NBDA's Counter Comments on the Consultation Paper dated 12th April 2022 on "Issues relating to Media Ownership"

The News Broadcasters & Digital Association (NBDA) (formerly known as News Broadcasters Association (NBA) is an association of 24x7 television and digital broadcasters who deal with news and current affairs programmes. NBDA represents several important and leading national and regional private news and current affairs broadcasters who run news channels and digital platforms in Hindi, English, and Regional languages.

The Consultation Paper sought the views of the stakeholders on need, nature and levels of safeguards with respect to issues relating to media ownership, particularly cross-media ownership and vertical and horizontal integration in the media and entertainment sector. NBDA submitted its comments on the above Consultation Paper on 24.6.2022 and is presently submitting its counter comments to the comments received from certain other stakeholders.

NBDA submits as under:

1. The Constitution of India under Article 19(1)(a) states *'All citizens shall have the right… to freedom of speech and expression…'* Freedom of speech has been stated as the Ark of the Covenant of Democracy by the Hon'ble Supreme Court of India. This has been reaffirmed by several decisions of the Hon'ble Supreme Court of India which has clearly reiterated that the freedom of speech and expression of the media is implicit under Article 19(1)(a) of the Constitution. Freedom of the media can only be restricted under Article 19(2) and it cannot be restricted through any executive order or through administrative instruction.

2. The restriction must be reasonable and specific and cannot be excessive or disproportionate. The manner of imposition of any restriction also must be just, fair and reasonable or else it would be *ultra vires* the Constitution.

3. NBDA is of the considered opinion that any proposed restrictions on cross-media ownership would work towards artificially limiting the business structure of media entities thereby restricting their opportunities of circulation/reach and also limit their options to seek advertisements to sustain their media operations. Any such proposed restrictions would not be permissible under Articles 19(1)(a) read with 19(2), and hence would be *ultra vires* the Constitution as stated above.

4. If any proposed restrictions are brought it would have a negative impact on the free speech rights guaranteed to the media, which cannot be the intention of TRAI. TRAI had itself stated in the Consultation Paper, *'The consequences of rapid technological development for informational diversity and media pluralism are mixed. An increasingly digital media environment gives internet users access to information from more and more sources, increasing the opportunities for people to use diverse sources and encounter different perspectives. With the emergence of social media platforms and Apps which depend on user*

generated content, the news and facts do not depend on any media organization for its conveyance to the public."

5. The above statement encompasses the following basic truths about the Media and Entertainment (M&E) sectors which underlie our counter comments detailed in this Note:

   (a) That with convergence and digitisation, there is no concept of 'geographical markets' and hence every argument sought to be made for monitoring/controlling 'concentration', 'market share', etc., with an eye to imposition of horizontal cross media curbs, is totally redundant;

   (b) That there are over 750 million smartphones in India, which is far greater than the readership of newspapers or consumption of Television or FM Radio;

   (c) That traditional or legacy media are now pygmies in front of large Technical entities/Social Media/Aggregators/User Generated Content (UGC) which are being consumed by larger audiences;

   (d) That News & Current Affairs as a genre is a miniscule part of the Media & Entertainment (M&E) sector;

   (e) That latest data confirms the trend of the last few years that consumption in news is declining sharply.

6. These are reiterated in the Reuters Institute Digital News Report, 2022 based on a survey, which is reproduced hereinbelow:

   (a) *Consumption of traditional media, such as TV and print, declined further in the last year in almost all markets, with online and social consumption not making up the gap.*

   (b) *While the majority remain very engaged, others are turning away from the news media and in some cases disconnecting from news altogether. Interest in news has fallen sharply across markets, from 63% in 2017 to 51% in 2022… We're also seeing news fatigue setting in – not just around COVID-19 but around politics and a range of other subjects – with the number of people actively avoiding news increasing markedly. Meanwhile, the proportion of news consumers who say they avoid news, often or sometimes, has increased sharply across countries.*

   (c) (Within the subset of news, which is a miniscule segment), *Facebook remains the most-used social network for news but users are more likely to say they see too much news in their feed compared with other networks. TikTok has become the fastest growing network in this year's survey, reaching 40% of 18–24s, with 15% using the platform for news. Telegram has also grown significantly in some markets, providing a flexible alternative to Meta-owned WhatsApp.*

(d) (Legacy/traditional media has declined hugely and digital consumption of news reiterates that the concept of geographical markets –basis for this CP--is dead). *The smartphone has become the dominant way in which most people* first access *news in the morning, though we find different patterns across countries. …India is a strongly mobile-focused market, with 72% accessing news through smartphones and just 35% via computers. News aggregator platforms and apps such as Google News (53%), Daily Hunt (25%), InShorts (19%), and NewsPoint (17%) have become an important way to access news and are valued for convenience.*

(e) *Social media are popular in India, with a significant number in our surveyed audience using YouTube (53%) and WhatsApp (51%) for accessing news.*

(f) (Reference to India)--*The popularity of social media is a concern for policy-makers as these platforms are also rife with misinformation, as well as incessant trolling and abuse. Facebook came under intense scrutiny after media investigations revealed the platform had pushed polarising content and misinformation in the form of advertisements during the election seasons in 2019 and 2020. Meanwhile, the Competition Commission of India (CCI), has launched an investigation into complaints that Google has allegedly abused its dominant position in the online news market. As in other countries, publishers claim they are not being compensated fairly for the content accessed via third-party digital platforms.*

7. With all of the above, it is obvious that TRAI's Consultation Paper on cross media ownership is not just redundant, but also technologically obsolete.

