DIGITAL NEWS PUBLISHERS ASSOCIATION

July 12th, 2020

INTRODUCTION:

1. The Constitution of India under Article 19(1)(a) states 'All citizens shall have the right… to freedom of speech and expression…' Freedom of speech has been stated as the Ark of the Covenant of Democracy by the Hon'ble Supreme Court of India.

Shri Dr. B. R. Ambedkar has stated on record that freedom of the Press was included in the guarantee of freedom of speech and expression and it was hardly necessary to provide for it specifically. This statement has been corroborated in a series of decisions from 1950 onwards and Hon'ble Supreme Court of India has clearly ruled that freedom of Press is implicit in the guarantee of freedom of speech and expression as guaranteed under Article 19(1)(a), thereby making freedom of Press a fundamental right.

Freedom of press can be restricted only under Article 19(2) and it cannot be restricted through any executive order or through administrative instruction. If any law is made to restrict freedom of Press, it must fall squarely within one or more heads of permissible restrictions under Article 19(2) viz. (a) sovereignty and integrity of India, (b) security of the State, (c) friendly relations with foreign States, (d) public order, (e) decency or morality, (f) contempt of court, (g) defamation or (h) incitement to an offence.

Through many judgements of the Supreme Court, it is settled position of law that the State cannot curtail freedom of Press for promoting the general welfare of a section or a group of people unless its action can be justified by a law strictly falling under Article 19(2). Freedom of the Press cannot be curtailed on such grounds as in the interest of the general public, as in the case of other freedoms under Article 19. The restriction must be reasonable and specific and cannot be excessive or disproportionate. The manner of imposition of any restriction also must be just, fair and reasonable. In the event any law does not pass this test, it may be invalidated, which has happened in the past as well.

We are of the considered opinion that any proposed restrictions on horizonal cross-media ownership holdings would work towards artificially limiting the business structure of media entities, thereby restricting their opportunities of circulation / reach and also limit their options to seek advertisements to sustain their media operations. Any such proposed restrictions under a subordinate legislation would not be possible under Article 19(2), and hence would be *ultra vires* the Constitution of India.

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2. TRAI had itself stated in the Consultation Paper, *'The consequences of rapid technological development for informational diversity and media pluralism are mixed. An increasingly digital media environment gives internet users access to information from more and more sources, increasing the opportunities for people to use diverse sources and encounter different perspectives. With the emergence of social media platforms and Apps which depend on user generated content, the news and facts do not depend on any media organization for its conveyance to the public."*

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

- That with convergence and digitisation, there is no concept of "geographical markets" and hence every argument sought to be made for monitoring/controlling "concentration", "market share", etc, with an eye to impose horizontal cross media curbs, has now been made totally redundant;
- That India today has over 750 million users who consume content via smartphones, far, far more than the readership of printed newspapers or consumption of TV or FM radio;
- That traditional or legacy media are now pygmies in front of Big Tech/Social Media/aggregators/UGC which are being consumed by audiences many, many times larger;
- That News & Current Affairs is a drop in the vast ocean of Media & Entertainment (M&E);
- That latest data confirms the trend of the last few years that interest in news is declining sharply.

These are reiterated in the respected Reuters Institute Digital News Report, 2022 basis a survey, and we quote:

- *Consumption of traditional media, such as TV and print, declined further in the last year in almost all markets, with online and social consumption not making up the gap.*
- *While the majority remain very engaged, others are turning away from the news media and in some cases disconnecting from news altogether. Interest in news has fallen sharply across markets, from 63% in 2017 to 51% in 2022… We're also seeing news fatigue setting in – not just around COVID-19 but around politics and a range of other subjects – with the number of people actively avoiding news increasing markedly. Meanwhile, the proportion of news consumers who say they avoid news, often or sometimes, has increased sharply across countries.*
- (Within the subset of news, which is a miniscule segment), *Facebook remains the most-used social network for news but users are more likely to say they see too much*

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news in their feed compared with other networks. TikTok has become the fastest growing network in this year's survey, reaching 40% of 18–24s, with 15% using the platform for news. Telegram has also grown significantly in some markets, providing a flexible alternative to Meta-owned WhatsApp.

