

Consultation Paper No. 04/2022



Telecom Regulatory Authority of India



Consultation Paper
on
Issues relating to Media Ownership

12th April 2022

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Written comments on the consultation paper are invited from the stakeholders by 10th May, 2022 and counter-comments, if any, by 24th May, 2022. The comments may be sent, preferably in electronic form to Shri Anil Kumar Bhardwaj, Advisor (B&CS), Telecom Regulatory Authority of India, at Email id advbcs-2@traigov.in and jtadvbcs-2@traigov.in(Tel No.+91-11-23237922). Comments/counter-comments will be posted on the TRAI's website www.traigov.in

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CHAPTER I

INTRODUCTION

1.1 The Media is the mirror of the society. It reflects the various contours of the societal reality in addition to providing voice to the powerless and marginalised. Since pre-independence period, media has played the role of a platform for giving voice to the masses and exposing the systemic failures in the state/ society. The appreciative and important role played by media in bringing justice to the victims of various offences, exposing scams, frauds etc. in India are well known.

The vitality of the role of media in a democracy like India is well summarised by Hon'ble Prime Minister¹: *“Media has played a praiseworthy role in disseminating information to every nook and corner of this nation. The network of media is pan-India and spread across cities and villages. This makes the media even more significant in fighting this challenge and spreading correct information about it at the micro level.”*

1.2 The importance of media has been acknowledged time and again by different organs of state including the executive and the judiciary. In the case of Sanjoy Narayan Editor-In-Chief Hindustan & Others, Hon'ble Supreme Court ruled the following:-

“..... 5. The media, be it electronic or print media, is generally called the fourth pillar of democracy. The media, in all its forms, whether electronic or print, discharges a very onerous duty of keeping the people knowledgeable and informed.

6. The impact of media is far-reaching as it reaches not only the people physically but also influences them mentally. It creates opinions, broadcasts different points of view, brings to the fore wrongs and lapses of the Government and all other governing bodies and is an important tool in

¹ Views expressed by Prime Minister, Mr Narendra Modi in an interaction on COVID-19 on 24th March, 2020 with Print Media journalists and stakeholders

restraining corruption and other ill-effects of society. The media ensures that the individual actively participates in the decision-making process.....”.

Therefore, there are no two opinions on the importance and the stellar role of media in the country.

- 1.3 Media pluralism is the founding stone on which the fourth pillar of democracy rests. The idea of media pluralism acts as a bulwark of a strong and healthy democracy in a country. Media pluralism is antithetical to the phenomenon of concentration of media ownership. The concentration of media ownership may restrict the ‘Freedom of Speech and Expression’ as enshrined in Article 19(1)(a) of the Constitution of India. The core idea is the active citizenry, which is the foundation of democracy, and therefore requires presence of diverse voices and perspectives in public debates. The concentration of media ownership impacts the independence of the fourth estate.
- 1.4 The freedom of speech and expression puts a dual obligation on the state, namely, negative, and positive. While the negative obligation prevents the State from interfering with or restricting individuals’ rights, the obligation of the state to prevent media concentration and thereby promoting media plurality is one of the facets of the said positive obligation only.
- 1.5 In terms of specific modalities, concentration of media ownership leads to reduction in the number of sources of news and information which undermines the quality of public debate by reducing the number of perspectives and ideas that fuel it. The anomalies caused by media concentration are analysed in two areas: cross-media ownership and vertical integration.
- 1.6 Cross-media ownership is the ownership of multiple media businesses by a person or entity. The need for viewpoint plurality arises from the premise that in the marketplace of ideas, the readers, viewers, and listeners seek to read, view and listen to diverse opinions. In case an entity owns a

newspaper, television channel and radio channel, it is likely that the consumers would get same or similar views across the three forms of media leading to an undesirable situation. In addition to diverse views from different media segments, there is an inherent need for internal diversity as well. In other words, the media entity is required to portray diverse opinions and perspectives because the readers/viewers deserve to get wholistic analysis/ commentary.

- 1.7 On the other hand, vertical integration in the broadcasting sector refers to Ownership/Control of content/broadcasting services and distribution services by a single entity. Vertical integration of broadcasters with Distribution Platform Operators (DPO), i.e., cable/ HITS/ DTH/ IPTV operators, can restrict horizontal competition as these practices can adversely affect competition and promote monopolistic practices.
- 1.8 Taking into consideration the importance of viewpoint plurality, the Authority, on the references of Ministry of Information & Broadcasting (MIB), has initiated consultations and has come up with recommendations on various issues related to media ownership.
 - 1.8.1 The Authority received an initial reference dated 22ndMay 2008, from MIB seeking recommendations of TRAI for formulating a policy imposing restrictions on ownership of companies seeking licenses/permissions/registrations under various policy guidelines.
 - 1.8.2 The Authority gave its recommendations dated 25thFebruary 2009 wherein TRAI recognized the need to establish requisite safeguards for dissemination of unbiased and impartial information and promote pluralism and diversity. TRAI recommended that MIB should perform a detailed market study to determine such safeguards. It was also recommended that guidelines for mergers and acquisitions (M&A) should be notified after the requisite safeguards for horizontal and vertical integration are put in place. Furthermore, TRAI was of the view

that at that time there was no need for putting restrictions on cross Control/Ownership across telecom and media sectors and kept the issue open to be reviewed after a period of two years.

- 1.8.3 Thereafter, in 2009, a study on the nature and extent of cross media ownership was conducted by MIB through Administrative Staff College of India (ASCI) which reported the presence of evidence indicating market dominance in certain relevant media markets.²
- 1.8.4 Again, on 16th May 2012, the MIB vide a reference **(Annexure-I)**, requested TRAI to review the issue of vertical integration in the broadcasting and TV distribution sector and suggest measures to address the issue of vertical integration to ensure fair growth of the broadcasting sector. Further, it called upon TRAI to suggest measures on cross media ownerships with an aim of facilitating plurality of news and opinions and accessibility of quality services.
- 1.8.5 After due consultation, on 12th August 2014, TRAI issued “Recommendations on Issues Relating to Media Ownership³.” The details of the recommendations have been incorporated in this consultation paper at appropriate places.
- 1.9 Since the recommendations issued by TRAI in the matter in 2014, there has been a significant change in the Media & Entertainment (M&E) Sector. In the backdrop of increased emphasis of the Government on digital literacy⁴, high proportion of population under the age of 35 years⁵, one of the lowest prices of internet⁶, there has been a sharp rise in the presence

² ASCI report titled ‘Study on Cross Media Ownership in India’ is available on MIB website www.mib.nic.in

³ Recommendations on Issues Relating to Media Ownership available at TRAI website at https://traai.gov.in/sites/default/files/Recommendations_on_Media_Ownership.pdf

⁴ Government of India has launched Digital India Campaign under which Digital Saksharta Abhiyan (DISHA) Pradhan Mantri Gramin Digital Saksharta Abhiyan (PMGDISHA), National Digital Literacy Mission etc.

⁵ With an average age of 29, India has one of the youngest populations globally.

⁶ India has been ranked 28th in lowest data price in the world, with cost of 1 GB data at \$0.05. <[<Worldwide Mobile Data Pricing 2021 | 1GB Cost in 230 Countries \(cable.co.uk\)>](http://Worldwide-Mobile-Data-Pricing-2021-1GB-Cost-in-230-Countries-(cable.co.uk))>

and influence of digital media⁷ in the country. COVID-19 induced lockdowns have resulted in higher consumption through digital medium causing changes in consumer choices.

1.10 Now, the Authority has received another reference from the MIB vide letter no. No.8/17/2014-BP&L dated 19th February 2021 (**Annexure-II**). MIB has sought reconsideration of the 2014 Recommendations of TRAI on certain points. As observed by MIB considerable time has elapsed since the said recommendations were made and during this period M&E landscape has changed drastically, particularly with the advent of new digital technologies in the sector. MIB has requested TRAI to re-examine its recommendations in the light of the subsequent technological developments in the media industry and issue a fresh set of recommendations in this regard.

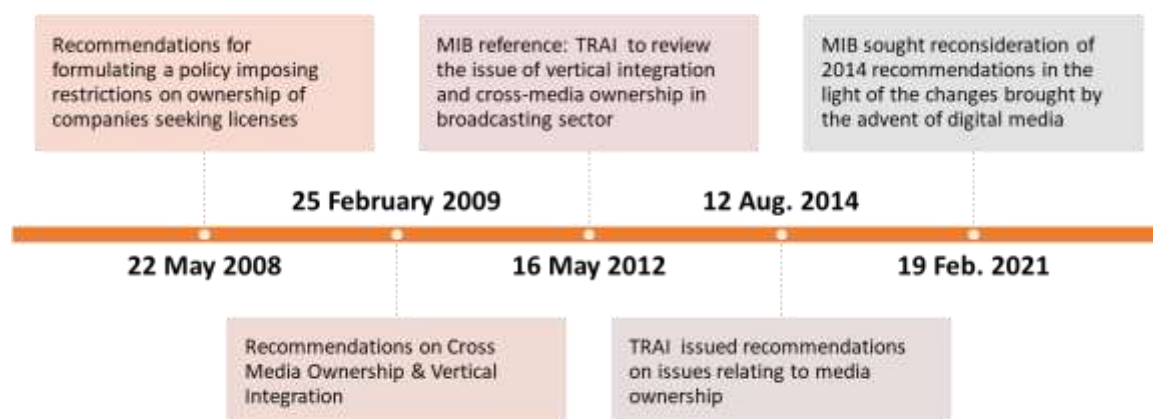


Figure 1- Timelines of Past Reference/ Recommendations on Media Ownership

1.11 In view of MIB’s reference, the Authority is issuing this consultation paper for seeking comments/views of the stakeholders on the need, nature, and level of safeguards with respect to horizontal & vertical integration in the broadcasting and distribution sectors and cross holdings across various media sectors. Chapter II presents a snapshot of the Media & Entertainment Industry. Chapter III focuses on various aspects of media

⁷In this Consultation Paper, the terms ‘digital media’ and ‘online media’ have been used interchangeably.

ownership and Control while Chapters IV and V discuss issues pertaining to cross-media ownership and vertical integration in the broadcasting sector respectively. Chapter VI enumerates current legal regime vis-à-vis media ownership including requirements of mandatory disclosures. A summary of issues for consultation forms Chapter VII. Further, in Annexure III, an analysis of various jurisdictions has been undertaken.

Chapter II

Indian Media and Entertainment (M&E) Landscape: Trends and Changes

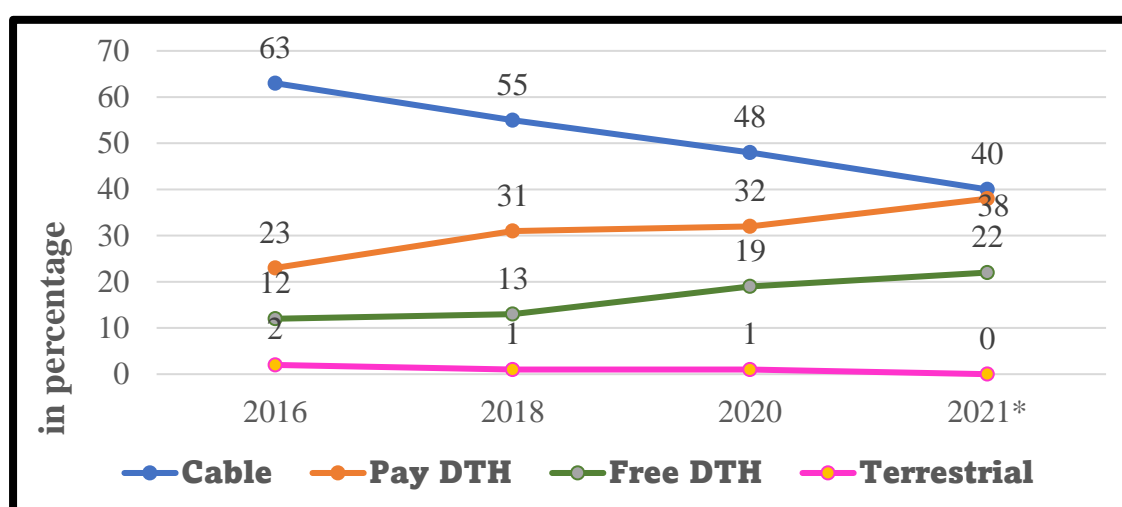
2.1 In the past few years, the equation of various segments of M&E industry is undergoing change with revenue of print, television and radio sector declining while the digital media is seeing a significant rise in revenue. According to various KPMG Analysis/ reports, the trends in various segments of M&E sectors can be described as follows:

Table 2.1: Recent Trends of M&E Segments

Year wise Industry size (in INR billion, i.e. Rs. 100 Crores)											
	FY14	FY15	FY16	FY17	FY18	FY19	FY20	FY21P	FY22P	FY20 growth over FY19	FY21P growth over FY20
Digital	32	47	65	86	121	173	218	254	338	26%	17%
TV	433	490	552	595	652	714	778	708	769	9%	-9%
Print	248	268	288	308	319	333	306	188	296	-8%	-38%
Radio	17	20	23	24	26	28	25	12	17	-11%	-50%

Among the TV distribution sector, according to BARC India TV Universe 2020, the market share of various distribution channels is as follows:

Figure 2.1: Share of Various Distribution Channels



2.2 Apart from the general trend, the M&E sector has undergone a drastic change owing to the technological developments, particularly those related

to IP technology and increased use of packet switched digital communications which have made converged services possible. The telecom networks can now provide access to internet and broadcast content in addition to telecommunication services. For example, Jio Fiber, started to bundle varied Over The Top (OTT) platforms like Disney + Hotstar, Zee5, Amazon Prime Video etc. Similarly, the Distribution Platform Operators (DPOs) are also bundling DTH services with OTT services. For instance, Reliance launched JioTV+ in July 2020 which enables consumers to access over 12 OTT platforms via its Set Top Box.

- 2.3 The technological convergence has manifested itself in changed consumer choices which, in turn, reflect the evolving dynamics of the M&E Sector. Digital and online gaming was the only segments which grew in 2020 adding an aggregate of INR 26 billion⁸. Consequently, their contribution to the sector expanded to 23% in 2020 vis-à-vis 16% in 2019. According to PwC Report of Global Entertainment and Media Outlook 2020-2024, with a compound annual growth rate of 28.6%, India will be the fastest growing OTT market. It predicts 16% year-on-year decline in TV ad revenue and 59% year-on-year decline in box office revenue while predicting a 16.1% growth in digital newspaper and circulation revenue⁹. The chapter, now, discusses the recent developments of each sector.

Television

- 2.4 The television service sector in the country mainly comprises cable TV services, pay DTH services, IPTV services and free to air DTH services. The terrestrial TV services have generally been phased out by Prasar Bharti with the decision to phase out the obsolete Analogue Television Transmitters (ATT). So far, more than 1000 Doordarshan ATTs have been closed in phased manner barring around 50 ATTs in strategic locations in

⁸ FICCI-EY Report – India’s Media & Entertainment Sector Reboots in 2020- March 2021

⁹ Global Entertainment and Media Outlook 2020-2024 by PwC <<https://www.pwc.in/industries/entertainment-and-media/global-entertainment-and-media-outlook-2020-2024.html>>

the country¹⁰. The following table provides certain statistical details¹¹ of Service providers in Broadcast Media:

Broadcasters		
1	Total No. of permitted channels	901
2	Number of Broadcasters (approx.)	350
3	No. of Pay broadcasters	40
4	No. of FTA broadcasters (approx.)	310
5	No. of Pay channels	327
6	No. of FTA channels	574
Distribution Platform Operators (DPOs)		
1	MSO	1724
2	DTH	04
3	IPTV	10
4	HITS	01

2.5 As per industry reports, the TV segment's revenue was estimated at INR 787 billion in 2019 and it declined to 685 billion in 2020 registering a fall of 13%.¹²This decline is primarily attributed to the adverse impact of the pandemic in the economy and absence of sufficient fresh content on TV post mid-April 2020. Despite this, television penetration in India remains at 61%.¹³ Thus, television as a medium of entertainment remains robust, providing the highest reach to the brands in the country and continue to remain both important and relevant.

Print

2.6 As per Registrar of Newspapers for India (RNI)¹⁴, the total number of registered publications as on 31st March 2020 is 1,43,423, which includes 14,508 newspapers. A total of 1498 new publications were registered in the year 2019-20. From a language point of view, the largest number of

¹⁰Statement by Hon'ble Minister for Information & Broadcasting in response to a Parliament Question on December 1, 2021

¹¹Information as on December 31, 2021

¹²FICCI-EY Report – India's Media & Entertainment Sector Reboots in 2020- March 2021

¹³ Television and OTT, PwC <<https://www.pwc.in/industries/entertainment-and-media/television-and-ott.html>>

¹⁴Press In India 2019-20, Registrar of Newspapers for India

newspapers & periodicals – 54,873 are registered in Hindi, followed by 19,766 in English. From a geographical perspective, the largest number of publications – 21,022 are registered in the state of Uttar Pradesh followed by 19,631 in Maharashtra. The statistics of newspapers & periodicals, particularly, ownership data, language wise distribution and geographical distribution, has been attached herewith as **Annexure IV**.

- 2.7 With the proliferation of smart-phones and tablets in India, niche content in magazines and hyper-local news in regional and English newspapers are expected to be the focus. To ride on positive advertiser sentiment, several newspapers have launched local editions in regional languages, for instance, Times of India has entered Kerala and The Hindu has launched its 3rd edition in Kozhikode.
- 2.8 However, the global print industry has been affected by the unfavourable macroeconomic conditions like ease of access, online availability of news, overall global economic slowdown occasioned by the outbreak of pandemic etc. In India also, the print media segment has been growing at a subdued rate for the past few years. According to industry reports¹⁵, print segment shrunk by 8.3% during 2019-20 with circulation revenue dwindling at the rate of 4.2%. Further, Hindi and vernacular newspaper circulation revenue fell by 20% in 2020 compared to 2019, while English circulation revenues fell by 50%¹⁶.
- 2.9 With the passage of time, the influence of digital news is likely to increase and a combination of print and digital media will drive growth. Consequently, the print media is rapidly embracing new technological innovations and progressively utilizing e-services by launching e-versions of their print newspapers, magazines, and directories etc.

¹⁵KPMG-India's Media & Entertainment Report 2020
(<https://assets.kpmg/content/dam/kpmg/in/pdf/2020/09/year-off-script-kpmg-india-media-and-entertainment-2020.pdf>)

¹⁶ FICCI-EY Report – India's Media & Entertainment Sector Reboots in 2020- March 2021

- 2.10 Even though the print industry is adopting the digital innovations, they are unable to tap the benefits of digitization due to the commanding share of tech giants like Facebook, Google, Twitter, Instagram etc. According to Edelweiss Research, the Facebook-Google duopoly controls 60% of all the digital spending¹⁷. The publishers allege that these tech giants are making money by advertisement on the strength of their news content though Facebook and Google claim that they are basically helping publishers by directing traffic to their website.¹⁸
- 2.11 In the past two years, internationally, quite-a-few state agencies have intervened in the ongoing tussle between Google-Facebook on one side and press & publishers on other. Countries like Australia and France have come up with laws for the fair sharing of revenue between these tech giants and press publishers. At the same time, as a truce, Google has decided to launch News Showcase and Facebook has come up with the news tab where they will pay for the news to the publishers. On 25th February 2021, Indian Newspaper Society, an association representing around 800 publishers, approached Google asking it to compensate them for carrying their content online and share 85% of the ad revenue. It said that Google is taking a 'giant share of advertising spends' leaving publishers with a small share and that the publishers are facing a very opaque advertising system as they are unable to get the details of the Google advertising value chain¹⁹.
- 2.12 Although Facebook announced its plan to launch Facebook News in India, there have been no recent developments in India. However, Google launched Google News Showcase in India on 19th May 2021. It has signed

¹⁷Prabhjote Gill, 'Google Facebook and their story behind controlling India's 60% digital ads' (*Business Insider*, July 08 2019) <<https://www.businessinsider.in/google-and-facebook-lead-in-digital-ads-market-share/articleshow/70122312.cms>>

¹⁸Keach Hagey, 'Facebook, Google and Publishers are fighting over news. What you need to know' (*Wall Street Journal*, 24th February 2021) <<https://www.wsj.com/articles/google-facebook-and-the-contest-over-paying-for-news-11614107023>>

¹⁹Gaurav Laghate, 'INS wants Google India to Compensate newspapers, share ad revenue' (*The Economic Times*, 25 February 2021) <<https://economictimes.indiatimes.com/industry/media/entertainment/media/ins-wants-google-india-to-compensate-newspapers-share-ad-revenues/articleshow/81210765.cms>>

agreements with 30 Indian publishers to offer access to some of their contents on News Showcase. The publishers include Amar Ujala, Asian News International (ANI), Deccan Herald, Hindustan Times, Indian Express, NDTV, Punjab Kesari, The Hindu, The Telegraph India, Zee News, etc.

- 2.13 In the light of the initiatives of Google and Facebook, there is a growing opposition against the state intervention and a support to self-regulatory regime. However, one cannot deny that state interventions have played a significant role in addressing the grievances of the news publishers and bringing the parties to the negotiation table. Further, digital media is a rapidly developing area. In future, new tech giants may also join the digital media. Consequently, certainty, stability and predictability in the regulatory regime is required.

Radio

- 2.14 Radio has been a primary medium for entertainment, information and education amongst the masses owing to the affordability and terminal portability of radio receivers. India had 34 private FM broadcasters in September 2021, across 112 cities who operated 385 FM radio stations.²⁰ 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.²¹ India had 339 operational community radio stations as of 30th September 2021.²² However, in recent years, the revenue of the industry is falling. As per industry reports²³, radio segment revenues fell by 54% in 2020 to INR14.3 billion.
- 2.15 To increase its presence in digital space and remain relevant, the radio industry is entering into a new world where the synergy between radio and digital is the 'new normal'. For instance, strategic partnerships with digital

²⁰TRAI, 'The Indian Telecom Service Performance Indicators, July-September 2021'.

²¹ <http://allindiaradio.gov.in/>

²²TRAI, 'The Indian Telecom Service Performance Indicators, July-September 2021'.

²³ FICCI 2021

players for licensing their content to multiple platforms, including OTT players, music streaming apps, etc. Radio City and Big FM's collaboration with Spotify is one such example.