8. **PART A: SUBMISSIONS ON BEHALF OF NBDA**

On a perusal of the comments submitted to TRAI on its Consultation Paper on Cross Media Ownership, NBDA observes as follows:

(a) That limiting State intervention in the content and carriage aspects of the broadcasting industry, is vital to protect democratic interests. Imposing additional regulations can have disastrous consequences not just for plurality and diverse viewpoints, but also for the survival of the sector. The legacy media sector is already overregulated and inspite of being overregulated, self-regulation within the media with respect to content has been a successful endeavour.

(b) That there is no link between horizontal media concentration and lack of viewpoint plurality or how diversified ownership can guarantee plurality. Ensuring media pluralism cannot be directly co-related to imposing horizontal cross-media restrictions. There are no reasons or evidence cited for the need for any modifications in the current cross-media ownership structure.

(c) That the entire edifice of this Consultation Paper has been based on a false premise that the consumer consumes media content based on the fact as to which media entity owns the content. However, this premise is incorrect as the consumer consumes content based on his/her preference of variety of content, which are available to him/her at different rates.

(d) That India has the most pluralistic, diverse and competitive media industry in the world where there is absolutely no evidence of dominance or monopoly as far as horizontal media ownership is concerned. The private sector, particularly Indian news and current affairs which has been targeted by a few unidentified global Technical, Intermediaries, Social Media entities has a vast array of every imaginable viewpoint due to lakhs of newspapers, thousands of websites/digital entities and hundreds of TV channels, all of which are available in several languages.

(e) That with the extensive growth of different mediums for disseminating news including 403 news channels out of approximately 900 TV channels, 1,44,520 lakh newspapers, 386 radio channels, and 470 All India Radio stations operated by Prasar Bharti[1], which in fact disseminates news in 23 languages and 179 dialects, reaching 92% of the country's area and 99.19% of the country's population along with several digital news platforms which are registered with the Ministry of Information & Broadcasting (MoI&B)/Ministry of Electronics and Information Technology (MEITY) and over 40 OTT platforms with 400 million customers, the question of monopoly or non pluralistic environment does not arise. These mediums are owned by different entities/owners, therefore the concerns of plurality raised in para 1.6 of the Consultation Paper- *"that in case an entity owns a newspaper, radio channel and television channel, it is likely that consumer will get same/similar views across three forms of media leading to undesirable situation"* are unfounded and should not be a matter of concern. From the Consultation Paper itself, it may be noted that there are myriad players 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.

(f) That plurality, diversity and competition has flourished in the absence of any horizontal cross-media ownership restrictions, and any new curbs would have the disastrous consequence of reducing plurality and diverse views.

(g) That even the most basic question --- what is this vague/undefined 'desired' level of plurality on which TRAI has based this entire Consultation Paper— has not been answered. As one entity quoted academicians Suzanne Rab and Alison Sprague asking in their 2014 paper –"*the question is how many viewpoints make a sufficient plurality*?" There are no answers and it would be a travesty if TRAI proceeds on the basis of vague notions with no basis or grounds for regulating media ownership.

[1] All India Radio | Prasar Bharati

(h) That with the explosion of digital media and in this age of convergence where news is consumed in a border-less and boundary-less cyberspace, the concept of a "*geographical market*" for news media ceased to have relevance twenty years ago. In the late 1990s the consumers started moving to digital media to consume content which has expanded unimaginably into a vast array of products and choices ,however, this has impacted the consumers interests in traditional media. Digital media by virtue of its inherent boundary-less distribution is available in all geographies. Even media that's run from outside the country could end up having a large user base in the country. In fact, as trends in USA prove, geographical boundary-less digital media will soon overtake other forms of media in terms of media consumption in India. In addition, the leaders in digital media in India are international platforms and large Technical entities such as Google, Facebook, Twitter, which through their various news, search, videos and content attract a large number of consumers. In such context, creating any cross media ownership guidelines/regulations for traditional media is not just totally unnecessary and illogical –but also absolutely unfair as it would impose restrictions on an already rapidly declining legacy media.

(i) That TRAI in the Consultation Paper has not been able to indicate or identify even one single "market" where there is horizontal dominance/ monopoly/concentration simply because none exists. With multiple technological methods developing to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium. Hence, with convergence and new technology, it is also not possible to use the phraseology that any single entity "dominates" any given "market" based on "market share" in a given "geography" within a media segment. Therefore, the entire basis for any effort to justify any restrictions on horizontal cross media ownership does not work.

