave me any receipt nor acknowledgement for the said amount. The result of my payment was evident in the news coverage given to me on April 13, 14 and 15, 2009 as compared to inconsequential coverage given to me from March 28, 2009 to April 12, 2009.

- 5.37 On the one hand, paid news is very attractive to political parties as poll propaganda in the form of news has a greater impact, it is unaccounted for in the election

⁵⁰Madabhushi Sridhar, *Indirect Victory Against Paid News*, The Hoot, May 13, 2013

⁵¹Paranjay Guha Thakurta, *Manufacturing News*, Economic and Political Weekly, Vol XLVI No 14, April 2, 2011

⁵²The actual headline in Hindi read “*Congress Bihar mein itithas rachne ko tayyaar*”, which translates to “Congress is ready to create history in Bihar”.

expenditure so there is no limit to spending on paid news advertorials and more importantly the relationship built with the media outlets prove to be useful even after coming to power. On the other hand, media entities find the paid news phenomenon attractive as they can evade taxes on these transactions as some of these may not be accounted for, and it benefits them to forge links with those who rise to power.

- 5.38 The nexus between corporates, politicians and the media is much more complex than one can imagine. Niira Radia, whose telephone conversations were tapped and recorded by the Income Tax Department in 2008-09, was a powerful lobbyist for DMK, the Tata Group and Reliance Industries. Her conversations with well-known journalists, like Barkha Dutt and Vir Sanghvi, revealed media-persons to be power-players, acting as middlemen between the lobbyist and the political party in the allotment of Cabinet portfolios, right after the 2009 Lok Sabha elections. Journalists were also found discussing with the lobbyist the viewpoint to be expressed in their articles, to see if it matched with what the corporate owners wanted.
- 5.39 The increasingly blurred line between politics, business and news is not only controlling people's minds and opinions in the above manner, but in the process, has eroded editorial independence. In many instances, owners are perceived to be dictating the editorial stances to suit their vested political and/or commercial interests. Free expression of facts and opinions by the editor and journalistic staff has become a casualty. Bylines of senior journalists were often used by the media to give 'credibility' to their paid news advertorials, which were mostly written by the PR Depts. of the respective political or corporate group. Reporters and correspondents being offered cash and other incentives for favourable reports on a company or an individual were, until recently, considered more of an aberration. But now, the frequency of such incidents has increased where reporters interviewing celebrities also double up as marketing agents. It is not unknown that the job of a political editor of a magazine can be terminated on the wishes of the industrialist owner in case the dictated line of the owner's commercial interest is crossed. See **Box 8**.

**Box-8 Excerpts from “Bal, Open and the Perils of Political Journalism”,
by P. Guha Thakurta**

Hartosh Singh Bal, political editor of Open, was served a notice of termination of employment on Wednesday November 13, 2013. The weekly is published by Open Media Network Pvt Ltd, a company in the RP-Sanjiv Goenka group headed by industrialist Sanjiv Goenka. ...

Bal said Joseph told him that Goenka wanted him out because his writings and the airing of his views on television had earned the industrialist a number of "enemies" in political circles. ... When asked to enumerate the reasons why Bal was served a notice of termination of employment, Goenka said that "as a matter of policy, I don't want to comment on any individual employee".

However, a source close to Goenka told this writer on condition of anonymity that the "mandate" of Open magazine is "more to report than provide opinion", that this mandate was specified to each employee recruited, that Bal had been "providing more opinion than reporting news" and that he was "excessively judgmental". In this context, without referring specifically to Bal, the source added that if someone is told what to do "once, twice, thrice....ten times but chooses not to respond, action will be taken". ...

Bal: "... the issue is not just the financial loss that they are inflicting on me. They are stopping me from writing as a political journalist when it matters the most. This is again an impingement on the kind of work I do."

The Hoot, November 15, 2013

5.40 Mrinal Pande, a senior journalist and Chairperson of Prasar Bharati, observes *“Editors in respectable houses have now become fixers. They actually travel location to location, meet up with local government officials and solicit DAVP advertising and make sure that it is in substantial amounts. Three quarters of their work when they are not working as editors goes in chasing these.”*⁵³ This issue has also been pointed out by the Delhi Union of Journalists in their comments⁵⁴. They explain that there is a great deal of unknown, unvoiced censorship within the media that stems from patterns of ownership and employment. Too many journalists have suffered the stifling of their voices and the censoring of their beliefs simply because these conflict with the unwritten policies of their employers. Many resort to self-censorship of their writings and opinions solely to retain their jobs in an insecure work environment. Some dominant newspaper groups have grown by leaps and bounds, making super profits while simultaneously retrenching their workforce and forcing employees, including journalists, to sign short-term contracts in place of the

⁵³The PSBT in partnership with Doordarshan, Prasar Bharti Corporation, *Brokering News: Media, Money and Middlemen*, <http://tinyurl.com/oshsl8u>

⁵⁴<http://tinyurl.com/k9ykfp2>

previous form of permanent employment. They have circumvented laws such as the Working Journalists' Act in the process. The contract journalist is an insecure journalist who is afraid to take an independent stand or voice an unpopular opinion, they argue.

- 5.41 In an Economic and Political Weekly article⁵⁵ it is noted that so long as journalists (in particular, those who work in non-urban areas) are paid low wages or are expected to earn their livelihood by doubling up as advertising agents working on commissions, such malpractices will continue. Till the 1980s, many editors refused to brook any “interference” from the managements of the newspapers they worked for. The number of such editors started dwindling as more and more senior journalists started to acquiesce to every whim of their managers and employers instead of their editors. With managers playing a more influential role in the selection and presentation of news, the importance of news has started being determined by the revenues that are generated for the media company. The bottom-line is increasingly determining the byline.
- 5.42 The commercialisation and resultant loss of editorial independence has spawned various instances of private censorship whereby the owners of media outlets, publishers or advertisers exert pressure to simply ignore adverse news and information so that it does not enter the public domain. News is often subjected to censorship through fiat by the corporate/ family owners. Sevanti Ninan recognises this when she asks of this “*new beast*” of private censorship: “*But where do these whimsical diktats leave professional journalists?*”⁵⁶ Chinmayi Arun appropriately sums up the problem “*It is ... vital to acknowledge the harm caused by private censorship. A democracy is endangered when a few parties disproportionately control access to the public sphere. We need to think of how to ensure that the voices of journalists and scholars reach their audience. Media freedom should be seen in the context of the right of the audience, the Indian public, to receive information*”⁵⁷.

⁵⁵Op. cit., *Manufacturing News*

⁵⁶ Tackling private censorship in media, Sevanti Ninan,
<http://www.thehoot.org/web/home/story.php?storyid=7664&mod=1&pg=1§ionId=10&valid=true>

⁵⁷ Private censorship and the right to hear, Chinmayi Arun,
<http://www.thehoot.org/web/home/story.php?storyid=7652&mod=1&pg=1§ionId=6&valid=true>

5.43 There is a preponderance of evidence that political and corporate ownership of the media is a cause for serious concern. Such ownership in various forms - direct or indirect; through surrogates; or via loans and private treaties - has encouraged proliferation of biased and, at times, untruthful news in all forms of media. They have contributed to the erosion of editorial freedom and independence. All the essential democratic processes and institutions - the elections, the government, the media and most importantly, the right to know and be an active participant in the everyday functioning of the democracy, have been adversely affected, albeit in various degrees. Ownership issues have to be addressed to ensure plurality, objectivity and fairness in reporting news.

Ownership by other entities

5.44 The issue of disqualification of certain entities was posed in the CP. Opinion was sought on whether the licensor, either *suo motu* or on the recommendations of the regulator, may be empowered to disqualify any other entity, i.e., other than those already recommended by the Authority earlier⁵⁸, from entering the media sector in public interest. The questions evoked mixed responses from the stakeholders. While most stakeholders agreed with the disqualification of political, religious and government bodies from the media sector, some stakeholders opined that such blanket restrictions on entry should not be imposed as they curtailed press freedom. Some others suggested that the licensor may have the authority to cancel licenses in public interest but based on certain pre-defined parameters, which can be looked at on a case-by-case basis. If the licensor is empowered to *suo motu* disqualify entities, there is a substantial risk of abuse of power that will be detrimental to media freedom. It would give the executive branch significant power over the media affecting its independence.

5.45 Many stakeholders suggested additions to the list of entities to be disqualified from entry into the media sector. These include persons facing criminal conviction; those affiliated to regulatory bodies; those holding posts under the Central or State Government offering the opportunity to gain financial or other benefits by entering

⁵⁸ Ibid.

the media; large business houses, especially those in financial services like banks etc.; advertisement agencies; IPR-violators; NGOs and social welfare groups; PR lobbyists etc.

Privacy issues in the media

“This is not just the famous but ordinary members of the public, caught up in events (many of them, truly tragic) far larger than they could cope with but made much, much worse by press behaviour that, at times, can only be described as outrageous.”

Lord Justice Leveson

- 5.46 Privacy issues in the Indian media came into sharp focus in 2008, during the coverage of the terrorist attacks in Mumbai. The intrusive live television coverage is perceived to have compromised national security and endangered the lives of the security personnel, hostages and common people. Privacy violations and inaccurate reportage have also topped the complaints before the News Broadcasting Standards Authority (NBSA)⁵⁹ and they have issued warnings, imposed fines and directed apologies to be issued to complainants or broadcast on television. These include the coverage of partying students of the NALSAR University in Hyderabad by Sakshi Television; CNN-IBN displaying a slide with the name of a complainant in a sexual harassment matter; CNN-IBN carrying an interview of the father of a child rape victim during December 16, 2012 protests following the Delhi gang rape; and Aaj Tak Channel airing details of a matrimonial dispute⁶⁰. International experience about invasion of privacy by the media has been no different. Lord Leveson, for example, has also pointed out that his report was commissioned by the Government *“sparked by public revulsion about a single action - the hacking of the mobile phone of a murdered teenager”* by a media entity.
- 5.47 The need to sensationalise – and, as a consequence, to intrude into individual privacy – is relevant to the present discussion on media ownership since it is, *inter alia*, driven by a desire to ‘outshout’ competition and gain commercial advantage in the media market. As noted above, both media corporates and non-media

⁵⁹ News Broadcasting Standards Authority is an independent body set up by the News Broadcasters Association. Its task is to consider and adjudicate upon complaints about broadcasts.

