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Koan Advisory Group's Response to TRAI Consultation Paper on "Issues Relating to Media Ownership"

Introduction

The Telecom Regulatory Authority of India (**TRAI**) floated a consultation paper titled '*Issues Relating to Media Ownership*' on April 12, 2022 (**Consultation Paper or CP**). We appreciate and thank the TRAI for opening this pertinent concern for public discussion. Our submission is divided into two parts. **The first part highlights preliminary suggestions we have, and the second responds to specific questions.**

Preliminary

1. The Consultation Paper views media plurality exclusively from the lens of ownership concentration

The Consultation Paper notes that media pluralism is necessary for the functioning of a democratic society since it facilitates the "presence of diverse voices and perspectives in public debates". Media plurality is an essential feature of contemporary democracies and a corollary of the right to freedom of speech and expression, but it is imperative to have a shared understanding of the term before we can assess it. It is possible to assess the potential impact of ownership on media plurality and recommend policy intervention only after a clear iteration of relevant parameters and the objectives of media plurality.

There is no statutory definition of media plurality. It is a combination of several parameters and nuances. It is the representation of geographical and cultural diversities, and other minorities. It is also a responsibility held by public media to provide plural information.[1] In India, the Prasar Bharati through Doordarshan and All India Radio functions as 'public media'. Academics and policymakers disproportionately focus on ownership concentration and transparency of ownership as the solution to media plurality, but we cannot understand media plurality to mean ownership concentration exclusively. Kari Karppinen, in his book 'Rethinking Media Pluralism' argues that media pluralism is a 'continuous contestation' of media power relation, i.e. the capacity of new entrants to challenge existing players and offer alternatives.

Several government bodies and academics discuss the intended outcomes of plurality, rather than define it. Some have also attempted to define the term. A comparison of these approaches indicates that that there are many facets to the concept, including internal plurality (viewpoint diversity/variety of content within media organizations), external plurality (number and variety of players providing media content) and reach/consumption. It may be simpler to measure only media ownership, and this may address some concerns about external plurality, but it is only one variable and cannot measure overall plurality of content available or consumed.

Considering the aim of ensuring media plurality is to support the functioning of a democratic society, it is important to highlight that the idea of media plurality is closely tied to multiple legal, economic, political, and social principles. Therefore, a measurement or assessment of plurality should be a holistic approach that factors all the above principles. Any regulatory intervention should follow such a detailed measurement.

[1] Brogi, Elda (2020). "The media pluralism monitor: Conceptualizing media pluralism for the online environment". Profesional de la información, v. 29, n. 5, e290529. https://doi.org/10.3145/epi.2020.sep.29

2. Media ownership is only one of the many variables that impact media plurality

Addressing plurality from the point-of-view of ownership or source of media is only one parameter for measuring plurality. Existing international studies on plurality have assessed multiple factors.

- The Ofcom outlined the desired outcomes of a plural market in a 2013 Consultation paper. The intended outcomes include: (a) diversity of viewpoints available and consumed across and within media enterprises; and (b) preventing one media owner or voice having too much influence over political opinion.
- Similarly, the Council of Europe in Recommendation 1 (2018) on media pluralism and transparency of media ownership discusses the availability and accessibility of diverse information and views, and transparency of media ownership. It is pertinent to note that the Council of Europe discusses 'transparency' of media ownership instead of restrictions on media ownership.
- The annual Media Pluralism Monitor, co-financed by the European Union is a seminal document on media plurality that analyses the health of media ecosystems by assessing a range of indicators.
- The UK Communications regulator, Ofcom, developed a "share of reference" metric, which uses a large random consumer survey that is representative of the media content to assess the share of reference for each outlet based on how often consumers use particular news sources. Other countries have adopted this metric with some variations. For example, the Netherlands supplements the survey with questions on the news title read and the time spent on it.
- The Australian Communications and Media Authority has proposed a "Diversity and Localism" measurement framework that takes into account local relevance, consumption and impact of news media in addition to ownership and viewpoint diversity.
- **USA/Sweden:** In the tension between economic rationales for industry concentration and the public interest in more diversity through less concentration, attempts have been made to find a middle road. The Joint Operating Agreements see pluralism to be upheld if editorial departments are not merged and the product consists of at least 50 per cent original (in-house) material – the rest can be bought from news services or shared between newspapers. More countries have tried to separate the questions of ownership and editorial independence.
- **Norway** (pg. 101): There is no evidence of a clear and direct connection between concentration of ownership and pluralism of any kind. The driving forces for different kinds of ownership structures are mainly the need to adapt to a declining market and to adapt content to market demands, regardless of the ownership structure. Additionally, in Norway, editorial agreements have been introduced in the form of contracts whereby the owner agrees not to interfere in editorial matters.

It is important to note that ownership concentration and plurality measure different things. For example, media viability, political independence of media and editorial independence are important for plurality, but not for competition. Several studies contest the notion that there is a strong correlation between competition and plurality (Open Society Institute Report, 2005; Council of Europe Report, 2002; European Institute for the Media Report, 2004; European Federation of Journalists Report, 2005). Additionally, European Commission report on Media pluralism in the Member States of the European Union (pg. 10, 2007) notes that intense competition may not itself guarantee pluralistic content.

