Consultation Paper dated 15th February, 2013

"Issues relating to Media Ownership"

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

General Disqualifications

Q. No. 1:

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

Q. No. 2:

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

TTN comments on Q. 1 & Q. 2:

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

We submit that the following must be restricted from entering the media sector:

1. Lobbyists - i.e. individuals or entities who are or have been associated, whether directly or indirectly, in public relations or political parties/groups Political Bodies
2. Religious Bodies
3. Urban and local bodies, Panchayati Raj bodies and other publicly funded bodies
4. Central Government Ministries and Departments, Central Government owned companies, undertakings, Joint Ventures of the Central Government funded entities
5. State Government Departments, State Government owned companies, undertakings, Joint Ventures of the State Government funded entities

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

While extending the general disqualifications to other entities including surrogate entities, the Ministry of Information & Broadcasting (Ministry), should exercise its powers of prohibition only on the basis of substantial information, due, fair and transparent process with prior intimation and opportunity and on the basis of evidence and not merely on the basis of 'opinion'. Towards this end, we recommend that the Ministry should set up an independent body/tribunal consisting of representatives, both from the industry and the Ministry, which may be empowered to examine and decide on such issues in a transparent manner after taking into account all relevant information/documents/evidence and sufficient opportunity should given to the concerned entities to be heard and represented.

For fair play and to ensure an unbiased democratic approach it is imperative that all media is not only devoid of the above categories of entities but also the Government should refrain from controlling media houses/platforms since the Government is the most powerful and influential entity of the country.

As a first step, Doordarshan should not enjoy any advantage or preferential treatment of its products/channels in carriage across platforms, which it compels by way of rules and regulations framed by it.

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

Media Ownership/ Control

Q. No. 3:

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

Q. No. 4:

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

TTN comments on Q. 3 & Q. 4:

Media Ownership and Control:

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

2. International media markets have significantly more developed regulatory regimes unlike India and international democracies having such media markets have in fact relaxed the extent of cross media restrictions imposed a few years ago as they have become irrelevant today. Unlike Indian media industry, many international democracies had very few players in the market, thereby giving rise to the concentration of power in few hands, which prompted these restrictions.

<u>Media Ownership/Control Rules – Horizontal Integration</u>

We do not see the need to measure ownership/control of an entity over a media outlet with respect to cross media holdings.

<u>*Developing economies like India require cross investments within a sector*:</u>

The Indian media economy requires cross media holdings by which one media segment can augment the growth of the other, considering the growth environment. An economically well placed media entity should be permitted to invest in Print, Television and Radio segments and vice versa. Restricting companies from making investments in other media segments will affect their growth and hinder expansion of business, which are vital for the media industry to progress. It would also deprive companies to extend their expertise and goodwill to other media segments which would otherwise bring in enhanced quality, optimum utilization of resources and most importantly will be able to cater to growing consumer demand for better information & entertainment services.

The Authority should not proceed with any kind of proposal that fixes any threshold limits for holdings across media to conclude that there is 'control' over that entity.

The Authority in its recommendations to the Government in 2008 on Mobile TV services in India has stated as under:

"Any mobile television licensee should not allow any broadcasting company or group of broadcasting companies to collectively hold or own more than 20% of the total paid up equity in its company at any time during the License period. Simultaneously, the mobile television licensee should not hold or own more than 20% equity share in a broadcasting company. Further, any entity or person (other than a financial institution) holding more than 20% equity in a mobile television license should not hold more than 20% equity in any other broadcasting company or broadcasting companies and vice-versa. However, there would not be any restriction on equity holdings between a mobile television licensee and a DTH licensee or a HITS licensee or a MSO/cable operator company."

We do not agree with the recommendations made by the Authority as regards restrictions on broadcasting entities from holding more than 20% equity stake in Mobile TV licensee companies/entities and vice-versa.

With convergence becoming a huge reality the world over, the term 'cross-media' is steadily losing its relevance. Convergence, Internet and Mobile telephony brings the newspaper, TV and radio channel on a single screen, thus making the very concept of specific media markets/geographies irrelevant. With multiple technological methods developing to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium. It is also not possible for a single entity to dominate any given market based on market share in a given geography within a media segment. There is no reasonable basis therefore to bring in any kind of cross media restrictions. In view of the above, especially in light of the mobile platform transgressing, rather becoming an integral part of media and content dissemination, it is imperative to look at ownership/holdings by a media entity in the mobile space. Further with the advent of mobile TV and hence convergence of TV on mobile, the restriction of 20% needs to be done away with.

With each media segment being governed by specific laws & regulations there is no need to bring in additional regulations in the form of restrictions such as these that encompass media sectors.

<u>Media Ownership/Control Rules – Vertical Integration</u>

Vertical Integration is an essential aspect for optimum utilization of resources. This is a pivotal aspect of any industry be it media, software or retail. Economic compulsion is driving industry leaders to integrate their businesses either towards:

a. Suppliers (by owning parts of the Supply chain); OR
b. Customers (by owning parts of the Distribution chain)

The simplest illustrations of such integration are:

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- Hospitals setting up Pharmacy Stores Automobile Companies having their own Showrooms
- Software Companies getting into Equipment manufacturing
- Power Companies owning mines (for fuel supply)
- Cement Companies owning mines (for raw material)

Vertical Integration is also prevalent in the cable and satellite space wherein certain broadcasters have significant holdings either directly or indirectly, in the downstream distribution entities be it aggregators, DTH, MSOs, etc. The challenges thrown before this industry are multifold:

(1) Increasing cost of carrying on business;
(2) Stiff competition from other media;
(3) Consumer choice and patterns have become very unpredictable; and
(4) Constant advancement and development in technology and growth of new media platforms.

For Vertical Integration not to be misused and serve as a detriment to the growth of this industry, certain pertinent and critical decisions need to be taken and therefore, the existing regulations of "must carry" as stipulated under Regulation 3(10) of **The Telecommunication (Broadcasting And Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 dated 30th April, 2012**, are effectively implemented and enforced by the Authority. The Regulation on "must carry" reads as under:

"Every multi system operator shall, within sixty days of receipt of request from the broadcaster or its authorized agent or intermediary, provide on non-discriminatory basis, access to its network or convey the reasons for rejection of request if the access is denied to such broadcaster.

Provided that it shall not be mandatory for a multi system operator to carry the channel of a broadcaster if the channel is not in regional language of the region in which the multi system operator is operating or in Hindi or in English language and the broadcaster is not willing to pay the uniform carriage fee published by the multi system operator in its Reference Interconnect Offer.

Provided further that nothing contained in this sub-regulation shall apply in case of a broadcaster who has failed to pay the carriage fee as per the agreement and continues to be in default.

