

July 12th, 2022

Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawaharlal Lal Nehru Marg
New Delhi – 110002

Kind Attn.: Shri Anil Kumar Bhardwaj, Advisor (B&CS)

Sub.: TV18 Broadcast Limited's counter comments to Telecom Regulatory Authority of India's consultation paper dated 12th April 2022 on "Issues Relating to Media Ownership"

Dear Sir,

We, TV18 Broadcast Limited, write in reference to Telecom Regulatory Authority of India's ("TRAI") consultation paper dated 12th April 2022 on "Issues relating to Media Ownership" ("**Consultation Paper**") and refer to some of the comments to the Consultation Paper that have been sent by certain entities and persons to TRAI's Consultation Paper.

By way of this communication, we are making our submissions which is attached as Annexure -I on the basis of issues raised by other stakeholders / respondents to the Consultation Paper for your kind perusal and consideration.

Thanking you.

Yours Sincerely,
For TV18 Broadcast Limited



Authorized Signatory

Encl.: As above

TV18 Broadcast Limited's Counter Comments to TRAI's Consultation Paper on Media Ownership:

1. At the outset, we state that it is important that choice to consumer and sufficient competition should always remain paramount to maintain plurality as well as for growth of Media & Entertainment (“M&E”) sector. We note that the Ministry of Information & Broadcasting (“MIB”) follows a light-touch regulatory approach in preference to any prescriptive measures or stipulations and would suggest a similar approach for all forms of mediums in M&E sector (including television and broadcasting). The MIB requested TRAI in 2014 to suggest measures that can be put in place to *inter-alia* ensure fair growth of the broadcasting sector and to suggest measures with respect to cross-media ownership with the objective to ensure plurality of news and views and availability of quality services to the consumers. Things have changed significantly since 2014, and it is our firm view that both plurality and accessibility exist for the end consumer in the Indian market today thereby, requiring no further intervention or measures.
2. The Consultation Paper and some of the responses sent thereto do not analyse or factor the impact, relevance and importance of other important segments of M&E sector (such as, theatres, plays (including street plays), music, live events (e.g., stand-up comedies, lectures, debates, talks), films and music)) as well as non-M&E related aspects (such as, social interactions (including at schools, colleges)). It is submitted that the other segments of M&E sector as well as non-M&E related aspects also immensely facilitate exposure of a person *inter-alia* to plural and diverse views, opinions and perspectives. In this background, it is submitted that impact of four segments of M&E sector (i.e., print, radio, television and Internet) ought not be looked into in isolation, and that it is imperative impact analysis of all other remaining segments of M&E sector is carried out along with an impact analysis of non-M&E related aspects.
3. Indian digital consumers have access to content created locally as well as globally which adds to plurality of voices. It may be noted that there is myriad of players as can be seen from Consultation Paper as well as some of the responses sent thereto itself in all the four segments of media, which also shows there is no case of monopoly or market failure

warranting the present exercise. It is submitted that there are hardly any entry barriers and the operation of principles of free market economy ensures that even small players are present and are able to compete in the aforesaid four segments of media. As such, in case of media, India as a whole ought to be treated as the relevant market.

4. In broadcasting sector too there is sufficient competition in the market as well as plurality. Further, market forces have ensured that there are large number of channels, broadcasters as well as distribution platform operators (“DPO”) in the market for consumers to choose from. It is also important to note that TRAI has itself acknowledged that the broadcasting sector of the economy have shown all round growth. Further, TRAI acknowledges that the sector presents a vibrant scenario with the presence of varied distribution platform operators such as, MSO, DTH, HITS, and IPTV, TRAI further acknowledges that the total number of MSOs in the country have been consistently growing in recent years, and that such developments augur well for the competition.
5. It is therefore submitted that there is already sufficient competition and plurality in the market, specially in broadcasting (including distribution segment of M&E sector) and that the industry is not facing any issues including those relating to alleged monopoly / market dominance or any that are caused or otherwise endangered by integration (both vertical and horizontal).
6. In so far as issue Internet (viz., OTT) as a segment of M&E sector is concerned, it is respectfully submitted that TRAI lacks jurisdiction over OTT services and the same is *inter-alia* evident as per TRAI’s own stated stand as well. In its Consultation Paper on ‘Regulatory Framework for Over-the-top (OTT) services’ issued on 27.03.2015, TRAI separated OTT services into communication OTT services such as, messaging and voice service providers (VoIP, Skype, WeChat etc) and non-communication OTT services, noting that the latter are “*not under the purview of the telecom regulations*” and accordingly, a review of the regulatory issues in relation thereto was not required to be undertaken by TRAI. Even in relation to communication OTT services, TRAI, while exercising its statutory powers of recommendation, proposed to practice forbearance if and until regulation occurred at the International Telecommunication Union (“ITU”) level. In this regard, it may be noted that TRAI *inter-alia* made the following recommendations:

“Market forces may be allowed to respond to the situation without prescribing any regulatory intervention. It is not an opportune moment to recommend a comprehensive regulatory framework for various aspects of services referred to as OTT services, beyond the extant laws and regulations prescribed presently. The matter may be looked into afresh when more clarity emerges in international jurisdictions particularly the study undertaken by ITU.”

7. Additionally, TRAI’s attention is also drawn to para 39 & 40 (reproduced below) of the Explanatory Memorandum of Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 (1 of 2017) wherein TRAI has categorically taken a stand that OTT is *inter-alia* outside the purview of the TRAI Regulations:

“39. Some stakeholders are of the view that definition of ‘distribution platform’ should include OTT and Doordarshan. They further suggested that definition of ‘distribution platform operators’ should include OTT operator, Doordarshan or any platform that distributes channels to the subscriber.

40. In this regard, this tariff order is applicable to only those distribution platforms and distribution platform operators for which any permission or license is granted by the MIB. Since OTT operators and Doordarshan are not covered under any permission or license granted by the MIB, the Authority is not in agreement with these suggestions of stakeholders as they are not covered under present framework.”

8. There are various laws occupying the field and other mechanisms already in place that ensure sufficient and comprehensive checks and balances with respect to content being made available through media and ensure level playing field on various aspects related thereto. Further, there are arduous compliance requirements are already in place, and it

will not be out of place to state that the sector is already overly regulated as there are already many agencies, authorities and ministries regulating different aspects of ownership and other issues of media entities such as, Competition Commission of India (“CCI”), Securities Exchange Board of India (“SEBI”) for listed media companies, Department for Promotion of Industry and Internal Trade (DPIIT), Foreign Investment Promotion Board (under Department of Economic Affairs, Ministry of Finance), MIB, Ministry of Electronics & Information Technology (MeitY), National Company Law Tribunal (“NCLT”) and National Company Law Appellate Tribunal (“NCLAT”). Press Council of India is mandated to preserve the freedom of the press and to maintain and improve the standards of Newspapers and News agencies in India. Introducing further regulatory oversight or a new regulatory oversight body will only lead to instances of overlap of jurisdiction with the existing regulators, impinging upon the ease of doing business.

9. The TRAI has *inter-alia* in Chapters 2 and 4 as well as in Appendix I to the Consultation Paper setout roles and jurisdiction of various regulators e.g., CCI established under Competition Act, SEBI established under SEBI Act, NCLT and NCLAT established under the Companies Act. For the sake of brevity, we are not delineating the relevant provisions of the aforesaid statutes as well as roles and responsibilities of the aforesaid regulators. However, it is submitted that perusal of aforesaid portion of Consultation Paper and some of the responses sent thereto show that there are sufficient checks and balances in place and as such, introducing any additional / other measure and/or regulatory oversight will only lead to jurisdictional overlaps and regulatory complexities. The same would also have an adverse impact on key endeavours of the Government of India specially ‘Ease of Doing Business’, ‘Digital India’ and ‘Make in India’ initiatives.
10. In so far as TV channels distribution is concerned, TRAI’s Interconnect Regulations provide for sufficient checks and balances as well. In this regard, it may be noted that TRAI’s Interconnect Regulations *inter-alia* cover commercial and technical arrangements among service providers for interconnection for broadcasting services throughout the Territory of India. The said regulations contain provisions dealing with:
(a) general obligation of broadcasters which *inter-alia* prohibit any broadcaster from engaging in any practice or activity or entering into any understanding or arrangement, including exclusive contracts with any distributor of television channels that prevents

any other distributor of television channels from obtaining signals of television channel of such broadcaster for distribution, and a similar obligation is placed on a distributor of television channels in relation to broadcasters; (b) every broadcaster is required to offer all its television channels on a-la-carte basis to the distributors of television channels; and (c) distributor of television channels is prohibited from engaging in any practice or activity or entering into any understanding or arrangement, including exclusive contracts with any local cable operator that prevents any other local cable operator from obtaining signals of television channels from such distributor for further distribution. Introducing further interventions or measures will hamper ease of doing business. In fact, the legacy media sector is already overregulated, which too should be de-regulated.