3. The explosive growth of new media services has changed the media market and the assessment of plurality

Researchers and scholars find it difficult to frame media pluralism in the digital age and the advent of new media services. New technologies enabled the mushrooming of cheap and universal systems of information dissemination and the abundance of information. From the perspective of media plurality, the internet significantly lowered entry barriers for information dissemination which led to the entry of diverse and plural opinions and democratized media. A reinterpretation of media plurality is imperative against this backdrop. The frame of analysis followed by researchers and policymakers have shifted towards analyzing the conditions within which users interact with new media ecosystems.

Media plurality emerged from the need to ensure diversity within a mass media environment/market, but the concept of 'mass media' itself requires a review, given that technology enables individual and interactive media consumption. The earlier notion of 'media plurality' looked at print and linear broadcasting, but the emergence of new media technologies makes this understanding obsolete. The roots of 'media pluralism' lies in mass dissemination but 'new media' is characterized by one-to-one personalized information services, algorithm-driven personalization, and segmentation of the audience.[2] An important consideration here is the difference between media pluralism in dissemination to a "public at large" and personal communication, which also impacts how we understand 'viewpoint plurality'. To summarize, the distinction between 'mass media' and 'personal communication' in the context of media plurality is unclear, and this raises new questions on how regulators should assess media pluralism. A policy intervention in the interest of media pluralism is premature and the TRAI must consult on regulatory goals in this subject area before it creates any new regulatory mechanism.

4. Indians have affordable access to multiple sources of information

Most Indians consume multiple types of media.

- Internet
  - In 2020 there were 622 million active internet users in the country, which is expected to reach 900 million by 2025
  - The average user spends nearly 2 hours online every day. Other reports suggest that for young people in particular, the time spent may be much higher – up to 8 hours a day
  - As of early 2022, more than 2100 digital media publishers had registered with MIB

- Radio
  - There are 34 private FM radio broadcasters and 339 community radio stations in addition to the public All India Radio service
  - Indians spend an average of 2 hours every day listening to the radio

- TV
  - There are around 350 television broadcasters
  - As of 2020, there were 892 million individual TV viewers
  - Indians spend on average around 4 hours a day watching TV

[2] Brogi, Elda (2020). "The media pluralism monitor: Conceptualizing media pluralism for the online environment". Profesional de la información, v. 29, n. 5, e290529. https://doi.org/10.3145/epi.2020.sep.29.

- Newspapers
  - There are 1,44,520 publications registered with the Office of the Registrar of Newspapers
  - The 2019 Indian Readership Survey showed that 39% of Indians above the age of 12 were reading newspapers

There is diversity in the sources of media/information and there is diversity in how the media is being consumed pan-India. A study conducted after the 2019 general election found that news audiences consumed a "wide and diverse range of sources" across platforms.

5. The Need for a Comprehensive Market Study

Market interventions should be supported by a market study, and regulators should prove a clear link between the actions they take and the market failure they look to solve – this must be objectively measured. Ideally, this consultation should have been preceded by a comprehensive market study or other clear evidence of market failure.

Market studies play an important role by finding existing issues and predicting emerging ones. A market study explores different drivers and clarifies the options available to regulators. Regulators can then decide their strategy and address problems from a competition policy, enforcement, regulatory, or other policy perspective. Market studies could also propose solutions to mitigate consumer harm, promote competition, and reduce the possibilities of violations.

Even if there is some evidence of market failure, it is not clear that restricting ownership is the most appropriate way to correct it, or to ensure viewpoint plurality.

TRAI, in its Consultation Paper on Market Structure of MSOs, observed that '*in a well-functioning market, where firms are competing on fair terms and there are no artificially erected barriers of entry, there is no need to impose restrictions. However, if there is little or no competition or in case where barriers to entry exist, there is the distinct possibility of abuse of dominance by the service providers*'.

There is a high degree of competition across multiple types of media for Indian consumers' time and attention.

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Response to CP Questions

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 YouTube/ 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.

No, there is no need for a new mechanism to check cross media ownership and control. General competition law enforcement is adequate to check harms that may arise from the Indian media market.

Indian media market is highly competitive: The Indian media market is highly competitive and there is no evidence to suggest a market failure. The tables below give a snapshot of the number of service providers in each segment and the market share of each segment.