(j) That the only entity having a total monopoly – and that too because it is the sole player in several segments - is the government-controlled Prasar Bharati, for the following reasons:

   (i) It is the only entity, which holds an absolute monopoly in terrestrial TV via its 43 channels –which also have to be mandatorily carried even on private cable;

   (ii) Has unrestricted vertical integration via DTH Freedish with 45 million subscribers;

   (iii) It is the only entity that holds an absolute monopoly in AM radio broadcasting as well as original content in news and current affairs on FM radio.

(k) No private stakeholders are allowed in the aforementioned segments and in fact Prasar Bharati is the only entity which has monopoly in these segments. There is a need for a level playing field viz vertical integration by bringing the telcos into the ambit of the 20% broadcasting vertical integration rule so that there are controls over the same entity owning the content and pipe in both the broadcasting and telecom sectors. In fact, this is the only intervention that TRAI is mandated to do since only telecom and broadcasting/cable services is within its remit and jurisdiction so that there is facilitation and promotion of competition in these sectors. However, the issue of horizontal cross media curbs is outside TRAIs jurisdiction and therefore, it cannot comment or recommend on the said subject.

(l) That in the international scenario, most countries are removing restrictions on horizontal cross media ownership. In fact, India has an absolutely different environment with the most diverse and competitive media market in the world, inspite of terrestrial TV being wholly government-controlled (Prasar Bharati). The private broadcasting industry is not permitted to deal with terrestrial TV.

(m) Even TRAI acknowledges that in light of the increased decentralisation of news sources, countries are moving away from cross-media ownership restrictions. For example, in USA, restrictions on cross-ownership rules for newspaper / broadcast and radio/television have been removed in 2017. Similarly, in UK, Media Ownership (Radio and Cross media) Order 2011 removed all local cross-media ownership restrictions.

PART B: SPECIFIC COUNTER COMMENTS:

9. **Lack of jurisdiction and legislative mandate of TRAI:**

NBDA would like to submit as under:

(a) Anything apart from telecommunications, broadcasting services and cable services is outside TRAI's jurisdiction, and hence any inputs provided by TRAI on Print and Digital are outside its statutory mandate. Since MoI&B has referred this matter to TRAI, it is its responsibility to restrict its suggestions to telecommunication services only.

(b) In any case market concentration and media plurality i.e., content is totally outside TRAI's remit. 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). Moreover, drawing parallels with FCC is not warranted as unlike FCC, TRAI does not have rule-making powers vis a vis Mergers &

Acquisitions (M&A) in the media and broadcasting space; *ex ante* review of combinations in the media and broadcasting space is already squarely within the remit of Competition Commission of India under Sections 5 and 6 of the Competition Act, 2002.

10. **Absolutely no link between market concentration and plurality:**

NBDA would like to counter some random studies done by countries with far less diverse and competitive markets as compared to India, which studies have been presented by some entities to TRAI in response to the Consultation Paper.

NBDA would like to specify that:

(a) There is no data to establish a causal linkage between market concentration and media plurality and media ownership and media plurality.

(b) More importantly, India is an absolutely unique media market in the world, with an unimaginable array of media products in over 15 languages. There is not a single argument that outlines what is the desired level of media plurality, how is media ownership connected to it and what curbs can be put on media ownership to increase media plurality.

11. **No examples/evidence that current state of media ownership is adversely affecting media plurality in India in any manner:**

NBDA reiterates that there is no concentration of ownership in the media and that in any case, concentration does not impact media plurality. This is because different media products in the same entity are structured under different companies, have separate editorial/content and management teams and have totally differentiated content strategies designed to address different target audiences. Hence, common ownership actually builds up plurality as there is a conscious effort to have differentiated products with entirely differing viewpoints. Without establishing an objective relationship between media concentration and plurality, the Consultation Paper proposes in paragraph 1.5 to analyse the "*anomalies caused by media concentration*" through cross-media ownership and vertical integration. Attempting to use tools such as regulation or restriction of vertical integration or cross-media ownership, without showing *how* they influence the theoretical *"desired level"* of media plurality is an exercise in futility.

12. **Contention that curbs, if at all, must only be for news and current affairs (N&CA) is farcical and baseless --given that consumption of N&CA is a drop in the vast ocean of consumption of M&E, and traditional/new media is a pygmy in front of Big Tech giants:**

(a) Government's NFHS study: Indians are sharply reducing their consumption of news and entertainment when delivered through traditional mass media like newspapers, magazines, radio, and TV. Data released in May 2022 by the

Government's National Family Health Survey (NFHS)-5, conducted between 2019 and 2021, shows that there has been a double-digit percentage decline since the 2015-16 NFHS-4 in the share of people who read newspapers or magazines, watch TV, and listen to the radio at least once a week, which is the study's benchmark for regular consumption of mass media[2].

(b) Instead, it is the large Tech entities that dominate in the Indian environment. India is Meta's largest market, and it has over 400 million users in India and even Twitter has 24 million subscribers. In contrast, the entire total combined readership of hundreds of English newspapers in India is only 31 million as per IRS 2019.

(c) Even within traditional media, news and current affairs is a drop in the ocean of consumption. Take viewership of TV news channels for instance. This is almost irrelevant in the overall TV viewership space as per the FICCI-EY Report[1][3].