⁶⁰ <http://www.thehoot.org/web/Self-regulation-and-privacy/7232-1-1-14-true.html>

corporates with media interests have every incentive to tweak news in order to maximize their TRPs and profits. The lack of balance in respecting the individual's right to privacy arises from the profit motive which ought not to be the sole or dominant motivation in presentation of news.

5.48 The Indian Constitution does not contain an explicit reference to the Right to Privacy. However, this Right has been read into the Constitution by the Supreme Court as a component of two Fundamental Rights: the right to freedom under Article 19 and the right to life and personal liberty under Article 21⁶¹. Article 19(1) (a) guarantees all citizens the right to freedom of speech and expression. Freedom of speech and expression for the media is derived from the general right to publish or present any information. Reasonable restrictions on the exercise of the right can be imposed by the State under Article 19 (2) in the interest of sovereignty and integrity of the State, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Article 21 of the Constitution provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law." Courts have interpreted the right to privacy as implicit in the right to life⁶².

5.49 The exceptions to the right to privacy such as overriding public interest, safety and security of the State exist in many countries. In addition, there are other instances of unwarranted invasion of the right to privacy of individuals. For instance, in the UK, Sweden, France and Netherlands, the right to photograph a person or retouching of any picture is prohibited unlike in India where press photographers do not expressly seek the consent of the person being photographed, if s/he is in a public space. In France, not only is the publication of information prohibited on account of the right to privacy, but the method in which the information is procured also falls within the purview of the right to privacy. This includes information or photograph

⁶¹ <http://cis-india.org/internet-governance/country-report.pdf>

⁶² <http://cis-india.org/internet-governance/blog/privacy/privacy-media-law>

taken in both public and private spaces. Privacy within public spaces is recognised, especially, “where there is reasonable expectation of privacy.”⁶³

- 5.50 It is indisputable that an appropriate balance needs to be struck between commercial interest and the right to information. How the media balances public interest and the “public hunger for tidbits” provokes Geeta Seshu to ask “*Can the media steer clear of sensationalist reportage that violates the privacy of those affected? Can the media stop feeding the beast?*”⁶⁴ In case it becomes necessary to reveal the identity of a person in the presentation of news, including victims of any crime or disaster, then the issue should be dealt with in a sensitive manner, and in accordance with pre-decided norms. In general, broadcasters must avoid unwarranted invasion of privacy.
- 5.51 The Department of Personnel and Training (DoP&T) has drafted a law on privacy and data protection in India. The draft bill on Right to Privacy is available in the public domain. Further, matters relating to privacy of individuals are also being examined by the Supreme Court in a case⁶⁵ filed by the former Chairman of the Tata Group seeking protection of his privacy following the circulation of some taped conversations between him and a PR professional. In a recent order given on 29 April 2014, the apex court formulated the following three issues as arising for its consideration and decision: (i) Right to privacy vis-à-vis the Government; (ii) Right to privacy vis-à-vis the Press; and (iii) Right to know the information. Thus, issues relating to protection of privacy are not only well recognized but are also under active consideration by the relevant institutions.
- 5.52 The press, given its history, has certain well-defined and coded principles and ethics to abide by, such as the Norms of Journalistic Conduct, 2010. Unfortunately, no such codes or guidelines for journalistic conduct and standards have evolved for the television industry. The news television sector is bound by the Program and Advertising Codes prescribed under the Cable Television Network Rules, 1994 and the Uplinking/ Downlinking guidelines, which are codes that regulate content but

⁶³ <http://cis-india.org/internet-governance/blog/privacy/privacy-media-law>

⁶⁴ Can we stop feeding the beast? Geeta Seshu

<http://www.thehoot.org/web/home/story.php?storyid=6997&mod=1&pg=1§ionId=25&valid=true>

⁶⁵ Ratan N Tata vs UOI and Ors., WP (C) No. 398 of 2010.

not journalistic practices. An Inter-Ministerial Committee looks into complaints related to television content like paid news. It is debatable whether this mechanism has led to any improvement in the quality of content on television.

- 5.53 Misreporting, sensationalism and defamation have become ubiquitous in the media system. Krishn Kaushik reasons that sensationalisation of news on broadcast media is an effort to grab the highest TRP (viewership) ratings (see **Box 9**). Even those media houses that wish to present news otherwise eventually succumb and join the race for TRPs, else they would lose big on advertisement revenues. These days,

**Box - 9 - “Bad News – Why English Language News Broadcasting is a Losing Game”
by Krishn Kaushik**

On a Friday evening in July 2006, a six-year-old boy named Prince fell into a 60-foot-deep borewell in Haryana. By that night, almost all the national television news channels were pursuing the story. India TV was an exception; instead of the Prince story, the Hindi-language news broadcaster at prime time aired a programme about a terrorist wanted in India and arrested in Nairobi, who vanished before the Indian authorities could get to him. When India TV's CEO, Chintamani Rao, arrived the following morning for his weekly meeting with the channel's editor-in-chief, Rajat Sharma, and other members of the editorial team, he realised that everyone else had spent the previous night watching Prince's ordeal on rival channels. "The whole buzz was about Prince," Rao recalled. During the meeting, they turned a television to Zee News to see what was happening to the boy. The anchor was going hysterical, Rao said, saying things like "*Jab tak Prince nahibachega, hum yahan se nahihatenge*. (We will not move from here until Prince is saved.)" Everyone laughed—"as if he would save the child sitting there in his studio", Rao said. But Rao realised the story was compelling. "I said, 'Shit! Guys, maybe we are missing something.'" On Saturday, India TV dispatched its own team to cover the borewell rescue, even though Rao knew "everybody [else] was already showing it".

Prince was saved on Monday morning. When the data arrived a few days later, Rao discovered that, during the 50 hours between the boy's tumble into the well and his rescue, Zee News had been watched by more than 40 percent of Hindi-language news viewers; India TV's share over the same period languished in single digits. "This is what was working," Rao said. "We realised more and more where the viewership was." India TV rarely passed up another chance to broadcast a dramatic rescue effort.

The Caravan Magazine, 01 December 2012

media houses look out for news anchors who can announce the news the loudest, and that news always has to be "breaking", even if it is being repeated the whole day! And in the race to the top of the rating list, media ethics and responsibilities are left trailing far behind. Kaushik also discusses another pressing issue in his article – that of resources devoted to investigative reporting. Investigative reporting is more expensive. Broadcasters say that it costs around two to three lakh rupees to produce a two-minute story. Most broadcasters do not have the resources and patience to send teams on assignment to remote parts of the country; they prefer, instead, to

bring in expert panelists to debate the most popular topics of the day, the costs of which are much lower. Thus, now the cheapest form of 'news' is to gather people for a discussion and have a heated debate that lets feelings and emotions fly high. This ensures low costs and high TRPs to the broadcaster. And in this dash for top ratings and revenues, media ethics and standards are conveniently given a go-by.

- 5.54 A senior TV journalist and presenter, has recently warned⁶⁶, “... *putting news above noise, sense above sensation and credibility above chaos must remain a credo forever: else journalism will lose its moral compass.*” The quality of discourse or debate on news media online and on television is appallingly ill-informed, polarised and downright shoddy on most days, says media expert Vanita Kohli-Khandekar⁶⁷. The reasons, according to her, are greed, lack of training and some seriously flawed ownership of media. Lack of training shows on newspaper and TV reporters. While training needs just 2-5 per cent of editorial budgets, very few media organisations have given this the time and attention it deserves.
- 5.55 Mindless sensationalism can be debilitating to the very idea of press freedom and will also affect the common weal. As Sreelata Menon succinctly puts it: “*The very freedom we exercise today has been paid for by the blood, sweat, tears and even fortunes of the founders of our nation ... By chipping away constantly at every institution/personality, by indulging in nit picking for mere sensationalism, by going competitive and combative – all in the name of ‘freedom of the press’- is to fritter away that very freedom.*”⁶⁸

Present Regulatory Framework

- 5.56 Vice President Hamid Ansari, while addressing the 17th Biennial session of the National Union of Journalists in June 2013, said “*If irresponsible reporting and sensationalism had to be curbed, then media ownership had to be regulated.*” There are a number of bodies – government, independent and industry bodies – that constitute the present regulatory institutional regime for the media.

⁶⁶Rajdeep Sardesai's farewell letter to his staff -<http://tinyurl.com/m7bpq2l>

⁶⁷Vanita Kohli-Khandekar, *The Business of Elections*, Mid-Day, 7th March 2014

⁶⁸Spare us over-the-top TV anchors – Sreelata Menon

<http://www.thehoot.org/web/home/story.php?storyid=7556&mod=1&pg=1§ionId=14&valid=true#>

- 5.57 The print media is regulated by the Press Council of India, established by the Press Council Act, 1978. The PCI is an independent regulator of the press and has issued the Norms of Journalistic Conduct and various Guidelines from time to time on a number of issues, to be followed by the print media. Its members include media owners, serving editors, working journalists, managers of newspapers and Members of Parliament. When the PCI finds a newspaper guilty of violation of its norms, it has the power to *“warn, admonish or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist”*⁶⁹.
- 5.58 The efficacy of the PCI is questioned by a former Member⁷⁰ of the PCI, who informs that *“the PCI does not have punitive powers – it cannot levy fines or order the withdrawal of advertisements by government agencies, leave alone place errant journalists behind bars.”* In his submission to the Parliamentary Standing Committee for its Report on Paid News⁷¹, he has opined that it could largely be because of the composition of the PCI, with most members chosen from the media itself. The Parliamentary Committee, therefore, noted that in its existing composition there could be a tendency of members coming together to protect their interests within the PCI. For instance, the Sub-Committee Report on Paid News prepared by two Members of the PCI was not accepted by the PCI initially as it had mentioned the names of all media, political and corporate entities involved in the malpractice. A much shorter version of the Report was released in its place. Even in the case of UK, Lord Leveson noted that *“when a story is regarded as big enough, the provisions of the law and the code count for little”,* as also the *“intense lobbying”* by the press *“challenging the proposition that breach of the criminal law by journalists, even on a wholesale, industrial basis should ever be capable of being visited with a custodial penalty”*⁷².
- 5.59 For television, the News Broadcasting Standards Authority (NBSA) is a body appointed by the News Broadcasters Association (NBA) to look into complaints of the violation of the NBA code of ethics. It is a self-regulatory body of which not all

⁶⁹ Press Council Act, 1978

⁷⁰ Paranjay Guha Thakurata, op. cit.