Provided also that imposition of unreasonable terms and conditions for providing access to the cable TV network shall amount to the denial of request for such access.

Provided also that it shall not be mandatory for the multi system operator to carry a channel for a period of next one year from the date of discontinuation *of the channel, if the subscription for that particular channel, in the last preceding six months is less than or equal to five per cent of the subscriber base of that multi system operator taken as an average of subscriber base of the preceding six months."*

These regulations have to be strongly imposed across cable platforms as the LCO and MSO control the last mile cable delivery of channels. Specifically during elections, it has been observed that certain MSOs/ LCOs under political influence or for lure of money blackout certain news channels which are potential threats to a political party. Countries like Georgia have mandated the 'must carry' of news channels during elections across platforms.

Further, the need of the hour is to bring in strictly and strongly enforceable fair practices, transparency and non-discrimination between entities in a vertically integrated media segment, the absence of which will give rise to malpractices and discrimination by dominant entities viz-a-viz other constituents within the segment. For example if a vertically integrated broadcaster's channel is available/placed on its downstream distribution system, be it DTH or an MSO or on any other platform, the competitor broadcaster's channel should also have the right/option to be on such distribution system on at-least the same terms and conditions, if not preferable, as are applicable to the vertically integrated broadcaster.

Illustration:

For instance a content owner owning a DTH company and vice-versa would give rise to discriminatory consequences as regards other entities in the vertical. As an illustration, A, is a broadcasting company owns several TV channels and has significant holding and control in B a DTH company. As DTH is today, growing at a very fast rate, A with its controlling position in B will be able to leverage a better position for its channels on B's DTH platform viz-a-viz channels of other independent broadcasters.

Vertical Integration, if not brought under the ambit of transparency and fair play with clear guidelines to ensure non-discrimination to direct competitors, will hurt the interests of the entire segment. We give below some instances that reflect such issues and also the desired action required that will help resolve such issues:

1. Issue: A vertically integrated aggregator may use its dominance against cable operators and seek reductions in its channels' carriage payouts, thus leaving no option for the cable operators to hike carriage fee demands from other broadcasters and also thrust its demand for significant increase in subscription revenues from the operators. And to recover such additional demand the operators may have no option but to reduce payouts to other broadcasters. In addition, it can ask operators to remove from their respective

networks, those channels, which are in direct competition with its own channels.

Action Required: To have clear guidelines that amplify that 'no TV channel which is part of a vertically integrated Media Group, to be given preference by a specific cable system, over its competitor, due to its proximity, to the Vertically Integrated Media Group owning a part of or all of the cable system, directly or indirectly. To ensure transparency, information regarding any specific cost or revenue accruing to such Media Group should be shared with the Authority, which may intervene if a competitor claims specific preference due to the reasons above.

2. Issue: Similarly, inference can be derived for preferential packaging, by placing these channels in the lowest price bouquet or the most popular bouquet exclusively, of its own channels on DTH, IPTV,HITS or 4G platforms. By virtue of doing so, it can be predatory to its competitors business interests. Such penetration will not only get substantial increase in their subscription revenues but will also significantly increase their advertising revenues due to the increased number of eye balls watching their channels.

   Action Required: To have clear guidelines that amplify that, 'no TV channel which is part of a vertically integrated Media Group, be given preference by a specific DTH, IPTV, HITS or 4 G Platform, over its competitor, due to its proximity, to the Vertically Integrated Media Group owning a part of or all of the platform, directly or indirectly. To ensure transparency, any specific revenue accruing, as a consequence of the same should be shared with the Authority, which may intervene if a competitor claims specific preference due to the reasons above.

3. Issue: Another instance is that of content owners owning Cable, DTH, IPTV, HITS or 4G companies and vice-versa giving rise to discriminatory consequences as regards other entities in the vertical. Such ownership have the effect of being able to specifically promote 'group owned channels', by virtue of allocation of EPG , specific promotions of those channels, popularly referred to as 'Barker Channels', thus making its 'own channels' more / easily visible to consumers and enabling better viewership of these channels. Thus unfairly skewing popularity of these channels, leading to better economic value.

   Action Required: To have clear guidelines that amplify that'no TV channel which is part of a vertically integrated Media Group, to be given preference of 'LCN, EPG or 'Barker' Visibility by a specific Cable, DTH, IPTV, HITS or 4G Platform, over its competitor, due to its proximity, to the Vertically Integrated Media Group owning a part of or all of the platform, directly or indirectly. To ensure transparency, any such specific placement should be shared with the Authority, which may intervene if a competitor claims specific preference due to the reasons above.

4. Issue: In a recent case, two major vertically integrated media broadcasting groups formed a 50:50 joint venture entity ("JV Aggregator") to be the aggregator (Distribution Bouquet) for these groups' channels. Both these groups have significant holding and control in DTH and cable distribution platforms. The JV Aggregator was able to leverage its channels' position to enable even faster growth for the two groups and their vertically integrated distribution platforms and put other independent DTH and Cable distribution platform operators and broadcasters in a tight spot.

   Action Required: To have clear guidelines that amplify that 'no Distribution Bouquet which is part of one or more vertically integrated Media Groups, should be given preference of ''carriage, subscription or placement' on a specific Cable, DTH, IPTV, HITS or 4G Platform, over the competitor channels of the Media Group, due to its proximity, to the Vertically Integrated Media Group owning a part of or all of the platform, directly or indirectly. To ensure transparency, any specific such carriage, subscription and / or placement should be shared with the Authority, which may intervene if a competitor claims specific preference due to the reasons above.

While, the broadcasting and cable services remain even today pre-dominant of analogue cable market that has a serious capacity constraint of carrying number of channels on a cable network, an Aggregator enjoying such market dominance can exercise its market position to push for its channels, creating lack of media plurality and concentration of media. Such market dominance can make the market uncompetitive and monopolistic within the vertical. Further, such integration can be more significantly detriment when a dominant vertically integrated media entity is also politically aligned.

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

The Government should allow vertical integration but ensure that stringent rules and regulations are effectively put in place to safeguard and ensure the above mentioned guidelines for fair play amongst players and there exists no opportunity for vertically integrated groups to treat other constituents in an unfair manner using the advantage they hold in the segment.

Media Ownership rules

Q. No. 5:
Should only news and current affairs genre or all genres be considered while devising ways and means to ensure viewpoint plurality? Please elaborate your response with justifications.

