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Note A, related to specific questions Q3 and Q4 on Page 47 of TRAI's CP

Note B, related to, inter alia, Q6, Q7 and Q13 on Page 53 through Page 61 of TRAI's CP

Note A

Q3: Should ownership/ control of an entity over a media outlet be measured in terms of equity holding? If so, would a restriction on equity holding of 20% (as recommended by TRAI in its recommendations on Media Ownership dated 25th Feb 2009) be an appropriate threshold? Else, please suggest any other threshold value, with justification?

Q4: In case your response to Q3 is in the negative, what other measure(s) of ownership/ control should be used? Please support your view with a detailed methodology to measure ownership/ control over a media outlet.

Past experiences across sectors, and new trends in the media sector, suggest that ownership / (and therefore, control) measured in terms of equity alone is neither accurate nor reflects industry dynamics. This is particularly a concern when involving news media companies. Therefore, policy protocols on cross-ownership, and on ownership in general, based on percentage of equity holdings, be it 20% or less/more, will be unhelpful. Here are some examples of how promoters distort policy protocols or caps on equity.

a) When the FDI cap in telecom was 49%, foreign operators raised their holdings, and therefore control, through a circuitous route. In many instances, In Telecom Company X an Entity A (a foreigner) directly owned 49%, while Entity B had 51%. However, in Entity B itself, the same Foreign Entity A either directly or indirectly controlled the remaining 49%. Thus, Foreign Entity A ended with an effective control of 74% in Company X, thereby leveraging management and board decisions, while its actual FDI amounted to being beyond the prescribed cap of 49%.
Therefore, in the case of vertical or horizontal integration involving FDI, indirect equity holdings must be considered and carefully computed. Irrespective whether the stipulated cap is 20% or 74%, there should be clear safeguards on to prevent circuitous investment, especially through subsidiaries and/or investment arms of Indian news media companies registered in tax havens.

b) Often a private promoter may not hold stakes directly in a company. So, Entity A may have a 20% stake in media Company X, but Entity A may be fully or partly owned by Entity B which is not a media company---but which, in turn, may be fully or partly owned by Entity C, which is a media company. In such cases, Entity C may come to

indirectly own---or if the case may be, cross-own---more than 20% through A and C. Sometimes is may be cumbersome to trace such ownership simply because the directors on boards of A and B would have no relation with directors and owners of C.
All layers of vertical information on equity investors must be disclosed adequately and publicly, especially if there is an involvement of another media company at any stage of such indirect investment. If Entity A has 40% equity in a Media Company X, no further equity stakes should be permitted to either its subsidiaries or its sister-concerns or even other entities where Entity A or its promoters have majority equity.

c) In the recent past, especially in the case of unlisted media companies, it has been seen that private equity investors and others having minority stakes sign water-tight contracts that give them control over management decisions---a control that is not evident when looking only at equity structures. Thus a private equity firm may have less than 20% in a media company, but its agreement with the promoters of that media company, generally kept secret, may allow the minority investor to veto board decisions on, say, fresh investment, expansion and marketing. Indirectly, such minority owners have huge leverage over growth as also the content of media companies---which may be particularly a concern when involving news media companies. Such agreements have come to light in many cases, the most notable being the one between *DE Shaw* and *Dainik Jagran* Group.
While determining media ownership and cross-media ownership, there should be full disclosure of all agreements and contracts. This is particularly relevant for private equity firms who may have investments in multiple media companies, within and across specific content/carriage segments. So called "private agreements", or conditionalities to equity infusion by an investor, that may act as forms of control, if they exist, should be disallowed especially in case of News media companies, even if the entities involved adhere to permissible caps in equity.