Segment	Services
Television	Broadcasters – 350; No. of channels – 901 Distributors – 1739 [1724 MSOs, 4 DTH, 10 IPTV, 1 IPTV]
Print	Registered Publications – 1,43,423 Newspapers – 14,508
Radio	Private FM – 34 broadcasters; 385 FM stations; 112 cities AIR – 479 stations Community Radio – 339 stations
OTT	Platforms – 51 (12-15 regional) [approx.]
Digital News Publishers	2439 (1836 digital only)

Source: TRAI CP; Newspaper reports

Year	Television (%)	Print (%)	Gaming (%)	OTT (%)	Search and Social (%)	Audio (%)	Cinema (%)	Animation, VFX, Postproduction (%)	OOH and others (%)
2015	46	27	1	1	4	3	11	4	2
2019	37	25	6	4	6	5	10	5	2
2020	37	25	8	6	7	6	6	3	1
2021E	33-35	22-25	9-10	7-9	7-9	5-7	5-7	2-4	1

Source: CII Big Picture Summit, 2021

The Media and Entertainment market is expected to grow at a CAGR of 17% between 2020 and 2023, according to a December 2021 Report by the Boston Consulting Group. A report by the Indian Brand Equity Foundation estimates that television will account for 40% of the M&E sector's revenues, followed by print at 13%, digital advertising at 12% and cinema at 9% in 2024. OTT and gaming industries would account for 8%. These estimates do not anticipate a significant change in the media market and the rise of digital M&E segments is an organic result of rising digital penetration.

No evidence of market failure: In the absence of a market failure or a specific harm, there is no need for ex-ante intervention or a new mechanism to monitor cross media ownership and control. The TRAI had adopted a similar approach in its recommendations on the regulation for OTT Communication Services and suggested that no regulation is required at this stage and market forces should be allowed to operate. TRAI relied on recommendations by the International Telecommunication Union which asked Member States to develop enabling policies and/or regulatory frameworks to foster fair competition. TRAI could not identify a market failure and chose not to intervene.

Ex-post competition enforcement is sufficient: The Competition Commission of India has the authority to take suo-motu cognizance under Section 19 of the Competition Act. Section 19 empowers the CCI to enquire into an alleged contravention of Section 3(anti-competitive agreements) or Section 4 (abuse of dominant position) if it causes or is likely to have an appreciable adverse effect on competition.

An important question before the TRAI considers ex-ante sectoral regulation is whether the regulations would add any value, considering that competition law already prohibits certain conduct and regulates the market.[3] The Competition Council of Canada notes that, "*For economic policy, appropriate application of competition law enforcement in digital markets should be the first defence and direct regulation the last resort*." In case of Indian media market regulation, general competition law enforcement is adequate.

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 ask 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.

Regulatory agencies such as the CCI, SEBI, and the NCLT monitor and regulate mergers, acquisitions, and takeovers and there is no need for another monitoring mechanism for media companies.

- Competition Law: The Competition Commission of India (CCI) functions as an ex-ante merger regulator. The CCI's oversight over consolidation is subject to threshold-based exemptions, but it covers all mergers that significantly affect competition. Further, it is imperative to assess the market and carve out the "relevant market" before any market intervention.[4] It is the CCI that defines the 'relevant market' to identify competitors

[3] Strowel, A. and W. Vergote (2016), "*Digital Platforms: to Regulate or Not to Regulate? Message to Regulators: Fix the Economics First, Then Focus on the Right Regulation*", Responses to the Public Consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy.

[4] Dr. S Chakravarthy, "Relevant Market in Competition Case Analyses" https://circ.in/relevant-market-in-competition-case-analyses/

for a product or service that possibly throttle competition. The CCI also has broad ex-ante powers to inquire and investigate violations of the Competition Act.

The CCI looked into seven merger notifications in the media, entertainment, and broadcasting space between 2011 and 2019. The CCI exhibited its ability to understand the nuances of the sector, adopted a holistic approach and conducted a case-by-case assessment in these mergers, according to a reputed Indian law firm. We have highlighted some pertinent examples below:

- In 2017, the CCI approved the combination between AT&T Inc. and Time Warner Inc.[5] and observed that there were several players in the streaming services market and in the audio-visual content distribution market thereby providing a choice to customers.
- In the Prime Focus Limited/Reliance MediaWorks Limited combination[6], the competition regulator conducted a market investigation and concluded that there were no AAEC concerns due to the presence of several competitors.
- The CCI has adopted a bespoke approach to mergers and combinations in the sector and used fit-for-purpose parameters in its market studies. The authority used 'gross office receipts' to understand the film production and supply market, and 'number of TV channels and viewership data' for the TV market to understand the combined market share of the Walt Disney Company and Twentieth Century Fox.[7]
- In the Sony Pictures/Aqua Investment combination[8], the authority adopted a different approach for calculating market share in the sports broadcasting businesses. The CCI examined bidding data for a 5-year period and examined the market share of the transacting parties in terms of number and value of the contract, Gross Rating Points (GRPs) and advertising revenue.
- The CCI has also displayed its understanding of the broadcasting market in the cases it heard.[9] For example, in the matter between DishTV and Videocon, the CCI looked at the substitutability of various categories of distributors (MSO, DTH, IPTV, and HITS) and concluded that they are not substitutable. In the Sony/Aqua case, the CCI analysed the value chain in detail and identified various forms of content distribution.

- Company Law: Under Chapter XV of the Companies Act, the National Company Law Tribunal (NCLT) examines issues related to the rights of shareholders and stakeholders before approving a merger or amalgamation. Under this framework, the NCLT has the power to send a notice to sectoral regulators and other authorities and seek their opinions before approval.[10]

- Securities Law: The Securities Exchange Board of India (SEBI) under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 may mandate public disclosures, open offers, and decide the minimum price in case an acquirer acquires more than 25% voting rights or 'control' of a company.