13. **Argument by largeTechnical entities / Social Media / UGC to curb ownership in news and keeplarge Tech Entities/Social Media/UGC/Aggregators outside of ambit of processes is farcical and baseless as they have far more influence than traditional or 'recognized' media:**

(a) **Chain of Command**

(i) The formal process of news collection of news through journalists and the chain of editorial command in a traditional process-driven media newsroom ensures multiple levels of checks before any content gets the clearance to be printed. It is for this very reason that social media / international platforms and aggregators who run their businesses through algorithms and not human editors need to be under the ambit of processes.

In Social Media/Aggregators/UGC:

(ii) News collection is not through a formal process of trained reporters and journalists but anyone (even those with malicious intent) can upload content and get distribution for millions of news consumers at one go.

[2] https://theprint.in/india/nfhs-shows-double-digit-drop-in-indians-reading-papers-watching-tv-listening-to-radio/969314/

[3] *https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2022/ey-ficci-m-and-e-report-tuning-into-consumer.pdf*

(iii) There is no chain of command and editorial processes in such companies and any content with virality (usually that drives strong emotions and force people to take sides) can find distribution on such platforms risking the very diverse nature of Indian society which is built on shared values and respect for each other's culture, traditions and viewpoints.

(b) **Viewpoint Plurality and Editorial Policies:**

(i) Every story in traditional media goes through a review process for accuracy and importance by a chain of editorial processes before it reaches readers. Traditional media is one set of news for the entire nation and is not personalized for each user. The newspaper cannot show different news stories and different text to different users through the same edition. Traditional media newsrooms do not have algorithmic functions to solve for only one success parameter - click through rates or engagement time that an algorithm driven platform / aggregator product uses.

In Social Media / Aggregators / UGC:

(ii) Instead, the multiple platforms on the other hand are built through machine learning and artificial intelligence where the algorithm is working to maximize only one output - which is usually click through rates of stories or time spent or virality. It is this singular optimization that allows unverified fake news to propagate through their systems and the algorithmic rewards are met not by showing what's factual and accurate to everyone but by showing what each user wants to see. It is for this reason that it becomes impossible to track the real damage of and by such algorithms to society.

(c) **Level of checks for accuracy, importance, awareness etc. drive the selection of news stories:**

(i) Control will not impact the nature of UGC. Platform monopoly hurts society and businesses. The algorithmic driven monopoly on content is monetized through the advertisement businesses of such large platforms and aggregators leading to unfair trade practices. Large Tech platforms are currently being probed on antitrust across multiple geographies in the world[4].

[4] https://www.livemint.com/technology/tech-news/us-says-google-breakup-may-be-needed-to-end-violations-of-antitrust-law-11603240644171.html

https://www.cnbc.com/2022/05/19/new-bipartisan-bill-would-force-google-to-break-up-its-ad-business.html

https://www.forbes.com/sites/iainmartin/2021/11/10/google-loses-court-challenge-over-eu-28-billion-antitrust-fine/?sh=b28092879048

14. Rather than **removal of vertical integration curbs, the 20% vertical integration rule in broadcasting must be extended to telcos especially with rapidly evolving broadcasting-telecommunications convergence:**

a. The telecom-broadband convergence has been happening at a frenetic pace and has been wholly unregulated. This is expected to grow even further; with 750 million smartphones where all manner of content is available. However, there is a total regulatory vacuum here, especially with the absence of adequate competition in the pipe. The common ownership/control of programming (broadcasting) and distribution undertakings can lead to concerns of preferential treatment and abuse of dominance, especially in today's age of smart TVs, improved internet access, and proliferation of high speed streaming services

b. Hence, curbs on vertical integration in broadcast and cable services which were absolutely necessary to ensure fair and non-discriminatory treatment, must now be extended to all entities in distribution space including telcos so as to ensure there is no self-preferencing by vertically integrated entities and to prevent instances of consumer harm by tariff regulations. This also falls squarely within TRAI Act 1997 whose remit is to promote competition and facilitate efficiency in the operation of telecommunications services.

c. <u>This</u> is especially the case, when horizontal integration is heightened by vertical integration as well –and that these risks have multipled with internet and online media. In other words, with the convergence of broadcasting and telecommunications, the gap in regulation of telcos has to be plugged by extending the 20% vertical integration rule in broadcasting to telcos.

d. In fact, technological advancements like interoperability, broadcast-broadband convergence, cable TV digitization, etc. make an integrated content value chain possible and therefore, it is necessary to ensure that the same telco does not own more than 20% equity stake in both content and the pipe. Moreover, TRAI's Consultation Paper on Market Structure of Multiple System Operators (MSOs) observed that '*in a well-functioning market, where firms are competing on fair terms and there are no artificially erected barriers of entry, there is no need to impose restrictions. However, if there is little or no competition or in case where barriers to entry exist, there is the distinct possibility of abuse of dominance by the service providers*'. NBDA is concerned that the situation is ripe for a potential abuse of market power especially given the handful of entities owning all distribution infrastructure as well as content across all formats. Therefore, regulatory measures on vertical