d) Loans are another form of financial agreements that are typically used to leverage control, especially in the media sector. Again, Entity A may not have any equity holding in media Company X, but the former---or its promoter---may have given huge loans (sometimes interest-free) to Company X. In such instances, Entity A could influence management and other decisions indirectly in Company X without any ownership---a greater concern if either Entity A is also a media company or is a holding company of a media company. Such loans usually come with a stipulation that they can be converted into equity at a fixed price, or according to a fixed formula, in case the promoters of media company X are unable to return the money within a specific period. Clearly, Entity A has indirect ownership during the tenure of the loan, which may become direct equity holding after a few years. This typically happened in the case of the *Eenadu Group* and *Reliance Industries*. Such cases can also happen between different media entities and result in indirect and direct cross-media ownership.
Loans given by a media company, or its holding company, to other media firms, either directly or indirectly though other firms that are ultimately owned by the lender (through layers of corporate ownership explained in Point B) need to be disclosed publicly. For greater diligence, protocols may be devised which clearly stipulate that loan(s) by one (media) company, directly or indirectly, to another media company cannot exceed a certain fixed percentage of the loan receiver's equity capital.

e) The recent arrangement between *Reliance Industries* (now considered a media entity due to Point D, above) and *Network18 Group* provides another insight of possible ways to exercise control without owning any stakes. In this case, Reliance, through a public trust, gave a huge loan to the promoter of Network18 Group. It was a private loan given to the promoter-owned company, which had substantial stakes in the Network18's media entities. The stipulation was that these loans could be converted into equity of the promoter's privately-held firm at a later date. During the loan tenure and even after its conversion into equity, Reliance would not have direct control in the media entities.
Such arrangements between the promoters of two news media entities, or promoters of holding companies of news media entities, need to be meticulously taken into consideration to measure ownership and cross-media ownership.

f) Another set of issues emerge when examining ownership of news media companies, including their cross-ownership by other media/news companies, by entities involved in electoral politics---be they political parties or individual politicians/legislators, or, as in numerous instances, their immediate family and business partners. Here it becomes essential for promoters and directors of news media companies to disclose their formal political and business associations, including that of their immediate family. In South India here are instances where siblings or spouse of state/central legislators find themselves as directors of news media companies as also on boards of their, cross-owned, sister companies also in the media sector.
Barring political entities owning/promoting news media companies could be viewed as a matter outside the scope of present document. Until then, protocols must be evolved and implemented for systematically and publically disclosing political associations of promoters, partners and directors of news media firms, including of their siblings and immediate family and other media companies with which such firms have commercial or financial transactions. Similar protocols may also be evolved and implemented in cases where religious trusts/institution are involved, in whatever way, in owning and cross-owning news media companies.

g) Any consideration on cross-ownership should also address the issue of incomplete disclosure in the case of ownership of print media company. The norms under Form IV, as they exist today, stipulate that only the names of individuals/companies that own more than 1% in the print media company be disclosed, once a year, through an advertisement in each newspaper and magazine. However, this information does not indicate the actual percentage of holding by each individual and entity, their relationship (personal and / or business) with other individuals, companies, or individuals and companies mentioned in the same list or, their interests in other news/media companies.
The present milieu of media abundance and technological convergence clearly cry out for reviewing disclosure norms, and parameters, existing in Form IV. The revised norms should stipulate, inter alia, the mention of actual equity holdings of each individual and entity mentioned in the Form IV. Moreover, the personal or business links between all these individuals and entities as also their similar links with other news media companies should be disclosed. Finally, and rather urgently, ways of devising equivalents of Form IV for TV news channels ought to be devised and

implemented; this is as much to bring uniformity in the disclosures expected from all news platforms as to make transparent structures of cross-ownership between various news platforms.

Note B

Q6: Which media amongst the following would be relevant for devising ways and means of ensuring viewpoint plurality?
(i) Print media viz. Newspaper & magazine
(ii) Television
(iii) Radio
(iv) Online media
(v) All or some of the above

Q7: Should the relevant markets be distinguished on the basis of languages spoken in them for evaluating concentration in media ownership? If your response is in the affirmative, which languages should be included in the present exercise?

Q13: Would Diversity Index be an appropriate measure for overall concentration (including within media and cross media) in a relevant market?