⁷¹ Issues Related to Paid News, Parliamentary Standing Committee on Information Technology (2012-13), Report #47, Lok Sabha Secretariat, New Delhi, May 2013

⁷² Op. cit., Lord Justice Leveson.

news channels are members. Out of the 135 news channels operating in the country, only 28 news broadcasters owning 57 news channels are members of the NBSA. The standards set by the NBSA apply only to these channels. A majority of the news channels, therefore, do not even come within the ambit of the limited self-regulation that exists.

- 5.60 The ineffective self-regulatory framework has occasioned public interest litigation as well⁷³. An office bearer of one of the organisations that has moved the Supreme Court is of the view that broadcasters do not wish that an effective regulatory regime be established *“What the broadcasters want is crystal clear: a dummy regime of ‘government regulation’ and a self-serving farce of ‘self-regulation’ to co-exist so that they are answerable to nobody”*⁷⁴.
- 5.61 MIB issues television licenses and enforces the Programme and Advertising Code for television channels, prescribed under the Cable Television Network Rules, 1994 and the Uplinking/ Downlinking Guidelines, which are codes that regulate content and not journalistic practices. In its submission to the Parliamentary Standing Committee, the MIB has accepted that the existing Advertising and Programme Codes are not being followed strictly and there is no mechanism to enforce the Code *vis-à-vis* private channels/newspapers even during the election time.

Has self-regulation worked?

- 5.62 The problems inherent in a self-regulatory mechanism are recognised universally. Lord Leveson, for example, concluded with respect to the UK’s Press Complaints Commission (PCC) that *“The PCC gave the public a false impression of what it could do and never acknowledged the limitations of its powers. Through acquiescent silence, the PCC permitted policy-makers and the public to make mistaken assumptions about the breadth and depth of the powers and capacity of self-regulation”*.
- 5.63 Regulation of the print media *via* the PCI has proved to be ineffective in enforcing the few norms and guidelines that have been issued. Similarly, the self-regulatory mechanism represented by the NBSA is over-dependent on voluntary compliance

⁷³ For example, WP (C) 1024 of 2013, *Mediawatch-India v. Union of India and Ors.*

⁷⁴ Enough bad faith and weasel words, Edara Gopi Chand, <http://www.thehoot.org/web/home/story.php?storyid=7667&mod=1&pg=1§ionId=19&valid=true>

and that too by a minority of the entities involved; the cosy club mentality of this mechanism is not conducive to aggressive or effective problem resolution. The only other regulatory device, i.e. the MIB guidelines, is being observed mainly in the breach and offers no real solution to the problems posed. In the UK Lord Leveson noted that *“It is damning of the PCC that it was only when the system of regulation was under unprecedented scrutiny and extreme threat, that a programme of reform was announced that asked questions of import directed squarely at the system’s failings”*. We in this country can ill afford the luxury of waiting for a crisis to present itself before acting to remedy the situation.

The Authority’s Conclusions

- 5.64 The Authority is of the opinion that the principal matters of concern here relate to and derive from the political and corporate ownership of the media. The issues of paid news; self-censorship; limited editorial independence; invasion of privacy; etc., are consequences of such unrestricted ownership and the crass commercialisation that has overtaken the media because of political and corporate ownership. Hence, the Authority finds that it is of utmost importance to first regulate such ownership to the extent practical before addressing other related issues. Indeed, in December 2012, the Authority had recommended, among others, that pending enactment of any new legislation on broadcasting, specified disqualifications for political bodies to enter into broadcasting and/or distribution activities should be implemented through executive decision by incorporating the disqualifications into Rules, Regulations and Guidelines as necessary⁷⁵.
- 5.65 On self-regulation, the Authority recognises that the opinion within the Indian media is divided. Journalist and media analyst Geeta Seshu cites the penchant for opting out of codes of conduct or agreements which do not suit their economic interests⁷⁶. On the flip side it is argued that government regulation of media would lead to an Emergency-like situation and that self-regulation is the only answer to curbing corruption in the media. The point that self-regulation has its limits and

⁷⁵ Op. cit., Recommendations of 12 November 2008 and 28 December 2012.

⁷⁶See Dr. Shakuntala Banaji, *Regulating the Media in India – an Urgent Policy Priority*, LSE Media Policy Project Blog, 07/08/2013.

statutory punishment is the only way to deter the ‘black sheep’ in the media from continuing with malpractices that are not merely unethical but border on the illegal, also has merits. It is claimed that since he who pays the piper, calls the tune, any regulatory body that is funded by the government cannot be free of political and/or bureaucratic interference. At the same time, it is also true that courts of law and others institutions, for instance, the Comptroller and Auditor General of India, are (constitutionally and consciously) independent of the government even as they are funded by the government. Whether such a suitably-empowered regulatory authority for all sections of the mass media in India can be the answer to reducing the incidence of malpractices in the media is moot.

- 5.66 Issue-specific regulations exist for some of the problems discussed in this Chapter. The enforcement of the existing regulations could help address some of these issues. The Companies Act 2013 makes it mandatory for all companies to file their ownership/control structure and their financial statements every year to the Registrar of Companies. As Sevanti Ninan points out⁷⁷, there is a Form IV declaration that all publications are required to publish once a year. It stipulates naming all those individuals and companies holding more than one percent stake in the ownership of that publication. What it does not require to be declared is what percentage of stake those parties hold. So one cannot judge whether any of the declared owners has controlling shares. In the case of television channels, MIB requires declarations of ownership in its uplink/ downlink permission guidelines. But these are for its own edification. There is no requirement of a public declaration in this regard on the channels’ website. It is only the listed media companies which have to make ownership details public. Neither set of requirements asks for groups of companies investing in a media house, rather than individual companies, to be disclosed. The majority of media companies are unlisted, and it is not easy to get their ownership details from the database of the Registrar of Companies. The penalty for not updating information is just a few hundred rupees, so they are often not updated. The Authority is of the view that detailed data on ownership is crucial to understand the extent of corporate and political ownership in the media. As of

⁷⁷Sevanti Ninan, *Surrogate Media Ownership*, The Hoot, November 15, 2013

now, given the lack of transparency on ownership information, there is no way to know the extent to which the news we receive is untainted.

- 5.67 As far as the regulation of advertisements on television is concerned, Rule 7(10) under the Advertisement Code of Cable Television Networks (Regulation) Rules, 1994 formulated under the Cable Television Networks (Regulation) Act, 1995, already stipulates that all advertisements should be clearly distinguishable from the program and should not in any manner interfere with the programs.
- 5.68 Nevertheless, many regulatory problems still cry out for attention. For example, ***paid news*** at present is only looked at by the Election Commission and that too from the limited perspective of election expenses. In fact, the malaise of paid news has to be defined comprehensively and a framework established for examining complaints and taking punitive action against defaulting media entities. There is little doubt that to curb the menace what is required is an institutional response that addresses both the substantive and procedural issues including evidentiary rules⁷⁸.
- 5.69 As regards the ***private treaties*** phenomenon, the Authority notes that the Securities and Exchange Board of India (SEBI) recommended the following list of disclosures to PCI to safeguard the interests of the investors:
- (i) Disclosures regarding the stake held by the media company may be made mandatory in the news report/article/editorial in newspapers/television channels relating to the company in which the media group holds such a stake.
 - (ii) Disclosure on percentage of stake held by media groups in various companies under such private treaties on the website of media groups may be made mandatory.
 - (iii) Any such disclosures relating to such agreements such as any nominee of the media group on the board of directors of the company, any management control or other details which may be required to be disclosed and which

⁷⁸ The Press Council Sub-Committee Report has already recommended the following:

- (i) News programs/items should be clearly distinguished from advertisements by setting them in different typefaces and by printing disclaimers.
- (ii) Any form of association, financial or otherwise, of the media entity with any other entity, affecting the content of the items being published as news should be disclosed to the reader/viewer during the time of publishing the item.

may be a potential conflict of interest for the media group, may also be made mandatory.

The Authority endorses these recommendations.

- 5.70 In addition, the guidelines that had been framed for the conduct of financial journalists in 1996 by the PCI were extended and made applicable to owners of media companies as well. PCI has requested SEBI to study if free shares can be given to a company in exchange for advertising services. Is this enough? Issues relating to capital transactions involving media entities have to be looked at and dealt with separately from transactions of this nature involving non-media firms. The tendency of media entities to use facts/ news/ information, which really are public property, as a *quid pro quo* in a financial transaction impacting its ownership needs to be curbed.
- 5.71 To address the issue of **editorial independence**, Para 37(ii) of Norms of Journalistic Conduct of the PCI stipulate that *“the editor under no circumstances can be asked by the proprietor to serve his private interests. In any country which swears by the freedom and the independence of the press, an attempt by any proprietor of a newspaper to use his editor as his personal agent to promote his private interests and to compel him to act and to write, to serve them is both offensive and reprehensive.”* However, due to PCI’s limited powers of enforcement, and the erosion of the freedom enjoyed by journalists under the Working Journalists Act, the issue of decline of editorial independence is far from addressed.
- 5.72 Regarding **privacy issues** in the media, the Authority is acutely conscious of the structural imbalance that places unbridled power in the hands of the media and offers almost no protection to the individual who values her privacy. The rampant trampling of individual privacy by the media needs both strict and updated laws and also strong, enforceable guidelines on ethical behaviour.
- 5.73 To sum up, the foregoing discussion throws up a number of issues that have to be addressed to ensure a vibrant, free, fair and effective media:
- (i) The Authority has already recommended in November 2008 that certain parties/entities should not be permitted to enter the broadcasting and

distribution platform in the TV medium. These recommendations were reiterated in December, 2012, when it was suggested that the proscription be effected through executive order. Is it necessary to expand the list of entities so proscribed? Similarly, is it necessary and/or desirable to effect such a proscription in the context of the print media? And, what would be the criteria to do so?