Q. No. 6:

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

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

TTN comments on Q. 5 & Q. 6:

To begin with, we strongly oppose the Authority's view that cross media holdings negatively impact viewpoint plurality. With the kind of fragmentation seen in the Indian media industry and several players competing with one another, (82000 publications, over 800 TV channels, and over 200 private Radio stations), there is no threat whatsoever of dilution of plurality or dearth in diversity of opinions as regards any information presented to readers/viewers/listeners. Indian laws that govern television news media already contains specific provisions, as part of regulations, license conditions etc., that govern the functioning of news media, as listed below. We do not see any additional need to bring in regulations and restrictions on the news genre on the premise of ensuring viewpoint plurality, which in our view already exists.

Control on TV Channels	**Existing Law/ Regulations**
Content Regulation	• Guidelines (as amended) For Uplinking Of Television Channels dated 5th December, 2011 • Rule 6 of Cable Television Network Rules, 1994 Guidelines (as amended) For Downlinking Of Television Channels dated 5th December, 2011 • Rule 7 (11) of Cable Television Network Rules, 1994
Advertisement minutage restrictions	• Standards Of Quality Of Service(Duration Of Advertisements In Television Channels) (Amendment) Regulations, 2013(15 OF 2012) dated 22nd March, 2013

Channel Price Freeze	• The Telecommunication (Broadcasting and Cable) Services Tariff Order 2004 [1 Of 2004]
Restrictions on Channel Offering & Bouquets	• Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 [no. 3 of 2007]
'Must Provide'	• The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004)
Compulsory A-la-carte pricing	• Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 [no. 3 of 2007]
Addressable Systems Pricing	• The Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 (Main) dated 21st July, 2010
Multiple Restrictions on Interconnection	• The Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation, 2006 (10 of 2006) • The Telecommunication (Broadcasting And Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 dated 30th April, 2012

Our reasoning against cross media restrictions are as under:

1. Media companies the world over are facing decreased revenues, as a result of several factors, majorly, the economic downturn, competition from online piracy and user generated video programming providers and most significantly due to increased competition from new media players, especially large global companies that have become the "go-to" destination for news and entertainment, unregulated new media players, etc have impacted the economic value of this industry.

2. There is a paradigm shift towards relaxing cross media ownership rules in several jurisdictions. Such relaxations were much favored after the recent economic recessions, where one media sector was growing and the other was facing the crunch. Experts believed given that cross-holding was allowed/ implemented one business could have saved other part of the media by cross investing/ takeovers and creating synergies.

3. Globally, print media is on the verge of a shut down and localized newspapers are facing stiff competition from global on-line businesses with global footprint, a domain that is not regulated.

The American and other Western newspaper markets have suffered significant reversals in readership and revenue. In countries like the United States, Greece and the United Kingdom, the business of journalism is suffering from cost-cutting measures, reduced consumption, declining resources, consolidation and its accompanying challenges.

4. The print sector is forced to move into the Digital & Television media because the Consumer is spending more time on these platforms and therefore advertising revenues are moving to these platforms as well.. Countries with high broadband penetration allows readers to more easily access to information and therefore popular websites are seeing higher traffic and increase in digital revenues. India is not far behind. With increasing shift to on-line advertising, print is facing the dual challenges of falling subscriptions and ad revenues. With newspapers already on the decline globally, and facing stiff challenges from online media, further restrictions on cross media holdings across media sectors will make it impossible for print media to survive.

5. Television sector is still grappling with the malaise of carriage fee burden and is yet to actually see real benefits of subscription revenues, which digitization is projected to bring into this industry. With stagnant or low growth in advertising revenues and no concrete prospects of subscription, TV companies are under tremendous pressure to deliver quality content at high costs. In fact there is an excess in the number of players, presence of political lobbyists and entities influenced by political interests all of which provides great potential for malpractice in this sector.

6. The efficiencies gained from combined media holdings will allow media companies to compete better in today’s changing marketplace. In addition, the cost savings generated by common ownership allow stations to add local newscasts and other locally oriented programming. Even within the same vertical segment, greater choice in the form of multiple formats can be made available to consumers.

7. To understand the nature of cross media holding it is imperative to take a step back and examine the holding's economic motivations. In the information and communication sector, two broad themes emerge.

   (i) The first sees holding in the media and entertainment sector as reactions to exogenous technological and policy or regulatory changes to the industry's structure. These forces create opportunities for previously distinct operations to combine.

(ii) A second and more "active" interpretation develops the strategic view of cross holding in media as a continuous drive by companies to consolidate their operations and improve their efficiency through economies of scale and scope and synergies.

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

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

In fact, it can even be concluded that there exists "excess" plurality in the news genre in Indian media. In television for instance, there are currently over 800 channels with 300+ news channels today. However, the viewership of TV news is almost irrelevant in the overall TV viewership landscape.

Channel Genres	**Share of Viewership**	**No. of Channels**
Hindi GECs	29%	16
Regional GECs	23%	138
Hindi Movies Channels	13%	17
Kids Channels	7%	15
Cable Channels	4%	10
Hindi Music Channels	4%	19
Regional News Channels	***4%***	***105***
Regional Movies Channels	3%	14
Hindi News Channels	***3%***	***19***
Sports Channels	2%	16
Regional Music Channels	2%	34
Infotainment Channels	2%	25
English Movies Channels	1%	17
Devotional Channels	1%	36
Regional Kids Channels	0.3%	6
English GECs	0.2%	11

English News Channels	***0.2%***	***8***
Hindi Business News Channels	***0.1%***	***2***
English Business News Channels	***0.1%***	***4***
Others	1.5%	193
Grand Total	100.0%	705

Source: TAM | TG: C&S 4+ |Market All India 2012| All day 24 hours

The above figures clearly show that the English News viewership in 2012 was 0.2%, the Hindi news category with 3% and all the 105 regional news channels account for 4% of viewership. The Hindi & regional GEC genre actually holds 52% of the total TV viewership. This makes the TV news segment extremely small and insignificant and imposing any kind of restrictions therefore on this segment will curb its growth and survival.

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

We do not see any need to impose restrictions on cross media holdings in the media sector or for that purpose identify sectors or genres to devise ways and means to ensure plurality. We therefore must have forbearance as far as imposition of any kind of restrictions on Cross-media holdings is concerned. If firms are allowed horizontal integration and growth, they will be able to save on costs and provide better quality content to the consumer. The overall experience of the Consumer will improve significantly given the ability of the Media Groups to deliver content across multiple platforms.

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

industry has at least 3 players – healthy competition even between 3 players will ensure plurality.

