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To,

Shri Anil Kumar Bhardwaj
Advisor (B&CS)
Telecom Regulatory Authority of India (TRAI)
Mahanagar Door Sanchar Bhawan,
J.L. Nehru Marg, (Old Minto Road)
New Delhi - 110002, India

**Sub: AIDCF response to the Consultation Paper on “Issues related to Media Ownership”
dated 12th April 2022**

Dear Sir,

This is with reference to consultation paper on “**Issues related to Media Ownership**” dated 12th April 2022 published by TRAI, wherein comments are invited from stakeholders.

In this regard, please find attached our comments for your kind reference and perusal please.

We hope that our comments will merit your kind consideration and same shall be considered while formulating the recommendations

Thanking You

Yours Faithfully

For, **ALL INDIA DIGITAL CABLE FEDERATION**



Manoj P. Chhangani
Secretary General- AIDCF

All India Digital Cable Federation ("AIDCF") response on the Consultation Paper on "Issues relating to Media Ownership" dated 12.04.2022

At the outset, we would like to put on record our sincere appreciation and gratitude for all the endeavours and measures that the Hon'ble Telecom Regulatory Authority of India (TRAI) has been putting forth in the recent past to improve the functioning of the broadcasting and telecommunication sector by periodically introducing diverse regulations and processes with deep involvement of the concerned stakeholders.

The captioned CP is likewise a welcome step towards building media pluralism. The Authority in the CP has rightly acknowledged that media pluralism is an important facet towards creating an effective public sphere and for furthering a democratic environment in its true essence and spirit. Media segment has an undeniable formidable strength to impact views and opinions of public at large and hence it is imperative for the industry to portray diverse opinions and perspectives for the readers and viewers to have a holistic and independent access of views and opinions on any subject-matter. Introduction of certain restrictions on cross-media holdings will curb abuse of vertical and horizontal monopolies of large enterprises and will consequently empower dissemination of diversified views and opinions. However, while notifying any rules with respect to media ownership, the Authority should ensure that such rules are formulated and designed in a manner to strike a balance between warranting a degree of plurality on one hand and ensuring that the entities are rendered with optimum opportunities of expansion, innovation and ease of doing business.

While, vide the CP, the Authority has sought for views regarding restrictions that can be imposed on horizontal and vertical segments of media for independent and impartial dissemination of information and views, we state and submit that the segments that have been identified for the purpose of horizontal integration (*like broadcasting, newspaper, print and digital media*) are very wide in themselves and any cross-media holdings amongst these segments *inter-se*, will have sizable and significant adverse implications. For the purpose of the same, it is pertinent for us to briefly understand the impact that each segment is likely to have in influencing the views of the public at large.

- A. Broadcasting Services:** The Authority has identified that the broadcasting services comprise of the broadcasters (*owners of the channels who aggregate the content of content-producers on their respective channels*), distributor platform operators (*multi-system operators (MSOs)/ Direct to Home (DTH) operators/ Headend in the Sky (HITS) operator/ Internet Protocol Television (IPTV) operators*) and local cable operators (LCOs). However, while demarcating the segments within the broadcasting services, the Authority has not distinguished the content aggregators or the owner of the channels from satellite service providers, teleport owners and content-producers. It is stated that all the aforesaid sub-segments also stand relevant and important from the viewpoint of cross-media

ownerships. For example, convergence/ significant relationship of control between a teleport owner and owner of channel/broadcaster may incentivize the respective broadcaster to get a competitive and commercial advantage in accessing the uplinking services over the other broadcasters. Similarly, exercise of significant control by any content aggregator on the owner of any channel is likely to provide an impetus to such content aggregator for syndication and availability of its content on the latter's channel. Hence, all such aforesaid sub-segments also stand of immense importance for ensuring viewpoint plurality.

The Authority has itself acknowledged that television penetration in India stands at 61%.¹ The Authority would also acknowledge that television as a segment, has the formidable capacity of reaching maximum number of households and population, both urban and rural in this country. Thus, television as a medium of entertainment remains robust, having the highest reach to the consumers and continue to remain both important and relevant.