- (ii) Given the inherent conflict of interest and the potential impact on content purveyed by the media, practices such as “private treaties” should be curbed. The practice of “paid news” too requires similar treatment. A clear disclaimer should be mandated in the case of “advertorials”. And, in all these cases, a framework for entertaining complaints, their investigation, and imposing and enforcing an appropriate regime of penalties should be evolved.
- (iii) Editorial independence in the media has to be ensured. If owners’ interventions damage the veracity of the content or violate the public’s right to information (through self-censorship), such a practice must be subject to regulatory jurisdiction viz., the editor or any other journalist must have the right to raise the matter before a regulatory authority as well as a right to obtain a remedy.
- (iv) Is it necessary or even desirable to ban the entry of non-media corporates in the media industry? If not, what safeguards need to be built in to ensure integrity of the news, the absence of corporate bias, disclosure and transparency to consumers? The Authority is of the view that while these issues are debated, as a first step, the licensor should impose a transparency condition in the license requiring clear disclosure of the identity of the beneficiary corporate owner of the media entity.
- (v) Despite the serious shortcomings of the self-regulatory model (bordering on regulatory failure), the Authority is of the view that under no circumstances should the government be the regulator of the media. At the same time, the Authority notes that it is imperative to strengthen the media regulatory framework at this point of time. This would require legislation that includes provisions for enforcement and penalties. Since this may take time, at least

with respect to television, the regulatory powers already vested in the Government should be enforced more effectively and compliance compelled. Further, it is moot whether a single regulator covering both the print and TV mediums should be put in place. If so, would it be desirable to ensure that the regulatory body is not manned predominantly by media persons (as Lord Leveson observed in his report in the context of UK)? The Authority is of the view that while the regulatory body should have representation from the media, it should be manned predominantly by eminent non-media persons from different walks of life. It has to be ensured that appointments to the regulatory body are fair, transparent and impartial, to instil confidence that the body is truly independent of the Government.

- (vi) How can the individual's right to privacy be ring-fenced from the creeping attack from unbridled commercial interests in the corporate-controlled media? Would it suffice to mandate guidelines or should the law be amended to penalise egregious violations of privacy?

These issues require dispassionate and critical attention from an independent perspective. At the same time, the Authority notes that Recommendations have already been made earlier touching upon some of these issues, and that certain other issues that have been flagged require immediate, urgent, policy attention.

Recommendations

5.74 In the backdrop of the foregoing discussion, and **given that about six years have elapsed without any concrete action being taken by the Government, the Authority strongly recommends that its Recommendations of 12 November 2008 and 28 December 2012 may be implemented forthwith. These Recommendations *inter alia* specified:**

- (a) **the entities (political bodies, religious bodies, urban, local, panchayati raj, and other publicly funded bodies, and Central and State Government ministries, departments, companies, undertakings, joint ventures, and government-funded entities and affiliates) to be barred from entry into broadcasting and TV channel distribution sectors;**

- (b) that in case permission to any such organisations have already been granted an appropriate exit route is to be provided;
 - (c) that the arm's length relationship between Prasar Bharati and the Government be further strengthened and that such measures should ensure functional independence and autonomy of Prasar Bharati ; and
 - (d) that pending enactment of any new legislation on broadcasting, specified disqualifications for the entities in (a) above from entering into broadcasting and/or TV channel distribution activities should be implemented through executive decision by incorporating the disqualifications into Rules, Regulations and Guidelines as necessary.
- 5.75 The Authority further recommends that even surrogates of the entities listed in paragraph 5.74 above should be barred from entry into broadcasting and TV channel distribution sectors.
- 5.76 Given the inherent conflict of interest arising from practices such as “private treaties”, the Authority recommends that such practices be immediately proscribed through orders of the PCI or through statutory rules and regulations. This would cover all forms of treaties including (i) advertising in exchange for the equity of the company advertised; (ii) advertising in exchange for favourable coverage/ publicity; (iii) exclusive advertising rights in exchange for favourable coverage.
- 5.77 The Authority recommends that in “advertorials” (for that matter any content which is paid for), a clear disclaimer should be mandated, to be printed in bold letters, stating that the succeeding content has been paid for. The Authority is absolutely clear that placing such a disclaimer in fine print will not suffice. The Authority recommends that such action on advertorials and other material which is paid for⁷⁹ may be taken immediately.
- 5.78 On “paid news”, in addition to the above, it is imperative that liability reposes in both parties to the transaction if it is tried to be passed off as news. For instance, if an MP/ MLA seeks favourable coverage in the media in exchange

⁷⁹ This covers promotional write-ups for a company, write-ups from publicists on individuals and favourable write-ups on politicians in exchange for payment.

for payment, then if such coverage was given in the garb of “news”, responsibility would be that of both parties, not only of the politician.

- 5.79 Again, on grounds of the inherent conflict of interest, the Authority recommends that ownership restrictions on corporates entering the media should be seriously considered by the Government and the regulator. This may entail restricting the amount of equity holding/ loans by a corporate in a media company, viz., to comply with provisions relating to control⁸⁰.
- 5.80 The Authority recommends that editorial independence must be ensured through a regulatory framework as described in paragraph 5.73 (iii) above.
- 5.81 With respect to the “media regulator”, the Authority recommends that:
- (a) Government should not regulate the media;
 - (b) There should be a single regulatory authority for TV and print mediums;
 - (c) The regulatory body should consist of eminent persons from different walks of life, including the media. It should be manned predominantly by eminent non-media persons;
 - (d) The appointments to the regulatory body should be done through a just, fair, transparent and impartial process;
 - (e) The “media regulator” shall *inter alia* entertain complaints on “paid news”; “private treaties”; issues related to editorial independence; etc, investigate the complaints and shall have the power to impose and enforce an appropriate regime of penalties.
- 5.82 The above recommendations, once implemented, will address the immediate objective of curbing unhealthy media practices. The Authority notes that there would still exist the need for a comprehensive evaluation of the legislative and legal framework in order to establish a robust institutional mechanism for the long term. The Authority, therefore, recommends that a Commission, perhaps headed by a retired Supreme Court Judge, be set up to comprehensively examine the various issues relating to the media, including the role and

⁸⁰ Here, control would have the same meaning as enunciated in paragraphs 2.13 and 2.14 of these Recommendations.

performance of various existing institutions, and the way forward. More than 5 years have elapsed since the Authority released its 'Recommendations on Media Ownership' on 25 February 2009. The situation has become graver. Clear time-lines may, therefore, be indicated to the Commission so appointed.

Chapter 6 – Summary of Recommendations

Defining Ownership and Control

6.1 The Authority recommends that the following definition of control should be adopted for all issues concerning media ownership discussed in this paper:

An entity (E1) is said to 'Control' another entity (E2) and the business decisions thereby taken, if E1, directly or indirectly through associate companies, subsidiaries and/or relatives:

- (a) Owns at least twenty per cent of total share capital of E2. In case of indirect shareholding by E1 in E2, the extent of ownership would be calculated using the multiplicative rule. For example, an entity who owns, say, 30% equity in Company A, which in turn owns 20% equity in Company B, then the entity's indirect holding in Company B is calculated as $30\% * 20\%$, which is 6%.; Or
- (b) exercises de jure control by means of:
 - (i) having not less than fifty per cent of voting rights in E2; Or
 - (ii) appointing more than fifty per cent of the members of the board of directors in E2; or
 - (iii) controlling the management or affairs through decision-making in strategic affairs of E2 and appointment of key managerial personnel; or
- (c) exercises de facto control by means of being a party to agreements, contracts and/or understandings, overtly or covertly drafted, whether legally binding or not, that enable the entity to control the business decisions taken in E2, in ways as mentioned in (b) (i) (ii) and (iii) above.

For this purpose:

- (i) The definitions of 'associate company', 'subsidiary' and 'relative' are as given in the Companies Act 2013.
- (ii) An 'entity' means individuals, group of individuals, companies, firms, trusts, societies and undertakings.

6.2 The Authority recommends that the following *proviso* be added to the definition of control as provided in the 'Recommendations on Issues related to New DTH Licenses' dated 23.07.2014:

- *“Provided that if E1 advances a loan to E2 that constitutes not less than - [51%] of the book value of the total assets of E2, E1 will be deemed to ‘control’ E2.”*

Cross-Media Ownership

6.3 The Authority recommends that the News and Current Affairs genre is of utmost importance and direct relevance to the plurality and diversity of viewpoints and, hence, should be considered as the relevant genre in the product market for formulating cross-media ownership rules.

6.4 The Authority recommends that television and print should be considered as the relevant segments in the product market. For print, only daily newspapers, including business and financial newspapers, should be considered. Once private radio channels are allowed to air news generated on their own and become significant in the relevant market, a review of the cross-media ownership rules should be undertaken.

