

## **BIF RESPONSE TO TRAI CP ON ISSUES AROUND MEDIA OWNERSHIP**

Broadband India Forum ("BIF"), as an independent policy forum and think-tank, is dedicated to working towards the proliferation of high-quality broadband and the realization of 'Digital India'. BIF has established itself as a thought-leader that engages in regulatory and policy consultations, with participation from various stakeholders, including technology providers, telecom operators, and internet-service providers.

We would like to take this opportunity to thank the Telecom Regulatory Authority of India ("TRAI") for providing us with the opportunity to submit our comments on the consultation paper on "Issues relating to Media Ownership" dated April 12, 2022 ("CP").

We support TRAI's initiative to promote media pluralism, especially in the interests of the powerless and marginalized sections of society. However, we do not agree that the concentration of media ownership is antithetical to media pluralism. We urge TRAI to reconsider the assumption that the concentration of media ownership adversely impacts the plurality of perspectives and ideas in the public forum, and consequently, undermines the quality of public debate. We have set out below our responses to the questions posed by TRAI in the CP and highlighted the benefits that may arise on account of cross media ownership. In our view, the Indian media market is well regulated by various sectoral regulators, and as such, there is no need for any further restrictions on media ownership.

**Q1. Media industry has expanded in an unprecedented manner. In addition to conventional television & print medium, the industry now comprises news & media-based portals, IP based website/ video portals (including You-tube/ Facebook/ Twitter/ Instagram/ Apps other OTT portals etc.). Considering overall scenario, do you think there is a need for monitoring cross media ownership and Control? Please provide detailed reasoning to support your answer.**

Response: We are of the view that there is no need to monitor cross media ownership and control. We note TRAI's concerns that cross-media ownership may be antithetical to viewpoint plurality (i.e., plurality of voices, opinions, and analyses in media systems). However, as set out below, we believe that market forces are likely to encourage companies to cater to a diverse range of consumer preferences, and pre-existing regulators in India are well-positioned to ensure that all players operate in a fair market.

As mentioned by TRAI itself in its Annual Report of 2020-21, the TV broadcasting sector encompasses 350 broadcasters, out of which, 40 are pay broadcasters at the end of March, 2021. Further, there were 1724 (1722 Regular & 02 Provisional) Multi System Operators (MSOs) registered with Ministry of Information and Broadcasting (MIB), an estimated 1,40,000 cable operators, 1 HITS operator, 4 pay DTH operators and few IPTV operators, at the end of March,

2021, in addition to the public service broadcaster - Doordarshan, providing a free-to-air DTH service in India. At present, there are 901 private satellite TV channels permitted by MIB at the end of March, 2021, out of which, 235 are SD pay TV channels and 92 are HD Pay TV channels. As mentioned in the same report, there were 366 private FM radio stations operational at the end of March, 2021, besides the public service broadcaster- All India Radio (AIR). As regards Community Radio Stations, reported by the Ministry of Information and Broadcasting (MIB), out of the 403 licenses issued at the end of March, 2021 for the setup of such stations, 324 community radio stations have become operational. From the above, it is evident that there are enough players in all segments of the media, thereby underlying the point that there is no dearth of competition in all sections of the media.

- **Benefits of Cross Media Ownership for End Users** – Cross media ownership may result in commercial advantages for the industry and increased choices for consumers. At the outset, while companies may operate in a successful manner without engaging in cross-media ownership, in the event that companies choose to participate in various platforms, it is likely to promote economies of scale, i.e., cost advantages that enterprises obtain due to their scale of operation. TRAI, while discussing its recommendations<sup>1</sup> to past consultation papers issued on the subject of media ownership, recognized that the benefits of consolidation include economies of scale and scope, access to better news management and improved access to technology for news gathering, editing and disseminating. In our view, as a consequence of these benefits, the increased profits from well performing businesses may be reallocated to subsidize the low performing assets which may be in nascent stages of development, such as regional or vernacular over the top (“OTT”) platforms. Additionally, cross media ownership may result in synergy between various platforms, which could enhance the quality and viability of involved media along with the flow of programs, information and entertainment across platforms. Such synergy between platforms is likely to eventually benefit consumers.
- **Convergence of Media Sources to Make Content Accessible** – Developments in technology have altered the manner in which information and entertainment can be communicated to the public, such as the launch of e-newspapers and e-magazines by print media companies to leverage the growing internet access in the country. As technology continues to evolve, companies are likely to explore multiple sources of media in order to disseminate content to the public in a convenient and easily accessible manner, thereby potentially making cross-media ownership the norm in the future.
- **Competitive Markets Beneficial for Viewpoint Plurality** – The policy goal of ensuring viewpoint plurality in a competitive market is likely to be encouraged by the operation of market forces itself, without the need for any oversight or special monitoring mechanism. Market players aiming to secure a large consumer base may seek to produce and disseminate content and information that satisfies the diverse demographic and cultural

---

<sup>1</sup> TRAI, Recommendations on Media Ownership, February 25, 2009, at page 33, available at [https://www.traai.gov.in/sites/default/files/recom25feb09\\_media.pdf](https://www.traai.gov.in/sites/default/files/recom25feb09_media.pdf).

preferences of consumers. Investment in developing varied types of content (and potentially in multiple media sources to disseminate such content) is likely to reinforce viewpoint plurality.

- **Fundamental Rights under Article 19 Should be Protected** – Article 19(1)(a) of the Constitution of India provides that all citizens shall have the right to freedom of speech and expression while Article 19(1)(g) protects the right to practice any profession, or to carry on any occupation, trade or business. Such fundamental rights may be subject to ‘reasonable restrictions’ as understood under the Constitution. With respect to the freedom of speech and expression, TRAI noted in past recommendations on the issue of media ownership that as per the Supreme Court, it is necessary that citizens have the benefit of plurality of views and a range of opinions on all public issues to ensure their free speech rights.<sup>2</sup> As highlighted by us above, cross-media ownership is likely to have multiple benefits which include reinforcing viewpoint plurality and improving avenues of content dissemination to the public. Thus, in our view, the free speech rights of citizens may be promoted by enabling entities to capitalize on economies of scale and scope as well as technological developments to make available diverse forms of news and other content to the public. In addition to this, while reasonable restrictions may be imposed on the freedom of trade in the interest of the general public, it is likely to benefit the public more if *no* restrictions are imposed on the freedom of trade for media and entertainment companies for the reasons highlighted above.
- **Pre-Existing Regulatory Mechanisms Available to Address Anti-Competitive Practices and Ensure Transparency** – In our view, cross media ownership is not inherently problematic, and as set out above, it has certain advantages. However, if TRAI’s concern is to ensure prevention of abuse of dominant position and other anti-competitive practices in cross media ownership, the same can be achieved through existing antitrust laws administered by the Competition Commission of India (“CCI”) established under the Competition Act, 2002 (“**Competition Act**”) or through oversight of takeovers of listed companies by the Securities and Exchange Board of India (“SEBI”), without the need for ex-ante restrictions on cross media ownership and control.