Digital Media

- 2.16 The advent of 4G based telecom networks has fuelled 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 2021.²⁴ Total telecom subscriptions were 1,189.15 million in September 2021 as compared to 1,174 million in December 2020.²⁵ 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.²⁶ 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 against 884.29 MB per month in 2016²⁷.
- 2.17 Only few M&E segments have been able to remain resilient through the course of the current global pandemic. Digital media is one such market segment. In 2013, there were only a couple of OTT platforms in India with very few viewers while in 2020 there were over 40 OTT video platforms in India with 400 million customers which are expected to grow to 555 million in the year 2022²⁸.
- 2.18 The pandemic has changed viewership preferences. It has steered the viewers towards higher consumption on digital platforms. Lockdowns and social distancing have acted as a powerful stimulant to employ digital tools. According to FICCI-EY report 2021, digital subscriptions grew by 49% in 2020 to reach INR 43.5 billion.²⁹ Further, according to The Ormax

²⁴ TRAI, 'The Indian Telecom Service Performance Indicators, July-September 2021'.

²⁵ Press release by TRAI No. 06/2021

²⁶ TRAI, 'The Indian Telecom Service Performance Indicators, July-September 2021'.

²⁷ TRAI, 'The Indian Telecom Service Performance Indicators, July-September 2021'.

²⁸ Samarpita Bannerjee, 'Where the Indian OTT Industry is headed in 2022' (*Business Insider*, 06th January 2022).

²⁹ 'Media and Entertainment Industry Expected to reach INR 2.23 trillion by 2023: FICCI-EY report' (*FICCI*, 26 March 2021) <<https://ficci.in/pressrelease-page.asp?nid=4137>> accessed 23rd November 2021.

OTT Audience Report 2021, 353.2 million people in India are consumers of OTT platform translating to 25.3% of Indian Population.³⁰

Table 2.2: Growth of OTT Video customers

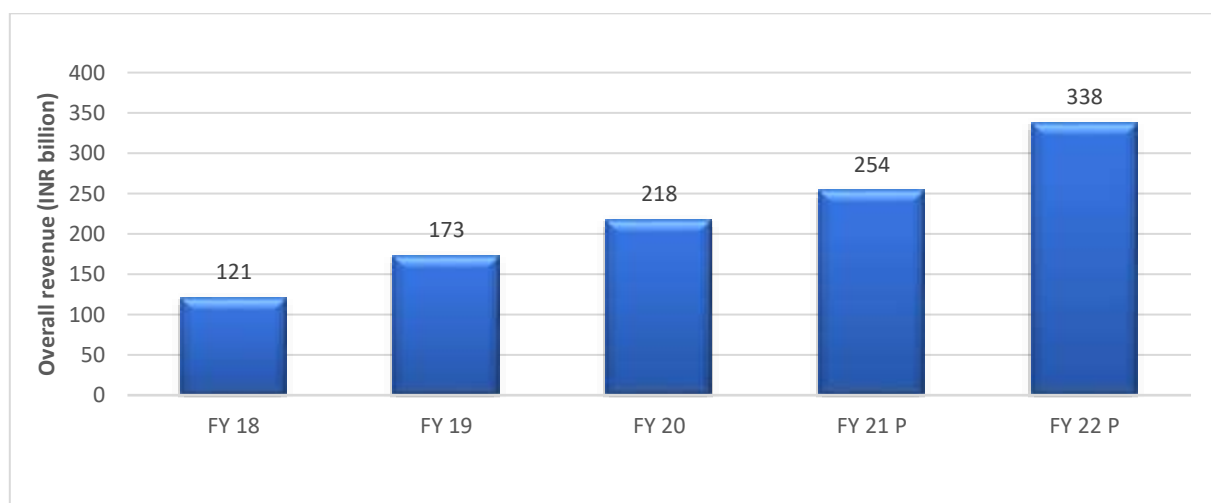
OTT Video customer base (in million)			
	FY 20	FY 21P	FY 22P
Total Online Video viewers in India	400	486	555
Total SVOD subscribers in India	22	40	57
Total SVOD subscriptions in India	22	41	62

Note: SVOD subscribers and subscriptions refer to users directly accessing and paying for online video streaming services.

Source: KPMG - India's Media & Entertainment Report 2020

2.19 Figure 2.1 depicts growth of revenues of OTT and digital video services. In the financial year 2020, digital and OTT sector registered a growth of 26 per cent which is the highest amongst other segments of the M&E sector.

Figure 2.2: Growth of revenues of OTT and digital video



Source: KPMG - India's Media & Entertainment Report 2020

2.20 A key trend in 2020 was the entry of Indian language OTT platforms like HoiChoi (Bengali), Planet Marathi (Marathi), aha (Telugu), Koode (Malayalam) and City Shor TV (Gujarati) which challenged the monopoly

³⁰ By Paid Membership Only? (Ormax Media, 01 September 2021) available at <<https://www.ormaxmedia.com/insights/stories/by-paid-membership-only.html>> accessed 15th December 2021.

of Netflix and Amazon Prime apart from increasing the focus on regional markets.³¹ There is an increased investment in regional language content by all language platforms as well. In the past year, the huge success of regional movies like Drishyam2, Village Rockstars, Thackeray, and Jai Bhim are the evidence of success of regional OTT content. According to CII BCG Big Picture Report 2021, the share of regional OTT media in FY2020-21 is 45-50%³². Further, FICCI-EY report on the M&E industry, has reported that the share of regional language consumption on OTT platforms will cross 50% by 2025 from the 30% share it held in 2019, leaving behind Hindi language consumption at 45%³³.

Desirability of a Media Market Regulator

Changed Landscape due to Emergence of Digital Media

- 2.21 The general trend of M&E sector is that print media readership and television viewing is declining, for example, pay DTH active subscriber base has decreased from 70.70 million in September 2020 to 68.89 million in September 2021³⁴ while the time spent with digital media has increased rapidly. We are moving from an environment where audiences found news by going directly to various channels offered by news media to an environment characterized by “distributed discovery”.
- 2.22 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 upon any media organization for its conveyance to the public. The emergence of digital media has increased the potential of media to raise the voice of the powerless and marginalised

³¹ “2020: The year OTT went mainstream,” Exchange4media, via EMIS

³² CII-BCG, ‘Blockbuster Script for the New Decade Way Forward for Indian Media and Entertainment Industry: CII Big Picture Summit 2021’ (December 2021).

³³FICCI-EY Report – India’s Media & Entertainment Sector Reboots in 2020- March 2021

³⁴TRAI, ‘The Indian Telecom Service Performance Indicators, July-September 2021’ (New Delhi, 10th January 2022).

by multiple times, thereby acting as a gloss over the role played by the traditional sources of media in the society. The role of the digital media during the second wave of the pandemic has been quite appreciative. It enabled government agencies and self-help groups to reach out to those who needed support. The social media acted as a real time data base for essential support like provisioning of medicines, oxygen cylinders, availability of hospital beds etc.

- 2.23 Digital media landscape is marked by the dominance of limited number of very large players who have wherewithal to consolidate by acquiring smaller players. This can reduce media pluralism by undermining the diversity of new age portals and online media. However, another aspect remains about the lack of accuracy of some online players. There have been a number of cases of fake/ curated videos being viral on social media platforms. Such fake/ curated contents sometimes lead to serious repercussions. Another facet of lack of authentication of content on digital media is that it challenges and sometimes contradicts the traditional media organizations, leading to a state of confusion and misinformation in the society. Therefore, there are diverse views issues on consolidation of media (including the digital media) that reduces number of market-players.

Role of Other Market Regulators in India

- 2.24 The Indian market is marked by regulators like Competition Commission of India (“CCI”) as well as sector specific regulators like Securities and Exchange Board of India (“SEBI”). In this section, we discuss the role of various market regulators in India with a focus on the current regulatory framework that regulates mergers and acquisitions of the M&E sector.
- 2.25 Competition Commission of India (CCI) established under the Competition Act, 2002, is one of the market regulators. The Competition Act prohibits anti-competitive agreements and abuse of dominant position under

sections 3 and 4 respectively and provides framework for ex-post investigations of violations in sections 19 and 20. The more important provisions are related to oversight and ex-ante powers with respect to mergers and acquisitions. The Competition Act enjoins CCI powers to regulate combinations which cause or likely to cause an appreciable adverse effect on competition. The limiting factors though are the thresholds provided for the combinations that are required to seek prior approval. At present Small Target Exemption for Assets of Rs. 350 Crore or Turnover of Rs. 1000 Crore is applicable³⁵. CCI has been given the power to inquire and investigate into the allegations of violation of provisions of the Competition Act. After due inquiry, CCI can impose restrictions or modify such agreements or impose penalties to ensure discontinuance of such practices in the market. In case of mergers, CCI may suggest remedies or may disallow a merger if it considers that proposed merger may cause adverse effect on competition.

2.26 SEBI established under the SEBI Act, 1992 is entrusted with the task of regulating the stock market. SEBI carries out its functions in the securities market by a variety of steps such as regulation of price rigging, guidelines to investigate cases of fraud and insider trading, educating the investors, e-trading etc. Among others, SEBI regulates the market through SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 which provide the procedure in case the acquirer acquires 25% or more of voting rights or acquires Control over the target company. The regulations provide for the public disclosures, open offer, minimum price etc. The Regulations have laid down the general obligations of the acquirer, Target Company and the Merchant Banker. For failure to carry out these obligations as well as for failure/non-compliance of other provisions, Regulation 45 provides for penalties.

³⁵Small Target Exemption: Available for acquisitions, mergers and amalgamations, where the target's asset value in India is less than INR 3.5 billion (approx. USD 48 million) or its turnover value, in India, is less than INR 10 billion (approx. USD 137 million).

<https://cci.gov.in/sites/default/files/notification/S.O.%20988%20%28E%29%20and%20S.O.%20989%28E%29.pdf>

- 2.27 National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) have been established under Companies Act, 2013 with the jurisdiction defined in section 280 of Companies Act, to adjudicate on various disputes between various stakeholders with respect to Companies Act, 2013. These tribunals play an important role in preventing oppression and mismanagement (section 241-6 of Companies Act, 2013) and ensuring compliance with memorandum of association and articles of association of a company. Further, chapter XV of Companies Act deals specifically with compromise, arrangements and amalgamations. The Act provides the power to NCLT to sanction the arrangements and amalgamations. As prescribed NCLT is enjoined to appropriately examine the issues related to rights of shareholders and other stakeholders while examining such mergers or amalgamations.
- 2.28 Further, the Department for Promotion of Industry and Internal Trade (DPIIT) has issued orders appointing an advisory committee for its Open Network for Digital Commerce (ONDC) project that is aimed at curbing “digital monopolies” by democratizing digital commerce (e-commerce) in India and provide alternatives to proprietary e-commerce sites. DPIIT noted that the ONDC aims at promoting open networks developed on open-sourced methodology, using open specifications and open network protocols, independent on any specific platform.
- 2.29 In the light of the rapid development of the digital technologies and digital media (Including OTTs), the government has prescribed the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 with the object of creating level playing field for print, television, and digital media. The rules provide for setting up of three tier grievance redressal mechanism with self-regulation by the digital platforms (OTT and other media) at the first level, independent self-regulatory body at the second level and oversight by MIB at the third level. In pursuance of the said rules, various level-II grievance redressal bodies have been registered

with the government, for instance, Indian Digital Publishers Content Grievance Council (a body of IAMAI) and Professional News Broadcasting Standards Authority (a body of NBF). In addition to these, Indian Broadcasting and Digital Foundation with its independent self-regulatory body, Broadcasting Contents Complaint Council also act as an industry-based grievance redressal mechanism.

2.30 On one hand we have reduced barriers to entry with the emergence of digital media although it comes with its own limitations as mentioned in the earlier sections. On the other hand, there are already existing regulators for various aspects of the market, with the latest addition being the digital media self-regulatory regime. Therefore, one may consider that in the backdrop of digital media, the existing regulatory regime is sufficient to ensure fair competition. However, self-regulatory mechanism suffers from a limitation. In cases, where a non-abiding entity ignores such prescribed rules/ guidelines, there are no enforcement tools/ powers available to ensure corrective action. Therefore, self-regulation works at best as a *Laissez-faire* mechanism, applicable only on those who respect the guiding principles.

2.31 There's no question about the peculiar nature of media and its role as the fourth pillar of democracy. Media, especially the news media, has the power to shape public viewpoints and, national priorities. Therefore, the requirement of plurality in the media sector is essential and consequently, the threshold of dominance is comparatively low. Secondly, issues like cross-media ownership are peculiar to the media sector. Some stakeholders stress on the need for a sector specific regulator to ensure media plurality. In view of the above discussion, TRAI invites the comments of stakeholders on the issue of need of media regulation by the government.

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.

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?**

Q3. There are regulatory agencies like CCI and SEBI among others that monitor and regulate mergers, acquisitions, and takeovers. Is there a need for any additional regulatory/ monitoring mechanism? Do you think there's a need to monitor takeovers, acquisitions of media companies, especially the news media companies?

- 3.1 If yes, which agency/ ministry should be entrusted with the task of such data collection, regulation & monitoring?**
 - a. Whether such monitoring/ control be ex-ante as is the case with combinations in the Competition Act 2002?**
 - b. What should be the procedure of reporting and monitoring? What should be the periodicity of such reporting?**
 - c. What should be the powers of the concerned authority for enforcing regulatory provisions, inter-alia including**

imposition of financial disincentives, cancellation of license/ registration etc.?

Q3.2 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.

Chapter: III

Contours of Media Ownership/Control

- 3.1 In light of the importance of media plurality and viewpoint plurality, it becomes imperative to understand the concept of media Ownership/Control and its consequences.

Media Ownership/Control

- 3.2 Concentration of control has a negative impact on media diversity and plurality. There may be thousands of MSOs and hundreds of TV channels in the media market, but if they are all “controlled” by only a handful of entities, then there may be insufficient plurality of news and views presented to the people. So, it becomes imperative to clearly define what constitutes or can amount to Ownership and/or Control of a media owning entity.
- 3.3 There is a distinction between ‘Ownership’ and ‘Control’. Ownership implies a pure economic interest in the form of equity or shareholding in a company whereas Control implies the ability to influence decisions in the company, which is of great significance in the media sector, as those who exercise Control over management of the company could also control the content, thereby influencing the public perception and opinions. As ownership of equity beyond a threshold level can contribute to Control, the ownership is subsumed in the definition of Control.
- 3.4 ‘Control’ is deemed to be exercised through equity ownership, appointment of directors, shareholding, loan agreements, etc. Appendix I contains an elaborate discussion on the definition of the term ‘Control’ in various legal instruments.
- 3.5 A comprehensive definition of ‘Control’ has been adopted in the Authority’s Recommendations on “Monopoly/Market Dominance in Cable TV Services” dated 26th November 2013 and “Recommendations on Issues related to New DTH Licenses” dated 23rd July 2014. The same was recommended by

the Authority in its recommendations dated 12th August 2014 on media ownership wherein the following has been mentioned:-

“6.1 The Authority recommends that the following definition of Control should be adopted for all issues concerning media ownership discussed in this paper: An entity (E1) is said to ‘Control’ another entity (E2) and the business decisions thereby taken, if E1, directly or indirectly through associate companies, subsidiaries and/or relatives:

- a) Owns at least twenty percent of the total share capital of E2. In the case of indirect shareholding by E1 in E2, the extent of ownership would be calculated using the multiplicative rule. For example, an entity who owns, say, 30% equity in Company A, which in turn owns 20% equity in Company B, then the entity’s indirect holding in Company B is calculated as 30% * 20%, which is 6%.; Or*
- b) exercises de jure Control by means of: (i) having not less than fifty percent of voting rights in E2; Or (ii) appointing more than fifty percent of the members of the board of directors in E2; or (iii) controlling the management or affairs through decision-making in strategic affairs of E2 and appointment of key managerial personnel; or*
- c) exercises de facto Control by means of being a party to agreements, contracts and/or understandings, overtly or covertly drafted, whether legally binding or not, that enable the entity to control the business decisions taken in E2, in ways as mentioned in (b) (i) (ii) and (iii) above.*

For this purpose:

- (i) The definitions of ‘associate company’, ‘subsidiary’ and ‘relative’ are as given in the Companies Act 2013.*
- (ii) An ‘entity’ means individuals, group of individuals, companies, firms, trusts, societies and undertakings.”*

Furthermore, in order to keep a check on entities gaining indirect Control in the media sector through extension of loan facilities to media organisations, the Authority recommended that an additional proviso be inserted in the above definition as mentioned hereunder:

“6.2.....Provided that if E1 advances a loan to E2 that constitutes not less than - [51%] of the book value of the total assets of E2, E1 will be deemed to ‘Control’ E2.”

- 3.6 It is notable that the extent legal regime in India is based on ‘Company’ as a legal entity. However, a broad range of companies owned by one large entity is quite common. In commercial parlance, an entity generally denotes an organization that has an identity separate from those of its members and would include individuals, group of individuals, companies, firms, trusts, undertakings and inter-connected undertaking.
- 3.7 Moreover, there are more and more trans-national corporations that are present in number of sectors including various businesses in media industry. Therefore, there’s a need to establish a new system that focusses on capturing cross holdings and direct/ indirect control of different organisations by a common entity. There is a view that restrictions based on control by a company can be easily subverted by creating another set of companies by the same entity. Thus, there is a need for a system that targets both *de facto* and *de jure* forms of ownership. Therefore, it is imperative to seek comments on most suitable criteria to determine ‘Control’.

Issues for Consultation:

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.

Media Ownership/Control to Market Concentration

- 3.8 There are two issues related to the Control of media: first, adverse effects of Control of media by an entity which though does not control a wide array of media, has the potential of affecting the impartiality of the news content by virtue of its affiliation with political parties, pressure groups etc; and second, adverse effects of control of media by entity which though does not

have affiliation with abovementioned groups, acquires the position to influence the impartiality and content of news by reason of media concentration i.e. controlling media in various segments such as print, radio and television.

3.9 Control of the media by political entities, surrogate organisations and corporate entities has been in vogue across the world. India is no exception to media controlled by corporate and ideological interests. Though the media interests of corporate entities have been justified on fulfilling the funding requirements of this capital-intensive sector. Furthermore, in a market economy, the right to invest in a line of business is choice of any business entity. However, in such scenario, a quid pro-quo guaranteeing favourable coverage to controlling entity can never be ruled out. In order to ensure the independence of the fourth pillar of democracy, TRAI had recommended the disqualification of certain entities from entering into the broadcasting and distribution sectors³⁶ (**Appendix-II**).

3.10 With the emergence of social media, the issues of fake news and biased news are looming above our heads. The horrific effects of fake news have been manifested before the society in the recent incidents of mob lynching, riots, and sacrilege cases. In this backdrop, the need of ensuring independence of media from political and commercial influences becomes all the more important.

Issue for Consultation

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.

Measurement of Market Concentration

3.11 The second aspect of market Control is studied in the form of market concentration. The object of studying media Ownership/Control is to

³⁶ Recommendations on issues relating to entry of certain entities into broadcasting and distribution activities. Dated 12 November 2008; These can be accessed at <https://traigov.in/sites/default/files/Recom12nov08.pdf>

develop a basic understanding of its adverse impacts over the viewpoint plurality. The aforesaid qualitative fact is quantified in the form of measurement of market concentration. It is often taken as a proxy for the intensity of competition as the understanding is that fewer players in the market reduce the potential for competition by increasing the barriers to entry.

3.12 The measurement of market concentration is grounded on three factors: the relevant geographical market, relevant product market and the index/methodology being used for calculating market concentration. The first two factors, i.e. relevant geographical market and relevant product market, have been discussed in the next chapter which discusses cross media ownership. The methodology that can be used for the purpose of calculating market concentration have been discussed in the following paragraphs.

3.13 The three commonly used methods to calculate market concentration are as follows:

a. Concentration Ratio: It compares the revenues of the top four or eight companies to the total revenues of that industry. If the top four is higher than 50% or the top eight is higher than 75% of total revenues, then concentration may be considered high. This can be also applied to cross-communication industry ownership by including all the cross-industry revenues and comparing individual conglomerates' revenue to the whole.

b. Lerner's Index: Another method to analyse market concentration is the Lerner's index, which recognizes how the industry is structured and its effect on the market power. It is defined as:

$$Lerner's\ index = \frac{p - c}{p}$$

where p is the selling price of good and c is the marginal cost required to produce that good.

c. Herfindahl-Hirschman Index: Third and the most widely used tool is the Herfindahl Hirschman Index (HHI). It is the sum of squares of market shares (%) of all firms in the identified market. It is more definitive than

Concentration ratios but can be tedious in a multiple company market in that each company's revenue needs to be accounted for and totalled for the total market revenue.

In **Appendix III**, these three methods have been discussed in detail.

3.14 In its recommendations dated 12th August 2014, the Authority recommended that HHI be adopted to measure concentration in a media segment in a relevant market as it considers the market shares of all entities in the market, thereby reflecting diversity both in terms of number of voices present, as well as influence (by way of market shares of the entities).

3.15 However, some scholars are shifting away from the HHI and are emphasizing the need of adopting an alternative and holistic tool of measurement. One of the scholars³⁷ have expressed his reservations against the HHI stating that HHI only considers market power and does not make allowance for pluralism. He theorized an alternative index called "Media Ownership Concentration and Diversity Index". (See details in Appendix III) MIB in its reference dated 19th February 2021, has mentioned that HHI index needs a relook as it was felt to be complex to be implemented.

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.

³⁷Eli M Noam, 'The Need for a New Concentration Index for Media', Media Ownership and Concentration in America (Oxford Scholarship Online, 2011).

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.