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https://www.pymnts.com/cfo/2022/voice-of-the-cfo-growing-a-company-means-looking-beyond-the-books/

integration ought to be introduced along the same lines as for DTH/HITS since there is no framework to regulate any anti-competitive integration by a handful of telcos. Restrictions on vertical integration have been in existence in the DTH guidelines since 2001 and the HITS guidelines since 2009 since there were very few operators. Moreover, these have stood the test of time and are a suitable benchmark for action to regulate telcos along the same lines.

e. The issue of Vertical Integration definitely deserves deliberation and is an important aspect to be considered when discussing about media ownership. An ideal situation would be that no company to be allowed as both broadcasting & distribution companies since no amount of regulations can address/restrict the extent of unholy nexus and damage it can result to the competition. FTA broadcaster currency of BARC ratings get determined on the basis of reach and time spent. The reach is determined based upon carriage agreements between broadcaster and distributor. If there is an unfair arrangement between broadcaster and bistributor and which is put to disadvantage of other, the unit of "reach" gets impactedto reduce, minimize and eliminate the cases of 'viewership malpractices' it would be prudent that any such vertical integration is completely prohibited. It is especially necessitated since there are clear cut restrictions which prohibit a broadcaster from entering distribution business and vice versa directly or indirectly or even remotely. Thus, unless and until such regulations are taken out, there cannot be an indirect way of backdoor entry of such vertical integration being permitted which can stifle and negate any competition.

f. A reference is made in DTH regime which permits 15% reservations in channel capacity by entity owning 20% of paid up equity capital. Such a condition only facilitates guaranteed reservation for vertically integrated operator on the contrary the rule should be there should be 100% offering of channel capacity by DPO on a non-discriminatory basis.

g. With a view to ensure plurality in dissemination of news, it is imperative that telecom companies which are vertically integrated by way of distribution, and providing content may be treated on par with the DPOs / DTH operators and reasonable restrictions on their holdings i.e.., 20% equity share cap may be imposed. This will not only enable level playing field but will also ensure prevention of abuse by dominant players controlling both content and distribution.

15. With the above submissions, NBDA would like to offer its specific counter comments on some of the comments of the stakeholders for ready reference which are as follows:-

STAKEHOLDER-WISE COUNTER COMMENTS:

16. **NASSCOM /Internet and Mobile Association of India (IAMAI)/Asia Video Industry Association/IBDF**

NBDA partially agrees with Nasscom's comments on the issue of vertical integration. It is correct that recognizing this issue of vertical integration, the MoI&B and the TRAI have already imposed certain restrictions. However, in order to ensure level playing field, NBDA is of the view that 20% ownership restrictions on vertically integrated companies (like DTH, HITS, etc.) should not only be retained but must be extended to other entities like telecom companies so as to ensure there is no ownership and control over both the content and the pipe because a vertically integrated broadcaster gets preferred placement and packaging in its/their vertically integrated DPOs, thereby substantially benefiting the vertically integrated broadcaster and depriving both the consumer of more choices and competition (i.e. other broadcasters).

17. **All India Digital Cable Federation (AIDCF)/GTPL Hathway Ltd**

NBDA is flagging only some of their identical comments which are contradictory, without any basis, justification or logic, or have been cited with no knowledge of a particular sector.

(a) Many entities have already commented that with convergence and internet, there is absolutely no question of geographical markets and that in any case, India is the most pluralistic and competitive media market in the world, with the number of newspapers running into lakhs, and hundreds of TV and radio channels –in several languages. Hence there is absolutely no question of monopolies hence no question of "abuse" in the private sector** as there is already dissemination of every possible diversified view and opinion on every conceivable topic in Indian media. Therefore, there is also no possibility that any rules curbing horizontal media ownership can ever *"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"*.
**The only entity that AIDCF comment is true for, is the government controlled Prasar Bharati,which holds an absolute monopoly in not just terrestrial TV and AM radio but also original news and current affairs on the entire radio sector.

(b) There are umpteen reasons why horizontal content holdings do not have any adverse implication, but are, on the contrary, necessary because they ensure that the same media house can outline different content strategies for each of them aimed at different target groups and audiences all by separate editorial and management teams. Furthermore, with the rapid decline of traditional media, every media entity needs to have a variety of media outlets so as to ensure that these can be cross-subsidised and can survive. Any attempt at imposing rules that does not allow this to happen, will be construed as an effort to restrict the business of media, which has Legal and Constitutional repercussions.

(c) Given all of the above taken in conjunction with multiple other arguments, AIDCF/GTPL Hathway's suggestion of tool/ a formula that can be used for measuring market share of any entity across all media segments in a relevant market or of limiting ownership to maximum of 2 segment types in so-called "user based" and "consumer based" interfaces or of setting up a media advisory committee to examine entities wanting to enter into media has no logic, basis or justification; in fact, the advisory body suggestion is illegal and goes against Constitutional and legal strictures. Interestingly, AIDCF contradicts itself later by conceding that in the *"present era of convergence, it is significantly difficult to ascertain the individual market shares of each entity"* even as it says that the *"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".*

(d) In India, the M&E industry is highly competitive with 901 permitted TV channels, 1,43,423 registered publications (including 14,508 newspapers), and 385 private FM radio stations. In the present scenario, the risk of individual entity owning two or more media outlets and being significantly able to influence public opinion at this stage of growth is impossible. Accordingly, introducing restrictions on cross media ownership/horizontal integration will only stifle the growth of the industry. Every country which had imposed horizontal cross media curbs, has removed them or is in the process of doing so.