**Q2. Media has the capacity to influence opinion of masses, more so the news media. Should there be a common mechanism to monitor ownership of print, television, radio, or other internet-based news media?**

- a. If yes, elaborate on the Authority, structure and mechanism of such monitoring mechanism/ regime?
- b. If no, should there be a self-regulatory mechanism by the industry? What should be the mechanism for defining and implementing such industry based self-regulatory regime? In case some players do not follow the self-regulation, what should be the procedure for enforcing such regulations?

---

<sup>2</sup> *Ibid.*, at page 28.

Response: We do not recommend setting up a common regulatory mechanism or a common self-regulatory mechanism to monitor the ownership of print, television, radio, or other internet-based news media. However, if the industry segment wishes to voluntarily set up a self-regulatory mechanism, it should be acceptable. Self-regulation should not be mandated, but only encouraged. As discussed in our response to Question 1, specialized oversight for media ownership is not required to ensure viewpoint plurality, as players in the competitive Indian market are conscious of the need to provide a plurality of views to cater to the diverse tastes of Indian consumers to increase their market share and revenue. Such viewpoint plurality goes on to reinforce the fundamental right of citizens to free speech and expression, particularly by being exposed to a plurality of views and opinions on public issues which will enable an 'aware citizenry' to arrive at informed judgements and decisions. Further, while cross media ownership is not inherently problematic, any concerns with respect to anti-competitive and monopolistic practices or changes in management control can be addressed by existing regulators. For instance, the CCI has the expertise to determine whether a common evaluation of the media sector should be conducted to address potential anti-competitive practices. We have set out our arguments in detail below:

- **Multiplicity of Regulators and Jurisdictional Overlap Should be Avoided** – We believe that in order to avoid jurisdictional conflicts and overlap with existing regulators, a new regulator should not be established. It is pertinent to point out that the CCI has had jurisdictional conflicts with regulators such as TRAI, the Reserve Bank of India ("RBI") and SEBI in the past in matters relating to the respective sectors overseen by them. In a jurisdictional conflict between the CCI and TRAI, the Supreme Court recognized the different roles of the regulators. The Supreme Court stressed on the need to take a balanced approach and gave TRAI the power to first determine the jurisdictional aspects which can be more appropriately handled by it, after which – if anti-competitive activity has occurred – the CCI can investigate the matter under the relevant provisions of the Competition Act.<sup>3</sup> A similar approach may be employed here, rather than establishing a new regulator. Where concerns arise which TRAI cannot address by itself, it should only adjudicate on jurisdictional aspects and allow regulators such as the CCI or SEBI to determine substantive concerns. Establishing another regulator is likely to give rise to further jurisdictional overlap and confusion between different sectoral regulators. Such overlaps may give rise to business uncertainty and lack of uniformity in the market, which may be detrimental for the growth of market players. Companies may end up delaying the launch of new forms of media and entertainment services as they await regulatory certainty. This, in turn, is likely to reduce customer choice and affect viewpoint plurality.
- **CCI Sufficiently Empowered to Monitor Competition in Media Sector** – As noted by TRAI, the CCI has already been tasked with ensuring fair and healthy competition in

---

<sup>3</sup> *Competition Commission of India v. Bharti Airtel Limited and Ors.*, Civil Appeal No(s). 11843 of 2018 & Ors. (Arising Out of SLP (C) No. 35574 of 2017 & Ors.), Supreme Court of India, December 05, 2018, available at [https://main.sci.gov.in/supremecourt/2017/40072/40072\\_2017\\_Judgement\\_05-Dec-2018.pdf](https://main.sci.gov.in/supremecourt/2017/40072/40072_2017_Judgement_05-Dec-2018.pdf).



economic activities in India, including prevention of abuse of dominant position, without any restrictions on which sectors it can investigate. The CCI acts with the objective of restoring competition in the market rather than just adjudication of dispute between two parties. To that end, the CCI has the expertise to determine the parameters on which dominance by an entity and anti-competitiveness should be evaluated and the 'relevant market' within which such evaluations should be conducted (i.e. whether its investigation should comprise the entire media sector or specific segments therein). Given that the CCI is statutorily required to balance its investigations and inquiries with the larger goal of promoting competition, consumer welfare and ensuring freedom of trade, the CCI is well-positioned to address concerns relating to cross media ownership in a holistic manner. In addition to the CCI, there also exist other regulators tasked with examining concerns of takeovers and change in control over entities from perspectives apart from antitrust, such as SEBI. Please refer to our response to Question 3 for further details.

- **Involvement of CCI in the Media Sector** – The CCI is actively involved in the media sector and has been conducting investigations in several media-related matters. This includes inquiries into agreements that restrict innovation in the film industry, specifically the market for post-production processing services.<sup>4</sup> The CCI has also inquired into abuse of dominant position by broadcasters of TV channels<sup>5</sup> and possible adverse effect on competition in India by combinations between them (please refer to our response to Question 3 below).<sup>6</sup> The CCI has also recently ordered an investigation into complaints against a tech giant for alleged abuse of its dominant position with respect to Indian online news publishers.<sup>7</sup>

Notably, as per news reports, the CCI intends to undertake a market study in the media sector to identify any gaps in the competitive landscape.<sup>8</sup> The CCI's market study into common ownership by minority shareholders, which should cover all sectors including the media sector, is already underway.<sup>9</sup>

- **Mechanism to Monitor Ownership / Control over News Media Cannot be Equated with Other Forms of Media** – In the event that TRAI chooses to impose restrictions on ownership / control of news media in particular, it is imperative that 'news media' be strictly defined to distinguish it from other forms of content generation on media platforms. For instance, there should be a clear distinction between media pertaining to news and current affairs generated by recognized news media entities and user-generated

<sup>4</sup> *In Re: PF Digital Media Services Ltd. v. UFO Moviez India Ltd. & Ors.*, CCI, Case No. 11 of 2020, September 17, 2021, available at <https://www.cci.gov.in/antitrust/orders/details/35/0>.

<sup>5</sup> *In Re: Asianet Digital Network Pvt. Ltd. and Star India Pvt. Ltd. & Ors.*, CCI, Case No. 09 of 2022, February 28, 2022, available at <https://www.cci.gov.in/antitrust/orders/details/7/0>.

<sup>6</sup> *Sony Pictures Networks India Pvt. Ltd. and Aqua Holdings Investment Pvt. Ltd.*, CCI, Combination Registration No. C-2016/09/436, January 13, 2017.

<sup>7</sup> *In Re: Digital News Publishers Association and Alphabet Inc. & Ors.*, Case No. 41 of 2021, CCI, January 07, 2022, available at <https://www.cci.gov.in/antitrust/orders/details/11/0>.

<sup>8</sup> *India antitrust watchdog to assess media, broadcasting sector*, Aditya Kalra, Reuters, August 27, 2019, available at <https://www.reuters.com/article/india-antitrust-media-idINKCN1VH1EA>.