Chapter: IV

Cross Media Ownership

- 4.1 Media plurality, which manifests in viewpoint plurality, contributes to a well-functioning democracy by making diverse viewpoints available to the citizens and by preventing any media owner/voice to exert too much influence over public opinion. Thus, viewpoint plurality ensures that media acts as the fourth pillar of democracy in letter as well as spirit.
- 4.2 At present, print, radio, television, and internet form the four segments of M&E sector. When a person or entity owns any two or more of these media outlets, it is said to be involved in cross media ownership. To ensure viewpoint plurality, it becomes imperative to ensure the diversity among all these segments. If one entity becomes dominant in all or most of these media segments, the news content will be homogeneous. Such scenario may adversely affect the debate and quell disparate viewpoints. Thus, establishment of an oversight and regulatory regime to monitor and regulate cross-media ownership may be necessary.
- 4.3 To deliberate on the issue of cross-media ownership, one may look at the current market scenario. In order to determine the extent of cross media ownership, TRAI had issued a letter to stakeholders on 15.12.2021 and the data provided by some of the stakeholders is given in the table below:

Name	TV	Radio	Print	MSO	DTH	Online
M/s Sun Tv Network Ltd	✓	✓		✓	✓	✓
M/s Mathrubhumi Printing & Publishing Co Limited	✓	✓	✓			✓

Ramoji Group	✓	✓	✓			✓
M/s Malayala Manorama Co Pvt Ltd	✓	✓	✓			✓
M/s Rajasthan Patrika Private Limited	✓	✓	✓			✓
M/s Fastway Transmissions Pvt Ltd	✓		✓	✓		
HT Media Limited		✓	✓			
M/s D B Corp Limited		✓	✓			✓
M/s ABP Network Private Limited	✓	✓				✓
M/s Sambhav Media Limited		✓	✓			✓
M/s Sarthak Music Private Limited	✓	✓				

Details of the analysis of the information received by the Authority are summarized below:

- a. The companies own stakes in various media segments through subsidiaries etc. There are certain families who own shares in various companies in various media segments. For instance, Sun TV Network Limited owns majority shareholding in M/s South Asia FM Limited and M/s Kal Radio Limited. Further, promoter of Sun TV Network Limited with

75% shares in it, has 67% shares in M/s Udaya FM Private Limited and 75% shares in M/s Kal Cables Private Limited (an MSO).

b. Similarly, Ramoji group controls Ushodaya Enterprise Private Limited (which is present in print and FM media) and Eenadu Television Private Limited (which is present in broadcasting media). Details of shareholding pattern in Ushodaya Enterprise Private Limited are given below-

- i. The promoters own 3.59% and 0.21% shares respectively
- ii. Ushakiron Movies Private Limited owns 35.64% shares. In this company, promoter of Ushodaya Enterprise Private Limited is the director.
- iii. Margadarshi Chit Fund Private Limited owns 44.54% shares. In this company also, promoter of Ushodaya Enterprise Private Limited is the director.

Ushodaya Enterprise Private Limited, in turn, owns 50.94% shares in Eenadu Television Private Limited.

c. In M/s Fastway Transmissions Private Limited, one shareholder owns 37.90% shares. The same shareholder further owns 99.50% shares in Vigilant Media Private Limited which is present in print media. Similarly, one of the shareholders of Fastway Transmissions is a company, which has shareholders who jointly own a company having majority shareholding in two companies in the broadcasting sector.

Secondly, Fastway Transmissions has a dominant position in distribution sector as well It has a large number of first level as well as second level subsidiaries as both MSO as well as LCO.

d. M/s HT Media Limited (a company in print media) has 48.6% shares in M/s Radio One Limited (an FM Company).

e. Jagran Prakashan Limited has presence in FM through Music Broadcast Ltd.

Apart from cross-media ownership, trend of “chain ownership” has been observed by the Authority during data analysis. In other words, even though an entity is present in one media segment only, it is in a dominant position in the segment. For instance, in the broadcasting sector:

- i. Network 18 group has 5 companies in the broadcasting business. Network 18 Media & Investment Ltd has majority shareholding in 2 companies, one of them being TV18 Broadcast Ltd. Further, TV18 Broadcast Ltd has majority shareholding in 2 companies while in 1, TV18 Broadcast Limited, India has the majority shares. These 5 companies collectively own 58 TV channels in various languages.
- ii. Zee Entertainment Enterprises Ltd owns 52 TV channels in various languages.
- iii. The Walt Disney Company has 4 subsidiaries in India under the Star Group namely, Star India Pvt. Ltd., Asianet Star Communications Pvt. Ltd., NGC Network (India) Pvt. Ltd. and Disney Broadcasting (India) Pvt. Ltd. According to the information available on the website of Star, they offer 46 SD channels and 32 HD TV channels.

Further, in the field of distribution of television channels:

- i. M/s Den Networks Ltd has majority shareholding in 13 other companies in the distribution sector while M/s Hathway Cable & Datacom Limited has majority shareholding in 4 companies in the television distribution sector.
- ii. M/s NXT Digital Ltd has majority shareholding in Indusind Media and Communications Limited in distribution sector, which in turn owns majority shares in 4 other companies in the TV distribution market.

Other stakeholders may submit relevant data to enable objective analysis.

The Concept of Relevant Market

- 4.4 The pre-requisite before considering the concentration in the market is defining the 'market'. India is a country of plurality of languages and cultures. Generally, for a person who knows only Telugu language, only Telugu publications and Telugu television channels are most relevant and not the entire set of publications and television channels available in the country. With a view to identify actual competitors in various media markets, it would be appropriate to invoke the concept of 'relevant market'.

4.5 The concept of ‘relevant market’ has been defined in Section 2(r) of the Competition Act 2002 in following terms:

“relevant market means the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets;”

- 4.6 The concept of relevant market, thus, can be bifurcated in two concepts:
- (i) The ‘relevant product market’ means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.
 - (ii) The ‘relevant geographic market’ means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.

For a particular medium, its relevant market is the set of consumers who reside in a geographical area where that media is available to them and who can avail or consume it. The twin dimensions of the relevant market for media are as below:

Relevant Product Market for Media

- 4.7 Within any medium e.g. television, radio and newspaper, there are a variety of genres³⁸ of the programmes e.g. news and entertainment. Each one of these genres is potentially relevant to media plurality. However, it is important to have clarity as to which of these genres should be included in the present exercise of devising ways and means to ensure viewpoint plurality. Traditionally, most of the countries have focused on news and current affairs as news and current affairs provide the greatest potential to inform citizens and ensure an effective democratic process. In **Annexure III** a detailed analysis of various jurisdictions has been undertaken.

³⁸ Various Genres are News & Current Affairs, General Entertainment, Sports, Infotainment, Music, Kids, Movies, Lifestyle, Religious/ Devotion.

- 4.8 India being a democratic country requires a well-informed citizenry for the proper functioning of democratic institutions. The general understanding is that any opinion disseminated through General Entertainment genre is informal and indirect in nature as the prime objective here is entertainment and in popular perception. News and Current Affairs genre is considered the direct proponent of authentic news and opinions based on extensive research, first-hand reporting, analysis and editorial checks. Further, the contents broadcasted on General Entertainment channels involve aggregation of content generated by various production houses. Therefore, it may not be necessary to regulate these media outlets as most of the content is outside the Control of the owner of these channels.
- 4.9 Based on the above reasoning, the Authority in its Recommendations dated 12th August 2014 recommended that only News and Current Affairs genre, including business and financial news and information, is of direct relevance to the plurality and diversity of viewpoints and, hence, should be considered as the relevant genre in the product market for formulating cross-media ownership rules.
- 4.10 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.
- 4.11 Further, in recent years infotainment channels are also gaining popularity and higher 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.

- 4.12 In view of the above, it is proposed to re-examine the relevance of the genres in the formation of popular perception and the need to ensure viewpoint plurality.

Issue for consultation:

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.

- 4.13 The second aspect of relevant product market is the examination of media segments which have a direct relevance in ensuring viewpoint plurality. Different media segments form separate markets as they meet distinct needs and are consumed in different ways. Each is equally important as each performs a unique function – the television provides news in an audio-visual format as it unfolds, the radio supplies news on the move and the print media follows up with in-depth analysis.
- 4.14 In M&E sector, there are four segments: television, radio, print and internet. The recent trends in each of these sectors have already been explained in chapter II. After examining the trends and influences of each segment, TRAI in its recommendation dated 12th August 2014 had recommended that only television and print segment (only daily newspapers) shall be taken to be relevant segment for ensuring viewpoint plurality. Radio was kept out considering that private radio channels were not permitted to air their own news content. Online portals were also excluded because, in 2014, the number of users of online media were limited.
- 4.15 As already discussed in chapter II, past few years have been transformational, marked by profound technological innovations that have

altered the landscape of M&E industry. Internet has developed as a popular source of news and information. However, internet, in itself, is a diverse medium. Consequently, the sources of news and information on internet are not homogenous and they vary from videos to textual information to short videos or snaps.

- 4.16 The news content providers on internet can be divided into two categories- first, entities which have presence in any other segment as well and they exist on internet as an extension of their traditional services. For instance, almost all the major newspapers have an e-version. Moreover, almost all newspapers have presence on social media platforms. The second category of news providers on internet includes entities which are present only on internet. For instance, there are several YouTube channels providing news along with apps like DNA, Public etc.
- 4.17 The development of digital media has made the news and information more accessible to the public. However, it comes with a rider of 'fake news' which has come up as one of the biggest issues of modern world. The impact of fake news is seen in almost every aspect of life, ranging from rumour mongering, distorted video messages including the allegations of election fraud in the presidential elections of USA.
- 4.18 'Fake news' is not simply 'false' news. Its nature is determined by fraudulent content as well as its ability to travel as much as, and in some cases, even more than, authentic news. It is when a deliberate lie "is picked up by dozens of other blogs, retransmitted by hundreds of websites, cross-posted over thousands of social media accounts and read by hundreds of thousands that it effectively becomes 'fake news'.
- 4.19 The business model pursued by social networking platforms and search engines encourages the production of information that is 'click-worthy', independently of its accuracy or public interest. It is being readily observed in the contemporary society that while information is becoming more

diverse and easily available, many individuals seem less likely to access material that challenges their pre-existing views. The algorithms used by social networking platforms and search engines to provide users with a personalized experience based on their individual preferences represent a challenge to pluralism, restricting individuals' exposure to differing viewpoints and newsfeeds.

- 4.20 Thus, in the contemporary world, internet hardly forms a segment which can be ignored in any aspect of societal administration, be it data privacy, convergence of services or access to plurality of information and viewpoints. In this backdrop, the relevancy of various media segments in ensuring viewpoint plurality is to be examined.

Issue for consultation: -

Q8. Which media segment amongst the following would be relevant for encouraging viewpoint plurality?

- 1. Print media viz. Newspaper & magazine**
- 2. Television**
- 3. Radio**
- 4. Online media/Digital media/OTT**
- 5. All or some of the above**

Please substantiate your answer with appropriate reasons.

- 4.21 The television segment consists of important players in television distribution chain. These are broadcasters, Distribution Platform Operators (DPOs) and Local Cable Operators (LCOs). Each one of these players can influence the viewpoint plurality.
- 4.22 The broadcasters have the direct ability to influence public perception as they control the content. However, the influence of DPOs is more indirect in nature in the sense that they can influence the reach of the content produced by the broadcaster thereby influencing the viewpoint plurality. For instance, the interconnection regulations give the liberty to DPOs to

define their target market and decide carriage fee accordingly. The issue of the practice of charging exorbitant carriage fee by the DPOs leading to undue financial burden on regional niche broadcasters had been examined by the Authority in the past years and accordingly various amendments have been brought in the Interconnection Regulations with the aim of resolving this issue.

4.23 In its 2014 consultation on the issues related to media ownership, the Authority had called for the comments of stakeholders on the issue of relevant media segments as explained above but the discussion was not extended to the distinct roles of broadcasters and DPOs. On this specific issue, MIB in its reference dated 19thFebruary 2021 (Annexure II), has mentioned, *‘in the recommendation television and print segment is used for media. It is not clear whether ‘television’ is used for both broadcasters and Distribution Platform Operators (DPOs)’*.

4.24 In this backdrop, TRAI intends to extend the consultation on the distinct role and influence of broadcasters, DPOs or LCOs in the television segment and accordingly, invites the comments of the stakeholders.

Issue for consultation:

Q9. Should the word ‘media’ include television, print media, digital/online media, and other media entities? Alternatively, whether ‘television’ as a media segment should include only DPOs (including LCOs) or only Broadcasters or both for ensuring viewpoint plurality in the television segment? Please justify your answer.

Relevant Geographic Market

4.25 The concept of relevant geographic market has been defined under Sec. 2(s) of Competition Act 2002 in following terms:

“relevant geographic market” means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and

can be distinguished from the conditions prevailing in the neighbouring areas;”

4.26 India is a multi-linguistic society and language has always been the primary yardstick of defining territories and establishment of states in the post-independence period. Therefore, one of the readymade formulae for defining relevant geographic market in India seems to be the regional markets based on the vernacular languages. On the other hand, English language media which is consumed across the nation would be required to be examined at national level.

4.27 In India, there are 22 official languages recognised in Eighth Schedule of the Constitution of India³⁹ and more than 1500 dialects. Taking the language as the yardstick, in its recommendations dated 12th August 2014, TRAI determined 12 geographic markets which are as follows;

(i) Assamese and Assam (meaning, Assamese newspapers read and Assamese television channels watched in Assam, and similarly henceforth);

(ii) Bengali and West Bengal;

(iii) English pan-India.

(iv) Gujarati and Gujarat;

(v) Hindi and Bihar, Chhattisgarh, Delhi, Haryana, Himachal Pradesh, Jharkhand, Madhya Pradesh, Rajasthan, Uttarakhand, Uttar Pradesh (these ten States together should be considered as a single market);

(vi) Kannada and Karnataka;

(vii) Malayalam and Kerala;

(viii) Marathi and Maharashtra;

(ix) Odia and Odisha;

(x) Punjabi and Punjab;

(xi) Tamil and Tamil Nadu;

³⁹ Official languages in India are Assamese, Bengali, Bodo, Dogri, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Maithili, Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu and Urdu.

(xii) Telugu and Andhra Pradesh and Telangana

In this list, the other languages included in the Eighth Schedule of the Constitution, namely – Bodo, Dogri, Kashmiri, Konkani, Maithili, Manipuri, Nepali, Sanskrit, Santhali, Sindhi and Urdu, to be considered based on the growth of newspaper circulation and television viewership in these languages in the future.”

- 4.28 One apparent omission in the above list is the North-eastern states except for Assam. The reason for the same is that the languages used in north-eastern states are marked by factors such as non-contiguity, limited footprint and the resulting lack of homogeneity. In the backdrop of the same, MIB in its reference dated 19th February 2021, has mentioned that basis of States and Language may be reviewed as North-East (NE) is left out.
- 4.29 The considerations relevant for defining relevant geographic market are generally taken to be basic demand characteristics, national preferences, preferences for national brands, the need for local presence, views of customers and competitors and current geographic consumer behaviour patterns etc. In light of these considerations, the criteria to demarcate relevant geographic market for the whole country, in general and north-eastern states, in particular need to be examined. Accordingly, the comments of the stakeholders are invited on this issue.

Issues for Consultation:

Q10. What should be the basis of classification of relevant geographic markets for evaluating concentration in media ownership? Should it be aligned with state or a region/Metro/Non-metro cities or the whole country? Please support your answer with reasons.

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.

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.

Methods for Calculating Level of Consumption in a relevant market

4.30 The mere presence of an entity in a market does not by itself provide correct picture of market concentration. To quantify the presence in a market sector into the contribution in market concentration, it is necessary to calculate level of consumption of a product.

4.31 The three metrics which are generally used to calculate level of consumption in a relevant market are as follows:

- Reach- Reach of a media outlet means the percentage of people who are exposed to a media outlet, at least once, in a given period of time. It is generally measured with the help of data collected by rating agencies.
- Volume of Consumption -This metric takes into account the frequency, or the time spent by consumers in consuming media content in a relevant market.
- Revenue-Media industry is a dual sided market with two major revenue streams, namely, advertising revenue and subscription revenue. Revenue is considered as a measure of consumption.

For details regarding above mentioned metrics, please refer to **Appendix IV.**

4.32 When it comes to television, when scrolling through the channels to watch the desired channel, a consumer might watch some channels for shorter

duration and other desired channels for longer duration. All these channels, irrespective of the duration of viewership would be counted under reach. However, the channel that the consumer watches for a longer duration would come under volume of consumption metric. On the other hand, for print media, the level of influence of content over the consumer does not depend upon the minutes spent by the consumer in reading rather it depends upon the reader's speed of reading, level of understanding etc.

4.33 On the basis of above reasoning, in its recommendations dated 12th August 2014, TRAI recommended that a combination of reach and volume of consumption metrics should be used for computing market shares for the television segment. For the print segment, using only the reach metric is sufficient. The reach of the newspapers can be understood from the circulation data released by the RNI which has been attached herewith as **Annexure IV.**

4.34 Apart from the metric to be used in calculating consumption in a relevant market, another facet of market concentration is calculating market share of an entity. In its 2014 recommendations, TRAI recommended following formulae for measuring market concentration in television and print segment:

- Market share of a television channel-

$$\frac{\text{GRP of the Channel}}{\sum \text{GRP of all channels in the relevant market}}$$

Herein, it was noted that some regional markets are characterised by the presence of news-cum-entertainment channels, which broadcast news bulletins for only some parts of the day. The GRP of only the news content aired on these news-cum-entertainment channels shall be taken into account so that they are comparable, for the purpose of analysis, with the pure news channels.

- Market share of a Newspaper-

Circulation of the Newspaper

Σ *Circulation of all Newspapers in the relevant market*

- 4.35 However, MIB in its back reference dated 19th February 2021, has mentioned that the formulation of Circulation+ Reach of Newspapers for print media is problematic and that Data on impact on viewership of Bouquet's of TV channels needs authentication.
- 4.36 Past few years have been marked by the phenomenal growth of digital media as has already been discussed in this consultation paper. Digital media is marked by the absence of a few dominating entities as far as content is concerned. However, if the stakeholders suggest inclusion of internet in the relevant market segment, as a next step, there will be a need to define the metric to be used to calculate the consumption and to measure market share of a particular entity.
- 4.37 The digital platforms, particularly for news content, can be broadly divided in two categories: subscription-based platforms and free platforms. In case of subscription-based platforms, the number of subscribers can be taken to be a measure of the level of consumption. However, in case of platforms which are available without the payment of a subscription charge, some other metrics needs to be developed.
- 4.38 In light of the February 2019 reference of MIB and the recent developments in the M&E sector, TRAI invites the stakeholders to submit their suggestions with respect to the metrics to be used to measure market consumption and market share of a particular entity.

Issues for Consultation

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.

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.

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.

Commonly used methods for formulating Cross Media Ownership Rules

4.39 Cross media ownership has been a matter of attention in almost every democracy of the world due to the direct link between viewpoint plurality and informed citizenry, which is taken to be the founding stone of the proper functioning of democratic institutions in a country. Different countries have used different methods to impose restrictions on cross media holdings. However, in light of the increased decentralisation of news sources, many 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. Detailed analysis of the practices of various jurisdictions is given in **Annexure IV**.

- 4.40 The reconsideration of cross media restrictions becomes all the more important in light of the time gap since the last recommendations of 2014 wherein TRAI had opined that cross media ownership rules shall be reviewed every three years.
- 4.41 Various methods of cross media ownership restrictions have been discussed hereinafter.

Restriction based on the presence in a media segment

- 4.42 The first method is that of restricting ownership based on mere presence, i.e., a blanket ban on Control over media outlets in more than one media segment. For example, an entity having Ownership/ Control over any television channel would not be allowed to acquire or retain Ownership/ Control over any newspaper or radio channel. Similarly, an entity having Ownership/ Control over a newspaper would not be allowed to acquire or retain Ownership/ Control over any television channel or radio channel. In other words, mere presence in a media segment is a criterion for exclusion from presence in other media segments.
- 4.43 The restrictions based on mere market presence have been objected to on the ground that they do not consider the market reality as there may be markets dominated by few players. In such cases, the restrictions on mere market presence obstruct the presence of plurality in the market.

Issues for Consultation

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?

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?

Restriction based on a Threshold Market Share in a Media Segment

4.44 The second method is restrictions based on market share in media segments, where media entities exceeding prescribed market share thresholds in two or more media segments would have to withdraw from one of the segments. The advantage of this method is that it takes the market reality into consideration. However, it can be objected to on the ground that it indirectly punishes the player which has achieved certain market share on its hard work irrespective of the fact that whether such player is hindering the viewpoint plurality in the relevant market.

Issue for Consultation

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.

Restriction based on Concentration in At Least Two Media Segments

4.45 The third approach could be imposition of a restriction based on concentration of the market, generally calculated by tools such as HHI. A media segment in a relevant market is said to be highly concentrated if the HHI of the market segment is 1800 or more. For any relevant market where

at least two media segments are highly concentrated, restrictions on cross media ownership may be applied as below:

- (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 more than 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 at least two 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. In this method, the contribution of an entity in the HHI of a media segment shall be regarded as the same as the cumulative contribution of the media outlets owned/ controlled by the entity.

4.46 HHI thresholds of 1800 as an indication of a highly concentrated market are suggested by economic theorists and were considered by US Department of Justice and the Federal Trade Commission in the Horizontal Merger Guidelines (1997). The said threshold is based on empirical and practical experience of markets in the US and is not media-market specific. As scholars have pointed out, people do not mind HHI as high as 4000 for the video game market as preference for diversity is not as high as in the case of media, where more diversity is demanded by the public. Media markets, therefore, need the test of a lower HHI.

4.47 In case an entity breaches the threshold of the above test, the second step comes up in the form of dilution of equity. The two methods generally used for dilution of equity are as follows:

- a. Company (media outlet) issues new shares resulting in reduction of ownership percentage of existing shareholders
- b. Holders of stock options, such as employee or board members of the company, exercise their options i.e. converting their holdings into

ordinary share, increasing the company's shareholding which in turn reduces the ownership percentage of existing shareholders

- 4.48 In light of the above discussion, the stakeholders are invited to provide their comments on the suitability of restrictions based on concentration in at least two media segments in a relevant market. They are further requested to suggest the best suitable method for dilution of equity and the time period for the same.

Issues for Consultation

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.

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.**

Restriction based on a Threshold Overall Concentration in a Relevant Market

4.49 The fourth method is the restriction based on the Diversity Index that considers the overall concentration in a relevant market (Refer Appendix III for more details on Diversity Index). The method may be described as below:

A relevant market is considered to be highly concentrated if its Diversity Index Score is 1800 or more. For highly concentrated relevant markets i.e., having Diversity Index Score of 1800 or more, restriction on cross media ownership may be applied as below:

- (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.

