7 June 2022

Submission on TRAI Consultation Paper on Issues Relating to Media Ownership

The U.S. India Strategic Partnership Forum **("USISPF")** welcomes the Telecom Regulatory Authority of India's **("TRAI")** efforts to undertake a consultation on issues relating to media ownership. Please see below our responses and recommendations to some of the questions raised in this consultation paper.

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.

Increased digitalization has contributed to the growth of the media industry. With the evolution of technology, companies are disseminating content to consumers through different media sources and platforms. For instance, newspapers and other print media are being digitized to make them more easily accessible to consumers. While cross-media ownership may be increasing, there are multiple factors contributing to viewpoint plurality.

Market forces play a major role in ensuring adequate competition without the need for separate oversight. In order to capture the interest of a wider audience, market players are incentivised to produce diverse content that caters to a wide range of consumers. While this may be commercially advantageous for companies, it ensures plurality of content as well. For instance, OTT platforms engender plurality and diversity in their content strategy. Given that OTT platforms prioritize expanding their subscriber base, they organically offer a diversity of products as it gives them a competitive advantage (i.e., they offer a wide repertoire by balancing consumer preferences for mass entertainment movies, niche and/or indie content, and regional content and supplying relevant filters to discover these products). OTT platforms are increasingly expanding into regional markets, which contributes to the diversity of the content available on such platforms. Reportedly, the share of regional languages in overall OTT video content will double from 27% in 2020 to 54% by 2024 and around 12-15 OTT platforms in the current ecosystem already include exclusive regional language platforms. Further, with the increase in the number of easy-to-use social media applications with minimal barriers to entry, content creators are creating digital content for multiple platforms, which has democratised the internet and contributed to viewpoint plurality.

Further, under existing laws, regulators such as the Competition Commission of India (**CCI**) and the Securities and Exchange Board of India (**SEBI**) are empowered to oversee anti-competitive practices and mergers and acquisitions across sectors, including the media industry. Given that such regulators have sufficient checks and balances in place to ensure accountability and transparency, we believe that cross media-ownership will not adversely impact viewpoint plurality and does not need to be monitored separately.

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?**

We do not recommend setting up a common mechanism to monitor ownership of print, television, radio, or other internet-based news media. As mentioned above, market forces contribute to viewpoint plurality and existing regulations have sufficient checks and balances to prevent anti-competitive practises in the media industry. Moreover, self-regulatory mechanisms have also been put in place to ensure compliance with prescribed rules/guidelines. For instance, OTT platforms are required to comply with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021(**IT Rules**), which provide for the setting up of a three-tier grievance redressal mechanism. Therefore, the setting up of a separate specialised regulator for the media industry will only lead to jurisdictional conflicts and overlaps with existing regulations. Excessive regulations and restrictions on the media industry may also hinder the growth of digital content, thereby impeding the production diverse content and consequently impacting viewpoint plurality.

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.

Given the existence of competent regulatory bodies such as the CCI and SEBI, we do not believe that mergers and acquisitions in the media industry require special oversight. Since its inception, the CCI has been actively overseeing mergers and acquisitions and enforcing competition law in India across sectors. Under the existing laws, the CCI is empowered to monitor and regulate acquisitions, mergers and amalgamations above certain thresholds as well as conduct investigations to curb anti-competitive practices and abuse of dominance. As a result, the CCI has the relevant expertise to prevent monopolistic behavior and identify transactions that will have an appreciable adverse effect on competition in India. Additionally, while CCI evaluates mergers and acquisitions from an antitrust perspective, SEBI regulates listed companies and ensures that acquisitions and changes in management take place in accordance with existing laws. For instance, SEBI monitors compliance with regulations such as the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 to protect the interests of shareholders and ensure transparency. Therefore, as existing laws already provide for sufficient regulatory checks and balances and mechanisms for inter-regulatory coordination, we believe there is no need for additional regulatory/ monitoring mechanisms to be set up specifically for the media industry. As discussed above, multiple regulators will only lead to jurisdictional conflicts and business uncertainty, thereby impacting the ease of doing business in India.

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.

Regulators such as the CCI and SEBI have established the criteria for defining and measuring ownership / control to prevent anticompetitive practises and ensuring transparency. Given that these specialised regulators have already defined ownership/control in different contexts, we recommend that a separate definition of 'control' should not be defined for the media sector. As discussed above, multiple definitions will only lead to conflicts, 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.

Restrictions placed on certain entities from entering the media sector will disincentivize investments. Introducing any restrictions or licensing requirements, will especially impede the growth of the digital media sector. Such restrictions are likely to reduce competition and plurality of content for customers. Therefore, we do not recommend that certain entities should be restrained from operating in the media sector. In case there are public interest concerns, restrictions may be imposed on dissemination of harmful content by the

Ministry of Electronics and Information Technology or Ministry of Information and Broadcasting under existing laws.