6.5 The Authority recommends that the relevant geographic market should be defined in terms of the language and the State(s) in which that language is spoken in majority. Thus the twelve relevant geographic markets would be as follows –

- (i) Assamese and Assam (meaning, Assamese newspapers read and Assamese television channels watched in Assam, and similarly henceforth);
- (ii) Bengali and West Bengal;
- (iii) English pan-India.
- (iv) Gujarati and Gujarat;
- (v) Hindi and Himachal Pradesh, Haryana, Delhi, Uttarakhand, Uttar Pradesh, Rajasthan, Madhya Pradesh, Chhattisgarh, Bihar, Jharkhand (these ten States together should be considered as a single market);
- (vi) Kannada and Karnataka;

- (vii) Malayalam and Kerala;
- (viii) Marathi and Maharashtra;
- (ix) Odia and Odisha;
- (x) Punjabi and Punjab;
- (xi) Tamil and Tamil Nadu;
- (xii) Telugu and Andhra Pradesh and Telangana;

In this list, the other languages included in the Eighth Schedule of the Constitution, namely - Bodo, Dogri, Kashmiri, Konkani, Maithili, Manipuri, Nepali, Sanskrit, Santhali, Sindhi and Urdu, to be considered based on the growth of newspaper circulation and television viewership in these languages in the future.

- 6.6 The Authority recommends that a combination of reach and volume of consumption metrics should be used for computing market shares for the television segment. For the print segment, using only the reach metric is sufficient.
- 6.7 The Authority also recommends that for calculating market shares, in the relevant market for the television segment, the GRP of a channel* should be compared with the sum of the GRP ratings of all the channels* in the relevant market and the market share of an entity# would be the sum of the market shares of all the channels* controlled by it i.e. :

$$\Rightarrow \text{Market share of a channel} = \frac{\text{GRP of the channel}^*}{\sum \text{GRP of all channels}^* \text{ in the relevant market}}$$

$$\Rightarrow \text{Market share of an entity}^{\#} = \sum \text{Market share of all channels}^* \text{ controlled by it}$$

(*In the television segment, apart from pure news channels, some regional markets are characterized by the presence of news-cum-entertainment channels, which broadcast news bulletins for only some parts of the day in 30-minute slots, amidst various entertainment programs. The GRP of only the news content aired on these news-cum-entertainment channels is taken into account so that they are comparable, for the purpose of analysis, with the pure news channels.)

- 6.8 Similarly, in the relevant market for the print segment, the market share of a newspaper would be the circulation of that newspaper compared with the

combined circulation of all newspapers in the relevant market, and the market share of an entity# would be the sum of the circulation of all the newspapers controlled by it i.e.:

$$\Rightarrow \text{Market share of a newspaper} = \frac{\text{Circulation of the newspaper}}{\sum \text{Circulation of all newspapers in the relevant market}}$$

$$\Rightarrow \text{Market share of an entity}^\# = \sum \text{Market share of all newspapers controlled by it}$$

(# this entity may be a media entity itself, which is operating the television channel(s) and/or daily newspaper(s) in the relevant market or an entity which is controlling many media entities, which in turn are operating the television channel(s) and daily newspaper(s).)

- 6.9 The Authority recommends that the Herfindahl Hirschman Index (HHI) be adopted to measure concentration in a media segment in a relevant market.**
- 6.10 The Authority recommends that a rule based on HHI be implemented i.e. if the television as well as newspaper markets are concentrated (HHI > 1800 in each), then, an entity contributing more than 1000 to the HHI of the television market, cannot contribute more than 1000 towards HHI in the newspaper market as well, and vice-versa. If it does so, it will have to dilute its control (as defined in paragraph 6.1 & 6.2 above) in one of the two segments. This rule applies only if the HHI thresholds are violated consecutively for two years.**
- 6.11 The Authority recommends that the cross-media ownership rules be reviewed three years after the announcement of the rules by the licensor and once every three years thereafter. The existing entities in the media sector which are in breach of the rules, should be given a maximum period of one year to comply with the rules.**
- 6.12 The Authority recommends that Mergers and Acquisitions (M&A) in the media sector will be permitted only to the extent that the rule based on HHI, as recommended in Para 6.10 above, is not breached.**

6.13 The Authority recommends the following list of reporting requirements for this section. These reports are to be made on an annual basis to the licensor and the regulator.

A. Transparency Disclosures (to be placed in public domain)

- (i) Shareholding pattern of the entity**
- (ii) Foreign direct investment pattern of the entity**
- (iii) Interests, direct and indirect, of the entity in other entities engaged in media sector**
- (iv) Interests of entities, direct and indirect, having shareholding beyond 5% in the media entity under consideration, in other media entities/companies**
- (v) Shareholders Agreements, Loan Agreements and any other contract/ agreement**
- (vi) Details of key executives and Board of Directors of the entity.**
- (vii) Details of loans made by and to the entity**
- (viii) For all channels registered as news channels with MIB - Registered language(s) of operation, actual language(s) of operation, time slots for news programs**

B. Reports to be submitted to the Licensor and regulator (confidential)

- (ix) Subscription and advertisement revenue of the entity/ company**
- (x) Advertising rates**
- (xi) Top ten advertisers for each media outlet of the entity**

Changes in any of the parameters (i) to (vi) listed above must be reported to the licensor and regulator within thirty days of implementation of the change.

Vertical Integration amongst Media Entities

6.14 Based on an examination of the issues and analysis of the comments received in this exercise, the Authority reiterates its recommendations on vertical integration amongst broadcasters and DPOs as contained in its “Recommendations on Issues related to New DTH Licenses” dated July 23, 2014 and recommends early notification and implementation of the same. For

ease of reference these are annexed at the end of these recommendations as Annex-3.

Issues affecting Internal Plurality

6.15 Given that about six years have elapsed without any concrete action being taken by the Government, the Authority strongly recommends that its Recommendations of 12 November 2008 and 28 December 2012 may be implemented forthwith. These Recommendations *inter alia* specified:

- (a) the entities (political bodies, religious bodies, urban, local, panchayati raj, and other publicly funded bodies, and Central and State Government ministries, departments, companies, undertakings, joint ventures, and government-funded entities and affiliates) to be barred from entry into broadcasting and TV channel distribution sectors;**
- (b) that in case permission to any such organisations have already been granted an appropriate exit route is to be provided;**
- (c) that the arm's length relationship between Prasar Bharati and the Government be further strengthened and that such measures should ensure functional independence and autonomy of Prasar Bharati ; and**
- (d) that pending enactment of any new legislation on broadcasting, specified disqualifications for the entities in (a) above from entering into broadcasting and/or TV channel distribution activities should be implemented through executive decision by incorporating the disqualifications into Rules, Regulations and Guidelines as necessary.**

6.16 The Authority further recommends that even surrogates of the entities listed in paragraph 6.15 above should be barred from entry into broadcasting and TV channel distribution sectors.

6.17 Given the inherent conflict of interest arising from practices such as “private treaties”, the Authority recommends that such practices be immediately proscribed through orders of the PCI or through statutory rules and regulations. This would cover all forms of treaties including (i) advertising in exchange for the equity of the company advertised; (ii) advertising in

exchange for favourable coverage/ publicity; (iii) exclusive advertising rights in exchange for favourable coverage.

- 6.18 The Authority recommends that in “advertorials” (for that matter any content which is paid for), a clear disclaimer should be mandated, to be printed in **bold letters**, stating that the succeeding content has been paid for. The Authority is absolutely clear that placing such a disclaimer in fine print will **not** suffice. The Authority recommends that such action on advertorials and other material which is paid for⁸¹ may be taken immediately.
- 6.19 On “paid news”, in addition to the above, it is imperative that liability reposes in both parties to the transaction if it is tried to be passed off as news. For instance, if an MP/ MLA seeks favourable coverage in the media in exchange for payment, then if such coverage was given in the garb of “news”, responsibility would be that of both parties, not only of the politician.
- 6.20 Again, on grounds of the inherent conflict of interest, the Authority recommends that ownership restrictions on corporates entering the media should be seriously considered by the Government and the regulator. This may entail restricting the amount of equity holding/ loans by a corporate in a media company, viz., to comply with provisions relating to control⁸².
- 6.21 The Authority recommends that editorial independence must be ensured through a regulatory framework as described in paragraph 5.73 (iii) above.
- 6.22 With respect to the “media regulator”, the Authority recommends that:
- (a) Government should not regulate the media;
 - (b) There should be a single regulatory authority for TV and print mediums;
 - (c) The regulatory body should consist of eminent persons from different walks of life, including the media. It should be manned predominantly by eminent non-media persons;

⁸¹ This covers promotional write-ups for a company, write-ups from publicists on individuals and favourable write-ups on politicians in exchange for payment.

⁸² Here, control would have the same meaning as enunciated in paragraphs 2.13 and 2.14 of these Recommendations.

- (d) The appointments to the regulatory body should be done through a just, fair, transparent and impartial process;
- (e) The “media regulator” shall *inter alia* entertain complaints on “paid news”; “private treaties”; issues related to editorial independence; etc, investigate the complaints and shall have the power to impose and enforce an appropriate regime of penalties.

6.23 The above recommendations, once implemented, will address the immediate objective of curbing unhealthy media practices. The Authority notes that there would still exist the need for a comprehensive evaluation of the legislative and legal framework in order to establish a robust institutional mechanism for the long term. The Authority, therefore, recommends that a Commission, perhaps headed by a retired Supreme Court Judge, be set up to comprehensively examine the various issues relating to the media, including the role and performance of various existing institutions, and the way forward. More than 5 years have elapsed since the Authority released its ‘Recommendations on Media Ownership’ on 25 February 2009. The situation has become graver. Clear time-lines may, therefore, be indicated to the Commission so appointed.