(e) Moreover, AIDCF/GTPL Hathway seems to be totally unaware of the working of the media sector. Websites/applications are owned and/or operated by content-owners, broadcasters, newspaper owners, etc., and are not part of the same media value chain as they are run under different companies, have entirely different journalists/content teams and hence are totally different from their physical siblings.

(f) In fact, in their entire set of comments, it is the monopoly by Prasar Bharati's AIR—which operates as many as 479 stations in 23 languages, reaching 92% of the country's area and covering as many as 99% of India's population which they have ended up inadvertently emphasizing. AIR also has an absolute monopoly over AM broadcasting as well as news and current affairs. In stark contrast, the entire private sector combined has only 385 FM radio stations, all won through open and transparent bidding, while AIR gets free spectrum and these are present in only a fraction of India's land area, as they cover only 50 square km of the 112 cities that they are present in. Moreover, NO original news and current affairs is allowed on private FM radio stations, and the only news they can carry, are AIR bulletins rebroadcast in original or translation.

(g) NBDA would like to flag a non-serious and unaware/ridiculous claim by AIDCF/GTPL Hathway with regard to newsprint: *"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"*.

(h) NBDA is surprised that why raw material of a product is being brought into discussion on ownership? It is like saying if there is a nexus between manufacturers of copper and aluminium raw materials used in cable hardware and that it will impact news plurality. It is surprising that an entity in the media sector is not aware that newspapers buy newsprint from many external foreign and domestic companies and have, in fact, been lobbying government to remove the customs duty on newsprint so as to bring down their usuriously high rates. Hence there is absolutely no question of a convergence between the newsprint agency and the newspaper owner as presumed by AIDCF/GTPL Hathway in its comments.

(i) AIDCF/GTPL Hathway are also of the view that the flexibility available to broadcasters to price their channels and on composition of bouquets has been misused by pay broadcasters and hence, it has suggested classification of channels into four bands for inclusion in the bouquet. NBDA wishes to state that this suggestion is made without any basis and it appears to be based on some incorrect thinking and logic without realizing the fact that the very purpose of bundling is to offer variety to the consumers. If the DPOs so feel that introduction of some price bands are good for bundling, they are free to categorize their DPO packs according to their suggested price brackets by bundling the broadcasters channels which are always available to them on *a-la-carte* basis and there are no restrictions in the regulations if they wish to create such bundles.

(j) Moreover, AIDCF/GTPL Hathway's observations on broadcasters are vicious and baseless. Channel pricing is the prerogative of the broadcasters and they are obliged to offer their channels on *a-la-carte* basis as well as in form of bundled bouquets in terms of the regulations. The packaging at the retail level is principally done by the DPOs and hence, further restrictions in bouquet packaging, if any, may be imposed on the DPOs for redistribution of TV channels in a fair manner as contemplated in the regulations. The DPOs advocate cross holdings in their area of operations like offering broadband along with TV services whereas they are suggesting unreasonable restrictions on broadcasting entities.

(k) The suggestion to set up a Media Advisory Body to work with CCI is not tenable and if such bodies are set up, it questions the entire structure, constitution and functioning of an expert body like CCI which is competent to look at any anti-trust issues. Further, even the need for having such a body is not given nor any examples of market failures have been quoted.

18. **<u>Broadband India Forum (BIF)</u>**

(a) NBDA does not see any logic or basis for the suggestion that there should be a self-regulatory or other body to oversee media ownership as there is no problem that necessitates such a move; in any case, it is not possible to have a self-regulatory entity governing investment and media ownership. Otherwise, self-regulation is working well for content, but that is outside the ambit of this Consultation Paper. Moreover, no methods are needed for measuring market concentration.

(b) Contrary to BIF claims, UGC/Social Media content is far more dangerous than recognised media entities which have a trained manpower curating content as per the prevailing laws, rules and regulations **and in India alone, follow more than 5 layers of ruleswhile algorithmic-led entities follow no rules. Moreover, Big Tech companies like Google is facing a split in many jurisdictions. Hence the argument to curb ownership in news and keep UGC and entertainment including OTT out of the ambit of controls is farcical. A detailed outline of NBDA's points is made under Part B as above.