Internet as a threat to TV:

The Internet and new digital mediums are posing stiff competition to television in the west. People are moving online because of clear benefits offered by the web. But they're also still drawn to the comforts and conveniences of TV. We are now moving toward something like a hybrid model that combines the best of both worlds: the simplicity and convenience of TV with the searchable, customizable, 'personalizable' world of the web. At the forefront of this shift are for example : (i) YouTube, (ii) Hulu, (iii) iPlayer, (iv) Google, Google TV, (v) Netflix and other 'over the top' (OTT) services, not to mention illegal downloading, all offer alternatives.

There is no denying the obvious advantage that Internet companies have over other media forms. Today, Internet companies could launch an exclusive channel dedicated to onlynews without seeking any permissions from the Government. The savvy Consumer (and there are many in this fast growing set), will be happy to read, see, listen to news on such Internet "Channel" compared to channels on other Broadcast medium. Or else be a platform for individual, "Newscasters" to Podcast over the Internet, as if it was a credible and licensed News source.

Two of such news aggregators who offer rich video content through their platforms are (1) http://live.huffingtonpost.com and (2) http://www.youtube.com/live/all, who are not licensed to provide such services in India. In such circumstances, the over 'policed' news broadcasting sector can never compete with these operators/platforms who cater to Internet savvy customers.

The US pay TV market had suffered its first ever drop in subscribers. Some commentators pointed to this as the inevitable result of the growth of on demand and over the top offerings available on the internet. Nielsen, who track US television viewing habits, have reported a drop in television ownership - albeit from 98.9% to 96.7%. DVD sales are falling, while Netflix recently overtook cable operator Comcast to become the biggest subscription video service in North America[1]. IMS Research however is predicting digital cable TV subscribers in the US will increase by 7.8m between 2010 and 2015[2].

A 2012 study by the ISI Group confirmed that American viewers continued to scale down their cable TV subscriptions in favor of accessing high-speed streaming services. Instead of flipping through

[1] http://www.bbc.co.uk/news/business-13377164

[2] Ibid

"whatever's on TV" every night, the online viewer are hooking up their smartphones, laptops and tablets to traditional TV screens or gaming devices and accessing their programming via the Internet[3].

In US, according to businessinsider.com, three of the nation's major cable TV players lost a total of 621,000 subscribers from 2011 to 2012. The ISI Group study projects that cable will decline into just one in three homes by 2017. While it may be too soon to label cable and linear broadcasting obsolete, there's a battle brewing between content creators and cable companies on costs and access for programming that doesn't bode well for the old guard.

The number of people who watched television at least once a month declined seven percent in 2011, according to a recent poll by the Nielsen Company. The survey of fifty countries found that the numbers of people who viewed an online video increased to 84 percent showing a shift from watching preprogrammed television shows.

The data also show a decline in subscription for the local cable providers, suggesting that many people are using new technologies and devices that make it easier for them to watch the content they want whenever and wherever is most convenient for them. Viewership decline, the report states "may be the result of leveling off after a period of sustained growth, weather and economic factors or of other viewing options."

It's clear that the rich variety of alternatives online have given consumers the option of spending their time doing things other than watching traditional television programming as the definition of the traditional TV home continue. Internet medium carries text, videos and audio and pose a threat to not only traditional media such as news papers but also to TV and Radio. Increasing internet service providers allow consumers to access news via mobile devices thereby diminishing the demand for TV viewing. Also the increase in use of social networks has also impacted TV. In the US, overall, 55% of Americans access the internet on a mobile device, such as a cell phone or tablet and among this group, 30% is believed to have viewed news on social networking sites the previous day.

While at present such access and penetration in India may be low, India is already emerging as a very strong provider of content on mobile and internet platforms. With growth in mobility, 4G and Broadband, India is expected to rapidly jump ahead of the curve, whereby this form of media via many such global operators, will threaten the domestically grown TV businesses in news and entertainment. It is likely these will soon destroy economic value of the TV broadcasting sector.

[3] http://blogs.imediaconnection.com/blog/2013/01/14/is-the-internet-killing-cable-tv/

Internet as a medium therefore poses a huge threat to sectors like newspapers and TV and imposing any kind of cross media restrictions will result in the absence of a level playing field between the media sectors.

Q. No. 7:

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

Q. No. 8:

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

Q. No. 9:

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

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

Please elaborate your response with justifications.

Q. No. 10:

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

Q. No. 11:

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

(i) C3
(ii) HHI
(iii) Any other

Q. No. 12:

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

Q. No. 13:

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

Q. No. 14:

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

Q. No. 15:

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

Q. No.16:

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

Q. No. 17:

Would it be appropriate to restrict any entity having ownership/ control in a media segment of a relevant market with a market share of more than a threshold level (say 20%) in that media segment from acquiring or retaining ownership/ control in the other media segments of the relevant market? Please elaborate your response with justifications.

Q. No. 18:

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

Q. No. 19:

Would it be appropriate to lay down restrictions on cross media ownership only in those relevant markets where at least two media segments are highly concentrated using HHI as a tool to measure concentration? Please elaborate your response with justifications.

Q. No. 20:

In case your response to Q19 is in the affirmative, please comment on the suitability of the following rules for cross media ownership:

(i) No restriction on cross media ownership is applied on any entity having ownership/ control in the media segments of such a relevant market in case its contribution to the HHI of not more than one concentrated media segment is above 1000. (For methodology of calculation please refer para 5.42)

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

Q. No. 21:

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

Q. No. 22:

In case your response to Q21 is in the affirmative, please comment on the suitability of the following rules for cross media ownership in such relevant markets:

(i) No restriction on cross media ownership is applied on the entities contributing less than 1000 in the Diversity Index Score in such a relevant market.

(ii) In case any entity contributes 1000 or more in the Diversity Index Score of such a relevant market, the entity shall have to dilute its equity in the media outlets in such a manner that the contribution of the entity in the Diversity Index Score of the relevant market reduces below 1000 within three years.

Q. No. 23:

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

TTN comments on Q. 7 to Q. 23:

The primary basis of the Authority's recommendations to devise media ownership rules is to ensure viewpoint plurality. The ASCI Report itself clearly mentions that as regards the TV market, there is no significant concentration and dominance in the market for Hindi and English language and with local channels also being available, the concern of lack of plurality of news, views and opinions is non-existent. With that premise being questioned, as there exists in our opinion no such concerns as far as Indian Media is concerned, there is no merit in going into in-depth review of the 'methods' suggested by TRAI to arrive at 'relevant market' and its parameters of measurement. The Authority has sought views on methods without really analyzing the need for measurement itself.