<sup>9</sup> *Private equity and its impact on competition*, Vandana Pai, Law Asia, February 23, 2022, available at <https://law.asia/private-equity-impact-competition/>.

content as well as aggregation of information by platforms that do not claim to verify the authenticity of the information being collated. The general public is likely to pay more attention to the news and current affairs disseminated by recognized news entities and consequently, be influenced by the information being disseminated, in comparison to information available on social media platforms – for instance – which require independent verification by readers. Thus, if TRAI is concerned by the ability to news media to influence the masses, it should consider limiting the scope of monitoring mechanisms (if any) to recognized news media entities.

**Q3. There are regulatory agencies like CCI and SEBI among others that monitor and regulate mergers, acquisitions, and takeovers. Is there a need for any additional regulatory/ monitoring mechanism? Do you think there's a need to monitor takeovers, acquisitions of media companies, especially the news media companies?**

**3.1 If yes, which agency/ ministry should be entrusted with the task of such data collection, regulation & monitoring?**

**a. Whether such monitoring/ control be ex-ante as is the case with combinations in the Competition Act 2002?**

**b. What should be the procedure of reporting and monitoring? What should be the periodicity of such reporting?**

**c. What should be the powers of the concerned authority for enforcing regulatory provisions, inter-alia including imposition of financial disincentives, cancellation of license/registration etc.?**

**3.2 If no, please provide an elaborate justification as to why there is no need for such a mechanism? Provide market data to substantiate your opinion.**

Response: We do not recommend setting up an additional mechanism to monitor and regulate mergers, acquisitions and takeovers. However, if the industry segment wishes to voluntarily set up a self-regulatory mechanism, it should be acceptable. Self-regulation should not be mandated, but only encouraged. As discussed in our responses to Questions 1 above, media ownership does not require specialized oversight to ensure viewpoint plurality as market players in the competitive Indian market are aware of the need to provide diverse content to cater to the diverse tastes of Indian consumers, which will aid them in increasing their market share and revenue. Additionally, as discussed in our response to Question 2, we do not recommend setting up additional mechanisms which will result in a multiplicity of regulators and jurisdictional overlaps, thereby leading to regulatory arbitrage, conflicting decisions and adversely impacting the Government's objective of improving the ease of doing business in India. Instead of creating new regulatory mechanisms, any concerns with respect to anti-competitive and monopolistic practices or changes in management control can be addressed by the CCI and other pre-existing sectoral regulators like SEBI and through inter-regulatory coordination. We have set out our arguments in detail below:

- CCI Empowered to Regulate Mergers and Acquisitions** – The CCI has the relevant expertise to scrutinize mergers and acquisitions in the media sector from an antitrust perspective.<sup>10</sup> The CCI is statutorily empowered to regulate combinations, i.e., acquisitions, mergers and amalgamations with assets valued above a particular threshold, across all sectors in an ex-ante manner (including the media sector). The Competition Act also requires mandatory notification of all combinations above a particular threshold to the CCI for its prior approval. Consequently, the CCI has developed and refined certain criteria to determine the competitive impact of a transaction, such as creation of barriers for new entrants, accrual of benefits to consumers, improvement in provision of services, etc. while considering appreciable adverse effects of a transaction on competition in India. Since the coming into effect of the Competition Act, the CCI has been actively enforcing competition law in India, including provisions relating to mergers and acquisitions since 2011. In fact, the CCI has reviewed numerous transactions pertaining to the media sector. With over a decade of regulatory experience, the CCI is the best specialized regulator to address all concerns relating to competition issues arising from transactions. In addition to this, even where transactions do not meet the thresholds to be notified to the CCI under the Competition Act, the CCI has the power to conduct ex-post inquiries to curb abuses of dominant position and anti-competitive agreements that create an appreciable adverse effect on competition. Cases in the media sector where the CCI has looked into violation of the enforcement provisions of the Competition Act have been referred to in Question 2 above.
- Mechanism for Consultation between Statutory Authorities** – TRAI has rightly noted the rapid change in market structure and consumer behaviour, especially with the advent of digital technology. This necessitates coordination among regulators to understand sectoral issues. The Competition Act provides for a robust architecture for inter-regulatory consultation and coordination through the provisions provided in Sections 21 and 21A of the Competition Act. Section 21 of the Competition Act provides that in the course of a proceeding before any statutory authority, if an issue is raised by a party that any decision which such statutory authority has taken / proposes to take would be contrary to the Competition Act, then such statutory authority may refer such an issue to the CCI. Section 21A provides the CCI with a similar power of making a reference to other statutory authorities, i.e., if the CCI is investigating a case and it is pointed out that there is a possibility of the decision being contrary to the provision of the law entrusted to a sectoral regulator, then the CCI may make a reference to such sectoral regulator, asking for its

---

<sup>10</sup> *The Walt Disney Company and TWDC Holdco 613 Corp.*, CCI, Combination Registration No. C-2018/07/583, August 10, 2018; *Dish TV India Limited and Videocon D2h Limited*, CCI, Combination Registration No. C-2016/12/463, May 4, 2017; *Jio Futuristic Digital Holdings Pvt. Ltd., Jio Digital Distribution Holdings Pvt. Ltd. and Jio Television Distribution Holdings Pvt. Ltd.*, AND *Jio Content Distribution Holdings Pvt. Ltd., Jio Internet Distribution Holdings Pvt. Ltd., and Jio Cable and Broadband Holdings Pvt. Ltd.*, CCI, Combination Registration No. C-2018/10/609 and C-2018/10/610, January 21, 2019; *Multi Screen Holding Limited and SPE Mauritius Investments Limited*, CCI, Combination Registration No. C-2012/06/63, August 9, 2012; and *Eros International Plc, STX Filmworks, Inc. and Marco Alliance Limited*, CCI, Combination Registration No. C-2020/05/745, 8 July 2020.

opinion and input in relation to the matter. The abovementioned provisions empower the CCI and other sectoral regulators, including TRAI, to cooperate and draw from each other's expertise on issues where their jurisdictions overlap. Thus, TRAI and / or the Ministry of Information and Broadcasting ("MIB") has a forum for presenting its opinions and inputs in the matters where its expertise may be required.

- **SEBI Empowered to Monitor Listed Companies** – In addition to the CCI, there also exist other regulators tasked with examining concerns of takeover and change in control over entities from perspectives apart from antitrust. For instance, SEBI established under the SEBI Act, 1992 regulates the stock market through, *inter alia*, the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**SEBI Regulations, 2011**") which provide the procedure in case an acquirer acquires 25% or more of voting rights or acquires control over the target company, i.e., company whose equity shares are listed in a stock exchange. Through these regulations, SEBI seeks to protect the interest of shareholders in relation to takeovers and to ensure fairness in the securities market and transparency in company affairs. Further, the SEBI Regulations protect the interests of the public shareholders by obligating the acquirers to mandatorily provide an exit opportunity to the public shareholders in case of a takeover or substantial acquisition.