B. Newspaper/Print Media: While the print media segment has been growing at a subdued rate for the past few years, it has been rapidly embracing technological innovations and progressively utilizing e-services by launching e-versions of their print newspapers, magazines, directories, *et cetera*. The Authority would acknowledge that newspapers still subsist as one of the principal sources for dissemination of information. They help in the emergence of public opinion by providing key information to the public at large and facilitating public discussion on issues of significant importance. The segments of print media can also be further segregated into content gathering (*reporters gathering information and covering events*), pre-press (*pictures and advertisements on the newspapers are created and composed and whole pages of the newspapers are placed*), press (*printing and folding*) and post-press (*copies are collected and transported to mailroom for further distribution to the consumers*). A convergence/ significant exercise of control between the newsprint agency and a newspaper owner is likely to stand advantageous for the concerned newspaper owner as the latter might be incentivized by the newsprint agency, thereby providing an avenue to the newspaper owner to get its content printed and disseminated at a competitive advantage as against the others. This becomes more relevant and pertinent in times when the menace of promoted news stand in subsistence by virtue of which any news, piece of information or articles can be easily published and propagated for a price in kind or cash as consideration.

C. Radio: Radio has been a primary medium for entertainment, information and education amongst the masses owing to the affordability and portability of radio receivers. India had 34 private FM broadcasters in September 2021, across 112 cities who operated 385

¹ Television and OTT, PwC, <https://www.pwc.in/industries/entertainment-and-media/television-and-ott.html>

FM radio stations. In addition, the public broadcaster Prasar Bharti's All India Radio service operates 479 stations in 23 languages reaching 92% of the country's area and over 99% of India's population.² Radio broadcasts can provide information regarding the most recent updates on any subject-matter to its listeners. Even in the absence of internet, people can still connect to the radio through airwaves.

D. Digital Media: The Authority in the CP has itself acknowledged that the advent of 4G based telecom networks has fueled unprecedented growth in wireless broadband subscribers in India. Number of internet subscribers increased from 795.18 million at the end of December 2020 to 834.29 million at the end of September 2021.³ Total telecom subscriptions were 1,189.15 million in September 2021 as compared to 1,174 million in December 2020. ⁴ The tele-density number in India is now 86.89% but is heavily skewed towards urban areas with tele-density of 138.72% in urban areas and just 59.33% in rural areas.⁵ Not only has the number of subscribers grown, but the amount of data consumption per subscriber has also grown exponentially. Per capita data consumption was 14.73 GB per month in September 2021 as against 884 MB per month in 2016⁶. Such proliferation in the growth of internet users have provided impetus to the growth of various OTT applications thereby making digital media a formidable source for dissemination of information, news and entertainment to the consumers.

The Authority would also acknowledge that the content which is available and accessible by the consumers on the television/ the information, which is disseminated through newspapers or journals, are also accessible by the consumers on digital media through various OTT applications/ open-sourced websites. The said websites/applications are owned and/or operated by content-owners, broadcasters, newspaper owners, *et cetera* which are part of the same media value chain and hence have tremendous scope of influencing the opinion of the consumers.

We further state that with a view to ensure viewpoint plurality and dissemination of unbiased information, each media segment as have been identified by the Authority in relation to horizontal integration should be further segregated basis 'user-based' and 'consumer-based' interfaces. We seek to substantiate the aforesaid with an example of broadcasting services. The broadcasting services in terms of 'user-based' paradigm can be further segregated into i) entities that are engaged in providing satellite services, ii) teleport owners, ii) content producers and iv) content aggregators/ owner of channels. The role and impact of each distinct segment has already been elaborated above.

² <http://allindiaradio.gov.in/>

³ TRAI, 'The Indian Telecom Service Performance Indicators, July-September 2021'

⁴ Press release by TRAI No. 06/2021

⁵ TRAI, 'The Indian Telecom Service Performance Indicators, July-September 2021'

⁶ TRAI, 'The Indian Telecom Service Performance Indicators, July-September 2021'.

Similarly with respect to 'consumer-based' paradigm, the mediums/modes vide which the broadcasting services or the views/agenda of the broadcasters are made accessible or are likely to be propagated to the consumers can be through i) MSOs, ii) DTH operators, iii) HITS operators, iv) IPTV operators, v) LCOs, vi) newspapers, vii) radio, viii) websites, ix) Free Dish and x) OTT applications, including communication-based services, video, audio, search engines like Google, Yahoo, Bing, etc., social media intermediaries like Facebook, Instagram, Twitter, etc.