Changing scenario in media consumption and viewing:

i. With the advent of technology, the consumer today is exposed to a wide array of options which he/she can chose to satisfy the need for information and entertainment, which till recently was dominated by traditional forms of media.

ii. To keep oneself updated about current affairs or to know more about upcoming projects, launches, events, etc. media exerts profound influence on our lives. Increasing number of people are switching to use of internet and mobile technologies in India and such new media market is slowly but steadily, emerging as a strong competitor to other forms of media.

iii. Convergence has made it possible for us to watch content online, on mobile devices, across geographical boundaries and virtually removing any kind of demarcation whatsoever to any given media platform. Online media has made it possible to read text, watch videos, listen to audio and also interact on one single platform, completely dispensing with traditional forms of viewing. The consumer today is making decisions about his/her unique mix, being much more active than conventional media would allow. In fact, newspapers, TV and radio are available on a mobile device and online. Hence, the term "cross-media" is becoming irrelevant and so is the concept of "cross media restrictions". With the defined borders of platforms steadily diminishing, how can one define a 'relevant market' in light of such changing trends in Indian media?

iv. Thus, any media ownership restrictions at this stage represents an unnecessary and counterproductive throwback to an era when consumers had far fewer choices for news and information than they have today. The Authority needs to take into account the emerging and significantly changing trends in media consumption and the manner in which viewers/audiences consume information or seek entertainment before concluding that there is a need to 'measure' or ‘define’ relevant markets in order to formulate media ownership/control rules.

Challenge of defining ‘markets’ in India viz-a-viz US and UK markets:

- The media landscape in India is strongly characterized by significant linguistic diversity. Regional languages have evolved through history and local conditions, and reflect area specific culture. It also reflects local demographics, for example, in historically multi-lingual states such as Karnataka, Andhra Pradesh & Bihar we have people speaking different languages and therefore the demand to receive quality programmes, the right to see and express themselves, their culture, their language and their life experiences through television programmes which affirm their sense of self, community and place in their own preferred language.

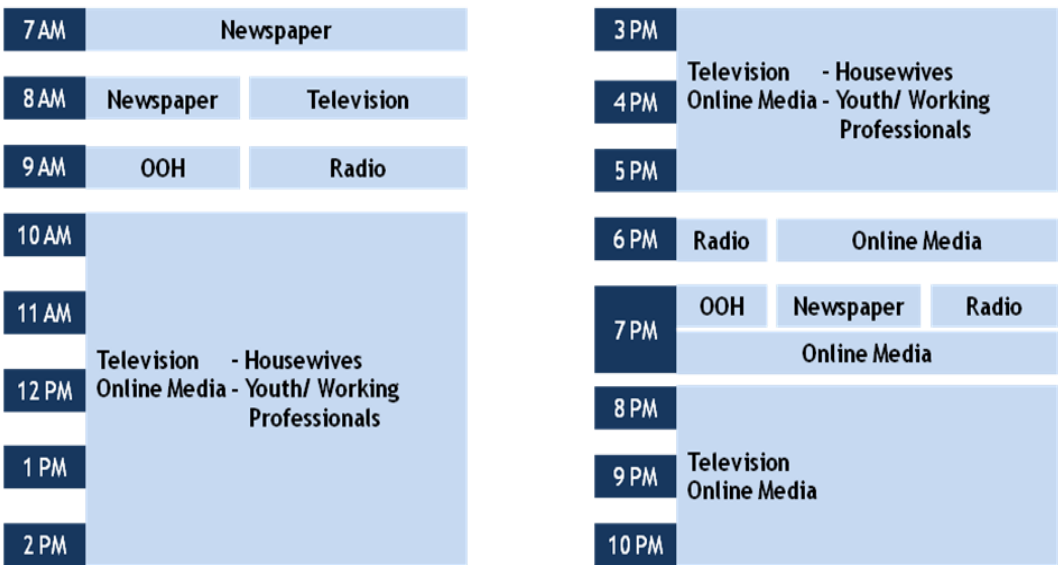
- In Western geographies which typically have one dominant language across the country, a news item which appears in one part of the country can easily be disseminated to another part, given everyone understands the language. However in India with so many languages spoken by so many exclusive demographics, it is important to re-create and convey the same news, in many languages. Hence it is important for the same media company, to be present in different languages, even if it is the same media, to be able to effectively convey the news item so that these exclusive demographics, which speak different languages may all receive the same news. This applies both to news and entertainment. The diversity of India’s linguistic framework is the driving force behind the wide range and presence of the number of TV channels, Print Media, Radio, Internet, etc.

- This diversity in turn creates a very lucrative market for regional language media for entertainment, news & information. The media is dependent on its audience/consumers/who decide which media they will use or subscribe to for their consumption of information. If they don't like what they see on TV or read in the papers, then the ratings and circulation figures fall, and the media organizations respond by 'giving the public what they want'. For instance a news report on any current event in a state would be effectively understood, consumed and accessed if it is broadcast in regional media. In terms of relevance and importance, regional news media plays a very vital role in making more people aware of happenings closer to them.

- This is unlike International markets like the US and UK, which do not face such linguistic challenges as it’s a completely homogeneous market and English is accepted across its media environment as a medium for news and information. Such a challenge is therefore unique to countries like India which is dominated by diverse cultures and socio-economic factors.

- Media ownership and merger control therefore maybe of more relevance for markets like US and UK, where there is predominantly a single language media market, but in India, the linguistic diversity and presence of multiple channels of media both at the national level and in the regional space, creates optimum diversified views and media pluralism as it is impossible for a single media outlet or owner to have 'influence' or 'dominance' and therefore the concept of deriving markets in India is irrelevant.

- Further, we need to appreciate 'A Media Day in the life of the average Indian Household'. The two representations drawn out below explain how media (in its ever changing forms) is an integral part of a consumer's day in an Indian Household:



An average Indian **transits from one Media to another Media**, across the day, choosing Media most suitable to her/his needs & convenience. For a media entity the focus lies in being able to cater to this audience on as many occassions as possible. Hence Media needs to be able to effectively cater to the average Indian consumers' media habits. Media needs to be given the freedom to be able to grow its Media interest in light of changing consumer needs and to be able to cater to societies' interests in providing News and Entertainment to a consumer who is accessing Media 24X7, across physical, digital and mobile devices. In this scenario, Cross Media Ownership needs to be encouraged, so that Media enterprises, which have built expertise and rich experience in domains of News and Entertainment, can help the Indian consumer to be informed and entertained in the manner the household chooses. This will preserve Media Freedom, ensure

Plurality and protect the fundamental principles of Democracy, which recognizes the importance of the Fourth Estate.