11. It is submitted that there are many effective, proactive and robust industry level self-regulatory mechanism already operating in the sphere of broadcasting and digital sector. These self-regulatory mechanisms *inter-alia* provide for guidelines to be adhered to by channel / content providers as well as provide for a clear, transparent and structured grievance redressal and escalation mechanism for reporting non-compliance with the prescribed guidelines.
12. In a free market economy, and to maintain plurality, there should be few or no limitations on people and organizations entering the media business. However, in order to ensure that media remains independent, we agree with the sentiment in the Recommendations on Issues relating to entry of certain entities into Broadcasting and Distribution activities, issued by TRAI dated November 12, 2008 and reiterated in Chapter III and Appendix II of the Consultation Paper as well as echoed in some of the responses to the Consultation Paper that: (a) political bodies, (b) religious bodies, (c) urban and local bodies, central and state government entities and entities controlled and/or funded by the above do not enter into the business of media. Further, wherever permission has already been granted to such bodies, then suitable exit route should be provided to them.
13. So long as there are no restrictions on content creation and distribution and access to the end consumer remains freely available, any restriction on cross-media ownership is not necessary in today's multi-media consumption environment, in fact, in today's era it is critical for survival of media companies.

14. Evidence from other countries, as mentioned in the Consultation Paper and some of the responses sent thereto, also support the thesis of light-touch regulation, and forbearance. A forbearance approach will naturally nudge the industry towards an optimal equilibrium of competition across the media industry. Regulators must place trust in the invisible but tried and rested hands of market forces for the industry to achieve its maximum potential. For example, in USA, restrictions on cross-ownership rules for Newspaper / broadcast and radio/television have already been removed. Similarly, in UK too, Media Ownership (Radio and Cross media) Order 2011 removed all local cross-media ownership restrictions. The M&E sector needs a forbearance based light touch regulatory environment that will foster growth and also help in bringing investments to support creation of quality content.
15. We submit that the present response on various aspects of / issues raised in Consultation Paper is to honour the consultation exercise being conducted by TRAI. However, it is respectfully submitted that the present exercise (where statutory recommendations have been sought and are contemplated to be provided by TRAI) ought to have been restricted only to those aspects and segments of M&E sector as envisaged in proviso to Section 2(1)(k) read with Section 11(1)(a) of the Telecom Regulatory Authority of India Act 1997 (as amended).
16. It is submitted that MIB's reference as well as TRAI's current consultation paper and some of the responses sent thereto delve into various aspects relating to media, e.g., control and ownership of media, cross-ownership in media, horizontal integration, and vertical integration. However, it is respectfully submitted that TRAI ought to consider that media enables citizens to exercise their rights enshrined under Articles 19(1)(a) and Article 19(1)(g) of the Constitution of India. As such, no measures ought to be considered / recommended that may have an impact of restricting dissemination of content as a form of freedom of speech and expression and right to carry on trade or occupation. Further, in addition to stakeholders' (including broadcasters' / content creators') aforesaid rights, TRAI also ought to keep in mind rights of consumers under Article 19(1)(a) to receive and consume content of their choice and to be informed and entertained. We are of the considered opinion that any proposed restrictions on cross-media ownership holdings would work towards artificially limiting the business structure of media entities. Any such proposed restrictions under a subordinate legislation would not be permissible under

Articles 19(1)(a) read with 19(2), and hence would be *ultra vires* the Constitution of India.

17. It is also submitted that Article 14 of the Constitution of India underscores the fundamental doctrine of treating dissimilar entities differently. There are several services that enable content consumption through variety of mediums and in different formats / stages. Further, each such service / medium has different capabilities to *inter-alia* make available content in differing manner thereby providing differing consumer experiences. Considering that discrimination also occurs when persons who are in unequal position are being treated in the same (equal) way therefore, any framework facilitating non-discrimination and enabling a level playing field to promote fair competition would necessarily need to identify all the relevant parameters and aspects for classification and categorisation as similar, or equal, or within the same relevant market.
18. In view of our submissions made above, it is respectfully submitted that choice to consumer and sufficient competition already exists in M&E sector and that there is no need for any interventions or measures. On the contrary, there is a need for forbearance-based light-touch regulatory approach to ensure that M&E sector in the country grows at an accelerated pace.