[5] Combination Registration No. C-2016/11/456.
[6] Combination Registration No. C-2014/08/198.
[7] Combination Registration No. C-2018/07/583.
[8] Combination Registration No. C-2016/09/436.
[9] See *Jak Communications v Sun Direct, Competition Commission of India* Case No. 08/2009; Consumer *Online Foundation v Tata Sky Limited, Dish TV India Limited, Reliance Big TV Ltd. and Sun Direct TV Pvt Ltd.,* 2011 SCC OnLine CCI 12: [2011].
[10] Section 230(5), Companies Act, 2013.

- FDI: Under the Broadcasting Content Services, 100% Foreign Direct Investment for Uplinking of Non - News and Current Affairs' TV channel under the Approval (Government) Route, 26% for uplinking of News & Current Affairs and Terrestrial Broadcasting FM under the approval route (the MIB recently extended this FDI restriction to digital news). Under the Broadcasting Carriage Services, for DTH Foreign Direct Investment up to 49% is the automatic route and further (49%-74%) requires the approval, for cable networks FDI through automatic route is 49%.

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.

The HHI and the Diversity Index are the most explored methods in the M&E sector, but they have considerable limitations. Other indices such as the Lerner Index and N-firm Concentration Ratio also have limitations.

To establish market concentration, the assessment of the relevant market and measurement of market power are crucial. Valuating both these factors pose considerable challenges as factors such as data availability and relevance of methodologies vary across industries. Following are widely accepted methods to assess market concentration:

A) Lerner's Index: It measures the ability of a firm to price above the short-run marginal cost. In theory, under perfect competition, there is no gap between the price of a product and its marginal cost of production. However, a monopolist would charge a price according to its profit maximization condition where they earn above normal profits (i.e., LI >0), representing a higher market power. Since the LI is represented as a fraction of the firms' profits to its price, it is also an indicator for assessment of allocative inefficiencies and performance.

$$Lerner\ Index\ = \frac{(Price\ of\ a\ product - \ Marginal\ cost\ of\ production)}{Price\ of\ the\ Product}$$

A drawback of the Lerner's index is its rigid demarcation between market structures such as perfect competition and monopoly. Markets often do not operate with multiple sellers offering homogenous products. In addition, the measure only accounts for the firm's ability to determine prices and fails to consider other demand and supply shocks which may affect prices in the short run.

B) N-firm Concentration Ratio (CR): The concentration ratio is an indicator of the firm size relative to industry. The ratio, which is expressed as a percentage, portrays the share of market controlled by $\boldsymbol{n}$ largest firms in the industry. A higher ratio is indicative of a less competitive market and vice versa. In practice, the four-firm concentration ratio (CR4) and eight-firm concentration ratio (CR8) are widely used measures in the media and entertainment (M&E) sector. A CR4 and CR8 ratio above 50 percent and 75 percent are considered highly concentrated respectively. The simplicity of the CRs restricts its explanation to market concentration which has often proved as an unreliable measure of competition and performance. Additionally, these ratios are not sensitive to market power held by individual firms, that is, a similar concentration ratio across comparable industries does not capture the share differential among firms.

C) Herfindhal-Hirschman Index- The HHI is mostly preferred over the CR as it provides the market share dispersion amongst all firms in the industry rather than just the selected top firms. It is estimated as the summation of the square market shares of the N largest companies in an industry. The HHI values range between 0 to 10000 (monopoly) where higher values suggest greater market concentration. The United States Department of Justice and the Federal Trade Commission consider markets with HHI greater than 2500 points to be highly concentrated. Mergers in excess of an HHI of 200 points in highly concentrated markets often come under the scrutiny of the regulators.

$$HHI = \sum_{i=1}^{N} s_i^2$$

Where s_i is the market share of firm i in the market, and N is the number of firms. Since HHI is a simple measure based on market share it fails to capture the various complexities of markets such as barriers to entry, rapidly changing technology, or firm-specific characteristics. Thus, regulators use the HHI as one among the many methods while determining competition in an industry. In addition, unlike the CRs, computation of the HHI requires market shares of all the firms in the industry which can become a tedious task in a multiple company/platform market.

D) Diversity Index- The Diversity index is an extension to the HHI as it assesses viewpoint plurality through accounting for vertical integration across segments in a relevant market. It uses the foundation of the HHI to measure the concentration in a particular market. In the M&E sector it is the weighted average of the HHI indices calculated across platforms like TV, radio, media and digital. However, the use of the diversity index has been challenged due to two main reasons. (i) Akin to the HHI the diversity index is concentration-based measure, thus it may be unable to completely explain market power (ii) Assigning weights is an integral part of computing the diversity index, this varies as there is no defined basis to specify the same. If weights are not correctly defined, the final valuation could be biased. Thus, although an improvement over the above discussed measures, the diversity index alone would not be sufficient to determine overall concentration in the media market.