We therefore suggest that in order to ensure that consumers have access to diversified views, opinions and information, the cross-media control of individual horizontal segment (*i.e. broadcasting services, print, radio and digital*) as have been identified under the CP should be restricted to a maximum number of two verticals each in both 'user based' and 'consumer-based' interfaces.

The next aspect that requires to be analyzed in this context is what would amount to one entity having control over the other. It is suggested that the regulatory framework and the definition of 'control' which is enshrined under the Competition Act, 2002 shall stand as a parameter to determine the permissible limit of influence/ impact that one entity is allowed to have over the other.

Adoption of certain restrictions in the manner as stipulated above will not only help the consumers to have access to diversified views, opinions and information by curbing the adverse effects of monopolies that is created by large enterprises but will also assist sustenance of ample avenues for creating synergies and business expansions by virtue of which one media segment can augment growth of the other.

It is further stated that while introduction of restrictions of cross-media ownership will reduce dominance of few voices or interests over the media, the same on its own will not create media pluralism. Additional measures ought to be taken to pro-actively introduce and ensure true prevalence of diversity of perspectives in the public domain. The Authority has itself acknowledged that presently, Over the top (OTT) platforms have established themselves as a formidable platform for distribution of video and media content. According to Bain and Company, India's online video user base has increased to more than 350 million people, growing 24% in the last three years.⁷ Moreover, the subscriber base of Free Dish has also seen an exponential growth and presently stands as 38 million. The Authority would acknowledge that an increasingly digital media environment, like that in the present times, gives internet users access to information from more and more sources, including the OTT platforms as well as various other open-source websites. However, the impact of technological development on informational diversity and media pluralism stands mixed. It is pertinent in this context to

⁷ Samarpita Bannerjee, 'Where the Indian OTT Industry is headed in 2022' (Business Insider, 06th January 2022), accessed at <https://www.businessinsider.in/advertising/media/article/where-the-indian-ott-industry-is-headed-in-2022/articleshow/88694261.cms>.

mention that majority of the OTT platforms are curated by the broadcasters themselves and such broadcasters make the same content available on the OTT platforms that are available via the satellite channels which are transmitted by them. The Authority would be well aware that presently both Free Dish as well as the OTT platforms are outside the purview of regulatory ambit as have been notified and enshrined by the Authority, despite of them providing the same services as that of the DPOs. The deliberate act on part of the broadcasters of making licensed channels/ the content of such licensed channels available on either their own OTT platforms or on the platforms of other OTT players is an issue of alarming significance in this regard which we yet again, seek to bring to the kind attention of the Authority. The Authority would be well aware that the television channels that are granted permission for downlinking by the Central Government under the policy guidelines issued by the Ministry of Information and Broadcasting (*Ministry/MIB*) are only permitted to be transmitted in the form of television channel in the country. We further bring the kind attention of the Authority to clause 5.6 of the Policy Guidelines for Downlinking of Television Channels dated 05th December, 2011 issued by the Ministry ("*Applicable Licensing Framework*"), which clearly prescribes that the broadcasters are under a strict obligation to provide the signals of satellite television channels and the equipment thereof, strictly to the registered multi-system operators (MSOs)/ to the registered Direct to Home (DTH) operators/ to the registered Headend in the Sky (HITS) operator/ to the registered Internet Protocol Television (IPTV) operators.

We further seek to draw the kind attention of the Authority to clause 5.10 of the aforesaid Licensing Framework which states that the company/channel shall always adhere to the norms, rules and regulations prescribed by any regulatory authority set up to regulate and monitor the Broadcast Services in the country. This establishes that the broadcasters are bound by the regulations notified by the Telecom Regulatory Authority of India (TRAI) and accordingly the broadcasters cannot offer their channels at prices lower than what they have offered to the subscribers of DPOs/LCOs in terms of the Tariff Order. Consequently, the act of the broadcasters by virtue of which their pay channels are available for access by the consumers of the OTT platforms and Free Dish at differential and comparatively lower prices/nil prices is also in contravention of the prescribed regulations by the sector regulator, i.e. Telecom Regulatory Authority of India (TRAI) as any broadcaster which is also being regulated under the applicable regulatory framework of TRAI, cannot in any manner act in defiance of the regulatory framework. We further state that the said conduct is also discriminatory against the subscribers of the other DPOs as those subscribers are being subjected to the payment of higher subscription costs, while the subscribers of the OTT platforms and Free Dish are receiving the same channels for negligible or much lower costs along with having access to much other diverse content of the respective OTT platforms.