In this method, contribution of an entity in the Diversity Index Score of a relevant market shall be regarded as same as the cumulative contribution of the media outlets owned/ controlled by the entity.

Issues for Consultation

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.

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.

Formulation of Rules for Merger and Acquisition

4.50 With the coming up of multinational companies with huge resources, mergers and acquisitions have come up as a new threat to competition in the market. As per media reports, in India, Zee Entertainment Enterprises and Sony Pictures Network India have decided to merge their linear networks, digital assets, production operations and program libraries. It has been projected by media reports that the resultant entity will have 26.7% of viewership share (according to BARC data, current market leader, Star-Disney has 18.6% viewership share) and 22% of ad-revenue market. Facebook Inc. is facing various lawsuits in United States of America⁴⁰ for alleged anti-competitive conduct. The allegations are that Facebook chose to acquire Instagram and WhatsApp rather than compete with them, thereby creating a monopoly in the market through these acquisitions. Along with taking judicial recourse, US state machinery is also undertaking an overhaul of the legislative framework to ensure competition and plurality in the market. For instance, Platform Competition and Opportunity Act is currently pending in US Congress which aims at shifting the burden of proof in case of merger and acquisition on the dominant platform to prove that the proposed merger or acquisition will

⁴⁰ Federal Trade Commission v Facebook Inc; State of New York et al v Facebook Inc.

not harm the competition in the relevant market rather than requiring the regulator to prove that merger or acquisition will lessen the competition.

- 4.51 To ensure media plurality, apart from preventing cross media holding by the same company, it is imperative to ensure that what the companies can't achieve directly, they don't achieve indirectly. Therefore, it is necessary to keep a check on M&A in the media sector as well. With a view to protect media plurality, some countries have laid down additional restrictions on M&A. In Australia, no new transactions (for M&A) can proceed unless a minimum of 5 independent media operations or groups are maintained in metropolitan markets and four in regional markets. In some other countries, cross media M&A is restricted in case it increases concentration in the media sector significantly.
- 4.52 In 2014, TRAI recommended that Mergers and Acquisitions (M&A) in the media sector should be permitted only to the extent that the rule based on HHI is not breached. However, another set of arguments in the light of the reduced barriers of entry with the emergence of digital media is that in the contemporary world, the popularity of digital media is rising and due to minimum barriers of entry therein, the plurality of the viewpoints available in the digital media is abundant. As a result, even if the dominant media groups acquire some platforms (in digital media or other segments), it cannot hinder the dissemination of plurality of viewpoints as variety of viewpoints will be available in the digital media segment.
- 4.53 In light of the same, the issue which needs consideration is if there is a need to impose additional restrictions in M&A in media sector and in case there is a need for such additional requirements, what shall be the basis for the same.
- 4.54 The framework of competition law in India, envisages a Competition Commission of India through Competition Act, 2002 as a competition authority. Subsequently, several sector specific regulators were also established and all played critical roles in resolving the issues pro-actively

through various regulatory provisions so as to facilitate smooth growth of the sector. The role of the Competition Commission and sector specific regulator can be complimentary. On one hand, sector specific regulation identifies a problem ex ante and builds an administrative machinery to address behavioural issues before the problem arises, while on the other hand, competition policy would usually address the problem ex-post in the backdrop of market conditions.

Issues for consultation:

Q23. Considering the fact that sectoral regulators have played important role in bringing necessary regulations to facilitate growth and competition and to promote efficiency in operations of Telecom Services (Telecommunications and Broadcasting), in your opinion, should Merger & Acquisitions in media sector be subjected to sector specific regulations? Please justify your response.

Q23a. If yes, which among the following should be taken as the criteria for the same-

- (i) minimum number of independent entities in the relevant market**
- (ii) maximum Diversity Index Score**
- (iii) any other measure**

Q23b. If no, what mechanism would you suggest for regulator to use for ensuring smooth and equitable growth of the sector?

Chapter: V

Vertical Integration

- 5.1 The broadcasting media, be it TV or radio, has two important entities in its value chain - one that provides the programmes (broadcasting/content services) and the other, its access to the consumers (distribution service). Vertical integration in the broadcasting sector refers to Ownership/Control of these two business/operations by a single entity. More and more broadcasting companies owning television channels are venturing into various distribution platforms namely cable TV distribution, DTH, IPTV etc. Similarly, many companies owning distribution platforms are also entering into television broadcasting.

- 5.2 The main issue for the Authority is the need to ensure that the broadcast and distribution sector is free and able to provide, from a wide range of sources, factual news and information to the consumers. Ownership and Control must not be allowed in any way to restrict this. Though the vertical integration of various entities within a particular sector results in reduction in cost to the company as well as offers economies of scale, it often manifests in the form of ills of monopolies viz. higher cost to the consumers, blocking competition, creating barrier to entry for new players to venture into the sector, deterring innovations, deterioration of the quality of service to the consumers in the long run etc.

- 5.3 Further, vertically integrated entities may negotiate mutually beneficial deals amongst the integrated entities & at the same time put up offers for the same deals which would be deterrent to the business interests of entities which are not vertically integrated. To prevent the dominance of one entity over media sector, after a detailed discussion of the term 'Control' as has already been explained in chapter III of the present consultation paper, the Authority had recommended 20% of the share capital as the minimum threshold to determine Control of one entity over another.

- 5.4 To further address the issue of vertical integration in the broadcasting sector, TRAI has undertaken two-pronged approach. Firstly, TRAI has notified regulations with respect to interconnection between broadcasters and distributors; and secondly, TRAI has recommended certain restrictions to be imposed on broadcasters and DPOs in its “Recommendations on Issues related to New DTH Licenses” dated 23rd July 2014 (For ease of reference, the extracts of the same are annexed as **Annexure-V** of this Consultation Paper).
- 5.5 TRAI notified Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 which were amended in 2020. The said regulations provide for various obligations of broadcasters and distributors vis-à-vis interconnection including the obligation of providing and carrying signals on non-discriminatory basis and the obligation to not to enter into exclusive contracts. The regulatory regime vis-à-vis interconnection regulations have thereby resolved the issue of denial of signals or carriage on unreasonable and arbitrary grounds.
- 5.6 As far as TRAI’s recommendations on DTH license are concerned, MIB in its letter dated 19th February 2021, has stated that the recommendation on vertical integration amongst DTH Licensees has already been accepted vide an amendment dated 30th December 2020 which introduced following provision in DTH Guidelines:
- “3. Vertically Integrated Entity: Reserving of operational channel capacity: A vertically integrated entity will not reserve more than 15% of the operational channel capacity for its vertically integrated operator. The rest of the capacity is to be offered to the other broadcasters on a non-discriminatory basis.”*
- 5.7 In light of the above developments, it becomes imperative to understand the market reality. To determine whether there is some prevalence of

vertical integration, a letter, seeking the required information, was sent to stakeholders on 15.12.2021. The copy of the said letter along with for the mat attached thereto is at **Annexure VI**. The following table shows the entities having an interest in both, broadcasting as well as distribution of television channels:

	Broadcasting	DTH	MSO
M/s Sun Tv Network Ltd	✓	✓	✓
M/s Thamizhaga Cable TV Communication Pvt Ltd	✓		✓
M/s Fastway Transmissions Pvt Ltd	✓		✓
M/s Odisha Television Limited	✓		✓
M/s Kerala Communicators Cable Ltd	✓		✓

Analysis of the information revealed the following:

- Sun TV Network Ltd has a presence in DTH sector directly and in MSO indirectly as its promoter's daughter owns 75% shareholding in M/s Kal Cables Private Limited (an MSO).

- Linkage of Fastway with the broadcasting sector-

One company owns 28.77% shares in Fastway Transmissions. This company is owned by 2 persons who also own 33.33% shares each in Ads Developers Pvt Ltd which in turn has a majority shareholding in 2 companies in the broadcasting sector.

Other stakeholders who have not submitted the data so far should submit the data for appropriate analysis.

5.8 Even though the issue of vertical integration has been addressed to a certain extent, several grey areas remain. For instance, the restrictions with respect to vertical integration have been imposed on DTH only and not on other DPOs such as MSOs and HITS operators. Further, there is a need to look into the crossholding amongst DPOs as well. In light of the

same, the issue of vertical integration in the broadcasting sector needs consideration and the comments of stakeholders are invited for the same.

Issues for consultation: -

Q24. In your opinion, should any entity be allowed to have an interest in both broadcasting and distribution companies/entities?

Q24a. If “Yes”, how would the issues of vertical integration be addressed?

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?

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

Chapter: VI

Part I: Current Legal Regime vis-à-vis Media Ownership in India

- 6.1 After developing the conceptual clarity on various issues related to media ownership, in order to get a complete picture, it becomes imperative to trace the existing legal regime on Media Ownership. Accordingly, deliberations below illustrate various provisions in the existing legal framework and guidelines issued by the Government and/or Regulators from time to time, for different services.
- 6.2 In the Part I of this chapter we discuss the current guidelines/ compliance structure on issues of: A: Broadcaster vis-à-vis Distributors; B: Frequency Modulation (FM) Radio Licensees; C: Mobile TV

A. Broadcaster vis-à-vis Distributors

a. DTH Services

- 6.3 The Government had notified the Guidelines for obtaining License for providing DTH Broadcasting Services in India on 15th March 2001, which has been amended from time to time. In these Guidelines, restrictions have been prescribed on the stake that can be held by a broadcasting and/or cable network company in a company owning the DTH platform and vice-versa. The restriction states as under:

“1.4 The Licensee shall not allow Broadcasting Companies and/or Cable Network Companies to collectively hold or own more than 20% of the total paid up equity in its company at any time during the License period. ...”

“1.5 The Licensee company not to hold or own more than 20% equity share in a broadcasting and/or Cable Network Company.”

- 6.4 Recently, the Government notified certain amendments vide order No. 8/7/2020-BP&L dated 30th December 2020 to the principal guidelines. The amendment introduced following provisions for the regulation of vertical integration:

“3. Vertically Integrated Entity: Reserving of operational channel capacity:

A vertically integrated entity will not reserve more than 15% of the operational channel capacity for its vertically integrated operator. The rest of the capacity is to be offered to the other broadcasters on a non-discriminatory basis.”

b. Head End in The Sky (HITS)

6.5 In the Guidelines for providing HITS Broadcasting Service in India dated 26th November 2009, the following provision have been prescribed which restrict the stake that can be held by a broadcasting and/or DTH licensee company in a company providing HITS based broadcasting services in India:

“1.6 Broadcasting Company(ies) and/or DTH licensee company(ies) will not be allowed to collectively hold or own more than 20% of the total paid up equity in the company (getting license for HITS operation) at any time during the permission period. Simultaneously, the HITS permission holder should not hold or own more than 20% equity share in a broadcasting company and/or DTH license company. Further, any entity or person holding more than 20% equity in a HITS permission holder company shall not hold more than 20% equity in any other broadcasting company(ies) and/or DTH licensee company and vice-versa. This restriction, however, will not apply to financial institutional investors. However, there would not be any restriction on equity holdings between a HITS permission holder company and a MSO/cable operator company.”

6.6 Further, regarding the manner of determining the shareholding, following has been stated in the said guidelines:

“1.7 While determining the shareholding of a Company or entity or person as per para 1.6 above, both its direct and indirect shareholding will be taken into account. The principle and methodology to determine the level of indirect holding shall be the same as has been adopted in Press Note 2 of 2009 dated 13.2.09 of the Department of Industrial

Policy and Promotion under the Ministry of Commerce and Industry for determination of indirect foreign investment.”

6.7 No restriction on the number of permissions has been prescribed in the Guidelines for providing HITS Broadcasting Service in India. The relevant provision of the guidelines states as under:

“2. There will be no restriction on the total number of HITS permissions and these will be issued to any company which fulfils the eligibility criteria & necessary terms and conditions and subject to the security and technical clearances by the appropriate authorities of the Government.”

B. Frequency Modulation (FM) Radio Licensees

[Policy Guidelines on Expansion of FM Radio Broadcasting Services through Private Agencies (Phase-III)]

In the policy guidelines dated 25th July 2011 for expansion of FM radio under Phase III expansion, certain provisions have been made in respect of the restriction on multiple permissions in a city and total number of frequencies that an entity can hold. The relevant provisions are as under:

a. Restrictions on multiple permissions in a city and other conditions

6.8 Till Phase II of the FM radio expansion in the country, no FM operator company was allowed to hold more than one license in a licensed service area i.e., no operator was allowed to operate more than one radio channel in a city. For the Phase III expansion of the FM radio, however, this restriction was relaxed; a company could have more than one FM radio channel in a city subject to certain conditions. The relevant provision states as under:

“7.1 Every applicant shall be allowed to run not more than 40% of the total channels in a city subject to a minimum of three different operators in the city and further subject to the provisions contained in para 8.

However, in case the 40% figure is a decimal, it will be rounded off to the nearest whole number.”

A minimum of three different operators should be present in the city where multiple channels can be allowed to an applicant. This is to ensure that there is plurality and competition in the market.

b. Total number of frequencies that an entity may hold

6.9 In the policy guidelines for phase II expansion of FM radio in India, a restriction that prevented holding of more than 15% of all the channels allotted in the country by any entity was prescribed. Same restriction has been prescribed in the policy guidelines for phase III expansion of FM radio in the country, with certain exceptions for the state of Jammu and Kashmir, North Eastern States and island territories. The relevant provision states as under:

“8.1 No entity shall hold permission for more than 15% of all channels allotted in the country excluding channels located in Jammu and Kashmir, North Eastern States and island territories. Only city wise limits as mentioned in para 7 will apply to channels located in Jammu and Kashmir, North Eastern States and island territories.

[Note (1): The channels allotted to the following categories of companies would be reckoned together for the purpose of calculating the total channels allocated to an entity:

- a. Subsidiary company of any applicant/ allottee;*
- b. Holding company of any applicant / allottee;*
- c. Companies with the Same Management as that of applicant/ allottee;*
- d. More than one Inter-Connected Undertaking with regard to the applicant/ allottee.*

Note (2): In respect of existing license/permission/LOI holders, the license(s)/permission(s)/LOI(s) already held by them shall also be taken into consideration for calculating the 15% limit.]”

C. Mobile TV

[TRAI's Recommendations for Mobile TV]

6.10 On 23rd January 2008, TRAI had given its recommendations to the Government with respect to the Mobile TV services in India. With respect to the stake that can be held by a broadcasting company in a company operating mobile TV services in India, TRAI had recommended as under:

“5.3.20 Any mobile television licensee should not allow any broadcasting company or group of broadcasting companies to collectively hold or own more than 20% of the total paid up equity in its company at any time during the License period. Simultaneously, the mobile television licensee should not hold or own more than 20% equity share in a broadcasting company. Further, any entity or person (other than a financial institution) holding more than 20% equity in a mobile television license should not hold more than 20% equity in any other broadcasting company or broadcasting companies and vice-versa. However, there would not be any restriction on equity holdings between a mobile television licensee and a DTH licensee or a HITS licensee or a MSO/cable operator company.”

6.11 As far as number of licenses/permissions to a company providing Mobile TV services is concerned, TRAI has made following recommendation to the Government in response to their reference dated 19.01.2010:

“...no entity can hold more than twenty five percent of the total number of permissions given in the country to prevent monopolization at national level for the first phase. This is in addition to the stipulation that an entity should have only one license per service area.”

6.12 In its recommendations, TRAI has suggested that a licensee should get only one carrier channel in a service area, so as to ensure multiplicity of service providers in every service area, subject to spectrum availability. As far as other media segments are concerned (i.e. broadcasters,

MSOs/LCOs, HITS), there are no restriction on the number of channels/licenses/ permissions which a company or entity can have.

Part II: Mandatory Disclosure Requirements to Prevent Violation of Existing Legal Regime

- 6.13 In this part we discuss the existing mandatory requirements for DTH operators, FM radio Licensees, IPTV operators, HITS Operators, on the Broadcaster for Uplinking / Downlinking guidelines and Print Media.
- 6.14 It is important that if the regulatory provisions with regard to cross media holdings in the media sector and vertical integration in the broadcasting sector are in place then the same should be easily monitorable and enforceable. It is also important that, during the entire period of currency of license/permission, the licensee/permission holder complies with all the terms and conditions of the license/permission, including the eligibility criteria. Amongst various rules for the same, one of the most effective tools could be a well-defined system of periodic mandatory disclosures by the entities providing the services in the sector. Therefore, it would be desirable to have a regulatory framework of periodic disclosures as a mechanism for monitoring and enforcing of the media ownership rules in case the same are prescribed.
- 6.15 In this part of the present chapter, first the mandatory disclosures related to broadcasting sector, which are already in place, as a part of license/permission conditions, have been discussed. Thereafter, the issue has been put for consultation with the stakeholders with a view to bring out a well-defined mechanism of mandatory disclosure in the media sector to ensure regulatory compliance with respect to cross media holdings and vertical integration.

a. DTH

6.16 In the Guidelines for Obtaining License for providing Direct-to-Home(DTH) Broadcasting Service in India, the licensees are required to comply with the following:

“1.4 The Licensee shall submit the equity distribution of the Company in the prescribed proforma (Table I and II of Form-A) once within one month of start of every financial year. The Government will also be able to call for details of equity holding of Licensee company at such times as considered necessary.”

“1.5 The Licensee shall submit the details of investment made by the Licensee company every year once within one month of start of that financial year. The Government. will also be able to call for details of investment made by the Licensee company in the equity of other companies at such times as considered necessary.”

“1.7 Any change in the equity structure of the Licensee Company as well as amendment to shareholders agreement, wherever applicable, shall only be carried out in consultation and with prior approval of Licensor.¶

“14.1 The Licensee shall furnish to the Licensor, such information at periodic intervals or at such times as the Licensor may require, including, but, not limited to, documents, reports, accounts, estimates, returns or other information such as change in Chief Executive, Board of Directors, equity holding pattern etc.”

b. FM Radio

6.17 In the Consolidated policy for FM Radio Phase III certain provisions regarding disclosures on the part of the company holding license/permission have been stipulated. The provisions are as under:

“.....9.3 The company shall make full disclosure, at the time of application, of Shareholders Agreements, Loan Agreements and such other Agreements that are finalized or are proposed to be entered into. Any subsequent changes in these would be disclosed to the Ministry of Information and Broadcasting, within 15 days of any changes, having a bearing on the foregoing Agreements.....”.

c. IPTV

6.18 In the guidelines for Obtaining License for providing IPTV (Internet Protocol Television) Service in India, the licensees are required to comply with the following:

“..... (ii) All telecom licensees/ Cable operators before providing IPTV will give a self certified declaration to I&B Ministry, DoT and TRAI giving details such as license/ registration under which IPTV service is proposed, the start date, the area being covered, and details of the network infrastructure etc.....”

6.19 The above mentioned self-certified declaration to be submitted by IPTV service provider in the prescribed format includes information on shareholding pattern of the applicant company and in case, there is any foreign investment direct or indirect in the applicant company then whether the applicant is complying with Foreign investment norms/Foreign Invest Promotion Board approval requirements. In addition to this, the said guidelines also prescribe as under:

“.....(xvi) The IPTV service provider shall submit such information with respect to its service as may be required by the Government in the Ministry of Information and Broadcasting or its authorized representative from time to time.”

d. HITS

6.20 In the Guidelines for Obtaining License for providing HITS Service in India, the licensees are required to comply the following:

“.....1.5 The company shall make full disclosure, at the time of application, of Shareholders Agreements, Loan Agreements and such other Agreements that are finalized or are proposed to be entered into. Any subsequent changes in these would be disclosed to the Ministry of Information and Broadcasting, within 15 days of any changes, having a bearing on the foregoing Agreements.

.....

9.2 *The company shall submit such information with respect to its services as may be required by the Government or its authorised representative, in the format as may be required, from time to time.....”*

e. Policy Guidelines for Downlinking of Television Channels

6.21 As per the policy guidelines for Downlinking of the TV channels, the applicant company has to disclose shareholding pattern. Clause 5.11 of the relevant guidelines provides as under:

“....5.11 The applicant company shall give intimation to Ministry of Information and Broadcasting regarding change in the directorship, key executives or foreign direct investment in the company, within 15 days of such a change taking place. It shall also obtain security clearance for such changes in its directors and key executives....”.

f. Policy Guidelines for Uplinking of Television Channels from India

6.22 As per the policy guidelines for Uplinking of the TV channels, the applicant company has to disclose shareholding pattern. Clauses 3.1.4 and 3.1.5 of the relevant guidelines provides as under:

“.... 3.1.4 The company shall make full disclosure, at the time of application, of Shareholders Agreements, Loan Agreements and such other Agreements that are finalized or are proposed to be entered into. Any subsequent changes in these would be disclosed to the Ministry of Information and Broadcasting, within 15 days of any changes, having a bearing on the foregoing Agreements.

3.1.5 It will be obligatory on the part of the company to intimate the Ministry of Information & Broadcasting, the changes in Foreign Direct Investment in the company, within 15 days of such change. While effecting changes in the shareholding patterns, it shall ensure its continued compliance to Clause 3.1.1 and 3.1.2 above.....”.

g. Print Media

6.23 The guidelines dated 31st March 2006 issued by MIB applicable for (i) Publication of newspapers and periodicals dealing with news and current

affairs. (ii) Publication of facsimile editions of foreign newspapers, provides as under:

“..... The applicant entity shall make full disclosure, at the time of application, of Shareholders’ Agreements and Loan Agreements that are finalized or proposed to be entered into. Any subsequent change in these shall be disclosed to the Ministry of Information & Broadcasting within fifteen days of such a change.”

6.24 In order to arrive at effective framework for mandatory disclosure, the Authority in its earlier recommendations dated 12th August 2014 considered the following criteria;

(i) The parameters that are likely to be handy in monitoring and enforcing compliance of restrictions with respect to cross media holdings and vertical integration, if any, as well as determining Control/ concentration of different entities/ companies in different media sectors are:

- a) Equity structure of the entity/ company
- b) Shareholding pattern of the entity/ company
- c) Foreign direct investment pattern of the entity/ company
- d) Interests of the entity/ company in other entities/ companies engaged in media sector.
- e) Interests of Entities/companies, having shareholding beyond a threshold (say 15%) in the media entity/company under consideration, in other media entities/companies.
- f) Shareholders Agreements, Loan Agreements
- g) Details of Key executives and Board of Directors of the entity/ company.
- h) Market share of the entity/ company
- i) Viewership / Readership details
- j) Subscription and Advertisement Revenue of the entity/ company.