E) New Empirical Industrial Organization (NEIO) Approach- The NEIO approach is considered a significant advancement which overcomes limitations of concentration-based measurement methods. Instead of simply relying on market structures, the NIEO approach estimates the demand and profit maximization functions of the firm/industry and jointly analyses it using econometric methods. Firms with higher market powers will be the price makers based on their price elasticity of demand. Whereas perfectly competitive firms will be price takers, solely driven by the industry costs. Analyses using this method can be used to draw inferences from an industry or even within a firm. In addition, the approach also allows to ascertain the effect of mergers. However, adoption of this method is suited for firms/industries where extensive data for variables are available.

To conclude, we endorse the view that even though the HHI and the Diversity Index are the most explored methods in the M&E sector, they possess considerable limitations. (i) Empirically, market concentration-based methods as a proxy for competition have not shown significance across all industries (Jacob et al., 2012).(ii) assessing market share alone fails to capture the various complexities of markets such as barriers to entry, rapidly changing technology, or firm-specific characteristics. Thus, the HHI or the diversity index alone may not explain market concentration in the M&E sector. We suggest that the TRAI should explore the use non-structural methods such as the NEIO approach in addition to the two methods. While proposing this, we remain cognizant of extensive data requirement of this approach.

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.

The link between media ownership concentration and viewpoint plurality is not proven and ownership concentration is only one facet of viewpoint plurality.

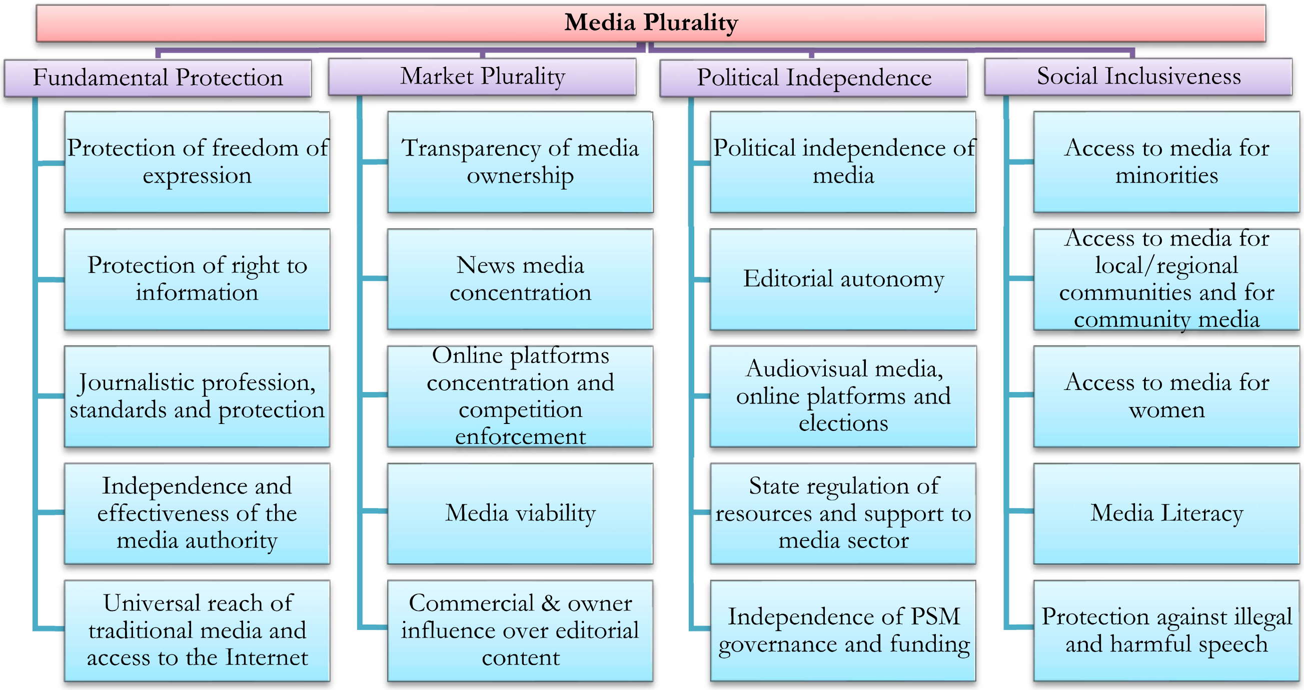
Para 1.5 of the CP says that concentration of media ownership leads to reduction in the number of sources of news and information which undermines the quality of public debate by reducing the number of perspectives and ideas that fuel it. However, the linkage between media market concentration and the lack of plurality is complex. The European Union has engaged with this issue in detail and there are some relevant takeaways for India.

- A study commissioned by the Council of Europe Committee of experts on media concentrations and pluralism (MM-CM) defines plurality as "*diversity of media supply, reflected, for example, in the existence of a plurality of independent and autonomous media and a diversity of media contents available to the public*". The study also notes the complexity in linking media concentration to media diversity and plurality. The study identified the following parameters for the measurement of plurality:
  - the size or wealth of the market.
  - the number of separate and autonomous suppliers.
  - diversity/heterogeneity in output of media.
  - consolidation of editorial or other functions/resources (Doyle, 1997, p. 7).