- (Legacy/traditional media has declined hugely and digital consumption of news reiterates that the concept of geographical markets –basis for this CP--is dead). *The smartphone has become the dominant way in which most people* first access *news in the morning, though we find different patterns across countries. …India is a strongly mobile-focused market, with 72% accessing news through smartphones and just 35% via computers. News aggregator platforms and apps such as Google News (53%), Daily Hunt (25%), InShorts (19%), and NewsPoint (17%) have become an important way to access news and are valued for convenience.*
- *Social media are popular in India, with a significant number in our surveyed audience using YouTube (53%) and WhatsApp (51%) for accessing news.*
- (Reference to India)--*The popularity of social media is a concern for policy-makers as these platforms are also rife with misinformation, as well as incessant trolling and abuse. Facebook came under intense scrutiny after media investigations revealed the platform had pushed polarising content and misinformation in the form of advertisements during the election seasons in 2019 and 2020. Meanwhile, the Competition Commission of India (CCI), has launched an investigation into complaints that Google has allegedly abused its dominant position in the online news market. As in other countries, publishers claim they are not being compensated fairly for the content accessed via third-party digital platforms.*

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

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PART A: UNANIMOUS/UNCONTESTED VIEWS:

We have read all the comments to TRAI CP on cross-media ownership consultation paper (CP) and find an almost unanimous corroboration or few contrary views across all responses as follows:

i. That limiting State intervention over the content media sector is vital to protect democratic interests and that additional regulations can have disastrous consequences not just for plurality and diverse viewpoints, but also the health and indeed survival of the sector. The legacy media sector is already overregulated on the content side and has in fact, ensured the success of self-regulation.

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

iii. That the above seems based on some vague idea that the consumer of media content --who uses multiple devices/media products—selects his preference on the basis of who owns the media entity. However, given that there is obviously no such possibility, the entire edifice of this CP has been built on a false premise because the content consumer bases his preference on the vast array of media brands which all serve him up differential fare.

iv. That it is instead clear from the comments that India has the most pluralistic, diverse and competitive media industry in the world where there is absolutely no evidence of dominance or monopoly as far as horizontal media ownership is concerned. Specifically, private sector Indian news and current affairs –which has been targeted by a few unidentified global Big Tech/intermediaries/SM entities hiding behind especially foreign industry associations-- has a vast array of every imaginable viewpoint thanks to lakhs of newspapers, thousands of websites/digital entities and hundreds of TV channels –all of which are available in dozens of languages. Similarly, in the non-news space India has thousands of websites and hundreds of TV and private FM radio channels, films and theatre apart from an array of digital entities which influence people, again in dozens of languages. In fact, India has more than 1 million professional user generated content creators across social media platforms and an estimated over 150,000 professional content creators apart from access to content created by global creators as well, which adds to plurality of voices.

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v. That there is no denying the fact that the numbers and variety of media owners have increased massively in the last several decades, and especially since the 2008 and 2013 TRAI consultation papers on cross media ownership. This is in every segment, every media platform and is not only a function of the explosion in digital tech.

vi. That plurality, diversity and competition has flourished in the absence of any horizontal cross-media ownership restrictions, and any new curbs would only have the disastrous consequence of reducing plurality.

vii. That even the most basic question --- what is this vague/undefined “desired” level of plurality on which TRAI has based this entire CP on—has not been answered at all. As one entity quoted academicians Suzanne Rab and Alison Sprague asking in their 2014 paper –"the question is how many viewpoints make a sufficient plurality? There are no answers and it would be a travesty if TRAI proceeds on the basis of vague notions with no basis on ground.

viii. That with the explosion of digital media and in this age of convergence where news is consumed in a border-less and boundary-less cyberspace, the concept of a “geographical market” for news media ceased to have relevance twenty years ago, yet here in India we are still flogging this dead horse. The media options available to consumers moved to digital choices in the late 1990s in India itself and has expanded unimaginably into a vast array of products and choices --which has not just created more choices but has also reduced consumers’ mind share of any traditional media. Digital media by virtue of its inherent boundary-less distribution is available in all geographies. Even media that’s run from outside the country could end up having a large user base in the country. In fact, as trends in US prove, geographical boundary-less digital media will soon overtake other forms of media in terms of media consumption soon in India. In addition~~al~~, the leaders in digital media consumption in India are international platforms and BigTech through their various news, search, video and content feed products. In such a context, creating any cross media ownership guidelines for traditional media is not just totally unnecessary and illogical –but also absolutely unfair to single out only rapidly declining legacy brands.

ix. That not one entity has hence been able to identify even one single “market” where there is horizontal dominance/monopoly/concentration simply because of the above fact, and also because none exists. With multiple technological methods developing to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium. Hence, with convergence and new tech, it is also not possible to any longer even use the phraseology that any single entity “dominates” any given “market” based on “market share” in a given “geography” within a media segment. Hence, the entire basis for any effort to justify any restrictions on horizontal cross media ownership simply falls apart.