List of Acronyms

ADAG	Anil Dhirubhai Ambani Group
AIADMK	All India Anna Dravida Munnetra Kazhagam
ASCI	Administrative Staff College of India
BCCC	Broadcasting Content Complaints Council
CCI	Competition Commission of India
CP	Consultation Paper
CPI(M)	Communist Party of India (Marxist)
CPS	Charge-per-subscriber
CTLC	Century Tokyo Leasing Corporation
DMK	Dravida Munnetra Kazhagam
DoP&T	Department of Personnel and Training
DPO	Distribution Platform Operators
DTH	Direct-to-Home
EMMC	Electronic Media Monitoring Centre
FIIs	Foreign Institutional Investors
GRP	Gross Rating Points
HHI	Herfindahl Hirschman Index
HITS	Headend-in-the-Sky
IISCO	Indian Iron and Steel Company
IMT	Independent Media Trust
IPTV	Internet Protocol Television
IRS	Indian Readership Survey
LCO	Local Cable Operator
MIB	Ministry of Information & Broadcasting
MLA	Member of Legislative Assembly
MP	Member of Parliament
MSO	Multi-system Operator
NBA	News Broadcasters Association
NBSA	News Broadcasting Standards Authority
PCC	Press Complaints Commission
PCI	Press Council of India
PMK	Pattali Makkal Katchi
PSBT	Public Service Broadcasting Trust
RIL	Reliance Industries Limited
RIO	Reference Interconnect Offer
RNI	Registrar of Newspapers for India
SEBI	Securities and Exchange Board of India
TAM	Television Audience Measurement
TCFSL	Tata Capital Financial Services Limited
TRP	Television Rating Points
UASL	Unified Access Services Licence
VC	Venture capital
ZOCD	Zero Coupon Optionally Convertible Debentures

Annex 1 - Reference from MIB

D.O. No. 9/9/2012-BP&L

उदय कुमार वर्मा
स. व
UDAY KUMAR VARMA
SECRETARY
Tel.: 011-23382639
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भारत सरकार
सूचना और प्रसारण मंत्रालय
शास्त्री भवन, नई दिल्ली-110001
GOVERNMENT OF INDIA
MINISTRY OF INFORMATION & BROADCASTING
SHASHTRI BHAWAN, NEW DELHI-110001

16th May, 2012

Dear Shri Khullar,

You are aware that Indian media landscape is witnessing changes due to convergence of technologies. Major players are looking for expanding their business interest in various segments of print and broadcasting sectors. In this scenario, the issue of media ownership and the need for cross media restrictions assumes great significance.

2. The Authority has earlier looked into the issue of media ownership and made its recommendations on 25.2.2009. These recommendations were examined in the Ministry and, as recommended by TRA, the Ministry sponsored a study through Administrative Staff College of India (ASCI) in July 2009. The study dealt with the nature and extent of cross media ownership, existing regulatory framework, relevant market and international experience. The ASCI report sheds light, *inter-alia*, on the following issues:-

- i. Cross media ownership rules for broadcasting, print and the new media must be put in place since there is ample evidence of market dominance in certain relevant markets.
- ii. As regards vertical integration, the report, *inter-alia*, recommends that a cap on vertical holdings must be carefully determined based on existing market conditions.
- iii. Prior to setting of media rules there is a need to conduct periodic market analysis taking note of structure of the relevant markets and competition.
- iv. Market survey and analysis needs to be made every 3-4 years and ownership rules changed accordingly.
- v. Disclosure regarding cross media affiliations and ownership to be in public domain.
- vi. There should be a regulatory oversight on carriers so as to ensure non discriminatory access.

3. The study of ASCI has since been placed in the public domain for seeking stakeholder views/ comments. In view of fact that several changes have taken place over the last three years in the media sector as also keeping in view the technological advancements, developments in convergence and changes in media consumption pattern, a stage has

Contd....Page-2/-

come to address the issues of cross media restrictions and safeguards. In view of this, the Authority may re-look at the following issues and make appropriate recommendations:-

- I. In the present emerging scenario more and more broadcasting companies owning television channels are venturing into various distribution platforms, namely cable TV distribution, DTH and IPTV etc. Similarly many companies owning distribution platforms are also entering into television broadcasting. This type of vertical integration can seriously affect competition and promote monopolistic practices. Therefore there is a need to address such vertical integration. TRAI may suggest measures that can be put in place to address vertical integration in order to ensure fair growth of the broadcasting sector.
 - II. In another scenario companies have controls/ownerships across Print, TV and Radio leading to horizontal integration. At present there is no restriction for a company to have ownership across Radio, Television and Print mediums. Such a situation may prevent plurality of news and views and, in turn, may have several implications including ensuring quality services at reasonable prices. TRAI may also look at this issue and suggest appropriate measures in this regard.
4. I, therefore, request you to give your considered attention to the entire issue from a fresh perspective and send your recommendations under Section 11(1) (a) (ii) and (iv) of the TRAI Act, 1997, on the above issues.

Regards,

Yours sincerely,

Uday Kumar Varma
(Uday Kumar Varma)

Shri Rahul Khullar
Chairman
Telecom Regulatory Authority of India (TRAI)
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg (Old Minto Road)
New Delhi – 110 002.

Annex 2 – Mandatory Disclosures

A5.1 The list of necessary **reporting** requirements to be made to the licensor and the regulator **on annual basis**, is as follows:

- (i) Shareholding pattern of the entity
- (ii) Foreign direct investment pattern of the entity
- (iii) Interests, direct and indirect, of the entity in other entities engaged in media sector
- (iv) Interests of Entities, direct and indirect, having shareholding beyond 5% in the media entity under consideration, in other media entities/companies
- (v) Shareholders Agreements, Loan Agreements and any other contract/agreement
- (vi) Details of Key executives and Board of Directors of the entity.
- (vii) Details of loans made by and to the entity
- (viii) Subscription and Advertisement Revenue of the entity/ company.
- (ix) For all channels registered as news channels with MIB – Registered language(s) of operation, Actual language(s) of operation, time slots for news programs
- (x) Advertising rates
- (xi) Top ten advertisers for each media outlet of the entity
- (xii) Income received in the form of shares or any other form for sale of ad space
- (xiii) Income received in the form of cash or any other form for sale of news or editorial space

A5.2 Changes in any of the parameters (i) to (vi) listed above must be reported to the licensor and regulator within thirty days of implementation of the change.

A5.3 Disclosures to be mandatorily placed in the public domain are as follows:

- (i) Any form of association, financial or otherwise, of the media entity with any other entity, affecting the content of the items being published/broadcast as

news should be disclosed to the reader/viewer during the time of publishing/broadcasting the item.

- (ii) All media entities must mandatorily disclose the list of all entities that control it (as per the definition of control given earlier) and those that it controls, on all their media outlets. These disclosures must be displayed as a moving line of information at the bottom of the screen for television channels at hourly intervals, and in a prominent space in the newspaper, say, right below the title on the front page.

A. Ownership Disclosure Forms

1. GENERAL

Name of entity

Registered Office Address

Telephone No.

Fax No.

Email Address

CAPITAL STRUCTURE OF THE ENTITY (those registered under the Companies Act)

Authorized Share Capital Breakup

<i>Type of shares</i>	<i>No. of shares</i>	<i>Nominal value (in Rs.)</i>
-----------------------	----------------------	-------------------------------

(i) Equity

(ii) Preference

Total authorized capital

Issued share capital

<i>Type of shares</i>	<i>No. of shares</i>	<i>Nominal value (in Rs.)</i>
-----------------------	----------------------	-------------------------------

(i) Equity

(ii) Preference

Total issued capital

Subscribed share capital

<i>Type of shares</i>	<i>No. of shares</i>	<i>Nominal value (in Rs.)</i>
-----------------------	----------------------	-------------------------------

(i) Equity

(ii) Preference

Total subscribed capital

Paid-up share capital

<i>Type of shares</i>	<i>No. of shares</i>	<i>Nominal value (in Rs.)</i>
-----------------------	----------------------	-------------------------------

(i) Equity

(ii) Preference

Total paid-up capital

**Share application money
pending allotment (Value in
Rs.)**

Debentures breakup

<i>Type of debenture</i>	<i>No. of debentures</i>	<i>Nominal value (in Rs.)</i>
--------------------------	--------------------------	-------------------------------

(i) Non-convertible

(ii) Partly convertible

(iii) Fully convertible

Total amount

2. Shareholding pattern of media entities (those registered under the Companies Act)

Sl.No	Category of Shareholder	No. of shareholders	Details of each shareholder*	No. of shares of each shareholder	Shareholding % of each shareholder
A	Shareholding of promoter and promoter group				
1	Indian				
a	Individuals/Hindu Undivided Family				
b	Central Government/ State Government(s)				
c	Bodies Corporate				
d	Financial Institutions/ Banks				
e	Any Other (specify)				
	Sub-Total (A)(1)				
2	Foreign				
a	Individuals (Non-Resident Individuals/ Foreign Individuals)				
b	Bodies Corporate				
c	Institutions				
d	Qualified Foreign Investor				
e	Any Other (specify)				
	Sub-Total (A)(2)				
	Total Shareholding of Promoter and Promoter Group (A)= (A)(1)+(A)(2)				
B	Public shareholding				
1	Institutions				
a	Mutual Funds/ UTI				
b	Financial Institutions/ Banks				
c	Central Government/ State Government(s)				
d	Venture Capital Funds				
e	Insurance Companies				

f	Foreign Institutional Investors				
g	Foreign Venture Capital Investors				
h	Qualified Foreign Investor				
i	Any Other (specify)				
	Sub-Total (B)(1)				
2	Non-institutions				
a	Bodies Corporate				
b	Directors/Relatives of Directors				
c	Individuals				
i	Individual shareholders holding nominal share capital up to Rs. 1 lakh				
ii	Individual shareholders holding nominal share capital in excess of Rs. 1 lakh				
d	Qualified Foreign Investor				
e	Any Other (specify)				
	NRIs/OCBs				
	Sub-Total(B)(2)				
	Total Public Shareholding (B)= (B)(1)+(B)(2)				
	TOTAL(A)+(B)				
C	Shares held by Custodians and against which Depository Receipts have been issued				
C1	Promoter and Promoter group				
C2	Public				
	Total C=C1+C2				
	GRAND TOTAL (A)+(B)+(C)				

* Name, Address, Contact number, Relationship with other promoters/ shareholders

Share application money pending allotment	Category (as per those given above)	Details of each shareholder*	Nominal Value (in Rs.)	Expected date of allotment

*Name, Address, Contact number, Relationship with other promoters/ shareholders

Capital/Owners' fund pattern of media entities (those not registered under the Companies Act)

1	Indian	Fund invested in the capital of the entity (in Rs.)	Details of promoter (Name, Address, Contact number, Relationship with other promoters)	Percentage of total owners' fund
a	Individuals/Hindu Undivided Family			
c	Bodies Corporate			
e	Any Other (specify)			
	Sub-Total (1)			
2	Foreign			
a	Individuals (Non-Resident Individuals/ Foreign Individuals)			
b	Bodies Corporate			
e	Any Other (specify)			
	Sub-Total (2)			
	Total Owners' Fund = (1) + (2)			

Note:

1. Media entities must disclose their detailed shareholding pattern in the above format.
2. Media entities must also disclose the detailed shareholding pattern of its promoting entities and of the entities holding shares greater than 20%.
3. Media entities must disclose a list of all their subsidiaries, associates and joint ventures, and the Holding Company and provide detailed shareholding patterns/owners fund pattern (as applicable) for each of them in the above pattern.
4. Media entities must also provide the detailed shareholding pattern/owners fund (as applicable) of all promoting entities and those entities holding shares greater than 20% in each of the subsidiaries, associates and joint ventures.