- In light of our submissions concerning cross media restrictions, we question the authority's view on the very need for media ownership rules with respect to cross media holdings With convergence becoming a huge reality the world over, the term 'cross-media' is steadily losing its relevance. With multiple technological methods developing to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium. It is also not possible for a single entity to dominate any given market based on market share in a given geography within a media segment. There is no reasonable basis or the need therefore to adopt any kind of measurement techniques that help derive 'relevant markets' based on which media ownership rules are proposed to be framed by the Authority.

Q. No. 24:

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

Q. No. 25:

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

TTN comments on Q. 24 & Q. 25:

We are of the strong view that the Authority, at present, should forebear from stipulating any kind of cross media ownership rules in India, for reasons substantiated in our preceding comments; However, in case the Authority decides to proceed with any guideline in this regard, it would be quite shocking given the huge commercial challenges that the industry is facing today – which are the fundamental reasons for horizontal growth. In this unfortunate scenario, the Authority should necessarily consult the Media industry in relation to all time lines (for Compliance, Review of guidelines, etc)

Mergers and Acquisitions

Q. No. 26:

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

Q. No. 27:

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

TTN comments on Q. 26 & Q. 27:

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

We do not see the need to bring in additional restrictions on M&A deals in the Indian media sector. M&A deals are integral to any business restructuring exercise, whether in media or other sectors. Specific guidelines and rules govern M&A and any fear of hindrance to competition or abuse of any dominant position by an entity would be adequately addressed under Competition laws. With merger control in India being reviewed for proposed changes pursuant to the Competition Amendment Bill of December 2012, the Indian Competition law framework is already equipped to deal with issues affecting competition across sectors, including the Media and Entertainment sector. As such a review by the Authority of M&A in the media sector to protect the need for diversity is in our view not really needed.

It is our view that there exists viewpoint plurality and healthy competition in the Indian media sector and hence there is no urgent need to impose additional restrictions on M&A in media to achieve this objective.

Vertical Integration

Q. No. 28:

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.

TTN comments on Q. 28:

Please refer to our comments on Vertical Integration at (Q. Nos. 3 & 4):

Mandatory Disclosures

Q. No. 29:

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

Q. No. 30:

What should be the periodicity of such disclosures?

Q. No. 31:

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

TTN comments on Q. 29 to Q. 31:

As regards the making of mandatory disclosure of information to the TRAI on regular basis, we are of the view that such mechanism already exists under relevant laws/ guidelines and there is no need for a similar mandate as is being sought by the Authority.

TTN VIEWS ON THE BROADER ISSUES CONCERNING MEDIA OWNERSHIP AND CONTROL:

Having addressed specific issues raised by the Authority as above, we submit below our overall perspective on the broader issues concerning Media Ownership and Control:

Key Aspects:

Constitutional Freedom:	• TRAI has put media's Right to Freedom of Speech and Expression at risk.
Convergence and Media	• TRAI has ignored the impact of Internet and new media on conventional media in light of convergence.
Media Ownership/Control: Is there a need?	• TRAI has not been able justify the proposed control measures.
Diversity – Indian Media Context & International comparisons	• TRAI has resorted to merely importing foreign concepts, while ignoring the diverse and different Indian media landscape.
Impact Analysis of regulations	• TRAI has not undertaken the important

	exercise of analyzing the regulatory impact of its proposals.
Media Plurality	• There exists ample media plurality in India – in fact, one could argue that there is too much competition.
Concurrent Laws- Competition law and TRAI's proposed regulations	• TRAI has in its efforts confused competition laws with sectoral regulations, creating overlapping jurisdictions.

I. Constitutional Freedom:

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

Why does the Authority think that a media entity should not use print, television, radio or internet, at the same time, to air its views? Isn't the proposed media ownership control in the present consultation paper restricting freedom of press and is contrary to what is desired, i.e. increasing 'media pluralism'.

The current condition of this industry is such that media companies have very few survival options. The challenges have manifested even more strongly due to ever changing consumer choices and preferences. It is very unlikely that the presence of multiple players in the industry would salvage the situation as very few media groups have the ability to survive in the current depressing economic conditions and capable of leveraging their monies and skill by investing in other media segments.

The Authority in its present consultation appears to be restricting media companies from investing in other media sectors by bringing in restrictions on ownership and control. For efficiencies of scale, production quality and satisfying consumer preferences, it is critical that media companies are allowed to invest across media sectors.

II. Convergence and Media:

1. With convergence becoming a huge reality the world over, the term 'cross-media' is steadily losing its relevance. Convergence, Internet

and Mobile telephony brings the newspaper, TV and radio channel on a single screen, thus making the very concept of specific media markets/geographies irrelevant. ***With multiple technological methods developing to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium.*** It is also not possible for a single entity to dominate any given market based on market share in a given geography within a media segment. There is no reasonable basis therefore to bring in any kind of cross media restrictions.

2. The world is witnessing a future that would be dominated by converged media and there is a clear shift in the manner in which information, specifically, news is being consumed. The consumption pattern is moving towards online sector in a big way with the internet platform redefining the way in which news is disseminated and consumed. ***It is important to have a regime that is flexible to changing needs of the media space and it appears that the TRAI has not in its present consultation considered the impact of such convergence in media before making its recommendation on media ownership.*** Any proposal therefore, that seeks to impose control on media ownership without factoring the impact of such convergence on the media sector as a whole would be completely inaccurate and flawed.

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

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

A. Indian Scenario:

1. The Indian scenario is quite unique, where even though the Government exercises control through licensing process, content regulation and price regulations, media companies have been successful in providing low cost quality entertainment to consumers. Government has exerted control through the licensing process while commercial interests have sought to monopolise the broadcasting sector and to focus on low quality but profitable programming. ***The complex issue is to determine the need for control itself and if measures are undertaken to control ownership in media how can such regulation serve public interest yet prevent that regulation itself from becoming a means of government control.***

2. Despite increase in literacy levels, television in India remains the cheapest and the most widely accessed mode of entertainment and information medium and hence attracts maximum eyeballs in the Indian Media & Entertainment industry, despite the fact that there is no monopoly and effective market competition amongst the media companies. The need is for a vibrant independent broadcasting sector free from any form of control that serves all regions and groups in society. The economic viability and the overall development of this sector have to be safeguarded before any kind of restriction is even thought about.

B. International Scenario:

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

4. International media markets have significantly more developed regulatory regimes unlike India and international democracies having such media markets have in fact relaxed the extent of cross media restrictions imposed a few years ago as they have become irrelevant today. Unlike Indian media industry, many international democracies had very few players in the market, thereby giving rise to the concentration of power in few hands, which prompted these restrictions.