We further seek an urgent intervention from the Authority on one other significant and crucial aspect regarding absence of licensing and regulatory regime of the OTT platforms. In this regard, as has been already established above, the licensed channels of the broadcasters are

available for viewership on the OTT platforms as well as on various websites, despite the same being in defiance of the Applicable Licensing Framework. It is imperative to note in this context that while the transmission of satellite channels through the platforms of DPOs are heavily regulated vide the Regulations of Interconnection, Tariff and Quality of Services, the transmission of the said licensed channels on the OTT platforms and Free Dish are neither regulated nor such platforms are subjected to any licensing framework. This definitely subjects the DPOs to an unequal regulatory regime and hence an urgent intervention is sought from the Authority to firstly establish and formulate a Licensing Framework for the OTT platforms with appropriate and applicable conditions by virtue of which only such licensed OTT platforms are allowed to remain operational in the country. Simultaneously, the purview of the regulations of Interconnection, Tariff Order and Quality of Service should also be extended to the OTT platforms as well as Free Dish as they are engaged in the provisioning of same services as that of the DPOs. Evidently, allowing the OTT platforms and Free Dish to exhibit and transmit the same services (*in addition to other diverse content on OTT platforms*) without subjecting them to any licensing and regulatory conditions, unlike the DPOs, is clearly arbitrary and devoid of the interests of the consumers as well as the DPOs.

We therefore urge that before formulating any rules with respect to cross-media ownership, the Authority should forthwith intervene and look into the aforesaid issues and formulate a licensing framework for OTT platforms, extend the purview of the Applicable Regulatory Framework to the OTT players and Free Dish, and initiate stringent and immediate actions against the broadcasters who are acting in blatant violation of the Applicable Licensing Framework, including initiating penal action not limited to withdrawal of license/permission. This will also ensure that all stakeholders including the consumers of all the platforms are brought to parity and are subjected to an equitable regulatory regime, and the same will usher equal opportunities to all concerned stakeholders for business growth and expansion.

In view of this backdrop and without prejudice to the aforesaid submissions, we would like to submit our comments on the issues highlighted in the CP. We stand ready to be involved in further consultations, industry dialogues that may be undertaken by the Authority before finalizing any view on these issues.

ISSUES FOR CONSULTATION

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: Media is often termed as the fourth estate or the fourth pillar of democracy. Media's inherent ability to reach masses requires sustenance of its ability to present an independent and

unbiased opinion on several issues, be it policies, performance of the government or any other information. The need, therefore, is for media to remain neutral. The Authority would acknowledge that while media has tremendous potential to inform citizens about events and issues that occur in the world, it also has unparalleled potential for abuse by dominant enterprises to propagate and further their own agenda. The goal of any rule or regulation brought upon the media must necessarily achieve the objective of preventing abuse and dominance of media by such forces and to ensure serious, true and accurate coverage and analysis of public issues. However, as has also been highlighted as part of our introductory comment, any framework or rules with respect to cross media ownership should be designed in a manner to strike a balance between warranting a degree of plurality on one hand and ensuring that the entities are rendered with optimum opportunities of expansion, innovation and ease of business. Therefore, instead of introducing blanket restrictions on cross-media ownerships, we suggest that media segment should be classified basis 'user-based' and 'consumer-based' interfaces. The control of any existing media entity should be restricted and limited to a maximum number of two segment types in each of the aforesaid interfaces. The description of segment has already been elaborated in our introductory comments/prologue.

Adoption of limited restrictions as outlined hereinabove will also allow an economically well-placed media entity to invest in other segments and vice versa, thereby balancing the interests of all stakeholders. Restricting companies from making investments in other media segments will affect their growth and hinder expansion of business, which are vital for prosperity of media industry. It would also deprive companies to extend their expertise and goodwill to other media segments which would otherwise bring in enhanced quality, optimum utilization of resources and most importantly will be able to cater to growing consumer demand for better information & entertainment services.