(c) In fact, NBDA strongly objects to the view that UGC is unlikely to hold significant amount of influence over public opinion and that there should be a conscious effort to avoid any restrictions in relation thereto. UGC has a greater impact on the consumers/viewers given the vast platforms that showcase them (like Facebook's 400 million users in India) as compared to the far smaller "recognised" media entities. Even among the well-educated people, there is a very small percentage of people who put in the effort of identifying the authenticity of the source of such information or check on veracity of such information before sharing/distributing such content, which effectively has a much larger impact and becomes far more dangerous as the source, distributors or consumers are not easily traceable as compared to the content made available to the consumers/viewers by broadcasters which is sourced by highly trained journalists/professionals, who follow the many layers of registrations and regulations. Notwithstanding anything contained herein before, any issues relating to content is beyond TRAI's jurisdiction and all such issues should be kept outside the scope, ambit and purview of this Consultation Paper. In fact, TRAI has admitted previously that it has no role to play or jurisdiction over content telecast by the broadcasters.

(d) Contrary to claims, the non-news media has greater influence on viewers for many reasons including having greater reach on hot button trends and topics, many of which can have overt or covert socio-political themes or undercurrents that can become massive trends that can impact the body politic in many ways. In fact, this can be proven by the much higher numbers of take-down notices sent by the government to large Technical /Social Media platforms as compared to those sent to news media.

(e) Moreover, general entertainment channels have a greater impact on viewers than news channels. It is, therefore, general entertainment channels that are often used as an effective tool to carry social messaging, for promotion by celebrities of various causes and by few political personalities being regularly featured on it to promote their sponsored social causes, in effect, their own political agendas.

(f) In comparison, the news and current affairs genre is driven by content in the form of reporting on current events and developments and primarily broadcasting the views of people involved in a story, comments and reviews of experts, analysts, and reactions from concerned groups, individuals and affected factions. Moreover, the self-regulatory guidelines imposed on news channels effectively ensure that the news entities telecast impartial, accurate and neutral views and are objective in their reporting.

19. **<u>Internet Freedom Foundation (IFF)</u>**

(a) NBDA opposes the baseless effort by IFF to imply that cross-media ownership rules may be considered for the news and current affairs and reiterates its counter comments made to the comments made by Broadband India Forum as stated in the paragraphs above and NBDA's iterations under Part B as above.

(b) NBDA does not agree that common ownership of different content media reduces pluralism, in fact it increases pluralism due to many reasons including the basic requirement to have different content entities with different content strategies with vastly differing viewpoints/focus so as to tap different target groups/audiences. NBDA is clear that restricting ownership will not lead to more viewpoint plurality and will only diminish/reduce it.

(c) Moreover, there is no dominance, and hence there is no question of lack of market plurality in content. In fact, creating a mechanism for monitoring ownership will not lead to diversity and pluralism.

(d) Large Technical entities and social media are today far more influential than traditional news media.

(e) All forms of content from films to video to TV to OTT to theatre impact and influence views and not just news media.

(f) No segment needs to be singled out for monitoring ownership/viewpoint plurality and hence any attempt to include radio and internet are totally unwarranted.

20. **<u>Alam Srinivas, Vibodh Parthasarathi and Others</u>**

(a) There is no data to establish a causal linkage between market concentration and media plurality and media ownership and media plurality.

(b) More importantly, India is an absolutely unique media market in the world, with an unimaginable array of media products in dozens of languages. These are both multiple AND diverse/pluralistic.

(c) There is not a single argument that outlines what is the desired level of media plurality, how is media ownership connected to it and what curbs can be put on media ownership to increase media plurality.

(d) Western academic studies cited by the authors are not relevant to the unique Indian market which is indeed diverse and has a vast array of multiple and pluralistic viewpoints. This is more than evident by the multiple options available in both traditional and new media, whether news or non-news.

(e) Similarly, methods and tools cited are outdated and have no relevance in the digital age.

(f) Common ownership of horizontal cross media is not a threat to plurality, but is necessary for it, as it is these entities which seek to capture diverse markets through differing media products with differentiated content. In any case, these differentiated media products are put together by entirely different editorial teams, usually part of entirely different companies.

(g) NBDA agrees that vertical integration i.e., common ownership and control of broadcasters and DPOs, or digital entities and ISPs, or a combination of these, is exceedingly detrimental to the media landscape, and hence have recommended extension of the 20% vertical integration rule to telcos to ensure a level playing field. It is especially the case, when horizontal integration is heightened by vertical integration. These risks have multiplied with internet and online media. In other words, with the convergence of broadcasting and telecommunications, the action point required from TRAI (which also falls squarely within the TRAI Act, 1997the only segment of Consultation Paper that does so) is to propose plugging this gap in regulation of telcos by extending the 20% vertical integration rule in broadcasting, to telcos.

No examples/evidence that current state of media ownership is adversely affecting media plurality in India in any manner:

(h) There is no concentration of ownership in the media and that in any case, concentration does not impact media plurality. This is because different media products in the same entity are structured under different companies, have separate editorial/content and management teams and have totally differentiated content strategies designed to address different target audiences. Hence, common ownership actually builds up plurality as there is a conscious effort to have differentiated products with entirely differing viewpoints. Without establishing an objective relationship between media concentration and plurality, the Consultation Paper proposes in paragraph 1.5 to analyse the *"anomalies caused by media concentration"* through cross-media ownership and vertical integration. Attempting to use tools such as regulation or restriction of vertical integration or cross-media ownership, without showing *how* they influence the theoretical "desired level" of media plurality is an exercise in futility.