5. A perusal of the restrictions in other countries would show that such curbs invariably relate to media entities diversifying only into terrestrial TV (which had limited channels) in view of its reach and not in satellite, cable and DTH services (which were not matured) have scattered and fragmented viewership. Hence, regulators and authorities in established markets have ratified the elimination of the blanket ban on cross media ownership. ***The need for cross media restriction in developed democracies arose because print players moved into terrestrial TV, which is not possible in India as the terrestrial TV ownership has always been monopolized by the Government*** through Prasar Bharti as is the case with short/medium wave radio through All India Radio. Hence any move to extend cross media restrictions to Indian media is uncalled for. Therefore, in the US markets, there was a need to regulate the players since there were no options for increasing competition unlike in India thanks to the large number of Satellite Broadcasting options which are completely independent and free from Government Control.

6. The Authority has to understand and fully appreciate the existing environment in Indian media before drawing comparisons or imbibing the restrictions that have been implemented in other countries. As the

diversity of services and choice of content from different owners in the market increases and as the consumer acquires increased level of control over the source of news he chooses, the justification or need for any kind of specific media ownership rules diminishes.

7. ***The Authority is proceeding on the assumption that media control or ownership restrictions are necessary for viewpoint diversity and that owners of media outlets are in a position to influence how and what is disseminated.*** This is an incorrect path to adopt while dealing with critical issues concerning media and any such rules or restrictions proposed in this direction will not be appropriate.

8. As an expert regulatory body on telecom and television media and distribution, the role of TRAI is to lay down provisions for fair competition, providing for a level playing field, protection of consumer's interest, prevention of monopoly, etc.

9. TRAI has not been able to clearly bring out reasons for bringing in such sweeping changes by way of proposals. The major view that emerges from the present consultation paper is that since media ownership and merger control is prevalent in major foreign jurisdictions, it must also be made effective in India. ***However, TRAI has not been able to establish the compelling circumstances which call for such regulations that are being proposed in this consultation paper.***

10. ***TRAI has considered international scenarios on cross media ownership but it is not clear whether TRAI did consider and compare socio-economic conditions of other countries with Indian conditions while referring to such international markets.*** It is important to consider that India has 18 official languages and 1500 dialects. So for every region, there are local players as well as national players and hence, no scope for dominance and/or restricting competition.

11. **There is absolutely no risk of influence by any entity in the News segment. Indians consume News through multiple languages and across different platforms. The combined reach of all News generating platforms is between 5% to 7% of the population. This leaves out a gigantic 95% of the population who does NOT CONSUME ANY NEWS. It is practically impossible to believe that common ownership of Newspapers & News Broadcasting can ever cause any influence through the country**. Currently, the number of Newspapers & News Channels is so large that even common ownership will not dent the market positioning of any player.

12. In the last 5 yrs competition has actually increased across all media platforms. **A few years ago, the regulator had taken a view that**

there was enough competition and therefore, plurality in the industry and there was no need to regulate horizontal and vertical integration. From the industry perspective, the situation has actually worsened and there is far more competition in each segment.

India – As a diverse market:

1. Indian media as a market has a pluralistic character in terms of diverse cultures, languages, demographics etc. The Indian constitution recognises 22 languages in its schedule as official languages in India but surveys show over 300 languages actually spoken by the population in the country. ***The Indian media market therefore has to cater to this enormous and diverse mix of audiences that has various nuances to its cultural, social and economic fabric.*** This is one of the major reasons why the Indian media market is highly fragmented and scattered and this is aptly reflected by the presence of over 800 channels that caters to this diverse audience. Any kind of restriction or proposal to control media ownership therefore will not be complete or accurate without assessing its impact on a fragmented media such as in India.

2. ***The Authority has cited examples of international jurisdiction viz. US, Australia, UK and other EU countries where cross-media holding restrictions are prevalent but did not consider the dissimilarities in the media landscape when compared to India.*** All of these jurisdictions intensively use territorial broadcast platform at local levels where bandwidth is a scarce commodity and thus can only cater to a handful of entities. Such skewed array of players in a sector gives natural rise to speculation of monopolistic practices and lessening of media pluralism. Thus there have been such strict regulations for cross-media holdings and localization of such media could only add to such speculations. Whereas, ***India's media landscape is different, there is no commercial broadcasting on the terrestrial platform, all content is centrally monitored, and there is ample competition and media diversity. In the current environment, to add to Media's woes, there is no new Spectrum/ Frequency allocation being approved by the Government. This is putting many media companies to an economic disadvantage and is delaying plans for new media products, all of which enhances the cause of Media Plurality.***

   As the expert regulator TRAI is expected to base its recommendations and regulations on extensive research and analysis and not merely copy/import foreign concepts without actually realizing the need for such regulations. Without justifying the cause for such recommendations, the Authority may in fact restrict media independence and right to speech and expression.

IV. Impact Analysis of regulations:

1. By the present consultation paper, TRAI has proposed regulations that bring in sweeping changes in media ownership in India. As a general practice, in many international jurisdictions, a document known as the Regulatory Impact Analysis (RIA) is created before any new government regulation is introduced. RIA encompasses a range of methods aimed at systematically assessing the negative and positive impacts of proposed and existing regulations. The central purpose of any RIA is to ensure that the regulation will be welfare-enhancing from the societal viewpoint i.e., that benefits will exceed costs. RIA is generally conducted in a comparative context, with different means of achieving the objective sought being analyzed and the results compared.

2. The Authority in this consultation has relied on the ASCI's July, 2009 Report, in which even ASCI has recommended that prior to framing media ownership rules there is a need to conduct a market analysis keeping in view the structure of the relevant markets and competition structures. As it appears, ***TRAI has not supplied any RIA on the proposed regulations nor has it mentioned anywhere in the present paper that such assessment or impact analysis was conducted that may be caused by the proposed regulations. This may be a serious lapse on the part of the Authority, that while bringing vast changes affecting multitude of stakeholders, it has not assessed whether the proposed changes will be more beneficial than status-quo or whether the changes sought through regulations being beneficial can outweigh potential harm to the stakeholders and whether, there are alternate options available to achieve the desired objectives.***

3. <u>On the ASCI Report:</u> The ASCI Report was issued in 2009, more than 3 years ago, and therefore the relevance of the data presented therein needs re-evaluation. Using such outdated data to arrive at a statistical analysis to measure media control would be entirely unreliable.

V. Media Plurality:

1. The Authority has emphasized on media pluralism as a cornerstone of democracy and said that it should reflect the plurality of independent and autonomous media and diversity of media content. While, agreeing to the same, it must also be emphasised here that media pluralism has two "faces": internal (which may also be called content pluralism or diversity) and external (or structural). The first presupposes a variety of voices that should be presented in the media. The second one assumes that there must be a diversity of media ownership, i.e. a number of media providers.