However, in order to ensure a level playing field for all participants in a given media sector, it is imperative that specific and strict measures are put into place, in absence of which certain horizontally/ vertically integrated groups/entities can dominate the market and render it non-competitive, thus leaving the industry in bad health. The Authority should allow vertical and horizontal integration but ensure that stringent rules and regulations are effectively put in place to safeguard and ensure the above-mentioned guidelines for fair play amongst players and there exists no opportunity for vertically/horizontally integrated groups to treat other constituents in an unfair manner using the advantage they hold in the segment.

We seek to elaborate the aforesaid concern and the implications thereof, vide an example. For instance, a content owner owning a DTH company and vice-versa would give rise to discriminatory consequences as regards other entities in the vertical. As an illustration, A, is a broadcasting company which owns several television channels and has significant holding and control in B, which is a DTH company. A with its controlling position in B will be able to have a

competitive advantage for its channels on B's DTH platform viz-a-viz channels of other independent broadcasters. Likewise, B will be at a leveraging position to negotiate its business arrangements with that of A, in comparison to other Distribution Platform Operators (DPOs).

Another instance in relation to content owners owning distribution platforms and vice-versa giving rise to discriminatory consequences as regards other entities in the vertical can be that of promotion of 'group owned channels', by virtue of favorable allocation and placement of such channels, specific promotions of those channels, thus making its 'own channels' more / easily visible to consumers and enabling better viewership of these channels. Such practice will result in unfairly skewing the popularity of these channels, leading to better economic value to the concerned content-owners. Another instance of potential abuse of dominance would be that A, which is the owner of several broadcasting news channels, has substantial control and stake in digital media vide an OTT application and controls/owns print media through a popular national daily. Evidently, such presence can be verily used by A to propagate and usher its own views, agenda and curated information, amongst the general public at large.

It is only in this regard that certain restrictions ought to be in place in order to ensure flow of diversified views and information. We have therefore, suggested that at any point in time, the control exercised by any entity in media domain should be restricted and limited to a maximum number of two segment types in each of the 'user-based' and 'consumer-based' interfaces, for ensuring that both plurality of media and opportunities for forming synergies and business expansions grow hand-in-hand.

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?

AND

Q.3 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.

AND

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.

Response: The Competition Act, 2002 ("*Competition Act*") and the Competition Commission of India (CCI) is entrusted with the responsibility of ensuring a level playing field and that there is adequate competition in the market which in turn ensures plurality and diversity. The key provisions relating to the Competition Act deal with:

- a) **Prohibition on Anti-Competitive Agreements (Section 3):** Section 3 prohibits any agreement (vertical or horizontal) that has an Appreciable Adverse Effect on Competition (AAEC).
- b) **Prohibition on Abuse of Dominant Position (Section 4):** Section 4 prohibits abuse of dominance. Thus, any conduct by a dominant enterprise that is likely to have a harmful effect will be prohibited under this provision.
- c) **Regulation of Combinations (Sections 5 & 6):** The Competition Act vide Sections 5 & 6 prohibits any structural change in an enterprise (vertical, horizontal or otherwise) that causes or is likely to cause an AAEC.

Thus, while Sections 3 and 4 of the Competition Act are ex-post measures to address competition concerns that arise from conclusion of an agreement or through conduct of a dominant enterprise, Sections 5 and 6 are ex-ante measures that address competition concerns that are likely to arise from any structural change. Further, the provisions of the Competition Act are applicable to all sectors, including the entertainment and media industry. In fact, the provisions of the Competition Act are more comprehensive and address all perceivable issues relating to competition in the market. Therefore, any issue arising with respect to vertical or horizontal integration is likely to be covered under the Competition Act and consequently, is comprehensively dealt through the CCI.