(ii) The percentage of equity holding is commonly used as a measure of Control/Ownership in a company e.g. in Telecom sector equity holding is one of the key parameters used to identify Control. Equity

participation is quantifiable and can be monitored and enforced. However, there are some entities who are not registered companies; in such cases the equity holding would not be relevant. Besides it may also be noted that a sole proprietorship, an association of persons, a body of individuals, a partnership firm, a corporate body or company, a public sector business enterprise, etc. are all entities.

(iii) In law, an entity is something capable of bearing legal rights and obligations. TRAI had recommended (As mentioned in para 5.15 of the Recommendations dt. 12th August 2014) that for the purpose of putting in place effective safeguards to prevent vertical integration between the broadcasting sector and its distribution platforms, the word entity be given a broad meaning so as to include any person including an individual, a group of persons, a public or private body corporate, a firm, a trust, or any other organization or body and also to include –inter-connected undertakings. Thus, any effective system for mandatory disclosure should also apply to all –interconnected undertakings be it for monitoring/ enforcing compliance with respect to cross media holdings or vertical integration.

6.25 Authority in its previous recommendations dated 12th August 2014, recommended the following:

“the following list of reporting requirements for this section. These reports are to be made Transparency on an annual basis to the licensor and the regulator.

- (i). A. Disclosures (to be placed in public domain) Shareholding pattern of the entity*
- (ii). Foreign direct investment pattern of the entity*
- (iii). Interests, direct and indirect, of the entity in other entities engaged in media and non-media sectors*
- (iv). Interests of entities, direct and indirect, having shareholding beyond 5% in the media entity under consideration, in other media entities/companies*

- (v). *Shareholders Agreements, Loan Agreements and any other contract/ agreement*
- (vi). *Details of key executives and Board of Directors of the entity.*
- (vii). *Details of loans made by and to the entity*
- (viii). *For all channels registered as news channels with MIB – Registered language(s) of operation, actual language(s) of operation, time slots for news programs*

B. Reports to be submitted to the Licensor and regulator (confidential)

- (i) *Subscription and advertisement revenue of the entity/ company*
- (ii) *Advertising rates*
- (iii) *Top ten advertisers for each media outlet of the entity*

Changes in any of the parameters (i) to (vi) listed above must be reported to the licensor and regulator within thirty days of implementation of the change.”

6.26 From the foregoing discussions one can see that there are quite a few disclosures / report that the stakeholders are required to make/ submit to the licensor (MIB) and the Regulator (TRAI). A question arises whether these disclosures are necessary and if yes, whether they are sufficient?

Issue for Consultation

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.

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.

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

Chapter VII

Summary of 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.**
- 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?**
- Q3. There are regulatory agencies like CCI and SEBI among others that monitor and regulate mergers, acquisitions, and takeovers. Is there a need for any additional regulatory/ monitoring mechanism? Do you think there's a need to monitor takeovers, acquisitions of media companies, especially the news media companies?**
- 3.1 If yes, which agency/ ministry should be entrusted with the task of such data collection, regulation & monitoring?**
 - a. Whether such monitoring/ control be ex-ante as is the case with combinations in the Competition Act 2002?**

- b. What should be the procedure of reporting and monitoring?
What should be the periodicity of such reporting?**
- c. What should be the powers of the concerned authority for enforcing regulatory provisions, inter-alia including imposition of financial disincentives, cancellation of license/ registration etc.?**

3.2 If no, please provide an elaborate justification as to why there is no need for such a mechanism? Provide market data to substantiate your opinion.

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.

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.

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.

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.

Q8. Which media segment amongst the following would be relevant for encouraging viewpoint plurality?

- 1. Print media viz. Newspaper & magazine**
- 2. Television**
- 3. Radio**
- 4. Online media/Digital media/OTT**
- 5. All or some of the above**

Please substantiate your answer with appropriate reasons.

Q9. Should the word 'media' include television, print media, digital/online media, and other media entities? Alternatively, whether 'television' as a media segment should include only DPOs (including LCOs) or only Broadcasters or both for ensuring viewpoint plurality in the television segment? Please justify your answer.

Q10. What should be the basis of classification of relevant geographic markets for evaluating concentration in media ownership? Should it be aligned with state or a region/ Metro/ Non-metro cities or the whole country? Please support your answer with reasons.

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.

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.

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.

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.

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.

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?

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?

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.

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.

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.**

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.

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.

Q23. Considering the fact that sectoral regulators have played important role in bringing necessary regulations to facilitate growth and competition and to promote efficiency in operations of Telecom Services (Telecommunications and Broadcasting), in your opinion, should Merger & Acquisitions in media sector be subjected to sector specific regulations? Please justify your response.

Q23a. If yes, which among the following should be taken as the criteria for the same-

(i) minimum number of independent entities in the relevant market

(ii) maximum Diversity Index Score

(iii) any other measure

Q23b. If no, what mechanism would you suggest for regulator to use for ensuring smooth and equitable growth of the sector?

Q24. In your opinion, should any entity be allowed to have an interest in both broadcasting and distribution companies/entities?

Q24a. If “Yes”, how would the issues of vertical integration be addressed?

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?

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

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.

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.

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

Glossary

S.No.	Abbreviation	Description
1	CCI	Competition Commission of India
2	DTH	Direct to Home
3	DPO	Distribution Platform Operators
4	FM	Frequency Modulated
5	HITS	Headend in the sky
6	HHI	Herfindahl-Hirschman Index
7	M&A	Merger and Acquisition
8	M&E	Media and Entertainment
9	MIB	Ministry of Information and Broadcasting
10	MSO	Multi System Operator
11	NCLT	National Company Law Tribunal
12	NCLAT	National Company Law Appellate Tribunal
13	OTT	Over-The-Top
14	RNI	Registrar of Newspaper for India
15	SEBI	Securities and Exchange Board of India
16	TRAI	Telecom Regulatory Authority of India

Definition of the term ‘Control’ in various legal instruments

A. The definitions of ‘Control’ and ‘group’, as given in clauses (a) and (b) of Section 5 of the Competition Act 2002, are reproduced below:

“(a) ‘Control’ includes controlling the affairs or management by—

(i) one or more enterprises, either jointly or singly, over another enterprise or group;

(ii) one or more groups, either jointly or singly, over another group or enterprise;

(b) ‘group’ means two or more enterprises which, directly or indirectly, are in a position to-

(i) exercise twenty-six per cent or more of the voting rights in the other enterprise; or

(ii) appoint more than fifty per cent of the members of the board of directors in the other enterprise; or

(iii) control the management or affairs of the other enterprise;”

B. According to Notification 481 (E) passed on 4th March 2011, the following changes were made to the above-mentioned clauses:

“In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002 (12 of 2003), the Central Government, in public interest, hereby exempts the ‘Group’ exercising less than fifty per cent of voting rights in other enterprise from the provisions of Section 5 of the said Act for a period of five years.”

The abovementioned exemption was further extended for a period of five years by a notification 673(E) dated 4th March 2016. No further notification has been issued on or after 4th March 2021.

C. In this regard, it is also worth noting the definition of ‘control’ in Regulation 2(1)(e) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 (‘Takeover Code’), which also emphasizes on the

importance of agreements between parties that could significantly contribute to control:

“Control includes the right to appoint the majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.”

D. In addition to considering the definition of ‘control’ given in the Competition Act and the SEBI takeover regulations, the definitions of ‘associated company’, ‘control’, ‘subsidiary’ and ‘relatives’ as given in the Companies Act 2013 are also relevant for regulating market dominance through ‘control’ of the competing entities. These are reproduced below:

“(6) “associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation.—For the purposes of this clause, “significant influence” means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;”

“(27) “control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;”

“(77) “relative”, with reference to any person, means any one who is related to another, if—

(i) they are members of a Hindu Undivided Family;

(ii) they are husband and wife; or

(iii) one person is related to the other in such manner as may be prescribed;”

“(87) “subsidiary company” or “subsidiary”, in relation to any other company

(that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or*
- (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:*

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.—For the purposes of this clause,—

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;*
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;*
- (c) the expression "company" includes any body corporate;*
- (d) "layer" in relation to a holding company means its subsidiary or subsidiaries;"*

E. The definition for associate could be further extended by including one aspect of the Meaning of Associated Enterprise as given in Clause 2 (c) of Section 92A in Chapter X of the Income Tax Act 1961 as follows:

"Two enterprises shall be deemed to be associated enterprises if a loan advanced by one enterprise to the other enterprise constitutes not less than 51% of the book value of the total assets of the other enterprise."

This suggests that if the loan advanced by an enterprise is a substantial amount (more than half of assets), then this can amount to exercise of significant influence over the other enterprise, sufficient enough for them to be termed associated enterprises.

**TRAI Recommendations on Disqualification of Certain Entities
for Entry Into Broadcasting and Distribution Activities**

Media influences ideas and therefore can swing opinions. It is, therefore, important that an arm's length distance is ensured between the media and organs of governance, political institutions and other entities which have a profound sway over public opinion. In many developed democracies, certain entities such as political and religious bodies are explicitly debarred under the relevant laws from holding broadcasting licences. In this regard, TRAI has issued Recommendations on Issues Relating to Entry of Certain Entities into Broadcasting and Distribution Activities dated 12th November 2008 and 28th December 2012. Salient points of these recommendations are as below:

- (i) Political bodies should not be allowed to enter into broadcasting activities.
- (ii) Pending enactment of any new legislation on broadcasting, the disqualifications stated below for political bodies to enter into broadcasting and/or distribution activities should be implemented through executive decision by incorporating the disqualifications into Rules, Regulations and Guidelines as necessary.

“Disqualification of political bodies:

- (a) A body whose objects are wholly or mainly of a political nature;*
- (b) A body affiliated to a body, referred to in clause (a);*
- (c) An individual who is an officer of a body, referred to in clause (a) or (b);*
- (d) A body corporate, which is an associate of a body corporate referred to in clause (a) or (b);*
- (e) A body corporate, in which a body referred to in any of clauses (a) and (b) is a participant with more than a five per cent interest;*
- (f) A body which is controlled by a person referred to in any of clauses (a) to (d) or by two or more persons, taken together;*

(g) A body corporate, in which a body referred to in clause (f), other than one which is controlled by a person, referred to in clause (c) or by two or more such persons, taken together, is a participant with more than a five percent interest.”

- (iii) Religious bodies may not be permitted to own their own broadcasting stations and teleports. However, broadcasting channels may be permitted to carry programmes aimed at the propagation of different religious faiths subject to strict compliance with the applicable content code or programme code, as the case may be.
- (iv) Urban and local bodies, Panchayati Raj bodies and other publicly funded bodies should not be allowed to enter into broadcasting activities.
- (v) The Central Government Ministries and Departments, Central Government owned companies, Central Government undertakings, Joint ventures of the Central Government and the private sector and Central Government funded entities should not be allowed to enter into the business of broadcasting and/or distribution of TV channels.
- (vi) State Government Departments, State Government owned companies, State Government undertakings, Joint ventures of the State Government and the private sector, and State Government funded entities should not be allowed to enter into the business of broadcasting and/or distribution of TV channels.
- (vii) If the Central Government has already accorded permission to any State Government/State Government owned companies/State Government undertakings/Joint venture of the State Government and the private sector/State Government funded entities to enter into the cable distribution platform, then the Central Government should provide an appropriate exit route.

Methods to measure market concentration

Concentration Ratios

1. The method of concentration ratio is usually represented as CR_n where 'n' refers to the number of firms used to study the concentration. Concentration ratio is calculated by adding the market shares of the n largest firms in a relevant market. Four firm concentration ratio (CR4) and five-firm concentration ratio (CR5) are the two most widely used concentration ratios used in anti-trust cases. In broadcasting, there is significant variation in the number of firms considered for calculating concentration ratios, as well as what constitutes a concentrated market. The *Media and Internet Concentration in Canada Report 1984-2015* published by CMCRP, defines CR4 of more than 50% and a CR8 of more than 75% as indicators of media concentration. Netherlands's National Regulatory Authority (NRA) uses CR1, CR2, and CR3, but does not mention thresholds to establish concentrated market. According to the Group of Specialists on Media Diversity, Council of Europe, a CR3 between 0 and 35% is low concentration, a CR3 between 36 and 55% indicates moderate concentration and a CR3 above 56% reveals high concentration.
2. Several academics have criticized the use of concentration ratio for assessing market power. A major point of criticism is that concentration ratios ignore smaller firms entirely and overestimate the effect of larger firms. Concentration ratios also fail to account for other determinants of competition — such as barriers to entry, economies of scale or scope, rapidly changing technology, or firm-specific characteristics — and over emphasize the impact of mergers and acquisitions.

Lerner's Index

3. Another method to analyse market concentration is the Lerner's index which recognizes how the industry is structured and its effect on market power. It is defined as:

$$Lerner's\ index = \frac{p - c}{p}$$

where p is the selling price of good and c is the marginal cost required to produce that good.

4. There are several problems with this measure; for instance, it fails to account for demand shocks that might affect the price of good, keeping the monopoly power intact, and the marginal cost required for this index is extremely difficult to calculate. Further, Meschi, Mayal, and Mehrotra (2017) cite complementarity, network effects, and learning curve as factors adding inaccuracies to the index.

Herfindahl-Hirschman Index

5. Third and the most widely used tool is the Herfindahl-Hirschman Index (HHI). It is the sum of squares of market shares (%) of all firms in the identified market. First significant mention of using HHI to assess market power in anti-trust cases appeared in the US Department of Justice's Vertical Merger Guidelines of 1984, followed by the 1992 statement on Horizontal Merger Guidelines. HHI also finds its mention in European Commission's Merger Guidelines, Netherlands' NRA (*Commissariaat voor de Media*) in its yearly Media monitor publication, NRA of the Dutch-speaking Community of Belgium (*Vlaamse Regulator voor de Media*) in Media concentration report, and the Canadian Media Concentration Research Project (CMCRP).
6. This index was feasible for regulators since it only involved data concerning market share of firms. Despite its prevalence and popularity, it has been criticized for several reasons. HHI overstates the competitive impact of mergers and understates the value of fringe firms. Furthermore, measurement errors of large firms drastically affect the HHI calculations.

Like concentration ratios, HHI fails to identify nuances in the market structures, which include barriers to entry, economies of scale or scope, rapidly changing technology, or firm-specific characteristics.

Diversity Index:

7. The Diversity Index has been developed by the Federal Communications Commission, United States of America in the year 2003 in its efforts to develop analytical tool to measure viewpoint plurality. The Diversity Index used HHI as the foundation and was essentially developed as the extension and modification of the same. FCC describes the methodology of calculating diversity index in following terms:

“In terms of calculating the Index, within each medium we combine commonly- owned outlets and calculate each owner’s share of the total availability of that medium. We then multiply that share by the share of the medium in question in the total media universe (television plus newspaper plus radio plus Internet). Once these shares in the overall ‘diversity market’ have been calculated, we add together the shares of properties that are commonly- owned (e.g., a newspaper and a television station), square the resultant shares, and sum them to get the base Diversity Index for the market in question.”⁴¹

The above methodology can be clarified in the following terms⁴²:

- a. An owner’s holdings in each medium (television, newspapers, radio, and the Internet) are first computed separately, with an owner’s ‘share’ of a particular medium calculated in terms of the proportion of the available outlets that the owner controls.
- b. The owners’ shares for each medium were weighted separately, with the medium- specific weights being derived from consumer survey.

⁴¹ Federal Communications Commission, 2003.

⁴² Phillip M Napoli, ‘Assessing Media Diversity in the US: A Comparative Analysis of the FCC’s Diversity Index and the EU Media Pluralism Monitor’, Media Pluralism and Diversity (2015).

- c. The market share of the entity in each media segment in the market is then multiplied by the share of the corresponding media segment in that market to calculate the weighted market share of the entity in each media segment.
- d. The weighted market shares of all the media segments are then added together to derive weighted ownership share of each entity.
- e. Once this process was completed for all of the holdings of each firm in the market, each firm's total share was squared, then summed (following the HHI methodology) to produce the Diversity Index for that market.

Metrics to measure consumption in a relevant market

Reach

Reach of a media outlet means the percentage of people who are exposed to a media outlet in a given period of time. This metric does not measure the actual viewing/reading of the media content, it only takes into consideration the number of people exposed to the media outlet at least once e.g. the number of people who have watched at least 'x' minutes of a specific television channel in a given time period. Reach of a media outlet can measure the degree to which there is a potential diversity of viewpoints consumed by the population. It can be measured with the help of data collected by rating agencies. With respect to television media, data generated by Broadcast Audience Research Council (BARC) can be used to calculate the reach of a media outlet. BARC defines reach as the number of viewers who watched at least one minute of the content. Further, Media Research Users Council India (MRUC India) conducts Indian Readership Survey for each quarter. They provide readership data of top daily newspaper for different States over a period.

Volume of Consumption

This metric takes into account the frequency, or the time spent by consumers in consuming media content in a relevant market. It measures the minutes of viewing and reading in case of television and print media outlets respectively, as opposed to only measuring the number of people exposed to these media outlets.

With respect to television media outlets, volume of consumption can be measured with the help of television ratings calculated by the rating agencies. These rating agencies define television viewership as a percentage of households that watched at least one minute of the channel in a week. In the recommendations dated 12th August 2014, it was mentioned that the television ratings estimated by TAM Media Research can be used to measure reach and volume of consumption of television channels. However, since TAM Media Research did not register itself with the MIB as per the MIB's Policy

Guidelines for Television Rating Agencies in India dated 10th January 2014 and later discontinued its operations, ratings provided by BARC can be used for the purpose of measuring volume of consumption of television channels.

BARC's various measurement products cover distinct sample universes.⁴³ A sample universe is the target population in which various audience estimates are projected. The sample universe for BARC's measurement panel consists of persons two years of age and older residing in television households in all parts of India except certain geographies that are unreachable due to harsh terrain, distance, or political unrest and safety concerns. These uncovered areas include Andaman & Nicobar Islands, Lakshadweep, Kashmir Valley, Ladakh UT, and Arunachal Pradesh (except Itanagar).

The BARC India Panel is recruited in a two-stage process. The first stage consists of the Establishment Survey (ES). This is a large-scale face-to-face survey of a sample of approximately 3 lakh households from the target population. The ES furnishes a list of households (called sampling frame) from which the panel itself is drawn. The second stage of the process is Recruitment. It is in the recruitment stage where the appropriate candidate households are approached to join the panel.

The total sample target for Broadcast India is set at 3,00,000 households and is set for two dimensions: Urban/Rural and Hindi Speaking Markets (HSM)/South.⁴⁴ Similarly, the current panel target is 44,000 households which is also set for two dimensions i.e., Urban/Rural and HSM/South. Thus, the parameters/computations carried out by BARC can be used to measure volume of consumption. However, a caution must be kept in mind that the sample size used by BARC is very limited and the results might not be accurate depiction of the consumption patterns of the consumers. TRAI in its Recommendations on "Review of Television Audience Measurement and Rating System in India" dated 28th April 2020 suggested that BARC should be mandated to increase the sample size from the existing 44,000 to 60,000 by the end of 2020, and 1,00,000 by the end of 2022 using the existing

⁴³ <https://barcindia.co.in/measurement/television-audience-measurement-description-of-methodology.pdf>

⁴⁴ As per BARC India, this target will be increased to 55,000 households in 2021.

technology. TRAI also suggested other structural reforms in the constitution of BARC so that veracity and impartiality of the data can be maintained. Unless these reforms are undertaken in letter and in spirit, the data collected by BARC might give an inadequate depiction of the consumption patterns of the consumers.

Revenue

Media industry is a dual sided market with two major revenue streams, namely, advertising revenue and subscription revenue. In economic analysis, revenue is considered as a measure of consumption. However, the relationship between revenue and ability to exert influence on public opinion may not be direct. In the absence of data regarding the previous two metrics, revenue is used as a measure of relative level of consumption of a particular media outlet. Revenue of media outlets can be measured using their income statements.

Reference dated 16th May 2012 from MIB

उदय कुमार वर्मा
र. न
UDAY KUMAR VARMA
SECRETARY
Tel.: 011-23382639
Fax.: 011-23383513



D.O. No. 9/9/2012-BP&L

भारत सरकार
सूचना और प्रसारण मंत्रालय
शास्त्री भवन, नई दिल्ली-110001
GOVERNMENT OF INDIA
MINISTRY OF INFORMATION & BROADCASTING
SHASHTRI BHAWAN, NEW DELHI-110001
16th May, 2012

Dear Shri Khullar,

You are aware that Indian media landscape is witnessing changes due to convergence of technologies. Major players are looking for expanding their business interest in various segments of print and broadcasting sectors. In this scenario, the issue of media ownership and the need for cross media restrictions assumes great significance.

2. The Authority has earlier looked into the issue of media ownership and made its recommendations on 25.2.2009. These recommendations were examined in the Ministry and, as recommended by TRA, the Ministry sponsored a study through Administrative Staff College of India (ASCI) in July 2009. The study dealt with the nature and extent of cross media ownership, existing regulatory framework, relevant market and international experience. The ASCI report sheds light, *inter-alia*, on the following issues:-

- i. Cross media ownership rules for broadcasting, print and the new media must be put in place since there is ample evidence of market dominance in certain relevant markets.
- ii. As regards vertical integration, the report, *inter-alia*, recommends that a cap on vertical holdings must be carefully determined based on existing market conditions.
- iii. Prior to setting of media rules there is a need to conduct periodic market analysis taking note of structure of the relevant markets and competition.
- iv. Market survey and analysis needs to be made every 3-4 years and ownership rules changed accordingly.
- v. Disclosure regarding cross media affiliations and ownership to be in public domain.
- vi. There should be a regulatory oversight on carriers so as to ensure non discriminatory access.