2. If we take the Ofcom (the Office for Communications, UK's communications Regulator) example, Ofcom undertook a 7 months public consultation exercise on measuring plurality. Its consultation involved stakeholder engagement, academic seminars, international benchmarking, extensive consumer research, an in-depth study of the provision of news and a review of the academic literature. Ofcom's stark observation on the assessments of media plurality was that media plurality should not be boiled down to simple market share measures and that:

   "The literature suggests that qualitative factors, including the type of ownership, should also be considered when thinking about plurality. Some writers in this area, including Barnett, have suggested that regulation to promote quality journalism (a form of positive content regulation), rather than a focus on media ownership rules, may be a way to secure outcomes in the public interest."[4]

   Significantly, Ofcom said on media plurality:

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

   Ownership plurality does not necessarily ensure editorial or viewpoint diversity. Journalists, editors and producers may have a more direct impact on the views expressed in a media outlet than the outlet owners. Editorial viewpoint and agenda setting is not always dictated by ownership. For example, ITV and Channel 4 have different news agendas, but they both source their national news from ITN. Also relevant is the argument that, in some cases, different sources of news offer similar perspectives, thus reducing the diversity of voice sought by ensuring different ownership."[5]

3. ***As highlighted in our specific submissions above, with the kind of fragmentation seen in the Indian media industry and several players competing with one another, (82000 publications, over 800 TV channels, and over 200 private Radio stations), there is no threat whatsoever of dilution of plurality or dearth in diversity of opinions as regards any information presented to readers/viewers/listeners.***

The Authority in this consultation has already recommended restrictions on certain entities from entering the media sector i.e. political, religious and government owned/influenced entities etc. If these restrictions are effectively implemented, ***there is no further need to have sweeping***

[4] http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/statement/Annex7.pdf

[5] http://stakeholders.ofcom.org.uk/binaries/consultations/morr/summary/morrcondoc.pdf page 15

regulations covering all media sectors, which the Authority is attempting to do.

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

1. A concerning issue emerges with proposed regulations; that there will be concurrency of competition laws and media regulations. India has a fairly new competition law framework and a specialist body (i.e. Competition Commission of India or "CCI") that is charged with competition law enforcement. This does not necessarily mean that enforcement policy should be more lenient. Rather it should preserve the flexibility to adapt to the particular challenges of media and communications markets where the blunt instrument of rigid ex ante controls in the absence of observable harm risks being counterproductive.

2. ***The Authority's approach to the issues concerning competition in the media sector poses a significant problem of duplication of regulations and lack of synergy with the existing competition law framework in India.***

VII. Media Ownership Restrictions in the US:

In 1975, the FCC passed the newspaper and broadcast cross-ownership rule. This ban prohibited the ownership of a daily newspaper and any "full-power broadcast station that serviced the same community". Beginning in 1975, FCC rules banned cross-ownership by a single entity of a daily newspaper and television or radio broadcast station operating in the same local market. The ruling was put in place to limit media concentration in TV and radio markets, because they use public airwaves, which is a valuable, and now, limited resource. In 2003 the FCC set out to re-evaluate its media ownership rules specified in the Telecommunications Act of 1996. On June 2, 2003, FCC approved new media ownership laws that removed many of the restrictions previously imposed to limit ownership of media within a local area.

The changes were:

- Single-company ownership of media in a given market is now permitted up to 45% (formerly 35%, up from 25% in 1985) of that market.

- Restrictions on newspaper and TV station ownership in the same market were removed.

- All TV channels, magazines, newspapers, cable, and Internet services are now counted, weighted based on people's average tendency to find news on that medium. At the same time, whether a channel *actually contains* news is no longer considered in counting the percentage of a medium owned by one owner.

- Previous requirements for periodic review of license have been changed. Licenses are no longer reviewed for "public-interest" considerations.

  After series of litigation, the US Supreme Court reinstated the FCC ruling. The FCC in 2007 voted to relax its existing ban on newspaper/broadcast cross-ownership. The FCC voted to eliminate some media ownership rules, including a statute that forbids a single company to own both a newspaper and a television or radio station in the same city.

VIII. Role of Prasar Bharti as a case:

Currently, this imposes the biggest dominance with its massive influence over Radio & Television broadcasting. Additionally, cable companies have to carry these channels at non-commercial rates. This indirectly puts pressure on them to recover revenues from private sector players. The excessive force with which Prasar Bharti operates must be controlled by the Government. There were issues raised on the role of BBC when Ofcom had taken up the exercise to review the Media Ownership rules in UK. The Ofcom research pointed to the overwhelming dominance of the BBC in the market for news in the UK. There was strong opinion of some stakeholders in UK that the BBC should not be treated differently, although it is owned and governed in a different way than private media and BBC must continue to be included in any market analyses, or those market analyses will be incomplete.

For fair play and to ensure an unbiased democratic approach it is imperative that all media is not only devoid of the above categories of entities but also the Government should refrain from controlling media houses/platforms since the Government is the most powerful and influential entity of the country, and to this effect, the Government should completely alienate itself from media by divesting from the public broadcasting service in India i.e. Prasar Bharti (a la Doordarshan and All India Radio) across platforms of DTH, terrestrial, radio and mandatory carriage on cable and DTH systems. As a first step, Prasar Bharti should be made democratically accountable to the society (or nation) which is usually achieved by way of overt parliamentary control of financial allocations and board members and officers Doordarshan should not enjoy any advantage of terrestrial platform exclusivity and/ or preferential treatment of its products/channels in carriage across platforms, which it compels by way of rules and regulations framed by itself. These aspects should also be looked into and position should be reviewed on regular intervals.

Conclusion:

Any attempt by the Authority to formulate any kind of Media Ownership/Control rules, specifically on cross media holdings in India has to first consider the following:

1. Any restrictions on cross media holdings will hamper the tremendous growth potential for the Indian Media sector.

2. With over 300 news channels and 14,508 newspapers (local and national) available in India as on date, there is no concern for lack of plurality in news.

3. The socio-economic-cultural conditions prevailing in the Indian media industry makes it a very different market as compared to other developed countries. With 22 official languages and 1500 dialects existing in India, it would be difficult to arrive at a 'relevant market' to measure dominance or concentration, as none in our opinion exist.

4. Restriction on investment (on the basis of equity holding threshold) in the Indian media sector will restrict companies from achieving technological developments at reasonable costs and deprive companies of optimum use of resources.

5. The presence of several players within and across all media segments in India signifies that there is no dearth for diverse opinions and views.

6. Restriction on entry of certain entities into the media sector is of utmost importance at present than devising rules to restrict cross media holdings.

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