**Q4. Please suggest the most suitable criteria to define and measure Ownership/Control along with suitable reasoning. Define Control and prescribe the statutory/ regulatory/ legal powers to enforce such criteria of Control.**

Response: We do not recommend establishing a separate definition or criterion for measuring ownership and control. However, if the industry segment wishes to voluntarily set up a self-regulatory mechanism, it should be acceptable. Self-regulation should not be mandated, but only encouraged. At the outset, a common definition for ownership / control for the media sector may not result in the consequences intended by TRAI for all types of media entities. Further, there are pre-existing regulators, i.e., the CCI, that have the expertise to determine the parameters for measuring ownership and control from an antitrust perspective. There also exist other regulators such as SEBI tasked with examining concerns of takeovers and change in control over entities from perspectives apart from antitrust.

Formulating new definitions for the same concepts are likely to result in the creation of a parallel jurisprudence, thereby, leading to business uncertainty and adversely impacting the ease of doing business in India. This is already the case due to diverging opinions between existing regulators such as the CCI and SEBI on what constitutes control, as explained in greater detail below. Introducing yet another set of criteria for determining control may add to this uncertainty.

Please see our detailed response set out below:



- Common Formulation for Ownership / Control Cannot be Applied Uniformly to Media Sector** – We note that TRAI, in its recommendations to past consultations on issues of media ownership, differentiated between ‘ownership’ and ‘control’ by considering the former to be a pure economic interest and the latter to imply the ability to influence decision-making in a company. According to TRAI, as ownership of equity moves beyond a threshold level, it can contribute to control and influence over content. Thus, TRAI sought to define ‘control’ by considering the threshold of equity holding (direct and indirect), de jure control (by possessing the ability to control voting rights, members of the board of directors or the management or affairs of a company) and de facto control (by being party to agreements, contracts and / or understandings which enable an entity to control business decisions, such as through debt instruments).<sup>11</sup> However, it should be noted that any such formulation developed by TRAI cannot be successfully applied to all forms of media and entertainment. For instance, the consequence of an entity exercising control over a news media outlet would be vastly different from the consequence of an entity exercising control over a social media or user-generated content sharing company. This is because in a news media outlet, there may be a chain of command and editorial policies and discretion through which information dissemination can be controlled. In contrast, user-generated content relies on decentralized sourcing of information and entertainment from users around the globe, and control exercised over such platforms / entities is unlikely to impact the nature of the user-generated content. The exercise of control over such platforms / entities may impact the business and administrative functioning of such organizations; however, this is unlikely to impact the content disseminated on such platforms, and consequently, unlikely to have any impact on viewpoint plurality. Therefore, no purpose would be served by imposing restrictions on ownership / control of such entities, and consequently, any common understanding of ownership / control for the media sector may not uniformly affect viewpoint plurality across media entities. Media ownership of social media platforms should be viewed judged differently from the conventional news outlets as the dynamics related to content creation and content ownership are completely different.
- CCI Empowered to Examine Control and Ownership Concerns from an Antitrust Perspective** – The CCI is empowered to ensure fair and healthy competition in economic activities and address anti-competitive concerns relating to control and to that end, possesses statutory powers to enforce the required measures. The need to develop a separate definition of ‘control’ specifically for the media sector does not arise as the definitions and principles embodied in the Competition Act can be applied by the CCI to the media sector in its investigations, if any. The Competition Act defines ‘control’ inclusively, allowing the CCI to arrive at a conclusion based on a factual analysis of the cases before it. The CCI has analyzed this in various cases across sectors. For instance, in

<sup>11</sup> TRAI, Recommendations on Issues Relating to Media Ownership, August 12, 2014, at pages 9-13, available at [https://www.trai.gov.in/sites/default/files/Recommendations\\_on\\_Media\\_Ownership.pdf](https://www.trai.gov.in/sites/default/files/Recommendations_on_Media_Ownership.pdf).



the combination of *Independent Media Trust and RB Mediasoft Private Limited and others*, the CCI stated that as “the ability to exercise decisive influence over the management and affairs” of an enterprise amounted to control.<sup>12</sup> However, in the penalty order under Section 44 of the Competition Act in *UltraTech Cement Limited and Jaiprakash Associates Limited*, the CCI relied on material influence to establish control.<sup>13</sup> The CCI has also considered other factors while examining the issue of ‘control’. Such factors include contractual obligations (in the combination of *Century Tokyo Leasing Corporation and Tata Capital Financial Services Limited*)<sup>14</sup>, and shareholder rights (in the combination of *Multi Screen Holding Limited and SPE Mauritius Investments Limited*)<sup>15</sup>. Thus, the CCI has the requisite authority and expertise to consider multiple factors while determining control for the purpose of addressing any anti-competitive concerns in relation to it.

- **SEBI Empowered to Monitor Takeover of Listed Companies** – As mentioned in our response to Question 3, in addition to the CCI, there also exist other regulators tasked with examining concerns of takeovers and change in control over entities from perspectives apart from antitrust. For instance, SEBI regulates the stock market through the SEBI Regulations, 2011 which provide the procedure in case an acquirer acquires 25% or more of voting rights or acquires control over the target company. Through these regulations, SEBI seeks to protect the interest of shareholders in relation to takeovers and to ensure fairness in the securities market and transparency in company affairs. Irrespective of acquisition or holding of shares or voting rights in a target company, an acquirer cannot acquire control over a target company unless they make a public announcement in accordance with these regulations. Here, ‘control’ is understood to include the right to appoint a majority of directors or to control the management or policy decisions exercisable by a person(s).
- **Diverging Standards between Regulators and Ensuing Uncertainty** – Even the limited discussion above in relation to the CCI and SEBI reveal that these regulators undertake fact-based analyses of what constitutes control. In fact, SEBI itself has acknowledged this divergence in its order relating to Etihad’s investment in Jet Airways,<sup>16</sup> noting that the criteria for control in the Competition Act may not be *in pari materia* with the corresponding criteria in the Takeover Code. Thus, there is existing uncertainty arising out of the clearly diverging standards laid down by CCI and SEBI. If TRAI formulates yet another definition

<sup>12</sup> *Independent Media Trust and RB Mediasoft Private Limited and Ors.*, Combination Registration No.: C-2012/03/47, CCI, May 28, 2012.

<sup>13</sup> *UltraTech Cement Limited and Jaiprakash Associates Limited*, CCI, Combination Registration No. C-2015/02/246, March 12, 2018.

<sup>14</sup> *Century Tokyo Leasing Corp and Tata Capital Financial Services Ltd.*, Combination Registration No.: C-2012/09/78, CCI, October 04, 2012.

<sup>15</sup> *Multi Screen Media Pvt. Ltd. and SPE Mauritius Holdings Ltd.*, Combination Registration No.: C-2012/06/63, CCI, August 09, 2012.