Details of indirect shareholding $\geq 20\%$ (as per multiplicative rule) through chain of entities in the media entity

Sl. No.	Name of entity	% of indirect shareholding ($\geq 20\%$) using multiplicative rule	Chain of investment

3. Details of Board of Directors (for those registered under the Companies Act)

Name of the Director	
Nationality	
Designation	
Date of appointment	
Contact details	
Shareholding %	
Relationship with	
Other Directors	
Promoters	
Shareholder with $>5\%$ shares	
No. of current directorships/management committee memberships (as applicable) in	
(i) Other media entities	
Details (Name of entity, Category, Relationship)	
(ii) Non-media entities	
Details (Name of entity, Category, Relationship)	
No. of directorships/management committee memberships (as applicable) in last five years in	
(i) Other media entities	
Details (Name of entity, Category, Relationship)	
(ii) Non-media entities	
Details (Name of entity, Category, Relationship)	
Shareholding interests/owners' fund investments (as applicable) in other entities	
Name of entity	

Nature of interest or concern	
Shareholding/owners' fund investments %	

Details of management (management committee etc.) (for entities not registered under the Companies Act)

Name of member	
Nationality	
Designation	
Date of appointment	
Contact details	
If invested in owners' fund,	
(i) amount of fund invested	
(ii) % of total funds of the entity	
Relationship with other members and owners	
No. of current directorships/management committee memberships (as applicable) in	
(i) Other media entities	
Details (Name of entity, Category, Relationship)	
(ii) Non-media entities	
Details (Name of entity, Category, Relationship)	
No. of directorships/management committee memberships (as applicable) in last five years in	
(i) Other media entities	
Details (Name of entity, Category, Relationship)	
(ii) Non-media entities	
Details (Name of entity, Category, Relationship)	
Shareholding interests/owners' fund investments (as applicable) in other entities	
Name of entity	
Nature of interest or concern	
Shareholding/owners' fund investments %	

Note:

Shareholding interests have to be disclosed in case of companies, and Owners' fund investments have to be disclosed in case of media entities not registered as companies.

4. Disclosures relating to key managerial personnel in the media entity

	Name	Date of appointment	Relationship with promoter/owner/management	Directorship in other entities	% Shareholding/ % investment in owners' fund			Contact details (Permanent address, Email Id, Mobile number)
					In media entity under consideration	In other media entities	In other business entities	
CEO								
CFO								
Company Secretary								
Manager								

Disclosures relating to Senior editorial staff

Name	Date of appointment	Relationship with promoter/owner/management	Details of employment in last five years/previous employer	% Shareholding/ % investment in owners' fund			Contact details (Permanent address, Email Id, Mobile number)
				In media entity under consideration	In other media entities	In other business entities	
Editor-in-chief							
Group editors							
Assistant Editors							

5. Disclosure of particulars of contract/arrangements/agreements* entered into by the media entity

Name of the entity	
Nature of relationship	
Nature of contract/arrangement/transaction	
Duration of contract/arrangement/transaction	
Salient terms of the contract/arrangement/transaction including the value, if any	
Purpose for entering into such contract/arrangement/transaction	
Date(s) of approval by the Board/Management	
Amount paid as advances, if any	

*Only those relating to media activities, loan agreements, shareholding agreements, agreements with own promoters and managerial personnel

6. CONTROL INTERESTS IN OTHER ENTITIES

Interests (>=20%) of media entity, directly or indirectly (through associates, subsidiaries, relatives, other related parties etc.) in other entities

Name of entity	Whether media entity or not	Value of shares/Amount invested in owners' fund (as applicable) (in Rs.)	Mode of Payment (Cash/Any other*)	Percentage shareholding/of total owners' fund	Relationship with entity

Interests (>=20%) of promoters and shareholders (with >5% shareholding) of media entity, directly or indirectly (through associates, subsidiaries, relatives, other related parties etc.) in other entities

Name of entity	Whether media entity or not	Value of shares/Amount invested in owners' fund (as applicable) (in Rs.)	Mode of Payment (Cash/Any other*)	Percentage shareholding/of total owners' fund	Relationship with entity

In case investment in shares has been made in any form other than cash, the following details may be furnished:

Name of the entity whose shares have been bought (A)	No. of shares	Nominal value of shares (in Rs.)	% shareholding obtained in (A)	Date of acquisition of shares	Details of services offered by the media entity in exchange for shares

7. Disclosure of loans, debenture, guarantee and security made by the media entity

Nature of transaction (loan/debenture/guarantee/security)*	
Date of making transaction	
Name of entity to whom transaction is made	
Contact details of borrowing entity	
Whether media entity or not	
Amount of transaction (in Rs)	
Time period for which it is made	
Purpose	
% of transaction amount (only for loans and debentures) to total capital employed of the borrower entity	
% of transaction amount to the book value of total assets	
Date of passing Board Resolution/Management Resolution	
Rate of interest (for loans)	
Date of maturity	
Details of loan agreements	

*Details of each transaction with each entity has to be provided separately.

Note: Transactions made with financial institutions, the general public and the government may be excluded while making the above disclosures

8. Disclosure of loans, debenture, guarantee and security made to the media entity

Nature of transaction (loan/debenture/guarantee/security)*	
Date of making transaction	
Name of entity by whom transaction is made	
Contact details of lending entity	
Whether media entity or not	
Amount of transaction (in Rs)	
Time period for which it is made	
Purpose	
% of transaction amount (only for loans and debentures) to total capital employed of the media entity	
% of transaction amount to the book value of total assets	
Date of passing Board Resolution/Management Resolution	
Rate of interest (for loans)	
Date of maturity	
Details of loan agreements	

*Details of each transaction with each entity has to be provided separately.

Note:

- 1. Transactions made with financial institutions, the general public and the government may be excluded while making the above disclosures.**
- 2. Details of loans, debenture, guarantee and security made to associates, subsidiaries and joint ventures of the media entity by the holding company and other entities also have to be disclosed in the above format.**

B. Revenue Disclosure Forms

Market-wise

State:

Segment: **Print (Dailies)**

Language: (for all languages of operation in a State)

Year:					
	Note	Outlet n			Total
		Edition n1	Edition n2	Edition nk	
Income					
Operating income					
(a) Circulation revenue					
(i) Subscription revenue					
(ii) Sales through other sources					
(b) Advertising revenue					
(i) Income from sale of ad space					
1. Income received in cash					
2. Income received in the form of shares					
3. Income received in other forms*					
(ii) Income from sale of news/editorial space					
1. Income received in cash					
2. Income received in other forms*					
(c) Other operating income	1				
Other income	2				
Total income					
Expenses					
Operational cost	3				
Cost of raw materials consumed					
(i) Cost of newsprint					
(ii) Cost of ink					
Increase in inventories					
Employees' benefits expense	4				
(i) Editorial staff					
(ii) Operations and Marketing staff					
(iii) Directors and Senior Executives					
(iv) Other staff					
Advertising and marketing costs	5				
Distribution cost					
(i) Commission paid to selling agents					
(ii) Cost of unsold copies					
Administration cost	6				
Other expenses	7				

Total expenses					
EBITDA					
Finance costs	8				
Finance Income	9				
Depreciation and amortization					
Extraordinary items/any other items					
Profit before tax					
Tax expense					
Current tax					
Deferred tax					
Others (Pl. specify)					
Profit for the year					

The following details may be provided in case of income received in other forms:

Name of the entity from whom income is received	Form in which income is received	Value of transaction	Date of transaction

Additional information

	Outlet n		
	Edition n1	Edition n2	Edition nk
Circulation			
Average issue price			
Ad space (cc, %)			
News space (cc, %)			
Editorial space (cc, %)			
Ad rate			

List of top 10 advertisers per outlet

Sl. No.	Outlet n					
	Edition n1		Edition n2		Edition nk	
	Name of advertiser	Payments made for ad space	Name of advertiser	Payments made for ad space	Name of advertiser	Payments made for ad space

Note:

1. $n = 1, \dots, t$; where t = total no. of outlets (newspapers and magazines) controlled by the entity; k = no. of editions per outlet
2. Disclosures in the above format are required to be submitted for the last 5 years.
3. Disclosures for all languages of operation in the 9 States considered in this Paper are required; for English and Hindi, disclosures are required for pan-India market and Hindi Speaking Market respectively.
4. All outlets "controlled" by an entity, as given by the definition of control, have to be included in the above format.