It is further suggested that in order to have a comprehensive overview of any synergies/convergence that is proposed with respect to media segment, a separate media advisory body which will be an expert body having adequate representation from each of the horizontal segment of media domain should be formed for engaging with the CCI on the issue of any proposed horizontal/vertical integrations that are likely to take place, through acquisitions, mergers and amalgamations. The composition and role of such media advisory body can be duly

consulted through a separate consultation process. All significant issues with respect to cross-media holdings should be first referred to the said media advisory body and then the final adjudication by CCI must take into consideration the opinion/ concerns that are raised by the said advisory body. This will ensure that view of the advisory body is taken well into consideration before approving any scheme of arrangement. In the event, CCI is not in agreement with the views of the advisory body, the same might be dismissed by CCI but should be substantiated and coupled with a reasoned order in writing. The Competition Act already provides for mutual consultations between the CCI and statutory authorities (including TRAI) in matters where a competition issue may arise. Moreover, the Competition (Amendment) Bill, 2012 also proposes to make such mutual consultations mandatory, and the consulting authority is required to pass a reasoned order taking into account the views of the consulted authority. Implementation of the provisions of the said Bill would ensure that views of all other market regulators are fully and comprehensively considered in cases of combinations in the media sector, including the broadcasting sector. Hence, both Authority as well as the Ministry should put concerted efforts to ensure expeditious passing and implementation of the said Bill, through the Parliament, so that the views of the media advisory body are taken well into consideration before CCI passes any Order, to that effect.

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.

AND

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

AND

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?

Response: The concept of 'control' is central to the formulation of a policy on restrictions on media ownership, both cross media and vertical integration. The concept of control has been analysed extensively in competition law across various jurisdictions, and certain broad principles have emerged.

There seem to be two principal ways of determining when 'control' is exerted over an enterprise. The 'equity based' approach and the 'decision making approach'. Having substantial equity in an enterprise is an obvious way by which influence can be exercised. This approach involves the determination of a threshold level of equity ownership, exceeding which an entity can be said to control another. This threshold level may vary across jurisdictions. For

example, a person/entity holding more than 50% equity of or having more than 50% of the voting share in a television, radio or Newspaper Company would be considered to have control over that company.

The 'decision making ability' on the other hand, involves the assessment of the likelihood of one entity significantly influencing another. This depicts '*de facto control*' wherein any person/entity who does not have a majority stake in a company can "in most cases or in significant respects" ensure that the affairs of the company are conducted in accordance with its wishes. The use of the 'decision making ability' approach does not necessarily exclude the use of the 'equity based' approach, as equity holdings may be one criterion to establish a firm's ability to exercise decisive influence.

The above approaches are also reflected in the treatment of "control" in the Competition Act. Section 5 of the Competition Act states that: '*control*' includes "*controlling the affairs or management by one or more enterprises, either jointly or singly, over another enterprise or group; one or more groups, either jointly or singly, over another group or enterprise*". The above definition of control in the Competition Act needs to be read along with the definition of 'group', which is enshrined under the Explanation (b) to Section 5 of the Competition Act. 'Group' means "*two or more enterprises which, directly or indirectly, are in a position to exercise 50% or more of the voting rights in the other enterprise; or appoint more than 50% of the members of the board of directors in the other enterprise; or controls the management or affairs of the other enterprise*".

The above provisions in the Competition Act, considered together, imply that 'control' can be inferred either on the basis of shareholding of 50% or more, or on the basis of the ability to appoint at least half the directors, or on the basis of other means to exercise control. For example, control could be exercised even without majority shareholding through a shareholders' agreement or other contractual agreement and obligations thereof. Since 'control' has been defined as above in the Competition Act, and on this basis is being amply analysed by the CCI, which is also in accordance with globally accepted principles, we, therefore do not advocate the need to have a separate definition of control in the media sector and the definition and principles embodied in the Competition Act should be allowed to prevail in the media sector as well.

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 reiterate and suggest that the media advisory body as suggested above, should undertake a comprehensive analysis of existing media ownership as well as potential to influence/control; and prepare a report for any entity proposing to enter the media domain. A copy of the said report should also be shared with the concerned licensor. The licensor should call upon the entity concerned to submit their written explanation against assertions made in

the report, if any, within a prescribed timeline and the said entity should also be rendered with an opportunity of hearing. The licensor shall accordingly pass appropriate orders allowing/restraining the entity from entering the media domain. Post conclusion of the extra-judicial proceedings, there should also be an appeal mechanism before Telecom Disputes Settlement and Appellate Tribunal which can hear appeals by media companies against the licensor and media advisory body, in case the concerned disqualified/restricted entity is not content with the decision of the licensor.