3. The study of ASCI has since been placed in the public domain for seeking stakeholder views/ comments. In view of fact that several changes have taken place over the last three years in the media sector as also keeping in view the technological advancements, developments in convergence and changes in media consumption pattern, a stage has

Contd....Page-2/-

come to address the issues of cross media restrictions and safeguards. In view of this, the Authority may re-look at the following issues and make appropriate recommendations:-

- I. In the present emerging scenario more and more broadcasting companies owning television channels are venturing into various distribution platforms, namely cable TV distribution, DTH and IPTV etc. Similarly many companies owning distribution platforms are also entering into television broadcasting. This type of vertical integration can seriously affect competition and promote monopolistic practices. Therefore there is a need to address such vertical integration. TRAI may suggest measures that can be put in place to address vertical integration in order to ensure fair growth of the broadcasting sector.
 - II. In another scenario companies have controls/ownerships across Print, TV and Radio leading to horizontal integration. At present there is no restriction for a company to have ownership across Radio, Television and Print mediums. Such a situation may prevent plurality of news and views and, in turn, may have several implications including ensuring quality services at reasonable prices. TRAI may also look at this issue and suggest appropriate measures in this regard.
4. I, therefore, request you to give your considered attention to the entire issue from a fresh perspective and send your recommendations under Section 11(1) (a) (ii) and (iv) of the TRAI Act, 1997, on the above issues.

Regards,

Yours sincerely,

Uday Kumar Varma
(Uday Kumar Varma) —

Shri Rahul Khullar
Chairman
Telecom Regulatory Authority of India (TRAI)
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg (Old Minto Road)
New Delhi – 110 002.

Back reference dated 19th February 2021 from MIB

No.8/17/2014-BP&L
Government of India
Ministry of Information and Broadcasting
(BP&L Division)

Shastri Bhawan, New Delhi-110001
Dated, the 19th February, 2021

To

Shri Sunil K Gupta
Secretary,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
New Delhi.

Subject: TRAI's recommendations on 'Issues regarding to Media Ownership' dated 12.08.2014 - reg.

Sir,

I am directed to refer to TRAI's recommendations on 'Issues regarding to Media Ownership' dated 12.08.2014.

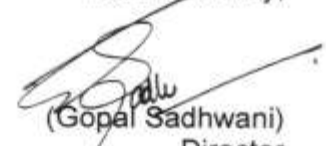
2. In this regard, it may be noted that considerable time has passed since the recommendations were made and the Media and Entertainment (M&E) landscape has changed drastically, particularly with the advent of new digital technologies in this sector. Therefore, it has been felt during the examination of the recommendations, that some of the issues, need further consideration by TRAI vis-à-vis the recommendations:

- (i) In the recommendation, television and print segment is used for media. It is not clear that television is used for both broadcasters and DPOs. Further if it is used only for broadcasters, what HHI formula will be used;
- (ii) Basis of States and Language (Para 3.25) may be reviewed as North East (NE) is left free;
- (iii) In para 3.29, TRAI has stated three metrics i.e. (i) Volume of consumption; (ii) Reach; and (iii) Revenue to measure the influence of a media entity in the relevant market. It is requested to explain in detail the process of measurement of these metrics;
- (iv) Para 3.33 – (a) Circulation + reach of newspapers is problematic. (b) BARC data needs authentication on Bouquet's impact on viewership;

- (v) While in para 3.36 reach metric has been used in print while in para 3.37 circulation has been used for market share. This is apparent contradiction.
- (vi) *HHI index, which measures concentration of media in a relevant market, needs a relook as after examination, it was felt to be complex to be implemented. Applicability of other measurement tools requires to be explored.* In para 3.45 it has been recommended that the HHI be adopted to measure concentration in media segment in relevant market. However, it is not clear it is for which media segment.
- (vii) Para 3.61 – Says cross media ownership rules could be revised after three years of announcement of rules by the licensor. In this regard it is submitted that these recommendations were given by TRAI in 2014 i.e. about 6 years ago. Therefore, TRAI needs to reconsider recommendation on cross media ownership.
- (viii) *Recommendation on vertical integration amongst DTH Licensees has already been accepted.*

3. In view of the above and subsequent developments/expansion like OTT in the Broadcasting Sector, TRAI is requested to have a re-look on recommendation "Issues regarding to Media Ownership" dated 12.08.2014 and provide a fresh set of recommendations in the matter.

Yours faithfully,



(Gopal Sadhwani)
Director
Tele: 23385016
Email: sadhwani.gopal@gov.in

International Scenario

For efficiently regulating the M&E sector in India, it becomes imperative to draw on the international practices as they form a readymade encyclopaedia for understanding the pros and cons of each potential measure. With the aforesaid objective in mind, this section examines the media markets of United States, Canada, European Union, United Kingdom, and Australia vis-a-vis cross media ownership and vertical integration in broadcasting.

UNITED STATES OF AMERICA**M&E Industry Landscape**

USA M&E industry is known to be the largest in the world. At around \$717 billion, it represents one-third of the global M&E industry. Like all other major economies of the world, USA is also witnessing the transition from traditional media to digital media. The increased level of competition coupled with the changed consumer preferences accelerated by the pandemic has changed the dynamics of the M&E sector and the same can be gauged from the following facts:

- Subscriptions of Pay TV market retracted by 23% from 97.9mn in 2016 to 75.6mn in 2020, and revenue from US\$108.9bn in 2016 to US\$87.3bn in 2020⁴⁵.
- USA is the largest OTT market in the world. However, during the period 2021-25, OTT market growth is expected to cool significantly, increasing at a 6.9%⁴⁶.
- The print industry's financial fortunes and subscriber base have been in decline since the mid-2000s. The estimated total US daily newspaper circulation (print and digital combined) in 2020 was 24.3 million for weekday and 25.8 million for Sunday, each down 6% from 2019.⁴⁷
- Revenue performance for the Radio Broadcasting industry is expected to post a double-digit decline in 2020.⁴⁸

⁴⁵US Edition: Entertainment and Media Outlook 2021-2025(*PwC*)<<https://www.pwc.com/us/en/industries/tmt/library/global-entertainment-media-outlook.html>>

⁴⁶Ibid.

⁴⁷Feature, "Newspaper Factsheet" (*Pew Research Centre*, 29th June 2021) <<https://www.pewresearch.org/journalism/fact-sheet/newspapers/>>

⁴⁸Radio Broadcasting Industry in the US- Market Research Report (*IBIS World*, 22nd July 2021) <<https://www.ibisworld.com/united-states/market-research-reports/radio-broadcasting-industry/>>

Regulation of M&E Sector

In United States, broadcasting is subject to regulation both at the local and federal level. The specialist regulator at the federal level is the Federal Communications Commission while Federal Trade Commission and Department of Justice regulate competition in the cable TV sector. The Telecommunications Act, 1996 requires the Commission to review its ownership rules every four years and determine whether they are in the public interest. In case the regulation is no longer in public interest, it can be repealed or modified.⁴⁹

For decades, the FCC's media ownership rules limited common ownership of broadcast radio stations, broadcast television stations, and daily newspapers within the same local market. In 2017, as described in "Ownership Rules Subject to Quadrennial Review," the FCC repealed two of these rules, thereby permitting common ownership of newspapers, radio stations, and television stations within the same local television market. In addition, the FCC relaxed its rule limiting common ownership of television stations within the same market, as described in "Local Attribution Rules," as well its standards of attributing television station "Ownership." In April 2021, the U.S. Supreme Court upheld the FCC's changes to its media ownership rules as not being arbitrary or capricious.⁵⁰

FCC has published the updated media ownership rules in June 2021 in four categories which have been described below:⁵¹

1. **Cross ownership:** Restrictions on cross ownership rules for newspaper/broadcast and radio/television have been eliminated in 2017. The rule for radio/television cross ownership prohibited an entity from owning more than two television stations and one radio station within the same Designated Market Area(DMA). The FCC found that it could no longer justify retention of the rule in light of broadcast radio's diminished contributions to viewpoint diversity and the variety of other media outlets that contribute to viewpoint diversity

The rule for newspaper/broadcast cross ownership prohibited common ownership of a daily print newspaper and a full-power broadcast station (AM, FM, or TV) if the station's service contour encompassed the newspaper's community of publication. The FCC found the lack of need of this rule in light of the multiplicity of sources of news and information

⁴⁹ Section 202(h), Federal Communications Commission (1996). *Telecommunications Act, 1996*.

⁵⁰FCC v Prometheus Radio Project 141 S. Ct. 1150 (2021).

⁵¹ Federal Communications Commission Media Ownership Rules, Updated June 1, 2021 (*Congressional Research Service*).

in the current media marketplace and the diminished role of daily print newspapers.

2. **Local TV/Radio multiple ownership:** An entity may own or control two television stations in the same television market, so long as the overlap of the stations' signals is limited and the joint control does not include two of the four most widely watched stations within the market and at least eight independently owned TV stations would remain in the market after the proposed combination.

In its 2017 Reconsideration Order, the FCC eliminated the "eight voices" component of the and it decided that in applying the restriction on ownership of two top-four ranked stations in the same market, it would conduct case-by-case evaluations to account for circumstances in which the application of the prohibition may be unwarranted.

Also, in 2016, the FCC retained its "failed station/failing station" waiver test. Under this policy, to obtain a waiver of the local television (duopoly) rule, an applicant must demonstrate that

- (1) one of the broadcast television stations involved in the proposed transaction is either failed or failing;
- (2) the in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station; and
- (3) selling the station to an out-of-market buyer would result in an artificially depressed price.

3. **Dual Network Rule:** The dual network rule common ownership of two of the "top four" networks but otherwise permits common ownership of multiple broadcast networks.
4. **National TV Ownership:** Section 629 of the Consolidated Appropriations Act, 2004 amended the Telecommunications Act of 1996 and directed the FCC to adopt rules that would cap the reach of a single company's television stations at 39% of U.S. television households. For determining the aforementioned limit, FCC takes into account actual subscriber numbers rather than cable homes. Further, taking into account that Direct Broadcast Satellite (DBS) and other non cable providers are gaining traction in the market, FCC took into account all MVPD subscribers, rather than cable subscribers alone.⁵²

At present, the national ownership cap stands at 39 percent. The National TV Ownership rule does not limit the number of stations a single entity

⁵² Suzanne Rab and Alison Sprague (2014). *Media ownership and control: Law, economics and policy in an Indian and international context*. Hart Publishing.

may own provided that the station group collectively reaches no more than 39 percent of all US TV households.

In 1985 the FCC adopted a rule that, for the purpose of applying its national ownership rule, discounted the number of television households reached within a DMA by stations operating in the Ultra High Frequency (UHF) band by half in measuring a station owner's reach. This is also known as the UHF discount. With the discount, a single entity that owns exclusively UHF stations could effectively reach 78% of U.S. television households, or double the national ownership cap of 39% of U.S. television households.

In 2016, FCC eliminated the UHF discount. However, this was reinstated in 2017 stating that the elimination had the effect of substantially tightening the national cap for companies without any analysis of whether this tightening was warranted given current marketplace conditions. In December 2017, the FCC launched a new rulemaking proceeding to examine whether to modify or rescind the UHF discount and national ownership cap. As of May 2021, that proceeding remains open.

Regulation of media company mergers in US

As a general matter, mergers are subject to the general review process created by the Sherman Act, 1894 and the Clayton Act, 1914 which give the antitrust authorities the right to try to convince a court to block any merger that they believe would substantially lessen competition. FCC is required to approve the transfer of licenses or authorisations issued by it to another party. In reviewing such transfer, the FCC must determine whether "the public interest, convenience and necessity", would be served by the transfer which includes, although is not restricted to the assessing the competitive impact of the license transfer.⁵³ In addition, the FCC also determines the likely effects of the transfer of the private sector deployment of advanced services, the diversity of license holders, and the diversity of information sources and services available to the public.

On the other hand, US-FTC along with the DOJ regulate competition in the cable TV sector under general antitrust laws (Sherman Act and Clayton Act). Unlike the FCC, which has the abovementioned concerns while approving a merger, the US-FTC focuses solely on competitive effects of a transaction.⁵⁴

⁵³ Section 214 and 310(d)), Federal Communications Commission (1996). *Telecommunications Act, 1996*.

⁵⁴ Alexander Maltas, Tony Lin, and Robert Baldwin (2016). "A comparison of the DOJ and FCC merger review processes: A practitioner's perspective". In: *The Antitrust Source*.

The burden of proof before both regulators is different. While the DOJ bears the burden of proof to establish why a transaction should be blocked, in an FCC proceeding, the merging parties bear the burden of proof to establish why the FCC should approve the transaction. Procedurally, while the DOJ conducts the review of a proposed merger without public access, the FCC reviews major transactions inviting the public to participate.⁵⁵

In 2015, the US-FTC and FCC signed a Memorandum of Understanding to coordinate their consumer protection methods. The memorandum outlines methods by which the agencies will coordinate and share information and recognises the agencies expertise in their respective jurisdictions.⁵⁶

Some case studies of merger in M&E sector (in the context of use of HHI)

The US antitrust enforcement agencies measure market concentration by the Herfindahl–Hirschman Index (HHI). The HHI requires determining each market participant's respective market share, squaring that share, and then summing the squares. According to the Horizontal Merger Guidelines of Department of Justice and Federal Trade Commission:

1. mergers that result in an increase in the HHI of less than 100 points, or post-merger HHIs below 1,500, are unlikely to have adverse competitive effects and ordinarily do not require additional analysis
2. Markets with post-merger HHIs between 1,500 and 2,500 are regarded as moderately concentrated. Mergers resulting in moderately concentrated markets that involve an increase in the HHI of more than 100 points potentially raise significant competitive concerns and often warrant scrutiny.
3. If the HHI is over 2,500, and the increase from pre-merger would be between 100 and 200 points, such mergers may raise significant competitive concerns and often warrant scrutiny. If the increase would be more than 200 points, then the merger raises significant competitive concerns and will be presumed by the enforcement agencies to create or enhance market power unless consideration of qualitative factors militates against that conclusion

In the light of the above guidelines, we can study the following two cases as an example:

⁵⁵ Alexander Maltas, Tony Lin, and Robert Baldwin (2016). "A comparison of the DOJ and FCC merger review processes: A practitioner's perspective" (*The Antitrust Source*).

⁵⁶FCC-FTC Consumer Protection Memorandum of Understanding <https://www.ftc.gov/system/files/documents/cooperation_agreements/151116ftcfcc-mou.pdf>

United States of America v Gray Television Inc and Quincy Media Inc (2021)

On January 31, 2021, Defendant Gray Television, Inc. (“Gray”) agreed to acquire Defendant Quincy Media, Inc. (“Quincy”) for approximately \$925 million in cash. The United States filed a civil antitrust Complaint on July 28, 2021, seeking to enjoin the proposed acquisition. After analysing the market, the United States District Court for the District of Columbia held in its competitive impact statement that in each designated market area, the post-merger HHI would exceed 2,500, and the merger would increase the HHI by more than 200 points. As a result, the proposed merger is presumed likely to enhance market power under the Horizontal Merger Guidelines issued by the Department of Justice and the Federal Trade Commission.

United States Of America v Anheuser-Busch Inbev Sa/Nv, Anheuser-Busch Companies, Llc, And Craft Brew Alliance, Inc

The United States of America brought this civil antitrust action to enjoin Anheuser Busch InBev SA/NV (“ABI”) and Anheuser-Busch Companies, LLC (“AB Companies”), from acquiring Craft Brew Alliance, Inc. (“CBA”). In Competitive Impact Statement of United States District Court for the Eastern District of Missouri Eastern division, it has been stated that the transaction would result in a moderately concentrated market with a post acquisition HHI of nearly 2,500 points, just below the threshold denoting a highly concentrated market. Moreover, the HHI would increase as a result of the transaction by more than 700 points. Therefore, ABI’s proposed acquisition of CBA potentially raises significant competitive concerns.

To remedy the adverse effect, the proposed Final Judgment required Defendants, within 10 calendar days after the entry of the Stipulation and Order by the Court, to divest certain assets in Hawaiian beer market (the relevant market).

CANADA

Media & Entertainment Industry Landscape

Canada is a mature digital economy, ranking high in most global technology benchmarks. There are 14.3 million broadband households, with a penetration rate of over 102% and over 26 million mobile Internet subscribers. The latest trends in the M&E sector can be traced as follows:

- Total broadcasting revenues in 2020 declined overall by -6.6%, with the commercial radio (-20.9%) and private conventional television (-14.3%) sectors being most impacted.⁵⁷

- According to a Statistics Canada report released on November 03, 2021, Canadian newspapers' revenues fell by 22 per cent over two years.⁵⁸
- There will be 23.8 million subscription OTT viewers in Canada this year, which is up 4.1% year over year (YoY) and on top of a whopping 14.9% growth rate in 2020.⁵⁹

Regulating Media & Entertainment Sector

Canada's primary regulator of the telecommunications and broadcasting industry is Canadian Radio-Television and Telecommunications Commission (CRTC) which has been established under Canadian Radio-Television and Telecommunications Commission Act and it derives authority for regulating telecommunication including internet and audio-visual media distribution from Telecommunications Act and Broadcasting Act.

The Commission, as the regulatory authority entrusted with overseeing and regulating the Canadian broadcasting system, must ensure on behalf of the public that the policy objectives of ensuring viewpoint plurality are being achieved. With increasing media mergers and acquisitions taking place in the 1990s, three inquiries were called upon. Out of these CRTC's Diversity of Voices inquiry in 2008 culminated in a formal set of rules and thresholds to guide decisions in the future about mergers, acquisitions and consolidations.⁶⁰

- **Ownership Caps**-The restrictions with respect to ownership caps are as follows⁶¹:
 1. As a general rule, the CRTC will not approve transactions that would result in the control by one person of more than 45 percent of the total television audience share (including audiences to both discretionary and over-the-air services);
 2. The CRTC will carefully examine transactions that would result in the control by one person of between 35 percent and 45 percent of the total television audience share.
 3. The CRTC will process expeditiously transactions that would result in the control by one person of less than 35 percent of the total television audience share.

⁵⁸Jeff Labine, 'Newspaper Revenue Down 22 percent in two years, report shows' (*iPolitics*, 3rd November 2021) <<https://ipolitics.ca/2021/11/03/newspaper-revenues-down-22-per-cent-in-two-years-report-shows/>>

⁵⁹Paul Briggs, 'Subscription OTT Services Help Push Canadian Viewership to 28 millions' (*Insider Intelligence*, 4th October 2021) <<https://www.emarketer.com/content/subscription-ott-services-help-push-canadian-viewership-28-million>>

⁶⁰Canadian Radio-television and Telecommunications Commission (2008). *Broadcasting Notice of Public Hearing (2008-11)*.

⁶¹Ibid.

The Commission differentiates between increase in audience share due to normal competition and increase in viewership due to acquisition. Audiences are measured separately for both English and French language markets using the BBM/Nielsen data.⁶²

- **Vertical Integration**-“Access rules” were designed to limit vertically integrated media conglomerates’ ability to foreclose access to their broadcast schedules to outside television and film producers. For conventional over-the-air television stations, three quarters of the programming broadcast has to be purchased from outside sources, while for digital speciality and pay services, at least 25 percent of Canadian programming other than news, sports and current affairs must be produced and obtained from independent producers.
- **Cross ownership rules**-The CRTC, as a general rule, will not approve applications for a change in the effective control of broadcasting undertakings that would result in the ownership or control, by one person, of a local radio station, a local television station and a local newspaper serving the same market.

Merger Control

Under the Broadcasting Act, 1991 prior approval of the Commission is required for changes of control or ownership of licensed undertakings. While the Competition Bureau’s examination of mergers relates exclusively to competitive effects, the Commission’s consideration involves a broader set of objectives under the Act. This may encompass consideration of competition issues in order to further the objectives of the Act. The Bureau’s concern in radio and television broadcast markets relates primarily to the impact on advertising markets and, with respect to broadcast distribution undertakings, to the choices and prices available to consumers. The Commission’s concerns include those of the Bureau except that its consideration of advertising markets relates to the broadcasters’ ability to fulfil the objectives of the Act.⁶³

Consequently, in case of merger review, there is parallel jurisdiction of both the bodies. A transaction must adhere to the Broadcasting Act and the Competition Act, 2002.

Sometimes, the abovementioned parallel jurisdiction has given rise to divergent views as well. For instance, in July 2001, Astral Media Inc. (Astral) filed an application with the CRTC to acquire eight French language radio stations from Telemedia Radio Inc. The Competition Commissioner

⁶² The BBM/Nielsen is a joint venture between the BBM Canada and Nielsen Media research to eliminate duplication of television audience data.

⁶³Government of Canada (2001) *CRTC/Competition Bureau Interface*.

simultaneously filed an application with the Competition Bureau challenging the merger, which involved the two largest French language radio broadcasters in Canada, on the basis that the merger would likely lessen competition substantially in six local radio advertising markets in Quebec.

The Bureau's review and the CRTC's review (which consider competition along with broader public interest factors) came to different conclusions with regards to the competitive impact of the transaction. The Bureau required divestitures to address the impact on competition for advertising on French language radio stations, while the CRTC concluded that the transaction would improve the competitive position of private French language radio and enhance programming quality.⁶⁴

To address the issue of conflicting opinions, in 2013, the Competition Bureau and CRTC entered into a Letter of Agreement⁶⁵ which set out various parameters and objectives for their cooperation, notably-

- **Notification** - The Competition Bureau and CRTC are obligated to notify each other with respect to a review under the Competition Act, Telecommunications Act and the Broadcasting Act where a review or process with respect to the same matter could be carried out by the other Party under its mandate, and exchange timing and other procedural information related to such reviews and processes.
- **Confidentiality** - Neither Party will disclose any confidential information obtained from the other Party to any third parties, without the written consent of the other Party, except as required by law. Where disclosure is required by law, the Party required to disclose the confidential information must give notice to and consult with the other Party on how to protect the interests of any applicable review or process in light of the disclosure requirement. The Party shall give this notice as soon as it becomes aware of the disclosure requirement.

EUROPEAN UNION

Media & Entertainment Industry Landscape

According to a report of May 2021 of European Union⁶⁶, the combination of the COVID-19 impact with the need to adapt to the digital shift puts the news and media sector at risk. The adverse impacts of digitization coupled

⁶⁴Astral Media Inc., on behalf of 3903206 Canada Inc., Telemedia Radio Atlantic Inc. and Radiomedia Inc., Broadcasting Decision CRTC 2002-90.

⁶⁵Letter of Agreement between the Chairman and Chief Executive Officer of the Canadian Radio-Television and Telecommunications Commission and the Commissioner of Competition of the Competition Bureau.