- Another research study commissioned in Europe also concluded that there is not enough evidence of a link between media concentration and plurality. This study assessed content diversity in newspapers and television in the context of increasing trends towards concentration of media markets" (Ward, 2006). The study covered four European countries and concluded the following "*data on content diversity collected for this report does not indicate a strong link between concentration of markets and the diversity of content. Markets that are strongly concentrated can demonstrate similar levels of content diversity as markets that are less concentrated*" (p. 4).

- Another conclusion by the study stated that: "*The study could not identify a direct link between media concentration (structural and market) and content diversity and pluralism in quantitative terms. This is not to conclude that there is not a link between concentration of ownership and content diversity. However, such a direct relationship is not evident in either the diversity of content of newspapers or on television channels over the monitoring period in quantitative terms. Other factors such as resources, size of markets and regulatory obligations are also key factors in determining the range of programming*" (Ward, 2006, p. 4).

- The Media Pluralism Monitor (annual) is based on the European Commission study (2009). The Monitor includes 32 countries. This project is under a preparatory action of the European Parliament.

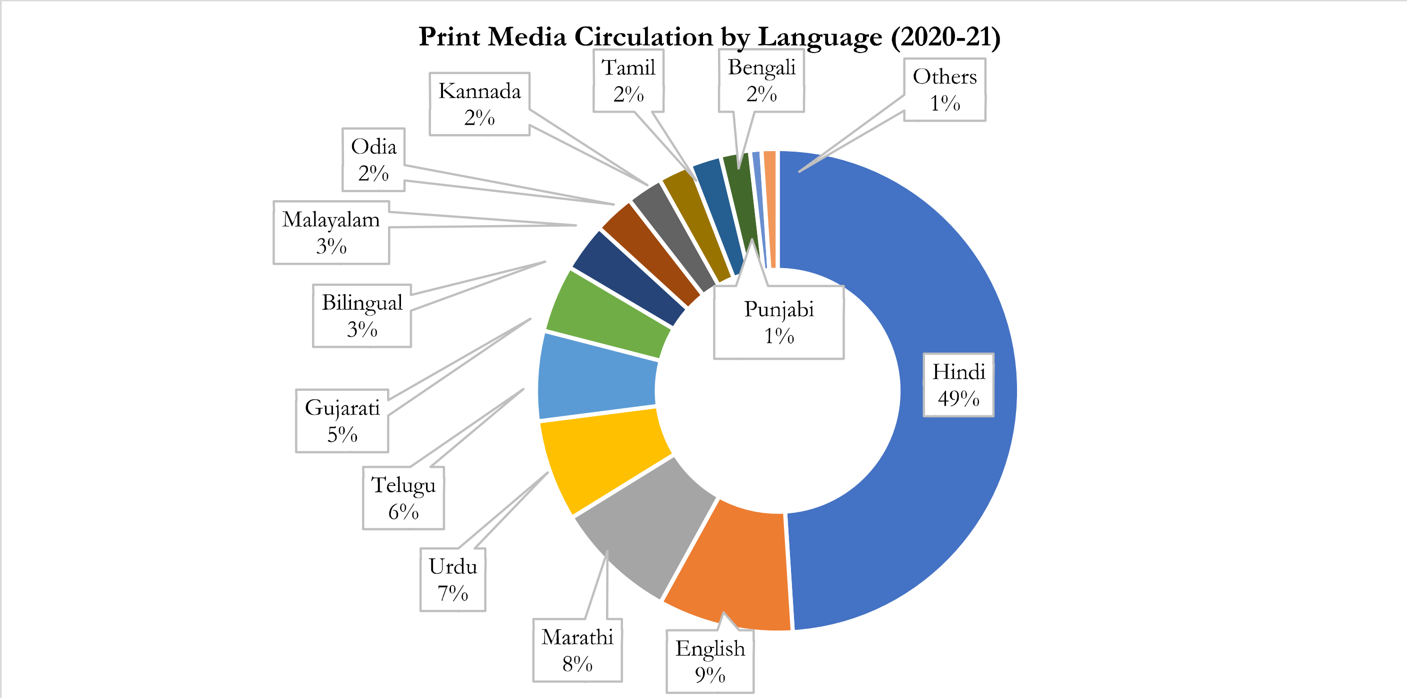


- A number of studies indicate no correlation between competition and plurality (Open Society Institute Report, 2005; Council of Europe Report, 2002; European Institute for the Media Report, 2004; European Federation of Journalists Report, 2005).