<sup>16</sup> *Order in the matter of acquisition of shares of Jet Airways (India) Limited by Etihad*, SEBI, WTM/RKA/CFD-DCR/17/2014, May 8, 2014, available at [https://www.sebi.gov.in/enforcement/orders/may-2014/order-in-the-matter-of-acquisition-of-shares-of-jet-airways-india-limited-by-etihad\\_26850.html](https://www.sebi.gov.in/enforcement/orders/may-2014/order-in-the-matter-of-acquisition-of-shares-of-jet-airways-india-limited-by-etihad_26850.html).

for control, it will create a further set of parallel jurisprudence, thereby, leading to even more business uncertainty which will adversely impact the ease of doing business in India.

**Q5. Should the licensor, based on recommendations of the concerned monitoring agency/regulator, restrain any entity from entering the media sector in public interest? Please elaborate your answer.**

Response: We do not recommend that entities should be restrained from operating in the media sector in public interest, particularly with respect to media disseminated over the Internet. However, if the industry segment wishes to voluntarily set up a self-regulatory mechanism, it should be acceptable. Self-regulation should not be mandated, but only encouraged. The Internet serves as the basic infrastructure for the advancement of many markets and must be facilitated to advance the free speech rights of citizens. If restrictions are placed on entities from entering the market, it may have an adverse impact on progress and development of the media sector, may disincentivise investment and discourage new market players from entering the media sector. This, in turn, is likely to reduce customer choice and affect viewpoint plurality in the public forum. To the extent that any restrictions are sought to be imposed, they may only be imposed on the harmful content disseminated by an entity and not on the entry of the entity into the sector. Such restrictions on harmful content may be implemented only through amendments under the Information Technology Act, 2000 ("IT Act") after conducting stakeholder consultation with industry associations and civil society groups. Furthermore, as the MIB and Ministry of Electronics and Information Technology ("MEITY") have oversight over activities conducted on the Internet through the IT Act and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, they are already sufficiently empowered to impose necessary restrictions on content dissemination in accordance with law. Thus, no licensing requirements should be issued for digital media disseminated over the Internet considering the nascent stage of growth of such Internet-based media platforms and the need to incentivize healthy competition to ensure viewpoint plurality.

**Q6. Which of the following methods should be used for measuring market concentration?**

- (i). Concentration Ratios
- (ii). Lerner's Index
- (iii). Hirschman-Herfindahl Index (HHI)
- (iv). Any other

**Please comment on the suitability of HHI for measuring concentration in a media segment in a relevant market.**

**In case you support "Any other" method, please substantiate your view with a well-developed methodology for measuring concentration in a media segment in a relevant market.**

Response: As discussed in our response to Question 3, the CCI is a specialized regulator with wide ranging powers to review and regulate proposed mergers and acquisitions and address anti-competitive practices, including in the media sector. However, if the industry segment wishes to voluntarily set up a self-regulatory mechanism, it should be acceptable. Self-regulation should not be mandated, but only encouraged. As such, the CCI is best suited to determine the appropriate method to measure market concentration and address related concerns. Any additional and potentially diverging criteria prescribed by TRAI may cause regulatory uncertainty. The CCI's usual practice on this is briefly described below, which also demonstrates the need to retain the flexibility to choose an appropriate measure on a case-by-case basis.

The CCI's decisional practice indicates that there is no set standard to measure market concentration. While the CCI, as rule of thumb, relies upon the Hirschman-Herfindahl Index ("HHI"), it has the flexibility to select alternate tools. This is done on a case-by-case basis and permits much needed flexibility to do a comprehensive assessment, given that each method has its own pros and cons. For instance, the use of concentration ratios is the simplest method to calculate market concentration but does not consider the total number of participants in a market. Whilst HHI solves for this problem, several adjusted HHI measures have been proposed in the recent past to account for how it does not reflect the nuances and complexities of certain markets. The Lerner Index is a concise measure of market concentration but can be unwieldy due to difficulty in accurately measuring costs in practice. The fact that these measures are not suitable for each and every case does not mean that they need to be discarded entirely, or that alternative measures need to be developed. It just means that it is inadvisable to have a prescriptive measure for market concentration when existing competition regulations permit a much wider and flexible assessment. As stated above, the CCI is best placed to carry out this assessment.

Currently accepted methods are concentration ratios, Lerner's Index and Herfindahl-Hirschman Index (HHI). In its recommendations of 2014 TRAI had indicated HHI Index as the appropriate index. However, HHI overstates the competitive impact of mergers and understates the value of fringe firms. Like concentration ratios, HHI fails to identify nuances in the market structures, which include barriers to entry, economies of scale or scope, rapidly changing technology, or firm-specific characteristics. We propose the use of Diversity Index as it has been developed by the Federal Communications Commission, in the year 2003 in its efforts to develop analytical tool to measure viewpoint plurality. The Diversity Index used HHI as the foundation and was essentially developed as the extension and modification of the same.

**Q7. What all genres shall be considered for the purpose of overseeing of media ownership to ensure viewpoint plurality? Please elaborate your response with justifications.**

Response: As discussed in our response to Question 1, we are of the view that no oversight of media ownership is required to ensure viewpoint plurality and no specific forms of media / genre should be subject to such oversight. However, if the industry segment wishes to voluntarily set up a self-regulatory mechanism, it should be acceptable. Self-regulation should not be mandated, but only encouraged. While we agree with TRAI that viewpoint plurality is important in a well-functioning democracy, we humbly beg to differ with the argument that cross media ownership is a hurdle for viewpoint plurality, especially in a competitive media marketplace such as India. In fact, common media ownership may increase viewpoint diversity, as owners of media companies may seek to capture the greatest possible audience share by diversifying their content in order to sustain consumer interest. However, in the event that TRAI intends to impose oversight and restrictions on media ownership, it should be limited to specific genres, such as news and current affairs, and should exclude user-generated content. We have set out our arguments below:

- **Internet Accessibility has Increased Scope for Viewpoint Plurality** – Rapidly increasing internet connectivity and technological innovations have increased plurality in terms of content creation across various mediums. Digital media is distinct from other traditional forms of media like print media and television in terms of content generation. With the emergence and popularity of social media applications and platforms and easy-to-create blogs and websites, the scope for users to generate content has increased. The low barrier of entry allows marginalized sections of society to present their concerns and raise awareness. Thus, a new class of content creators on the Internet has further fuelled viewpoint plurality in India.
- **Competitive Markets Beneficial for Viewpoint Plurality** – Market forces prevalent in a competitive sector such as media and entertainment, along with the existence of a diverse consumer base, is likely to ensure that the policy goal of viewpoint plurality is satisfied. Market players are cognizant of the need to provide a plurality of views to cater to the diverse tastes of Indian consumers in order to increase market share and revenue. Hence restrictions, if any, may damage the equilibrium of growth and diversity that the industry has been trying to maintain.
- **Convergence of Media Sources to Make Content Accessible** – With growth in technological developments, the manner in which market players improve accessibility to content for the public has also evolved, such as through digitization of newspapers and other print media and bundling direct-to-home (“DTH”) services with OTT services. As market players examine different forms of media to improve accessibility and seamless content sharing, cross media ownership is likely to become a norm. Instead of trying to propel market players to operate in silos to address the perceived problem of media plurality, efforts should be made to keep entry barriers at a minimum (especially on the internet) to ensure that viewpoint plurality is not negatively impacted by any gatekeeping.
- **Oversight and Restrictions (If Any) Should be Limited to News and Current Affairs** – In the event that TRAI considers it necessary to impose oversight mechanisms and

restrictions on media ownership, it should be imposed only on a narrow segment of media that is likely to influence the opinion of the masses. TRAI, in its recommendations to past consultations on media ownership, had also identified that since the news and current affairs genre, including business and financial news, is of utmost importance and directly relevant to the plurality and diversity of viewpoints, this particular genre should be considered the relevant product market for restrictions on media ownership.<sup>17</sup> Following from this, as flagged by us above, the consequence of an entity exercising control over a news media outlet would be vastly different from the consequence of an entity. For instance, exercising control over a social media or user-generated content sharing company. Since user-generated content relies on decentralized sourcing of information and entertainment, control exercised over such platforms / entities is unlikely to impact the nature of the user-generated content, and consequently, unlikely to impact viewpoint plurality.

- **User-Generated Content on the Internet Should be Excluded from Ambit of Potential Regulations** – While social media and content user-generated content sharing platforms have democratized the Internet and emerged as a powerful tool for knowledge and empowerment, readers and viewers do not attribute the same standards of credibility and accountability to user-generated content on such platforms compared to content generated by news outlets. Therefore, user-generated content is unlikely to hold significant amount of influence over public opinion. TRAI, in its recommendations on past consultations on media ownership, also recognized that while the Internet is an important platform for opinion formation, the public may not perceive viewpoints on blogs and social media to be as trustworthy, accurate or authentic as those of the press or television.<sup>18</sup> Given this, in our view, there should be a conscious effort to avoid any restrictions in relation to user-generated content so as to ensure that the potential and avenues for underserved segments of the population to share their narratives and experiences is not limited, and consequently, viewpoint plurality is not limited.
- **General Entertainment Should be Excluded from Ambit of Potential Regulations** – As noted by TRAI in its recommendations to past consultations on media ownership, even though the general entertainment genre has high viewership, the opinion disseminated through this genre is informal and indirect in nature as its prime objective is entertainment any perceived social and political influence cannot be determined objectively.<sup>19</sup> Given this, general entertainment, including programs on OTT platforms should be excluded from the ambit of potential regulations. Further, given that the OTT segment is currently in its developing stages, any restrictions or regulations are likely to have an adverse impact on growth in the sector which could be fuelled by cross-media ownership.

---

<sup>17</sup> *Supra* note 8, at page 17.

<sup>18</sup> *Ibid.*, at page 19.

<sup>19</sup> *Ibid.*, at page 16.



**Q8. Which media segment amongst the following would be relevant for encouraging viewpoint plurality?**

- 1. Print media viz. Newspaper & magazine**
- 2. Television**
- 3. Radio**
- 4. Online media/Digital media/OTT**
- 5. All or some of the above**

**Please substantiate your answer with appropriate reasons.**

Response: To encourage viewpoint plurality, our view is that print media would be the most relevant as it is today more credible and information passes through a well-honed mechanism of checks and balances to filter out biases and opinions. But given the propensity of audio-visual and digital media to reach more of the populace, they need to be considered as well.

We are of the view that no media segment should be subject to oversight to encourage viewpoint plurality. At the outset, cross media ownership is likely to become a norm as market players examine different forms of media to improve accessibility and seamless content sharing. To that end, no one media segment takes on more relevance than another. Additionally, we disagree with the assumption that cross media ownership may curb viewpoint plurality, especially in a competitive media marketplace such as India. On the contrary, common media ownership by market players to capture the greatest possible audience by providing diverse content may increase viewpoint diversity. However, in the event that TRAI seeks to impose restrictions on media ownership, the ambit of such restrictions should be limited to news and current affairs, and should exclude entities providing Internet-based platforms for user-generated content as well as entities providing general entertainment (including OTT platforms). Please refer to our response to Question 7 above for a detailed analysis.

**Q9. Should the word 'media' include television, print media, digital/online media, and other media entities? Alternatively, whether 'television' as a media segment should include only DPOs (including LCOs) or only Broadcasters or both for ensuring viewpoint plurality in the television segment? Please justify your answer.**

Response: As discussed in our response to Questions 7 and 8 above, we are of the view that no media segment should be subject to oversight to encourage viewpoint plurality. Not only is cross media ownership likely to become a norm in the future, but it may also have a positive impact on viewpoint plurality by leading to an increase in diverse content to cater to diverse consumer preferences in the competitive Indian market. However, in the event at TRAI seeks to impose restrictions on media ownership, the ambit of 'media' be limited to news and current affairs primarily through the television and print media, and should exclude entities providing Internet-based platforms for user-generated content as well as entities providing general

entertainment (including OTT platforms). Please refer to our response to Question 7 above for a detailed analysis.

**Q10. What should be the basis of classification of relevant geographic markets for evaluating concentration in media ownership? Should it be aligned with state or a region/ Metro/ Non-metro cities or the whole country? Please support your answer with reasons.**

Response: We are of the view that TRAI should not seek to define or determine the relevant geographic market for the media sector as the relevant framework already exists under the Competition Act and is administered by the CCI. We have set out our arguments in detail below:

- **CCI Determines 'Relevant Geographic Market' to Assess Anti-Competitive Practices** – The Competition Act provides specific factors to be kept in mind by the CCI while determining the 'relevant geographic market' and may regard *all or any* of the listed factors while determining the relevant market. For instance, factors such as regulatory trade barriers, language, transportation costs, distribution facilities, adequate distribution facilities, national procurement policies, local specification requirements, etc. are used to determine the 'relevant geographic market'. The CCI has the requisite expertise to consider such factors while determining the 'relevant market' for various industries and sectors and to take into account the unique functioning and characteristics of a particular sector. The CCI's decisional practice demonstrates that standards to define relevant geographic market cannot and should not be prescriptive as the determination is based on a case-by-case assessment and is temporal in nature especially in dynamic markets.
- **Business Uncertainty on Account of Parallel Jurisprudence for 'Relevant Market'** – The Competition Act already provides that the 'relevant market' for the purposes of investigations into anti-competitive practices may be evaluated on the basis of the 'relevant geographic market', the 'relevant product market' or both. If new definitions for the same concepts are formulated by TRAI, then it will result in the creation of parallel jurisprudence. Where the same situation or dispute is being considered by both TRAI / MIB and the CCI, there may be a possibility of different outcomes. A difference in treatment by two different authorities in regard to the same set of facts is likely to lead to business uncertainty and have an adverse impact on the ease of doing business in India.