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

AND

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.

AND

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.

AND

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.

AND

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.

AND

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: While we acknowledge the efforts that the Authority has put in the determination of the aforesaid indexes for the purpose of measuring concentration, it is stated that each of the concentration measures take into consideration the individual market shares of all market participants in a relevant market.

The Authority would acknowledge that since 'individual market shares' stands of pivotal importance for the use of any market concentration tool and for determining market dominance. Hence, it is suggested that before recognizing any such tool, the Authority should first and foremost devise a tool/ a formula that can be used for measuring market share of any entity across all media segments in a relevant market. Under the present era of convergence, it is significantly difficult to ascertain the individual market shares of each entity. Thereafter, the Authority should also appoint an independent panel of auditors/experts for verifying the data with respect to market shares of each entity across all media segments in a relevant market. Any concentration tool with incorrect values of market shares will fail to provide and establish an accurate extract leading to a sheer failure in analysing the prevalent instances of dominance, if any.

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: We reiterate that in lines with our introductory comments, all media segments should be considered for the purpose of ensuring viewpoint plurality. Accordingly, in the broadcast space, we suggest that all genres especially, 'general entertainment', 'infotainment', 'news and current affairs' and 'devotional' should be considered for the purpose of media ownership, to ensure viewpoint plurality.

The importance of 'news and current affairs' is undeniable as they have greatest potential to inform and impact mindset of people as well as ensure sustenance of an effective democratic process. However, a wide variety of contents are broadcasted on General Entertainment channels, ranging from fictional content to reality shows, and their influence on public

perception cannot be denied. In the recent years, many fictional as well as reality shows have come under the scanner of public criticism due to the inappropriate content and their influence on public perception. Therefore, it may be necessary to oversee the control of such entertainment media that has serious impact on value system and beliefs.

Further, in recent years infotainment channels are also gaining popularity and viewership in India. The infotainment channels broadcast content on a wide array of subjects, ranging from history to religion to international relations. The peculiarity of infotainment programmes is that they are perceived to be factually correct and therefore, have the ability to influence popular perceptions. Consequently, any inherent bias in such programmes is bound to have adverse impact on the society. Devotional programmes and content also play an important role in shaping the religious and spiritual views of the public, at large.

We therefore suggest that all the aforesaid four genres shall be considered relevant and important for viewpoint plurality as they have the potential to impact various social and behavioural issues in a multi linguistic and multi religion country like India.

Q.8. 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: All of the above media segments stand relevant and no one medium can be singularly relevant for devising ways and means of ensuring viewpoint plurality. It is relevant to note that in the present scenario, though there are multiple players operating in each media segment (be it print, television, radio or digital), however few large media houses exercise ownership/control over majority of such media segments. A consequence of such cross-media ownership/control may lead to a piece of news/information being carried on a number of news channels on television and the same being simultaneously covered by radio, digital and print media, thus negating viewpoint plurality. All the aforesaid segments have formidable capacity of reaching maximum number of households and population, both urban and rural in this country.

Hence, all segments stand relevant for encouraging and ensuring viewpoint plurality.

Q.9. 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: We reiterate our response to the previous question and state that media should include within its purview television, print, digital as well as radio for reasons as have been outlined above.

We further state that 'Television' as a media segment should include the broadcasters, DPOs as well as the LCOs. The broadcasters have the direct ability to influence public perception as they control the content. The influence of DPOs (*including the LCOs affiliated to the MSOs*) though stands indirect in nature, however they can influence the reach of the content produced by the broadcaster thereby influencing the viewpoint plurality.

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.

AND

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: Relevant market may be determined basis facts of each case and taking into account geography, language, demography, population, target market, *et cetera*. The concept of 'relevant market' is amply covered under the Competition Act, 2002, as amended and is determined by the Competition Commission, on case-to-case basis, with reference to both relevant product market and relevant geographic market. Therefore, in view of already existing regulations and determination factors under the Competition Act, there is no necessity for considering relevant market by devising parallel regulatory framework.