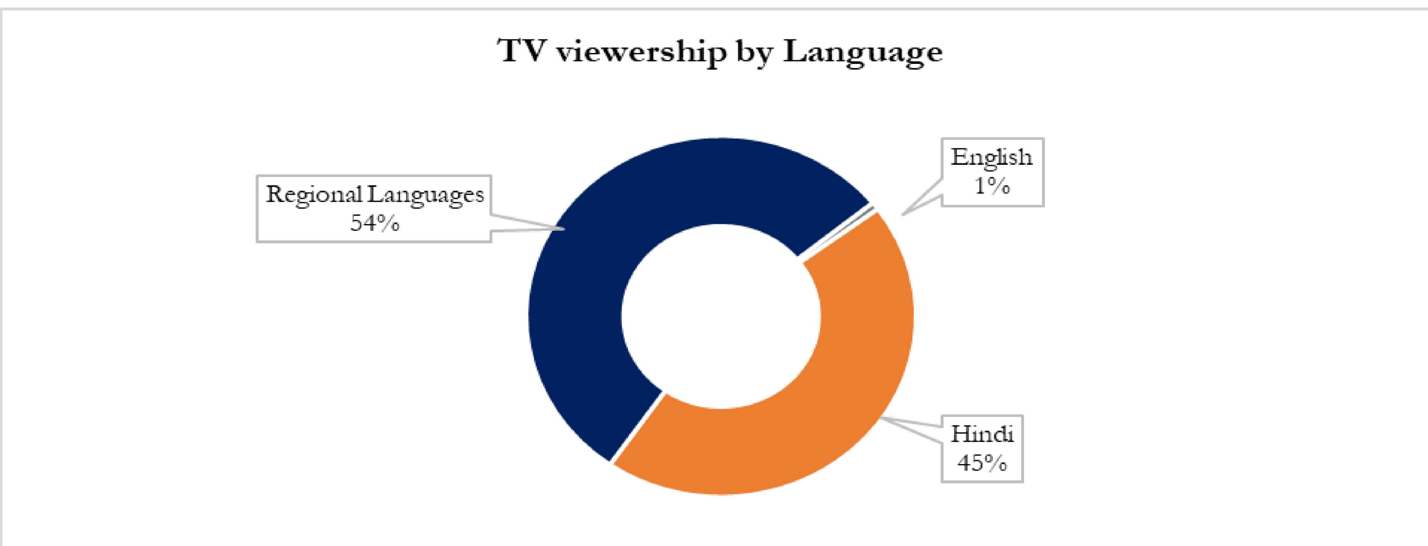
- In conclusion, media ownership concentration and media plurality different things and ownership concentration is only one facet of media or viewpoint plurality.

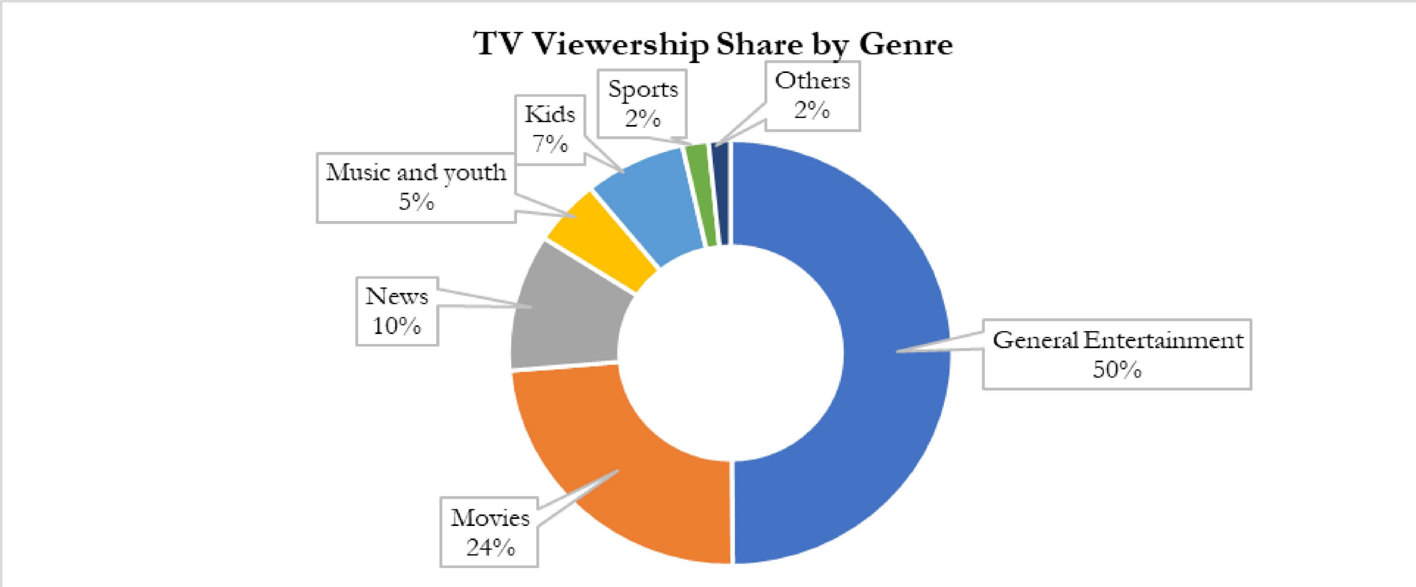
India has a diverse demographic with diverse content preferences which lead to an organic expansion of media and viewpoints that cater to the plural needs of the Indian audience.

Data below highlights the diversity of consumption in India. Each demographic is considerable enough to make a difference to a media business because most media businesses rely on volumes for returns.



Source: [Press in India (2020-21)], Office of Registrar of Newspapers, GoI





Source: EY FICCI Report 2021

Key Trends in TV

- Regional languages comprised over 50% of TV viewership.
- In 2020, regional channels received 27% more advertising compared to national channels.
- Regional television will drive ad rate growth, regional ad rates have been rising since 2019.