**Q11. Should the relevant geographic market be defined on linguistic criteria? If yes, please list the languages which may be included in this exercise, along with justifications.**

Response: As discussed in our response to Question 10 above, we are of the view that TRAI should not seek to define or determine the relevant geographic market for the media sector as the relevant framework already exists under the Competition Act, and the CCI has relevant expertise to determine the relevant geographic market for the purposes of its investigations.

Even the CCI has refrained from being overly prescriptive, and typically carries out a case-by-case analysis. If new definitions of the same concepts are formulated by different regulators, it may give rise to the possibility of different outcomes on the same facts by different regulators leading to business uncertainty. Please refer to our response above for a detailed analysis.

**Q12. Should the relevant geographic market be defined uniformly for the whole country? Is there a need to adopt separate criteria for certain states and/or Union Territories in light of their peculiar circumstances such as difficult terrain, hilly region, huge distance from mainland, low media penetration etc.?**

**In case you support the need of a separate criteria for certain states and/or union territories, please specify such states and/or union territories and the criteria suitable for them along with appropriate justifications.**

Response: As discussed in our response to Question 10 above, we are of the view that TRAI should not seek to define or determine the relevant geographic market for the media sector given the existence of a detailed framework under the Competition Act and the expertise of the CCI in administering the same. Even the CCI has refrained from being overly prescriptive, and typically carries out a case-by-case analysis. If new definitions of the same concepts are formulated by different regulators, it may give rise to the possibility of different outcomes on the same facts by different regulators leading to business uncertainty. Please refer to our response to Question 10 for a detailed analysis.

**Q13. Which of the following metrics should be used to measure the level of consumption of one type of media (media outlet) in a relevant market?**

**13.1 Volume of consumption**

**13.2 Reach**

**13.3 Revenue**

**13.4 Any other**

**Please elaborate your response with justifications.**

**In case you find "Any other" metric to be suitable for the said purpose, you are requested to support your view with a detailed methodology.**

**Q14. Whether circulation details of newspapers should be used as a proxy for readership to measure the reach of media outlet in print segment in a relevant market?**

**In case you disagree, kindly provide a detailed methodology to measure the level of consumption of print media segment.**

**Q15. According to you, what measures should be adopted to discount the impact of bouquet system of channel distribution on the viewership of television channels? Please support your suggestion with reasoning.**

**Q16. Would it be appropriate to put restrictions on cross media ownership in one or more type of media segment based on mere presence of an entity in any segment in a relevant market?**

Response: We do not recommend imposing any form of ex-ante restrictions on cross media ownership in one or more type of media segment in the relevant market, regardless of the basis on which such restrictions are formulated. Such ex-ante restrictions may disincentivise investment in the growing media sector and may also negate any positive impact that cross media ownership may have on the market. For instance, cross media ownership may lead to economies of scale and scope, and consequently, create a more profitable and commercially viable industry with adequate resources to satisfy consumer needs with diverse content. In our view, cross media ownership is not inherently problematic, and there exist sufficient regulators in India to protect the market from anti-competitive practices and ensure transparency in management of company affairs. We have set out detailed arguments below to address TRAI's specific concerns of viewpoint plurality and anti-competitive practices arising out of cross media ownership:

- **Adverse Impact of Ex-Ante Restrictions on Viewpoint Plurality and Sectoral Growth –**  
The media sector is highly dynamic and market players are aware of the need to provide a plurality of views to cater to the diverse tastes of Indian consumers in order to increase their market share and revenue in the competitive media market. Market players aiming to secure a large customer base may also seek to take advantage of advancements in technology to enter into different modes of media, integrate various platforms and produce content that may be consumed seamlessly across platforms. If investment spanning media platforms is disincentivised on account of ex-ante restrictions, it could adversely impact innovation and growth in the media sector, along with viewpoint plurality and the volume of media sources and content available to consumers. Thus, ex-ante restrictions may damage the equilibrium of growth and diversity that the industry has been working towards, and stifle further innovation.
- **Existing Restrictions under Foreign Trade Policy –** There are already existing restrictions on investment in the digital media sector in India. The Foreign Trade Policy under Foreign Exchange Management Act, 1999 ("FEMA") is a set of guidelines and instructions in matters related to the import and export of goods in India. The Government through Press Note No. 4 (2019 Series) set the limit of foreign investment in streaming of news and current affairs through digital media to up-to 26% under government route. With the already existing restrictions upon investment in the digital media, any additional restrictions may have a negative impact on commercial viability of the media industry in India.
- **Ex-Ante Scrutiny Undertaken by Sectoral Regulators –** Given that sectoral regulators with the relevant expertise to scrutinize acquisitions, mergers and amalgamations already exist, there is no need for blanket restrictions on cross media ownership in different

segments of the media market. Restrictions by multiple layers of authority will only hamper the investment motivation and business strategies of prospective investors. In particular, the CCI is statutorily empowered to regulate all combinations (i.e., acquisitions, mergers and amalgamations above a particular threshold) across all sectors in an ex-ante manner (please refer to our response to Question 3 above). Further, the Competition Act also requires mandatory notification of all combinations to the CCI for its prior approval. The threshold limits for a transaction to be considered a combination have been set at relatively high numbers to protect the ease of doing business in India and investment opportunities for smaller entities. Thus, such reviews are formulated to not only address antitrust concerns, but also ensure that the market is developing in a holistic manner. In addition to ex-ante examinations, the CCI is also empowered to assess abuse of dominant position and anti-competitive agreements on an ex-post basis. Apart from the CCI, SEBI is also empowered to examine takeovers and changes in control over enterprises to protect shareholders and ensure the financial integrity of the securities market. Thus, existing regulators are well-equipped to deal with any market distortions, and further ex-ante regulation is likely to be counterproductive.

**Q17. In case you support the restriction based on mere presence in the relevant market, what all segments should be included for imposition of restrictions?**

**Further, in how many segments, presence of an entity should be allowed i.e. should it be "2 out of x" or "1 out of x", x being the total number of segments?**

Response: As discussed in our response to Question 16 above, we do not recommend imposing any form of ex-ante restrictions on cross media ownership in one or more type of media segment in the relevant market, regardless of the basis on which such restrictions are formulated. Please refer to our response above for a detailed analysis.

**Q18. Would it be suitable 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 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.**

**In case you support such restriction, please suggest the threshold level of market share for the purpose of imposing cross-media ownership restrictions.**

Response: As discussed in our response to Question 16 above, we do not recommend imposing any form of ex-ante restrictions on cross media ownership, regardless of the basis on which such restrictions are formulated. We believe that such ex-ante restrictions may disincentivize investment in the growing media sector and dilute any positive impacts that may be introduced by cross media ownership. There already exist sufficient regulators in India to protect the media sector from anti-competitive practices and ensure transparency in



management of company affairs on an ex-ante basis, and no additional restrictions are required. Please refer to our response to Question 16 for a detailed analysis.