⁶⁶Europe's Media in the Digital Decade (Policy Department for Structural and Cohesion Policies: European Union, May 2021).

with pandemic over sectors other than digital can be seen from the following facts:

- The audio visual and radio sector score ‘high risk’. Commercial free-to-air TV stations reported the highest losses, whereas pay-tv benefited from a surge in subscriptions (for example, in Italy, according to AGCOM[2020] free-to-air TV is estimated to have lost 14.8% for the first semester of 2020, compared to only 0.8% for pay-tv)⁶⁷
- The newspaper sector scores the highest risk, close to the maximum. In all the countries, without exceptions, the revenues in the sector decreased by more than the GDP. The parallel increase in digital subscriptions did not compensate for the losses from print and advertising in any of the countries. ⁶⁸
- Multiple streaming services launched over the past 10 years and rapid consumer adoption in Europe have led to the growth in SVOD revenues, with OTT SVOD subscriptions passing from 300 000 subscriptions in 2010 to over 140 million in 2020.⁶⁹

Keeping in view the dwindling situation of the sector, in December 2020, European Commission released the Media Action Plan⁷⁰ which is the first policy document explicitly setting out a vision and dedicated initiatives for the news media sector. Further, several EU countries have set up dedicated measures for the news media sector (e.g. in France, Denmark, Austria, Sweden and Estonia). These measures include reduced VAT rates, support to news media consumption, support to journalists and direct funding to address the loss of advertising revenues.⁷¹

Regulating M&E Sector

The European Union guarantees “media pluralism” under article 11(2) of the Charter of Fundamental Right. Further, in 2013, the European Parliament issued a resolution in which it called upon member states and the European Commission to take appropriate measures to ensure better monitoring and enforcement of media freedom and pluralism across the EU. However, it should be noted that there are no Europe wide media ownership rules. Each Member State has treated the issue separately. The European Commission, triggered by the European Parliament, entered this area in the early 1990s

⁶⁷Roberta Carlini and Konrad Bleyer-simon, ‘Media Economy in the Pandemic: A European Perspective’ (Centre for Media Pluralism and Media Freedom, April 2021).

⁶⁸ Ibid.

⁶⁹Enveu, ‘OTT Trends in Europe: A European Broadcaster Perspective’ (*Community: By NASSCOM Insights*, 10th June 2021) <<https://community.nasscom.in/communities/media-technology/ott-trends-europe-european-broadcaster-perspective/>>.

⁷⁰Europe’s Media in the Digital Decade (Policy Department for Structural and Cohesion Policies: European Union, May 2021).

⁷¹Le Gall, ‘Europe’s Media in Digital Decade: an action plan to support recovery and transformation in the news media sector’ (*Research4Committees*, May 2021) <<https://research4committees.blog/2021/05/07/europes-media-in-the-digital-decade-an-action-plan-to-support-recovery-and-transformation-in-the-news-media-sector/>>

by issuing a Green Paper with the objective of assessing whether extensive concentration could damage media pluralism.⁷²The Commission, however, concluded that the protection of pluralism is a national concern, and, therefore, the National Competition Authorities and National Regulatory Authorities were better placed to address this concern.

The two primary instruments governing media pluralism at EU level are its Competition Policy and the Audio Visual Services Media Directive.

EU's competition policy framework lies in Articles 101 and 102 of the Treaty on the Functioning of European Union. The EU Merger Regulation complements articles 101 and 102 by allowing the European Commission to control certain concentrations. Under the Merger Regulation, the EC has exclusive jurisdiction for mergers between firms with a European dimension an aggregate turnover of at least 5000 million Euros and a turnover within the European Economic Area of more than 250 million Euros for each of them. It becomes clear that the Regulation covers only large mergers that affect competition in the market in question. However, there is a specific provision that relates to mergers affecting media pluralism, which allows Member States to apply stricter legislation to these mergers. This way the EC allows Member States to apply tougher national regulation where they think media pluralism might be in danger.⁷³

The other instrument intended to deal with media concentration is the Audio Visual Services Media Directive, brought into force in 2010. The legally binding Directive requires Member States to ensure that audio visual media service providers under their jurisdiction shall make easily, directly and permanently available to the recipients of a service at least the following information⁷⁴:

- name of the media service provider
- the geographical address at which the media service provider is established
- the details of the media service provider, including his electronic mail address or website, which allow him to be contacted rapidly in a direct and efficient manner
- where applicable, the competent regulatory or supervisory bodies

⁷² European Commission (1992). *Green Paper on Pluralism and media concentration in the single market: An assessment of the need for community action.*

⁷³ Article 21(4), European Union (2004). *Council Regulation on the control of concentrations between undertakings (No 139/2004).*

⁷⁴ *Directive on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services* (2010), art 5.

However, the transparency requirements as abovementioned are complaint, not information, oriented⁷⁵ as they only ensure that consumers have the information they need to contact a particular media company in order, for instance, to exercise their right of reply or complain about material transmitted rather than giving info about the source of news.

Some Case Studies

In 2017, two cases came before the EU that raised media plurality concerns.

Vivendis and Telecom Italia Media

The EC approved Vivendis acquisition of de facto control over Telecom Italia Media (TIM) subject to remedies. Vivendi is a French media company active in the music, TV, cinema, video sharing and games industries. Vivendi also held a significant non-controlling minority stake (29.9 percent of voting rights) in Media set, the largest broadcaster in Italy and owner of important network infrastructure. On other hand, TIM is the Italian telecommunications incumbent.

During the ECs review, the Italian Communications Authority (Agcom) opposed the transaction on media plurality grounds on the basis that Vivendi would hold equity stakes exceeding 10 percent in both TIM and Media set following the transaction. Italian media plurality rules are designed to prevent any one media company from having excess influence over the national public debate and political agenda. They prohibit companies accounting for a market share of more than 10 percent in the media sector (consisting of press, audio visual media and radio services, cinema, advertising and other activities). The Italian regulator, Agcom, concluded that Vivendi had infringed the plurality rule. Therefore, it ordered Vivendi to divest from its share-holding in one of the holdings. Following this direction, by the Agcom, the EC found that the proposed transaction will not significantly reduce competition in the European Economic Area or any substantial part of it, including Italy.⁷⁶

Fox/Sky Transaction

EC unconditionally cleared the Fox/Sky transaction. Sky is the leading pay-TV operator in a number of European countries. Twenty-First Century Fox (Fox) is one of the six major Hollywood film studios, with TV channel broadcasting activities. The EC found that despite the relatively high combined shares of the parties in the markets of wholesale and retail supply

⁷⁵ Mihaly Galik. *Regulating Media Concentration within the Council of Europe and the European Union*.

⁷⁶ Case M.8465 - Vivendi/Telecom Italia <http://ec.europa.eu/competition/mergers/cases/decisions/m8465_568_3.pdf>

of TV services to end users, there were no competition concerns. It held the increments were limited and competition would remain post transaction.⁷⁷ However, the UK Secretary of State asked Ofcom to assess the impact of the acquisition on media plurality in UK. Ofcom gave a finding of media plurality being endangered due to the increased influence by members of the Murdoch Family Trust over UK news. Following this, the Secretary made a formal referral to the Competition and Markets Authority for an in depth Phase II investigation on public interest grounds. The Authority concluded that this is not in the public interest since such acquisition would provide the Murdoch Family Trust the ability to exert excessive influence over public opinion and the political agenda. The Secretary cleared the acquisition in 2018 on the condition that Fox would divest from Sky News. In case the divestiture of Sky News could not be undertaken, the merger of Sky and Fox would be blocked.⁷⁸

UNITED KINGDOM

Media & Entertainment Industry Landscape

While revenue fell 5% in 2020 due to the pandemic, Britain's E&M sector is expected to grow by 9% in 2021 alone. Continuing this to see a CAGR of 5% until 2025, the UK is estimated to overtake Germany as the largest E&M market in Western Europe by 2025.⁷⁹ Some trends of the UK M&E sector can be traced as follows:

- UK TV production sector revenues declined by 14% to £2.9bn, the lowest level since 2017. Spending by the BBC, ITV, Channel 4 and Channel 5 on programmes from UK production companies dropped by 10% to £1.16bn, the lowest level since 2011 and the first fall in five years.⁸⁰
- Circulation and print revenue shrank by 3.7% and 3.5% respectively in the period June to November 2021.⁸¹
- Radio Broadcasting Industry revenue declined by 11.5% in 2020-21 as demand from advertisers fell significantly.⁸²
- UK digital advertising outperformed expectations in the pandemic, growing by 5% in 2020 overall (with display advertising up 11%). By contrast, non-digital advertising saw significant double-digit declines. It is further

⁷⁷ Case M.8354 - Fox/Sky <https://ec.europa.eu/competition/mergers/cases/decisions/m8354_920_8.pdf>

⁷⁸ Competition and Markets Authority, 21st Century Fox/Sky merger inquiry <<https://www.gov.uk/cma-cases/twenty-first-century-fox-sky-merger-european-intervention-notice>>

⁷⁹ Consultancy.uk, 'UK Media Industry could be worth £88 billion by 2025' (*Consultancy.uk*, 14th July 2021).

⁸⁰ Mark Sweney, 'UK Broadcasters cut spending on British Shows in lowest point in decade' (*The Guardian*, 08th September 2021).

⁸¹ Ella Sagar, 'Reach ad revenue down 29% vs pre-pandemic period' (*Mediatel News*, 23rd November 2021) <<https://mediatel.co.uk/news/2021/11/23/reach-ad-revenue-down-29-vs-pre-pandemic-period/>>

⁸² Radio Broadcasting Industry in the UK - Market Research report' (*IBIS World*, 29th October 2021) <<https://www.ibisworld.com/united-kingdom/market-research-reports/radio-broadcasting-industry/>>

projected that digital advertising continuing to forge ahead – rising at a CAGR of almost 8% from 2021 to 2025, twice as fast as non-digital. Also, UK consumer spending on over-the-top video streaming – was expected to be up by 14% in 2021.⁸³

Regulating M&E Sector

In UK, Ofcom has powers concurrent with the Competition and Market Authority to apply UK competition law in the communications sector. Under section 3 of the Communications Act, 2003, Ofcom's duty is to further the interests of consumers in relevant markets, where appropriate, by promoting competition.⁸⁴ Sections 316 to 318 of the Communications Act, 2003, allow Ofcom to include conditions for operators licensed under the Broadcasting Act.⁸⁵ Ofcom must include in new licenses such conditions as it considers appropriate for ensuring that a provider does not engage in practices that would be prejudicial to fair and effective competition.

The current media ownership rules consist of 4 rules (3 have been provided below and 4th one relates to merger, as explained in next section) are as follows:

- **Broadcast licenses:** There are restrictions which prevent certain categories of persons from holding a broadcasting license. These relate mainly to political bodies and advertising agencies.
- **National cross media ownership:** A newspaper group with more than 20 percent of national newspaper market share is prohibited from owning a channel 3 license (Independent Television, legally known as Channel 3, is a British free-to-air television network. According to Ofcom, currently, there are 15 regional Channel 3 licensees and one licensee providing the national breakfast-time service) or an interest in a channel 3 license exceeding 20 percent. Conversely, a channel 3 company is prevented from owning more than a 20 percent interest in a national newspaper. The Media Ownership (Radio and Cross media) Order, 2011 removed all local cross media ownership restrictions.
- **Channel 3 Appointed News Provider Rule:** It requires the regional Channel 3 licensees to appoint a single news provider among them

Ofcom has a statutory duty to review the UK media ownership rules and make recommendations for change.⁸⁶ Ofcom is undertaking the review of media

⁸³UK Edition: Entertainment and Media Outlook 2021-2025 (PwC) <<https://www.pwc.co.uk/industries/technology-media-and-telecommunications/insights/entertainment-media-outlook.html#4-ways-consumers-engage>>

⁸⁴ Section 3, *Communications Act, 2003* (2003).

⁸⁵ Section 316 and 318, *Communications Act, 2003* (2003).

⁸⁶ Section 391, *Communications Act, 2003* (2003).

ownership rules vis-a-vis rise of digital media. It published a consultation paper in June 2021⁸⁷ underlining that existing media ownership rules – which focus on ownership of traditional forms of media – have not evolved to take account of increased importance of digital media. It has finally submitted its recommendations to Secretary of State on 17th November 2021⁸⁸.

Ofcom has recommended retention of cross media ownership rules and Channel 3 Appointed News Provider Rule. However, it has recommended that the Secretary of State should broaden the scope of the existing Media Public Interest Test framework beyond print newspapers and broadcasters to capture a broader range of “news creators”. Also, although it has recommended retention of disqualification rule with respect to broadcast license, it has recommended certain changes, specifically, removal of prohibition for religious bodies, the prohibition on advertising agencies, and the prohibitions for publicly-funded bodies⁸⁹.

Merger Control in UK (Media Public Interest Test)

The UK has a multi layered regulatory and competition law enforcement system comprising sector specific regulation, mainstream competition law and the market investigations regime. The general competition law regime under the Enterprise Act, 2002 has been amended by the Communications Act, 2003 to make it specific to media mergers.

Under section 42 of the Enterprise Act, 2002, the Secretary of State, Digital, Culture, Media and Sport is able to intervene in a newspaper or broadcasting/media merger where the Secretary believes it may raise a relevant “public interest consideration”.⁹⁰“Public interest consideration”, for broadcasting, has been defined under section 58 of the Enterprise Act as:⁹¹

- The need for there to be sufficient plurality of persons with control of the media enterprises serving that audience in relation to every audience in the UK or a locality of the UK.
- The need for the availability throughout the UK of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests.
- The need for persons carrying on media enterprises and for those with control of such enterprises to have a genuine commitment to the

⁸⁷The Future of Media Plurality in the UK: Including Ofcom’s Consultation on the Media Ownership Rules Review (Ofcom).

⁸⁸The Future of Media Plurality in the UK: Ofcom’s Report to the Secretary of State on the Media Ownership Rules and our next stepson media plurality (Ofcom).

⁸⁹Ibid

⁹⁰ A notice under section 42 can be issued when no reference has been made under section 22 of the Enterprise Act to deal with “relevant merger situation” which have been defined in the traditional competition law in terms of turnover, market concentration etc.

⁹¹ Section 58, *Enterprise Act, 2002* (2002).

attainment in relation to broadcasting of objectives relating to due impartiality of news, taste and decency.

Under section 42(2) of the Enterprise Act, an Intervention Notice is issued directing Ofcom to submit a report. This reference requires Ofcom to present a report to the Secretary on the effect of the consideration or considerations concerned on the case. This report is required to contain advice and recommendations on any media public interest consideration mentioned in the intervention notice and which is or may be relevant to the Secretary's decision on whether or not to make a reference under section 45 of the Enterprise Act.⁹²The report of the Ofcom on plurality is non binding in nature.

If however, the Secretary forms an opinion, on the basis of such report that public interest considerations are involved in the relevant merger situation, it may make a reference to the Authority to investigate the matter. This is an in depth investigation and is also referred to as a Phase II investigation. The report received from the Authority is binding on points of competition law. On the basis of this report, the Secretary takes a decision as to whether or not the merger should be allowed or not.⁹³

The latest issue of such notice has been in the case of Sky/Fox merger which has been discussed in the previous section of this annexure.

AUSTRALIA

Media & Entertainment Industry Landscape

The Australian M&E industry is also marked by the changed dynamics in line with the developments globally.

- According to Global Data, the total pay TV services revenue in the country will drop from US\$2.4 billion in 2020 to US\$2.1 billion in 2025, representing a CAGR of -2.6%.⁹⁴
- Printed circulation revenue dropped -6.7 percent in 2020 to A\$735 million, and print advertising revenue dropped more markedly by -24.0 percent to A\$882 million⁹⁵.
- Revenue for the Radio Broadcasting industry is expected to decline by 3.8% in 2020-21⁹⁶

⁹² Section 44A, Federal Communications Commission (1996). *Telecommunications Act, 1996*.

⁹³ Section 45, Federal Communications Commission (1996). *Telecommunications Act, 1996*.

⁹⁴Jonathan Easton, 'Australian Pay TV Set for Decline' (*Digital TV Europe*, 3rd March 2021) <<https://www.digitaltveurope.com/2021/03/03/australian-pay-tv-set-for-decline/>>

⁹⁵Australia Edition: Entertainment and Media Outlook 2021-2025 (PwC): Newspaper <<https://www.pwc.com/au/industry/entertainment-and-media-trends-analysis/outlook/newspapers.html>>

⁹⁶Radio Broadcasting Industry in the Australia - Market Research report' (*IBIS World*, 30th June 2021) <<https://www.ibisworld.com/au/industry/radio-broadcasting/638/>>

- SVoD revenue in Australia is forecast to increase at a compounded annual growth rate (CAGR) of 10.3 per cent from \$1.9 billion (€1.68bn) in 2021 to \$3.2 billion in 2026.⁹⁷

Regulating M&E Sector

The main legislative instrument governing communications regulation in Australia is the Broadcasting Services Act, 1992 and the Competition and Consumer Act, 2010.

Broadcasting Services Act, 1992

Section 3(1)(a) refers to the availability to Australian audiences of a diverse range of radio and television services offering entertainment, education and information while referring to pluralism of media *types* and *genres*. Section 3(1)(c) refers to diversity in control of the more influential broadcasting services, thereby relating to media ownership and control. The administration of the Broadcasting Services Act is the responsibility of Australia Communications and Media Authority (ACMA).

Limitation on control

In Division 2 - Limitation on Control, the following limitations are placed:

- A person must not be in a position to exercise control of more than one commercial television broadcasting license in the same area.
- A person must not be in a position to exercise control of more than two commercial radio broadcasting licences in the same licence area.

However, in license areas where there is only one commercial television broadcasting licence the ACMA may, in certain circumstances, permit that licensee to provide a second commercial television broadcasting service. In licence areas where there are two commercial television broadcasting licences, the ACMA may, in certain circumstances, permit those licensees to provide a third commercial television broadcasting service.⁹⁸

Schedule 1 of the Act sets out mechanisms that are to be used to determine if a person is in a position to exercise control of a license, a company or a newspaper for the purposes of this Act. It is intended to cover various formal and informal arrangements, including trusts, agreements, understandings and practices under which a person comes to be in a position to exercise control over a broadcasting service licence, a newspaper or a company. Further, Schedule I also describes a method for tracing company interests.⁹⁹

⁹⁷Australia: SVoD revenue to reach \$3.2 billion by 2026' (*Advanced Television*, 17th December 2021) <<https://advanced-television.com/2021/12/17/australia-svod-revenue-to-reach-3-2bn-in-2026/>>

⁹⁸ Division 2 *Broadcasting Services Act* (1992).

⁹⁹ Part 4, Schedule I, *Broadcasting Services Act* (1992).

Further, a change in control of a media operation requires notification to the ACMA. A media operation is a commercial television broadcasting licence, a commercial radio broadcasting licence or a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence. Each licensee of a commercial radio licence or commercial television licence, and each publisher of an associated newspaper must notify the ACMA when a person becomes, or ceases to be, in a position to exercise control of the licence, within ten business days of the licensee becoming aware of the event. Similarly, anyone who gains a position to exercise control of a commercial radio licence, commercial television licence or associated newspaper must notify the ACMA within ten business days of the licensee becoming aware of the event. These reporting requirements have been designed to provide the ACMA with the information it needs to monitor and enforce the control and diversity limits defined in the Act.¹⁰⁰ Failure to lodge a required notification is an offence of strict liability.¹⁰¹

Media Diversity

In Division 5A, the Act addresses the concern of “media diversity”. The Act defines what constitutes “unacceptable media diversity situation” in metropolitan and regional license areas¹⁰²

- An unacceptable media diversity situation will exist in a metropolitan licence area of a commercial radio broadcasting licence if the number of points in the radio licence area is less than five.
- An unacceptable media diversity situation will exist in a regional licence area of a commercial radio broadcasting licence if the number of points in the licence area is less than four.

The prohibition on transactions which result in an unacceptable media diversity situation is sometimes referred to as the 4/5 rule.

The concept of media group is integral to the media ownership diversity rules which involve the calculation of the number of points in a radio licence area and limitations on transactions with the effect of reducing the number of points below a specified level.¹⁰³ A media group is defined in the Act as a group of two or more media operations.¹⁰⁴

¹⁰⁰ Section 63, Division 6, *Broadcasting Services Act* (1992).

¹⁰¹ Section 65A, *Broadcasting Services Act* (1992).

¹⁰² Section 61AB, *Broadcasting Services Act* (1992).

¹⁰³ To determine the number of points, the registration of ‘registrable media groups’ in the Register of Controlled media groups is required. An entry in the RCMG lists the media operations that form part of a group and the controllers of those operations. The Media Control Database that provides public access to the RCMG, Associated Newspaper Register.

¹⁰⁴ Section 61AA, *Broadcasting Services Act* (1992).

Disclosure of cross media relationships

ACMA is responsible for monitoring cross media relationships. Under section 61BB of the Act, disclosure is to be made by commercial television broadcasting licensee if they broadcast or publish matter about the business affairs of another party in a set of media operations.¹⁰⁵

Prior approval for breaches of statutory control rules

ACMA reserves the power to approve breaches of provisions of limitations on control or directorships in case prior approval is sought. If the ACMA approves the application, then the transaction or agreement may proceed without an offence being committed against the Act.¹⁰⁶

In case of transactions creating unacceptable media diversity situations, ACMA may give approval, subject to actions that ACMA assess to remedy the situations in acceptable period of time.¹⁰⁷

Competition and Consumer Act, 2010

Section 50 of the Competition and Consumer Act (2010) prohibits any acquisition that would result in a substantial lessening of competition. The focus of the Australian Competition and Consumer Commission (ACCC) is to understand the effect a transaction would have on competition.

However, the recent The Competition and Consumer Amendment (Competition Policy Review) Act, 2017 has changed the criteria for “access to services” under section 44A. The access to services is to be considered depending on the factor whether or not the increase in access to services would promote public interest. The notification of mergers and acquisitions in Australia is voluntary and there is no minimum turnover or other monetary threshold for notifying mergers to the ACCC. However, the ACCCs Merger Guidelines indicate that the ACCC expects to be notified of mergers in advance where the products of the merger parties are either substitutes or complements, and the merged firm will have a post-merger market share greater than 20 per cent in the relevant market.¹⁰⁸

The ACCC’s interim Merger Authorisation Guidelines, released in late 2017, provide that the ACCC will take into account “any benefits that would result from the proposed acquisition, regardless of the market in which that

¹⁰⁵ Section 61BB, *Broadcasting Services Act* (1992).