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.

As discussed in our response to Question 3 and 4, specialised regulators such as the CCI are empowered under existing regulations to carry out such assessments. Given that the CCI has the relevant expertise, it is best placed to measure concentration in a relevant market as per its established criteria and practices.

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.

We believe that there should be no separate oversight mechanisms put in place for media ownership as cross-ownership in the media sector does not adversely impact viewpoint plurality. Please refer to our response to Question 1 above.

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.

We believe that a separate focus on a particular media segment is not required to boost viewpoint plurality. The current ecosystem caters to a diverse audience and cross-media ownership does not adversely impact viewpoint plurality. Please refer to our response to Question 1 above.

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.

We believe no separate classifications or oversight mechanisms for certain media segments or cross-ownership is required. Please refer to our response to Question 1 above.

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.

As discussed in our response to Question 3 and 4 and 6 above, determining the relevant market is the prerogative of the CCI. Section 2(r) of the Competition Act, 2002 defines 'relevant market' as "the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets." Given that the CCI has the relevant expertise and experience, we believe it should be responsible for classification of relevant geographic markets in accordance with existing laws. We believe TRAI should not seek to separately define or determine the relevant geographic market in the media sector.

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.

Please refer to our response to Question 10 above.

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.

Please refer to our responses to Question 10 and 11 above.

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.

We note that TRAI is considering creating a mechanism for measuring the volume of consumption and reach of digital platforms, especially in case of advertising-led content platforms. However, viewership metrics and other data on user interaction collected by digital businesses is confidential in nature and protected under the Indian copyright laws. Under existing law, datasets, source codes, metadata and data insights are trade secrets. Given that data on viewership is proprietary, we request that private businesses should not be required to share the intangible property they hold in the form of datasets and algorithms.

Government access to such data without adequate safeguards could affect India's global competitiveness in the media and entertainment sector. Digital businesses deploy various strategies to acquire customers and rely on data insights to improve consumer experience and retain their interest. For instance, in case of online video streaming platforms, the data from viewers gives insights on popular titles and preferred genres and the platforms use these insights to design a better consumer experience. Each platform may have a unique formula for this that gives them a competitive edge, which may be in the form of a confidential algorithm, or a data set. These intangible IP assets are essential for an online video streaming service to thrive in a competitive ecosystem. Europe, which has a thriving digital ecosystem, specifies that governments may ask for mandatory data access only in case of a market failure or specific harms that the government identifies in the European Strategy for Data. Therefore, given that viewership data includes intellectual property assets that could reveal sensitive information about business strategies, we recommend that no metrics should require mandatory disclosure of such data.

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?

We believe there is no requirement to impose 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. At present, foreign direct investment in streaming of news and current affairs through digital media requires government approval and is capped at 26%. Additionally, existing regulators actively oversee mergers and acquisitions in the media sector to ensure transparency and prevent anti-competitive or monopolistic practises that could compromise viewpoint plurality. Imposing additional restrictions will only disincentivize investment in a rapidly growing sector, limit options available to consumers and hamper innovation. Therefore, we believe additional restrictions will negatively impact the media industry and should be avoided.

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?

As discussed above, we do not recommend imposing any restrictions based on a specific media segment. Please refer to our response to Q 16 above.

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.

As discussed above, we do not recommend imposing any restrictions based on a specific media segment. Please refer to our response to Q 16 above.

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.

As discussed above, we do not recommend imposing any restrictions based on a specific media segment. Please refer to our response to Q 16 above.

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.**

As discussed above, we do not recommend imposing any restrictions on cross media ownership. Please refer to our response to Q 16 above.

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 cross media 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.

As discussed above, we do not recommend imposing any restrictions on cross media ownership. Please refer to our response to Q 16 above.

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.

As discussed above, we do not recommend imposing any restrictions on cross media ownership. Please refer to our response to Q 16 above.

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?

As discussed above, existing regulators have the requisite experience and expertise to facilitate growth and competition in the media sector. Therefore, given that the CCI and SEBI are already evaluating mergers and acquisitions, we do not recommend the establishment of a separate regulator for the media sector.

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.

We believe the existing disclosures / compliance reports for different types of licenses as described in Part II of Chapter VI are sufficient for the government authorities to ascertain media Ownership/ Control.

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.

As discussed in our response to Question 26 above, we do not believe additional mandatory disclosures are required to be made for effective monitoring and compliance of media ownership rules. However, if TRAI takes the view that additional disclosures are required, such disclosures should not include commercially sensitive business information. Additionally, we request that TRAI should consult the industry before creating a list of additional disclosures.