**Q19. Whether in your opinion, the restrictions on cross media ownership should be imposed 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.**

Response: As discussed in our response to Question 16 above, we do not recommend imposing any form of ex-ante restrictions on cross media ownership, regardless of the basis on which such restrictions are formulated. We believe that such ex-ante restrictions may disincentivise investment in the growing media sector and dilute any positive impacts that may be introduced by cross media ownership. There already exist sufficient regulators in India to protect the media sector from anti-competitive practices and ensure transparency in management of company affairs on an ex-ante basis, and no additional restrictions are required. Please refer to our response to Question 16 for a detailed analysis. Please also refer to our response to Question 6 above for our general comments on methods such as HHI to measure market concentration.

**Q20. In case your response to the above question 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.**
- (ii). In case an entity having Ownership/ Control in the media segments of such a relevant market contributes 1000 or more in the HHI of two or more concentrated media segments separately, the entity shall have to dilute its equity in its media outlet(s) in such a manner that its contribution in the HHI of not more than one concentrated media segment of that relevant market remains above 1000 within three years.**

Response: As discussed in our response to Question 16 above, we do not recommend imposing any form of ex-ante restrictions on cross media ownership, regardless of the basis on which such restrictions are formulated. Please refer to our response to Question 16 for a detailed analysis. Please also refer to our response to Question 6 above for our general comments on methods such as HHI to measure market concentration.

**Q21. Please provide your inputs on the suitability of imposing restrictions on cross media ownership only in highly concentrated relevant markets using Diversity Index Score as a tool to measure concentration.**

In case you find the abovementioned criteria of restricting crossmedia ownership appropriate, please comment on the suitability of the following rules for cross media ownership in such relevant markets:

- (i) No restriction on cross media ownership is applied on the entities contributing less than 1000 in the Diversity Index Score in such a relevant market.
- (ii) In case any entity contributes 1000 or more in the Diversity Index Score of such a relevant market, the entity shall have to dilute its equity in the media outlets in such a manner that the contribution of the entity in the Diversity Index Score of the relevant market reduces below 1000 within three years.

Response: As discussed in our response to Question 16 above, we do not recommend imposing any form of ex-ante restrictions on cross media ownership, regardless of the basis on which such restrictions are formulated. We believe that such ex-ante restrictions may disincentivize investment in the growing media sector and dilute any positive impacts that may be introduced by cross media ownership, including the development of diverse content to cater to a diverse range of consumer preferences. There already exist sufficient regulators in India to protect the media sector from anti-competitive practices and ensure transparency in management of company affairs on an ex-ante basis, and no additional restrictions are required. Please refer to our response to Question 16 for a detailed analysis.

**Q22. In case you consider any other criteria for devising cross media ownership rules to be more appropriate, please suggest the same with sufficient justifications.**

Response: As discussed in our response to Question 16 above, we do not recommend imposing any form of ex-ante restrictions on cross media ownership, regardless of the basis on which such restrictions are formulated. Please refer to our response to Question 16 for a detailed analysis.

**Q23. Considering the fact that sectoral regulators have played important role in bringing necessary regulations to facilitate growth and competition and to promote efficiency in operations of Telecom Services (Telecommunications and Broadcasting), in your opinion, should Merger & Acquisitions in media sector be subjected to sector specific regulations? Please justify your response.**

**Q23a. If yes, which among the following should be taken as the criteria for the same-**

- (i) minimum number of independent entities in the relevant market
- (ii) maximum Diversity Index Score
- (iii) any other measure

**Q23b. If no, what mechanism would you suggest for regulator to use for ensuring smooth and equitable growth of the sector?**

Response: As discussed in our response to Question 16 above, there already exist sectoral regulators, such as the CCI and SEBI, with the relevant expertise to scrutinize acquisitions, mergers and amalgamations. Thus, mergers and acquisitions in the media sector do not need to specifically be brought under sectoral regulations. They are already sufficiently regulated from the perspective of antitrust, protection of shareholders and ensuring transparency in company affairs. Please refer to our response to Question 16 for a detailed analysis.

**Q24. In your opinion, should any entity be allowed to have an interest in both broadcasting and distribution companies/entities?**

**Q24a. If "Yes", how would the issues of vertical integration be addressed?**

**Q24b. If "No", whether a ceiling of 20% equity holding 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?**

It is important to determine whether a vertically integrated service provider will have the 'ability' to hinder competition, and abuse its market power. Whether the service provider indulges in discriminatory practices has to be ascertained on a case-by-case basis, after assessing the impact of these newly emerging business models with service providers acting as platforms to various applications ranging from entertainment to retail to payment systems, etc. There are plenty of examples where large corporates having interest in other fields have acquired media companies –both in the content / broadcasting side as well as media distribution companies, paving the way to become a vertically integrated digital services provider.

These have to be dealt with on a case-to-case basis and preferably through ex-post regulation, if necessary. No ceiling/cap may be envisaged at this stage

**Q25. Please suggest any other measures to determine "Control" and the limits thereof between the broadcasting and distribution entities.**

No Comments

**Q26. Do you think that the disclosures/ compliance reports for different type of licensees as described in Part II of Chapter VI are sufficient to ascertain the media Ownership/ Control by certain entity(ies)? If no, please specify, what additional details should be sought by the licensor or the regulator for effective monitoring.**

Response: We are of the view that pre-existing disclosures governing various telecom and broadcasting licensees (as discussed in Part II of Chapter VI of the CP) are sufficient for the relevant Government departments to ascertain media ownership / control. In addition to this,

the CCI is already empowered to ex-ante regulate all combinations across all sectors (including the media sector) from an antitrust perspective. All proposed transactions with respect to combinations are to be notified to the CCI along with the Board approval for the merger or amalgamation and any other relevant agreement or document. The CCI may provide its opinion on the possible appreciable adverse effects on competition in India on the basis of the abovementioned documents and may call for additional information while making its decision.

**Q27. What additional parameters, other than those listed in this consultation paper, could be relevant with respect to mandatory disclosures for effective monitoring and compliance of media ownership rules? Further, what should be the periodicity of such disclosures? Please justify your answer**

Response: As discussed in our response to Question 26 above, we do not recommend putting in place any additional mandatory disclosures with respect to media ownership. However, despite the existing mechanisms discussed above, if TRAI is of the view that other disclosures are required, it should set out such disclosures only in consultation with stakeholders and ensure that no disclosures containing strategic and commercially sensitive information are required so as to protect business outcomes.

**Q28. Stakeholders may also provide their comments on any other issue relevant to the present consultation.**

We hope that TRAI finds our submissions useful in establishing the future course of the sector in a manner that will enable growth, encourage innovation and generate employment.

We look forward to discussing our concerns and recommendations further with TRAI. Thank you.