The choice of an apt and accurate 'unit of analysis' rests at the heart of all efforts at addressing media diversity/pluralism. This CP seems to frame this in terms of the problem of choosing 'relevant market'. However, the issue of 'relevant market'---Product Vs Geographical/Linguistic Vs Administrative markets---can only be addressed after delineating the aims and nature of pluralism desired---as the choice of the unit of analysis depends completely on the aims of measurement.

And as regards the aims of measurement, underlying the core issue of cross-ownership, the case of 'viewpoint pluralism' mentioned in the CP us undoubtedly crucial. Nevertheless, it may not be the only, or sufficient, benchmark for addressing pluralism, and therefore of measuring cross-ownership.

Before diving into techniques of measurement of cross-ownership, it may be beneficial to reflect on the differing methodological conceptions and concern of media pluralism. Doing so will bring greater diligence and clarity in efforts at framing media pluralism/diversity, and thereby in devising---rather than simply replicating---methods to measure cross-ownership. While constraints of time and space may not permit a detailed description of all this, here is a summarized attempt.

a) ***Clearly there are numerous ways in which pluralism, diversity and concentration can be enumerated---as reflected in competing conceptions on both sides of the Atlantic[1].***
b) ***The idea of 'structural pluralism' may be engaged with, since it seeks to embed issues of viewpoint pluralism---as emphasized by TRAI---in the wider workings of the media ecology[2], something with TRAI's CP is trying to grapple with.***

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[1] For an overview of some, see Natascha Just, "Measuring Media Concentration and Diversity: New Approaches and Instruments in Europe and the United States", TTLF Working Papers No.2, Transatlantic Technology Law Forum, Stanford/Vienna, 2008

c) ***The 'either-or' approach to product/service-based market definition and language/content-based market definition tends to overlook the ways in which these two, allegedly distinct markets, impact on each other. Here, it is useful to draw on seminal literature in media policy that seeks to frame, and subsequently measure, diversity at the three, inter-related levels of Source Diversity, Content Diversity and Exposure Diversity[3].***

d) ***For a large and diverse country like ours, it is pertinent to learn from other multi-lingual/cultural experiences, perhaps the foremost being the Media Pluralism Monitor, a measurement tool developed for the European Commission[4]. Based on a multidisciplinary approach, the Monitor combined indicators drawn from law, economics and social science to identify and measure risks relating to various aspects of media pluralism[5]. TRAI may note that such aspects of media pluralism not only include ownership and viewpoint issues, as flagged in TRAI's CP, but also cultural, political and geographic dimensions.***

e) ***Along with a group of media scholars & journalists, the authors of this submission are devising a prototype of a media pluralism index which, drawing on the above and other cutting-edge instruments from across the world, responds to the specificities of the Indian media landscape.***

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Vibodh Parthasarathi, Academic, New Delhi

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[2] Beata Klimkiewicz, 'Introduction: Structural Media Pluralism', International Journal of Communication Vol. 4 (2010) pp. 906-913.

[3] Phil Napoli, 'Deconstructing the Diversity Principle'; Journal of Communication, Autumn, 1999. Source Diversity also contributed to a deeper understanding of Content Diversity especially through the ways of financing television content, see M. Einstein 'Broadcast Network Television, 1955-2003: The Pursuit of Advertising and the Decline of Diversity', Journal of Media Economics Vol. 17/2, 2004 (pp.145-155)

[4] K.U. Leuven et al, "Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach, *Prepared for the European Commission Directorate-General Information Society and Media* (SMART 007A 2007-0002), Leuven, July, 2009 http://ec.europa.eu/information_society/media_taskforce/pluralism/study/index_en.htm

[5] Peggy Valcke at al, "The European Media Pluralism Monitor: Bridging Law, Economics and Media Studies as a First Step towards Risk-Based Regulation in Media Markets", Journal of Media Law Vol. 2(1) 2010, pp. 85-113.