Market-wise

State:

Segment: **Television**

Language: (for all languages of operation in a State)

Year:

	Note	Channel 1	Channel 2	Channel n*	Total
Income					
Operating income					
(a) Subscription revenue					
(b) Advertising revenue					
(i) Income from sale of ad time					
1. Income received in cash					
2. Income received in the form of shares					
3. Income received in other forms*					
(ii) Income from lease of news/editorial time					
(c) Income from sale of other time slots					
1. Income received in cash					
2. Income received in other forms*					
(d) Sale of content					
(e) Program licensing income					
(f) Transmission revenue					
(g) Income from mobile and internet-based contests, questions etc.					
(h) Shared services					
(i) Events					
(j) Other operating income					
Other income	2				
Expenses					
Operational cost	10				
Advertising and marketing costs	5				
Employees' benefits expense	4				
(i) Editorial staff					
(ii) Operations and Marketing staff					
(iii) Directors and Senior Executives					
(iv) Other staff					
Administrative cost					
Other expenses	7				
Total expenses					
EBITDA					
Finance costs	8				
Finance income	9				
Depreciation and amortization					

Extraordinary items/any other items					
Profit before tax					
Tax expense					
Current tax					
Deferred tax					
Others (Pl. specify)					
Profit for the year					
*n = no. of channels "controlled" by the entity, as per the definition of control.					

The following details may be provided in case of income received in other forms:

Name of the entity from whom income is received	Form in which income is received	Value of transaction	Date of transaction

Additional information

	Pure News Channel 1	Pure News Channel 2	Pure News Channel m*
Subscription charge (if pay channel)			
Ad time (hours, %)			
News time (hours, %)			
Editorial time (hours, %)			
Ad rate			
*m = no. of pure news channels "controlled" by the entity			

List of top 10 advertisers per outlet

Sl no.	Channel 1		Channel 2		Channel n	
	Name of advertiser	Payments made for ad space	Name of advertiser	Payments made for ad space	Name of advertiser	Payments made for ad space

	NCE* 1	NCE 2	NCE k^
Subscription charge (if pay channel)			
News time (hours, %)			
Time slots for news programs			
Ad time during news programs (hours, %)			
Ad rate for news programs			

*News-cum-Entertainment channel

^k = no. of NCE channels "controlled" by the entity

Note:

1. Disclosures in the above format are required to be submitted for the last 5 years.
2. Disclosures for all languages of operation in the 9 States considered in this Paper are required; for English and Hindi, disclosures are required for pan-India market and Hindi Speaking Market respectively.
3. All outlets "controlled" by an entity, as given by the definition of control, have to be included in the above format.

Market-wiseDistribution segment: **MSO**

State:

Year:

	Note	MSO1	MSO2	MSO n	Total
Income					
Operating income					
(a) Subscription revenue					
(b) Advertising revenue					
(c) Sale of equipment and accessories					
(e) Bandwidth charges					
(f) Commission income					
(g) Other operating income					
Carriage revenue					
Placement revenue					
Other income	2				
Total income					
Expenses					
Operational cost	11				
Administrative cost	6				
Purchases of stock-in-trade					
Changes in inventories of stock-in trade					
Employee benefits expense	4				
Advertising and marketing costs	5				
Other expenses	3				
Total expenses					
EBITDA					
Finance costs	8				
Finance income	9				
Depreciation and amortization					
Extraordinary items/any other items					
Profit before tax					
Tax expense					
Current tax					
Deferred tax					
Others (Pl. specify)					
Profit for the year					

Note: The above details have to be disclosed for all MSOs "controlled" by the entity.

Market-wiseDistribution segment: **DTH**

State:

Year:

	Note	Outlet 1	Outlet 2	Outlet n	Total
Income					
Operating income					
(a) Subscription revenue					
(b) Advertising revenue					
(c) Sale of equipment and accessories					
(d) Teleport services					
(e) Bandwidth charges					
(g) Other operating income					
Carriage revenue					
Placement revenue					
Other income	2				
Total income					
Expenses					
Purchases of stock-in-trade					
Changes in inventories of stock-in trade					
Operational cost	12				
Administrative cost	6				
Employee benefits expense	4				
Advertising and marketing costs	5				
Other expenses	4				
Total expenses					
EBITDA					
Finance costs	8				
Finance income	9				
Depreciation and amortization					
Extraordinary items/any other items					
Profit before tax					
Tax expense					
Current tax					
Deferred tax					
Others (Pl. specify)					
Profit for the year					

Note: The above details have to be disclosed for all DTH outlets "controlled" by the entity.

Annex 3 – Excerpts from “Recommendations on Issues related to New DTH Licenses”
Issued on July 23, 2014

Restructuring of cross-holding/'control'

- 3.17 **There should be uniformity in the policy on cross-holding/'control' between broadcasters and Distribution Platform operators (DPOs), and amongst DPOs, in the broadcasting and distribution sectors.**

Definition of 'control'

- 3.18 **An entity (E1) is said to 'Control' another entity (E2) and the business decisions thereby taken, if E1, directly or indirectly through associate companies, subsidiaries and/or relatives:**

(a) Owns at least twenty per cent of total share capital of E2. In case of indirect shareholding by E1 in E2, the extent of ownership would be calculated using the multiplicative rule. For example, an entity who owns, say, 30% equity in Company A, which in turn owns 20% equity in Company B, then the entity's indirect holding in Company B is calculated as 30% * 20%, which is 6%.; Or

(b) exercises de jure control by means of:

- (i) having not less than fifty per cent of voting rights in E2; Or**
- (ii) appointing more than fifty per cent of the members of the board of directors in E2; Or**
- (iii) controlling the management or affairs through decision-making in strategic affairs of E2 and appointment of key managerial personnel; Or**

(c) exercises de facto control by means of being a party to agreements, contracts and/or understandings, overtly or covertly drafted, whether legally binding or not, that enable the entity to control the business decisions taken in E2, in ways as mentioned in (b) (i) (ii) and (iii) above.

For this purpose:

- (i) The definitions of 'associate company', 'subsidiary' and 'relative' are as given in the Companies Act 2013.**
- (ii) An 'entity' means individuals, group of individuals, companies, firms, trusts, societies and undertakings.**

Relevant Market

- 3.19 **The State, with certain exceptions as mentioned in the Table 2.1, should be considered as the relevant market for assessing market share/ market dominance of MSOs (including HITS) in the TV channel distribution market.**
- 3.20 **In the case of DTH operators, the relevant market for assessing market share/ market dominance should be the entire country.**
- 3.21 **The market share of a DPO would be the number of active subscribers of that DPO, as a percentage of total number of active subscribers of that category of DPOs, in the relevant market. Here, active subscribers of a DPO would mean the subscribers who are registered with that DPO for provisioning of TV services and availing the same.**

Broadcasters and DPOs to be separate legal entities

- 3.22 **Broadcasters and DPOs should be separate legal entities.**

Vertical/Horizontal integration

- 3.23 **Rationalized and regulated vertical integration may be permitted between broadcasters and DPOs.**
- 3.24 **The vertically integrated broadcaster or DPO, as the case may be, shall be subjected to an additional set of regulations vis-à-vis the non-vertically integrated broadcasters and DPOs.**

Restrictions on Vertically Integrated entities

- 3.25 **The entity that controls a broadcaster or the broadcaster itself, shall be permitted to 'control' only one DPO (of any category i.e. either an MSO/HITS operator or DTH operator) in a relevant market and vice-versa.**
- 3.26 **The entity that controls a vertically integrated DPO or the vertically integrated DPO itself, shall not be allowed to 'control' any other DPO of other category.**
- 3.27 **If a vertically integrated DPO, while growing organically or inorganically, acquires a market share of more than 33% in a relevant market, then the vertically integrated entities will have to restructure in such a manner that the DPO and the broadcaster no longer remain vertically integrated.**
- 3.28 **A vertically integrated broadcaster can have only charge-per-subscriber (CPS) agreements with various DPOs which should be non-discriminatory.**

- 3.29 **A vertically integrated broadcaster shall file its RIO for its approval by the Authority. The RIO should cover all scenarios for interconnection and interconnection agreements should be only on the terms specified in the RIO.**
- 3.30 **A vertically integrated DPO will have to declare the channel carrying capacity of its distribution network. And, at any given point in time, it shall not reserve more than 15% of this capacity for its vertically integrated broadcaster(s). The rest of the capacity is to be offered to the other broadcasters on a non-discriminatory basis.**
- 3.31 **A vertically integrated DPO shall publish the access fees for the carriage of channels over its network. The access fee so specified shall be non-discriminatory for all the broadcasters. DPO shall file the specified access charge, with justification, with the Authority.**

Restrictions on Horizontal Integration

- 3.32 **Any entity controlling a DPO or the DPO itself should not ‘control’ any DPO of other category. However, MSOs and HITS operators can have cross-holding/‘control’ amongst them, subject to market share restrictions, as specified from time to time.**

Time period for Compliance

- 3.33 **Vertically integrated entities be allowed a period of one year to comply with the amended cross-holding/‘control’ requirements.**
- 3.34 **The policy decision on cross-holding/control to be appropriately reflected in all the existing rules/ policy guidelines/ licenses in the broadcasting and distribution sectors.**
- After the decision of the Government on these recommendations, the Authority would finalize the additional set of regulations and disclosures for regulating the vertically integrated entities.

Legend:

- *For the purpose of cross-holding/‘control’, a broadcaster includes the broadcaster itself, its subsidiary companies /associate companies/ companies of its relatives, its holding company and subsidiary companies /associate companies/ companies of its relatives of its holding company and any other broadcaster in its ‘control’.*
- *For the purpose of cross-holding/‘control’, a DPO includes the DPO itself, its subsidiary companies /associate companies/ companies of its relatives, its holding company and*

subsidiary companies /associate companies/ companies of its relatives of its holding company and any other DPO in its 'control'.

- *Vertical integration means a common entity, which can be a Broadcaster itself or a stakeholder having 'control' over the Broadcaster, "controls" a DPO in the same relevant market and vice versa.*
- *Horizontal integration means that a common entity, which can be a DPO itself or a stakeholder having 'control' over the DPO, "controls" the two categories of DPOs in the relevant market.*
- *Cross-holding means vertical integration; horizontal integration; or both.*
- *The two categories of DPOs are – (1) MSO/HITS operator and (2) DTH operator.*