21. **Manas Kumar Chaudhary, Tanu Banerjee, Ishan Johri (Khaitan)**

(a) NBDA disagrees that any entity should be allowed entry into media sector and reiterates the point that certain categories of media like those owned by political and state/central government entities must not be allowed as these would not be independent and impartial entities and their only motive would be to sway public opinion towards only one point of view.

(b) These individuals are of the view that that restrictions on cross-media should not be made applicable –but if they are, then these should be limited to news and current affairs. NBDA strongly objects to this point of view, in fact, even the authors contradict themselves in the same para by stating that thousands of newspapers and hundreds of TV channels *"evidences a healthy competition in the media sector of different mediums and existence of viewpoint plurality"*. NBDA opposes any attempt to cite curbs for legacy news media, especially when it is large Technical entities/Social Media/UGC which are the new giants before which traditional media and their digital arms are absolute pygmies. The counter comments made to the comments made by Broadband India Forum and the submissions made in the paragraph B above are reiterated.

(c) There is no possibility of a 'geographic market' in the digital age. Hence their suggestion of how to measure 'market share' or 'reach' or 'volume of consumption' of any legacy/traditional media while keeping digital entities (including their own digital arms) out of the picture is illogical and unjustified.

(d) NBDA is of the view that LCOs and DPOs are sufficiently governed and there is no further regulations required. However, the ills of monopolies due to vertical integration is clearly evident and to ensure a level playing field, 20% ownership restrictions on vertically integrated companies (like for DTH, HITS, etc.) must be extended to other competing entities like telcos.

22. **Rishab Bailey and Ajay Shah**

The content media ecosystem has pointed out for many years that the broadcasting sector can be developed by de-regulation and this would enable market entry by reducing compliance burdens. However, in this regard, the commentators later contradict themselves by citing some tools for measurement and methods to evaluate diversity while the entire thrust of their comments is that there is no need for the same. NBDA strongly disagrees that the existing mechanisms are adequate to keep anti-competitive activities in check when it comes to vertical integration. The ills of monopolies due to vertical integration is clearly evident. Hence, to ensure level playing field, 20% ownership restrictions on vertically integrated companies in the broadcasting sector must be extended to other competing entities like telcos.

23. **Bharti Telemedia**

Regarding comment to bring OTTs under the broadcasting and cable services regulatory framework, it is stated that OTTs are not under the TRAI purview presently. Moreover, OTTs cannot be compared with DPOs. Unlike DPOs, OTTs are not aggregators of multiple broadcaster channels. Like the broadcaster website, OTT is merely another extension of the broadcaster where it can showcase its own content.

24. **Discovery Communications India**

(a). Despite a regulatory framework in the form of Interconnection Regulations, Tariff Order etc, the ills of vertical integrations are being faced by the industry; moreover there are no restrictions of ownership or control for vertical integration in the telecom sector which owns the content and the pipe both including in broadcasting without any kind of regulatory checks. Hence, considering that ills of monopolies being manifested due to vertical integration especially with rapidly evolving broadcasting-telecommunications convergence, TRAI must recommend expansion of the 20% rule for telcos as well.

(b). As regards the comments that news media has influence and the non-news media has no or little influence on viewers, NBDA reiterates that this is not based on a correct premise. As outlined above in reference to NBDA's counter comments on BIF, the non-news media has greater influence on viewers for many reasons including having far greater reach on hot button trends and topics, many of which can have overt or covert socio-political themes or undercurrents that can become massive trends that can impact the body politic in many ways.

25. **TATA PLAY**

(a). Tata Play is of the view that either the restrictions on cross-media ownership be made applicable to MSOs and OTTs or it should be removed from DTH. As discussed above,–NBDA is of the view that to ensure level playing field, 20% ownership restrictions on vertically integrated companies (like DTH, HITS, etc.) must be extended to other competing entities like telecom companies to ensure a level playing field with the broadcasting sector.

(b). Again as explained above, OTTs are neither DPOs nor vertically integrated with the broadcaster (and is merely an extension of the broadcaster). Hence, any restrictions on cross-media ownership cannot be made applicable on OTTs.

PART C: CONCLUSION

26. Since there is sufficient competition and plurality in the market and the news broadcasting industry, there is no requirement or justification for any cross-media restrictions on horizontal cross-media ownership whether relating to monopoly or dominance in the market or otherwise. In fact, each of these content sectors would benefit from active de-regulation so as to reduce entry barriers. There does, however, exist a need to extend the 20% vertical integration ownership rule present in broadcasting, to telcos owning content and vice versa, as well as to telcos owning any part of the media distribution value chain. Further, there is no basis to consider that the news media has more influence than other media.

TV18 does not subscribe to the view that there should be 20% restriction on vertical integration in cross media ownership in the broadcasting sector and in telcos as it is of the view that there should be complete forbearance.

The above counter comments have been made on behalf of the members of the News Broadcasters & Digital Association.

Annie Joseph
Secretary General, NBDA

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