¹⁰⁶ Section 67, *Broadcasting Services Act* (1992).

¹⁰⁷ Sections 61AJ and 61AK, *Broadcasting Services Act* (1992).

¹⁰⁸ *Merger Guidelines* (2008).

benefit occurs”.¹⁰⁹This means that the market in which the public benefits occur may be different from those in which competition may be lessened.

Keeping in line with the Broadcasting Services (Amendment) Act. 2017, the ACCC has updated its Media Merger Guidelines accordingly. In this ACCC recognises that advances in technology lead to traditional business models being exposed to new or different forms of competition. Technological convergence would have a bearing on how the “relevant market” is to be decided. Markets being characterised by rapid conduct innovation may be unstable such that increased market power gained through a merger may only be transitory in nature. Technology allows a competitor who is innovative to have a disproportionately large impact on the level and form of competition, despite a comparatively small market share. In early 2018, the ACCC commenced an inquiry into digital platforms to better understand the effect of digital search engines, social medial platforms and other digital content aggregation platforms on competition within the market for media content and advertising services. Additionally, the ACCC hopes that the digital inquiry will shed light on the evolving way consumers search, access and receive news in Australia.¹¹⁰

¹⁰⁹*Interim merger guidelines (2017).*

¹¹⁰*Media Merger Guidelines (2017).*

Registrar of Newspapers for India (RNI) data Tables**Table 2.1**

OWNERSHIP OF NEWSPAPERS		
Form Of Ownership	Number of Ownership	Percentage of Total
Government	88	0.269
Firms / Partnership	240	0.734
Society / Association	697	2.133
Trusts	573	1.753
Individuals	28789	88.094
Others	2293	7.017
Total	32680	100

Table 2.2**OWNERSHIP OF NEWSPAPERS (PERIODICITY WISE)**

Category	Annual	Daily	Fortnightly	Monthly	Others	Quarterly	Weekly	Total
Central Govt.	0	1	0	24	1	3	8	37
Educational Institution	3	0	0	22	12	11	0	48
Firm / Partnership	1	126	10	53	9	4	37	240
Individuals	65	8293	2852	6284	205	456	10634	28789
Organs of Political Parties	0	6	3	1	0	1	9	20
Pvt. Ltd.	15	644	47	204	46	23	122	1101
State Govt.	0	9	4	18	2	6	12	51
Others	7	259	15	65	30	17	142	535
Pub. Ltd.	15	340	23	64	7	2	138	589
Society / Association	3	81	28	357	79	75	74	697
Trusts	5	81	34	306	39	53	55	573
Total	114	9840	3016	7398	430	651	11231	32680

Table 2.3**OWNERSHIP PATTERN OF NEWSPAPERS****(Periodicity-Wise)****(In percentage)**

Form of Ownership	Dailies	Weeklies	Fortnightlies	Monthlies	Others
Individuals	84.27	94.69	94.56	84.94	60.74
Society/ Association	0.83	0.65	0.93	4.83	13.12
Firm/Partnership	1.28	0.34	0.34	0.72	1.17
Government	0.11	0.18	0.13	0.56	1.05
Others	12.68	3.66	2.91	4.81	15.81
Trusts	0.83	0.48	1.13	4.14	8.11
Total	100	100	100	100	100

TABLE 2.4 A**DISTRIBUTION OF OWNERSHIP OF NEWSPAPERS****(LANGUAGE-WISE)**

Language	Central Govt.	Educational	Firm	Individuals	OPP	Pub Ltd.	Pvt. Ltd.	State Govt.	Society	Others	Trusts	Total
Assamese	0	0	5	37	0	2	6	0	2	1	2	55
Bengali	0	1	4	455	2	8	24	2	26	6	17	545
Bilingual	0	4	15	1294	0	22	53	21	88	26	34	1557
Bodo	0	0	0	3	0	0	0	0	0	0	0	3
Dogri	0	0	0	0	0	0	0	0	0	0	0	0
English	7	16	35	1399	4	217	319	6	186	241	74	2504
Gujarati	3	0	17	1715	1	13	35	2	40	19	81	1926
Hindi	10	1	73	15133	3	157	313	4	154	137	126	16111
Kannada	1	1	8	1016	0	20	21	1	11	14	25	1118
Kashmiri	0	0	0	3	0	0	0	0	0	0	0	3
Konkani	0	0	0	2	0	0	1	0	1	0	0	4
Maithili	0	0	0	2	0	0	0	0	0	0	0	2
Malayalam	3	0	5	133	6	64	50	5	28	22	29	345
Manipuri	0	0	1	5	0	0	0	0	0	0	0	6
Marathi	1	0	32	2354	1	27	47	2	36	42	31	2573
Multilingual	1	0	1	171	0	0	4	1	23	8	18	227
Nepali	0	0	1	8	0	0	1	0	1	0	1	12
Oriya	1	0	2	378	0	5	13	0	16	3	17	435
Others	0	0	1	49	0	0	0	0	6	1	11	68
Punjabi	1	0	4	144	0	4	6	0	5	3	11	178
Sanskrit	0	0	0	24	0	1	0	0	1	0	2	28
Santhali	0	0	0	2	0	0	0	0	0	0	0	2
Sindhi	0	0	0	17	0	0	0	0	1	0	1	19
Tamil	1	0	17	647	2	10	76	1	35	14	54	857
Telugu	2	1	12	2171	0	30	98	3	26	8	24	2375
Urdu	6	0	7	1627	1	9	34	3	11	14	15	1727
Total	37	24	240	28789	20	589	1101	51	697	559	573	32680

OPP : Organ of Political Parties

Table 2.4 B
DISTRIBUTION OF OWNERSHIP OF NEWSPAPERS
(STATE-WISE)

State	Central Govt.	Educational	Firm	Individual	OPP	Pub Ltd.	Pvt. Ltd.	State Govt.	Society	Trust	Others	Total
Andaman & Nicobar Islands	0	0	0	18	0	0	1	0	0	0	0	19
Andhra Pradesh	0	0	14	1915	1	21	81	1	20	8	24	2085
Arunachal Pradesh	0	0	0	10	0	0	2	0	0	0	0	12
Assam	0	0	6	80	0	8	17	0	1	2	5	119
Bihar	0	0	2	243	0	15	4	0	3	1	21	289
Chandigarh	0	0	1	36	0	16	5	0	1	15	11	85
Chhattisgarh	0	0	0	473	0	5	22	0	2	2	13	517
Delhi	21	10	23	1675	3	55	196	5	127	58	58	2231
D&N Haveli and Daman & Diu	0	0	1	33	0	3	0	0	0	0	0	37
Goa	0	0	2	11	0	5	6	0	2	3	4	33
Gujarat	4	0	17	1907	1	21	51	3	43	77	26	2150
Haryana	0	0	2	321	0	6	6	0	6	6	9	356
Himachal Pradesh	0	0	0	97	0	3	5	0	1	2	2	110
Jharkhand	0	0	1	124	0	15	19	0	4	1	8	172
Jammu & Kashmir	0	0	2	359	0	3	5	0	2	6	1	378
Karnataka	2	1	7	1140	0	45	35	2	21	35	38	1326
Kerala	4	0	9	159	6	80	50	6	41	45	48	448
Ladakh	0	0	0	0	0	0	0	0	0	1	0	1
Lakshadweep	0	0	0	0	0	0	0	0	0	0	0	0

Maharashtra	1	5	52	3324	1	89	146	20	132	91	90	3951
Manipur	0	0	2	11	0	0	1	3	0	0	0	14
Meghalaya	0	0	0	12	0	2	0	3	0	0	0	14
Mizoaram	0	1	1	3	0	0	1	3	6	0	2	14
Madhya Pradesh	0	0	18	5014	1	28	79	1	42	12	22	5217
Nagaland	0	0	0	5	0	0	0	3	1	0	0	6
Orissa	0	0	3	445	0	15	19	3	19	14	10	525
Puducherry	0	0	1	42	0	0	4	3	7	8	2	64
Punjab	0	0	3	259	0	6	11	3	13	10	13	315
Rajasthan	1	0	6	1572	0	19	30	3	15	17	21	1684
Sikkim	0	0	0	16	0	0	1	0	0	0	0	17
Tamil Nadu	0	0	25	790	2	29	124	3	57	63	43	1136
Telangana	2	2	5	794	0	20	35	4	22	14	13	911
Tripura	0	0	0	45	2	0	0	0	1	1	0	49
Uttar Pradesh	0	4	27	5558	1	49	79	1	53	35	44	5851
Uttarakhand	2	0	5	1796	0	8	8	0	11	24	9	1863
West Bengal	0	1	5	502	2	23	58	2	44	22	22	681
Total	37	24	240	28789	20	589	1101	51	697	573	559	32680

Table 2.5
CIRCULATION OF NEWSPAPERS
UNDER DIVERSE OWNERSHIP

Form of Ownership	Number	Average Circulation	% of Circulation
Government	88	1384250	0.315
Others	2293	113023199	25.691
Firms / Partnership	240	8045834	1.829
Individuals	28789	301374010	68.505
Society / Association	697	7642572	1.737
Trusts	573	8459904	1.923
Total	32680	439929769	100

Table 2.6
OWNERSHIP OF 'NEWS & CURRENT AFFAIRS' NEWSPAPERS

Form of Ownership	No. of Units	No. of such Newspapers	Circulation
Individuals	2513	7743	124275640
Firms / Partnerships	54	91	5221052
Trusts	30	71	3418153
Others	75	1337	82053067
Total	2672	9242	214967912

TABLE 2.7
NUMBER OF 'NEWS & CURRENT AFFAIRS' NEWSPAPERS
UNDER COMMON OWNERSHIP UNITS
(Periodicity-wise, from 2011 to 2020)

Year	Dailies, Bi/Tri- weeklies	Weeklies	Others	Total	Growth over previous year
2011-12	3070	1097	465	4632	11.97
2012-13	3648	1268	532	5448	17.62
2013-14	4429	1533	764	6726	23.46
2014-15	5322	1805	856	7983	18.69
2015-16	5825	1989	1041	8855	10.92
2016-17	5785	2009	1269	9063	2.34
2017-18	5608	1884	1312	8804	-2.75
2018-19	6339	2206	1637	10182	15.65
2019-20	5942	1995	1305	9242	-9.23

Table 2.8
Number of Newspapers
Under Common Ownership (2011-2020)

Year	Number of Units	Number of 'news-interest' newspapers	Number of 'non-news interest' newspapers	Total
2011-12	1256	4632	294	4926
2012-13	1516	5448	298	5746
2013-14	1874	6726	43	6769
2014-15	2268	7983	220	8203
2015-16	2496	8855	211	9066
2016-17	2546	9063	214	9277
2017-18	2530	8804	212	9016
2018-19	2937	10182	348	10530
2019-20	2672	9242	349	9591

Table 2.9**Circulation of Common Ownership 'News & Current Affairs' Dailies
(2011-12 to 2019-20)**

Year	Average Circulation	Percentage of total Circulation
2011-12	140342854	71.26
2012-13	159073804	74.58
2013-14	186952472	70.74
2014-15	216102937	72.93
2015-16	252520513	67.98
2016-17	193285626	70.19
2017-18	171886507	70.83
2018-19	195679009	67.12
2019-20	172549402	39.22

Table 2.10
CIRCULATION OF COMMON OWNERSHIP NEWSPAPERS
(2011-12 TO 2019-2020)

Year	Circulation of "news & current affairs" newspapers	Circulation of "non-news-interest" newspapers	Total Average circulation	Percentage of total circulation
2011-12	187215747	8701803	195917550	50.55
2012-13	204106390	9183441	213289831	52.66
2013-14	243749433	1006449	244755882	54.32
2014-15	275575069	6607146	282182215	53.98
2015-16	320330830	5664153	325994983	52.49
2016-17	250107575	4876359	254983934	51.24
2017-18	221696378	4110959	225807337	51.55
2018-19	251278959	6066110	257345069	48.28
2019-20	214967912	6154317	221122229	50.26

TRAI's recommendations on vertical integration amongst broadcasters and DPOs as contained in its "Recommendations on Issues related to New DTH Licenses" dated July 23, 2014

- 3.23 Rationalized and regulated vertical integration may be permitted between broadcasters and DPOs.**
- 3.24 The vertically integrated broadcaster or DPO, as the case may be, shall be subjected to an additional set of regulations vis-à-vis the non-vertically integrated broadcasters and DPOs.**

Restrictions on Vertically Integrated entities

- 3.25 The entity that controls a broadcaster or the broadcaster itself, shall be permitted to "control" only one DPO (of any category i.e. either an MSO/HITS operator or DTH operator) in a relevant market and vice-versa.**
- 3.26 The entity that controls a vertically integrated DPO or the vertically integrated DPO itself, shall not be allowed to "control" any other DPO of other category.**
- 3.27 If a vertically integrated DPO, while growing organically or inorganically, acquires a market share of more than 33% in a relevant market, then the vertically integrated entities will have to restructure in such a manner that the DPO and the broadcaster no longer remain vertically integrated.**
- 3.28 A vertically integrated broadcaster can have only charge-per-subscriber (CPS) agreements with various DPOs which should be non-discriminatory.**

- 3.29 A vertically integrated broadcaster shall file its RIO for its approval by the Authority. The RIO should cover all scenarios for interconnection and interconnection agreements should be only on the terms specified in the RIO.**
- 3.30 A vertically integrated DPO will have to declare the channel carrying capacity of its distribution network. And, at any given point in time, it shall not reserve more than 15% of this capacity for its vertically integrated broadcaster(s). The rest of the capacity is to be offered to the other broadcasters on a non-discriminatory basis.**
- 3.31 A vertically integrated DPO shall publish the access fees for the carriage of channels over its network. The access fee so specified shall be non-discriminatory for all the broadcasters. DPO shall file the specified access charge, with justification, with the Authority.**

Annexure VI

F.No. C-33/4/(1)/2021-B AND CS(1 AND 3)-Part(1)

Dated -15.12.2021

To,

Service providers as per the list attached

Subject : Issues related to Vertical integration in the Media Sector and Cross Media Ownership

TRAI has received a reference from Ministry of Information and Broadcasting (MIB) requesting TRAI to have a re-look on its recommendations on “Issues relating to Media Ownership” dated 12.08.2014 in view of the subsequent developments / expansion like OTT in the Broadcasting Sector and provide a fresh set of recommendations in the matter.

2. TRAI is in the process of preparing a Consultation Paper on “Issues relating to Media Ownership”. For this purpose, details of shareholding of your company and presence in different media sectors (TV channels, Radio channels, newspapers, Apps/OTT platforms) is required.

3. You are requested to provide the above information by 29th December, 2021 in the enclosed format. You are also requested to indicate the viewership / listenership of the TV channels / FM radio channels, circulation / subscription details of the publications and subscription details of Apps/ OTT platform owned / controlled by your company. This information is to be considered and used in the consultation process of TRAI for the formulation of its recommendations to the MIB on the subject matter. A soft copy of the same information may also be e-mailed to the id jtadvbcs-2@traf.gov.in.

(C. P. Sharma)
Jt. Advisor (B&CS)
Tel. 011-23664404

A. Shareholding Pattern of the group company¹¹¹/company

Name of the Group Company/ Company _____

Name of Group Company/Company _____						
Print Media						
S. No.	Name of the Group Company/Company	Name of the Group (in case of Group Company)	Type of Holder	Name of shareholders	No. of shares	% shares
1			1. Promoters	1		
				2		
				3		
			2. Public Shareholding	1		
				2		
				3		
			3. Domestic Financial Institutions	1		
				2		
				3		
			4. Foreign Institutional Investors	1		
				2		
				3		
			5. High Net Worth Individuals	1		
				2		
				3		
2			1. Promoters	1		
				2		
				3		
			2. Public Shareholding	1		
				2		
				3		
			3. Domestic Financial Institutions	1		
				2		
				3		
			4. Foreign Institutional Investors	1		
				2		
				3		
			5. High Net Worth Individuals	1		
				2		
				3		

¹¹¹ As per para 2.1.25 of Consolidated FDI Policy Circular 2020, 'Group Company' means two or more enterprises which, directly or indirectly, are in a position to:

- (i) exercise twenty-six percent or more of voting rights in other enterprise; or
- (ii) appoint more than fifty percent of members of Board of Directors in the other enterprise.

Name of Group Company/Company _____

Broadcasting

S. No.	Name of the Group Company/Company	Name of the Group (in case of Group Company)	Type of Holder	Name of shareholders	No. of shares	% shares
1			1. Promoters	1		
				2		
				3		
			2. Public Shareholding	1		
				2		
				3		
			3. Domestic Financial Institutions	1		
				2		
				3		
			4. Foreign Institutional Investors	1		
				2		
				3		
			5. High Net Worth Individuals	1		
				2		
				3		
2			1. Promoters	1		
				2		
				3		
			2. Public Shareholding	1		
				2		
				3		
			3. Domestic Financial Institutions	1		
				2		
				3		
			4. Foreign Institutional Investors	1		
				2		
				3		
			5. High Net Worth Individuals	1		
				2		
				3		

Name of Group Company/Company _____

DTH

S. No.	Name of the Group Company/Company	Name of the Group (in case of Group Company)	Type of Holder	Name of shareholders	No. of shares	% shares
1			1. Promoters	1		
				2		
				3		
			2. Public Shareholding	1		
				2		
				3		
			3. Domestic Financial Institutions	1		
				2		
				3		
			4. Foreign Institutional Investors	1		
				2		
				3		
			5. High Net Worth Individuals	1		
				2		
				3		
2			1. Promoters	1		
				2		
				3		
			2. Public Shareholding	1		
				2		
				3		
			3. Domestic Financial Institutions	1		
				2		
				3		
			4. Foreign Institutional Investors	1		
				2		
				3		
			5. High Net Worth Individuals	1		
				2		
				3		

Name of Group Company/Company _____

MSO including Cable Operator

S. No.	Name of the Group Company/Company	Name of the Group (in case of Group Company)	Type of Holder	Name of shareholders	No. of shares	% shares
1			1. Promoters	1		
				2		
				3		
			2. Public Shareholding	1		
				2		
				3		
			3. Domestic Financial Institutions	1		
				2		
				3		
			4. Foreign Institutional Investors	1		
				2		
				3		
			5. High Net Worth Individuals	1		
				2		
				3		
2			1. Promoters	1		
				2		
				3		
			2. Public Shareholding	1		
				2		
				3		
			3. Domestic Financial Institutions	1		
				2		
				3		
			4. Foreign Institutional Investors	1		
				2		
				3		
			5. High Net Worth Individuals	1		
				2		
				3		

Name of Group Company/Company _____						
FM Radio						
S. No.	Name of the Group Company/Company	Name of the Group (in case of Group Company)	Type of Holder	Name of shareholders	No. of shares	% shares
1			1. Promoters	1		
				2		
				3		
			2. Public Shareholding	1		
				2		
				3		
			3. Domestic Financial Institutions	1		
				2		
				3		
			4. Foreign Institutional Investors	1		
				2		
				3		
			5. High Net Worth Individuals	1		
				2		
				3		
2			1. Promoters	1		
				2		
				3		
			2. Public Shareholding	1		
				2		
				3		
			3. Domestic Financial Institutions	1		
				2		
				3		
			4. Foreign Institutional Investors	1		
				2		
				3		
			5. High Net Worth Individuals	1		
				2		
				3		

B. Details of TV channels owned / controlled by the companies					
Sl.No.	Name of the Company	Channel Name	Genre of Channel	Language of Channel	% of Market Share in the relevant Language market
1					
2					
3					

C. Details of FM Radio channels owned / controlled by the companies				
Sl.No.	Name of the Company	Channel Name	City of operator	% of Market Share of the channel in terms of listernership in the city of operation
1				
2				
3				

D. Interest of Group Company/Company across various media sectors							
Name of the group company/company							
So No.	Newspaper/Publication	Name of TV Channels	MSO	DTH	IPTV	Name of the FM Radio Channel	Apps/OTT Platfroms
1							
2							
3							

List of Service Providers

S.No	Broadcasters
1	M/s Zee Entertainment Enterprises Limited
2	M/s Star India Private Limited
3	M/s Eenadu Television Private Limited
4	M/s Sun TV Network Limited
5	M/s Bennett, Coleman & Company Limited
6	M/s TV Today Network Limited
7	M/s TV 18 Broadcast Limited
8	M/s ABP News Private Limited
9	M/s Sarthak Music Private Limited
10	M/s Odisha Television Limited
	DTH
1	M/s Dish TV India Ltd.
2	M/s Tata Sky Limited
3	M/s Sun Direct TV (P) Ltd.
4	M/s Airtel Digital TV Ltd
	FM Radio
1	M/s Ananda Offset Private Limited
2	M/s Bag Films & Media Limited
3	M/s Entertainment Network (India) Limited
4	M/s D B Corp Limited
5	M/s Dainik Bhaskar
6	M/s HT Media Limited
7	M/s Digital Radio Broadcasting Limited
8	M/s JagramPrakashan Limited
9	M/s Malayala Manorama Co Ltd.
10	M/s Malar Publications Limited
11	M/s Rajasthan Patrika Private Limited
12	M/s Mathrubhumi Printing & Publishing Co Limited
13	M/s Reliance Broadcasting Network Limited
14	M/s Radio One Limited
15	M/s PudhariPublicattionsPvt. Ltd.
16	M/s Neutral Publishing House Ltd
17	M/s Sambhav Media Limited
18	M/s Kal Radio Limited
19	M/s South Asia FM Limited
20	M/s Udaya FM Private Limited
	MSO
1	M/s Siti Cable Network
2	M/s Hathway Cable & Datacom Private Limited
3	M/s Asianet Communications Limited
4	M/s Kal Cable Private Limited
5	M/s GTPL Hathway

6	M/s Den Networks
7	M/s Fastway Transmissions Pvt Ltd
8	M/s Thamizhaga Cable TV Communication Pvt Ltd
9	M/s Kerala Communicators Cable Ltd
10	M/s Tamil Nadu Arasu Cable TV Corporation Ltd
11	M/s V K Digital Network Pvt. Ltd
12	M/s Asianet Digital Network Pvt. Ltd
13	M/s NXT Digital Ltd (Cable TV)