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: We reiterate and submit that relevant geographic and relevant product market should be determined by virtue of the framework as enshrined under the Competition Act, 2002. In terms of the same, it is stated that language should be one of the criteria for analysing market dominance. Any relevant market should be classified for each medium basis the primary/principal language of that particular market along with other factors, like geography, demography, population, target market, *et cetera*.

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.

Response: All of above-mentioned parameters especially share of revenue and volume of consumption are important to judge concentration. However, these parameters are not sufficient to prove any organization’s potential to influence the opinion. Audience shares and reach, volume of consumption, *et cetera*, cannot be taken as being synonymous with ‘ability to influence’. Such parameters are, at best, only capable of providing ‘useful insight’ and should not be relied upon to provide absolute measures of media enterprises’ ability to influence and inform opinion. These may be relevant for measuring media consumption in a relevant market. The most appropriate metrics depend on the specific purpose of measuring consumption. If the purpose is to assess plurality, then revenue is unlikely an appropriate measure as the relationship between revenue and the ability to exert influence is less direct than the relationship between revenue and economic power. Relevant consumption metrics include reach, share (of viewing/listening etc.) and multi-sourcing. Relevant consumption metrics should also be considered across all media i.e., television, radio, press and digital media. Such metrics should not be considered in isolation. Rather, they should be considered within a broader framework that includes an assessment of availability, the supply-side (or provision), and impact (which tends to be very difficult to measure), equitable regulatory framework and internal factors such as governance.

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.

Response: We submit that circulation of newspapers can be used for determining reach of a media outlet in print segment. The circulation can help in determining the percentage of people who would have subscribed to a particular newspaper/journal, at a certain point in time. In addition to the data available with Registrar of Newspapers for India (RNI), reports published by National Readership Survey Council which publishes National Readership Survey (NRS) and Media Research Users Council, India which publishes Indian Readership Survey (IRS) may also be considered.

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.

Response: The flexibility available to broadcasters to price their channels and on composition of bouquets has been grossly misused by the pay broadcasters. The same has also been acknowledged by the Authority. Hence, there is a need not only for price cap for inclusion of channel in a bouquet but also to regulate composition of channels offered in bouquets by the broadcasters.

In this regard, price cap for inclusion of a channel in bouquet is already duly consulted and the Authority has fixed a cap of Rs. 12/- for inclusion of a channel in a bouquet, under the New Regulatory Framework. We support the said cap of Rs. 12/- for inclusion of a channel in a bouquet. Here it is also pertinent to mention that popular channels do not require any push by inclusion in a bouquet and will always have uptake despite it being price above the said price cap of Rs. 12/-. Such channels to be treated as premium/popular channels.

We also state that to ensure that such popular/premium channels are not unnecessarily clubbed with unpopular channels, a price range/band(s) should also be introduced and adhered to for inclusion of channels in a bouquet. Accordingly, we suggest price range/band(s) for inclusion of a channel in a bouquet as is stated in the table below:

<u>Sr. No.</u>	<u>Band(s) for inclusion of a channel in a Bouquet</u>	<u>Lower Range (In Rs)</u>	<u>Upper Range (In Rs)</u>
1	Band 1	0.01	1.00
2	Band 2	1.01	4.00
3	Band 3	4.01	8.00
4	Band 4	9.01	12.00

** Any Channel with MRP above Rs. 12/- to be treated as premium/popular channels should not be permitted to be part of a bouquet.*

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?

AND

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?

AND

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: The restrictions that have been suggested in our introductory comment and our responses to Question No.1&4 should be implemented in uniformity, across all segments.

We state that all segments as have been identified under horizontal integrations should be further segregated basis 'user based' and 'consumer based' interfaces. The control (*as defined in terms of the Competition Act, 2002*) of any entity should be restricted to a maximum number of two segments in each of the 'user-based' and 'consumer-based' interfaces.

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.

AND

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: It is stated that the disclosures that have been called upon by the Authority under Annexure-VI should be mandated across entities in all media segments.

We further state that in addition to the disclosures that have been listed under Annexure-VI to the CP, the following should also be mandated:

1. Structure of ownership and control for all entities,
2. Composition of the Board for all entities, where relevant,
3. Disclosure of Interest of Board Members/Managers for all entities.

Failure to submit any of the aforesaid details/disclosures shall be subjected to strict punitive actions by the licensor.

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

Response: No Comments.

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