Key Trends in OTT

- The year 2020 observed the entry of many language OTT products like aha (Telugu), Koode (Malayalam), Letsflix (Gujarati) and City Shor TV (Gujarati)
- The share of regional languages in overall OTT video content will double from 27% in 2020 to 54% in 2024.
- Currently there are more than 40 OTT platforms, of which around 12-15 consist of regional language platforms.
- According to the EY FICCI report, more than 50% of the total time spent on OTT platforms will be on regional content in India.

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 city or the whole country? Please support your answer with reasons.

A market study should precede delineation of the 'relevant market' and any further intervention. Regulators should establish the link between the intervention and the market failure it looks to solve. It is pertinent to note that the TRAI has adopted this position in earlier recommendations to MIB.

Market studies play an important role by finding existing issues and predicting emerging ones. A market study explores different drivers and clarifies the options available to regulators. Regulators can then decide their strategy and address problems from a competition policy, enforcement, regulatory, or other policy perspective. Market studies could also propose solutions to mitigate consumer harm, promote competition, and reduce the possibilities of violations. According to the Organization for Economic Cooperation and Development (**OECD**), "*Market studies assess whether competition in a market is working effectively and identify measures to address any issues that are identified. The most common market study outcomes are recommendations for regulatory changes, calls for firms to change their behaviour, or law enforcement interventions*".

- TRAI in the Consultation Paper on Market Structure of MSOs, observed that '*in a well-functioning market, where firms are competing on fair terms and there are no artificially erected barriers of entry, there is no need to impose restrictions. However, if there is little or no competition or in case where barriers to entry exist, there is the distinct possibility of abuse of dominance by the service providers*'.
- TRAI in its Recommendations to MIB on Media Ownership said that "*A detailed market study and analysis may be carried out by the MIB for identifying/determining the safeguards. The results of such analysis may be put in public domain and discussed before finalizing the safeguards.*"

The CCI is the right authority to delineate the relevant market. As said earlier, the CCI uses fit-for-purpose parameters in its market studies. The authority used 'gross office receipts' to understand the film production and supply market, and 'number of TV channels and viewership data' for the TV market to understand the combined market share of the Walt Disney Company and Twentieth Century Fox.[11] In the Sony Pictures/Aqua Investment combination[12], the authority adopted a different approach for calculating market share in the sports broadcasting businesses. The CCI examined bidding data for a 5-year period and examined the market share of the transacting parties in terms of number and value of the contract, Gross Rating Points (GRPs), and advertising revenue.

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.

Diverse segments in the M&E industry do not allow a 'one size fits all approach' to measure consumption in its relevant market. Parameters such as volume of consumption and reach of the media outlet provide key insights to estimate M&E consumption.

The consultation paper (CP) mentions three widely used measures to assess the level of consumption in the M&E sector i.e., volume of consumption, reach and revenue. We discuss the feasibility and relevance of each of these parameters.

[11] Combination Registration No. C-2018/07/583.
[12] Combination Registration No. C-2016/09/436.

A) Reach: The reach in the M&E sector is measured as a percentage of people who are exposed to a media outlet, at least once in each period. This metric is clearly defined for print media and television for which the data can be made available through the Broadcast Audience Research Council (BARC) and Media Research Users Council India (MRUC India) respectively. However, it does not capture reach for digital media and OTT platforms where data on viewership preferences is proprietary and confidential to the entity in question.

B) Volume of Consumption: The volume of consumption for a media outlet is measured by the frequency or the time spent by consumers on the platform. In the case of television viewership, channels which are preferred by consumers and are watched for longer duration are used to quantify the volume of consumption. Data for the television industry can also be accessed through rating agencies and BARC measurement products. However, in the print and digital media space, quantifying the level of consumption for TRAI is challenging due to the inaccessibility of data.

C) Revenue: As highlighted in the CP, the M&E sector generates revenue from two segments i.e., advertising revenue and subscription revenue. The revenue share if often considered indirectly synonymous to the audience share for the concerned entity. However, media outlets, especially digital platforms generate different revenues due to other factors such as varying prices and differential payments through advertising. Although the data for this parameter is easily accessible, revenue often portrays a weak relationship with the ability to influence and inform opinion (audience share and market power).

<u>Overall, we suggest that diverse segments in the M&E industry do not allow a 'one size fits all approach' to measure consumption in its relevant market. Parameters such as volume of consumption and reach of the media outlet provide key insights to estimate M&E consumption. Measurement through these two parameters differs across segments and in some cases, one parameter alone could be sufficient to estimate consumption.</u> For example, as the CP emphasized, that in the print media segment, measuring circulation (reach) alone is sufficient. Additionally, revenue share, reach and volume of consumption, among other factors, cannot be taken as being synonymous with 'ability to influence'. These parameters, at best, only provide insights into the level of consumption in the industry. Finally, these metrices do not account for measurement of consumption in the digital media and OTT space which have emerged as significant contributors to the M&E growth story.

We hope our submission aids with your decision making. Additionally, we hope to continue to contribute to such consultations in the future and remain at your disposal for any clarifications.