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x. That the only entity having a total monopoly –and that too because it is the sole player in several segments-- is the government-controlled Prasar Bharati, which:

- Is the only entity and hence holds an absolute monopoly in terrestrial TV via its 43 channels –which also have to be mandatorily carried even on private cable;
- Has unrestricted vertical integration via DTH Freedish with 45 million subscribers;
- Is the only entity and hence holds an absolute monopoly in AM radio broadcasting as well as original content in news and current affairs on FM radio. No private players are allowed in any of these segments and there cannot be a more blatant example of a media monopoly anywhere in the world like Prasar Bharati.

xi. That there is no argument against the need for a level playing field viz vertical integration by bringing telcos into the ambit of the 20% broadcasting vertical integration rule so that there are controls over the same entity owning the content and pipe in both broadcasting and telecom sectors. In fact, this is the only intervention that TRAI is mandated to do since only telecom and broadcasting/cable –where its remit is to promote competition and facilitate efficiency-- is under its jurisdiction and any discussion on other media involving horizontal cross media curbs is outside its jurisdiction.

xii. That there is no example cited of any country in the world which is even discussing imposing curbs on horizontal cross media ownership. Infact, the few countries which did have these restrictions owing to the very few media outlets present there wanting to enter terrestrial TV over 60 years ago, have been rolling them back owing to many factors including convergence and the need to ensure cross-media ownership to keep their traditional media entities alive. India, in any case, has absolutely different circumstances, with the most diverse and competitive media market in the world, even as terrestrial TV –the trigger for cross media curbs in a few countries 60 years ago—is wholly in government-controlled Prasar Bharati's hands and private sector is barred from it.

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

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PART B: GENERAL COUNTER COMMENTS

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

   We would like to keep discussion within the ambit of law, hence:

- Anything apart from telecommunications, broadcasting and cable is outside TRAI's jurisdiction, and hence any inputs provided by TRAI on Print and Digital are outside its statutory mandate. Since MIB has referred this matter to TRAI, it is its responsibility to restrict its suggestions to telecommunication services.
- In any case market concentration and media plurality ie content is totally outside TRAI's remit. The present exercise (where statutory recommendations have been sought and are contemplated to be provided by TRAI) ought to have been restricted only to those aspects and segments of M&E sector as envisaged in proviso to Section 2(1)(k) read with Section 11(1)(a) of the Telecom Regulatory Authority of India Act 1997 (as amended). Moreover, drawing parallels with FCC is not warranted as unlike FCC, TRAI does not have rule-making powers vis a vis M&As in the media and broadcasting space; *ex ante* review of combinations in the media and broadcasting space is already squarely within the remit of Competition Commission of India under Sections 5 and 6 of the Competition Act, 2002.

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

   We would like to counter a couple of entities who have cited academic studies based on some random studies in countries with far far less diverse and competitive markets as compared to India. We would like to specify that :

- There is no data to establish a causal linkage between market concentration and viewpoint plurality and media ownership and viewpoint plurality.
- More importantly, India is an absolutely unique media market in the world, with an unimaginable array of media products in over 15 languages. There is not a single argument that outlines what is the desired level of media view point plurality, how is media ownership connected to it and what at all can curbs on media ownership do for this viewpoint plurality.

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

   We are very clear that there is no concentration of ownership in the media and that in any case, concentration does not impact viewpoint plurality. This is because different media products in the same entity are structured under different companies, have separate editorial/content and management teams and have

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totally differentiated content strategies designed to address different target audiences. Hence, common ownership actually builds up plurality as there is a conscious effort to have differentiated products with entirely differing viewpoints. Without establishing an objective relationship between media concentration and plurality, the CP proposes in paragraph 1.5 to analyse the "anomalies caused by media concentration" through cross-media ownership and vertical integration. Attempting to use tools such as regulation or restriction of vertical integration or cross-media ownership, without showing *how* they influence the theoretical "desired level" of viewpoint plurality is an exercise in futility.

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

- **Government's NFHS study: Indians are sharply reducing their consumption of news and entertainment** when delivered through traditional mass media like newspapers, magazines, radio, and TV. Data released in May 2022 by the Government's National Family Health Survey (NFHS)-5, conducted between 2019 and 2021, shows that there has been a double-digit percentage decline since the 2015-16 NFHS-4 in the share of people who read newspapers or magazines, watch TV, and listen to the radio at least once a week, which is the study's benchmark for regular consumption of mass media.

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

- **Instead, it is Big Tech that rules the roost now in India.** India is Meta's largest market, and it has over 400 million users in India and even Twitter has 24 million subscribers. In contrast, the entire TOTAL combined readership of the hundreds of English newspapers in India is only 31 million as per IRS 2019, for example.

- **Even within traditional media, News and current affairs is a drop in the ocean of consumption.** Take viewership of TV news channels for instance. This is almost irrelevant in the overall TV viewership space:
  As per the FICCI-EY Report[1], the viewership of different genres is as under:

GEC – 49.8%
Movies – 23.8%
News – 10.4%
Sports – 1.9%
Kids – 7.4%

Language	Share of Viewership	No. of Channels
Hindi	43%	175
Telegu	13%	50
Tamil	12%	65
Multiple	7%	43
Kannada	7%	36
Marathi	5%	27
Bangla	5%	36
Malyalam	3%	28
Oriya	2%	19
Bhojpuri	1%	15
Punjabi	1%	21
English	1%	60
Gujarati	0%	15
Assamese	0%	15
Others	0%	8

Channel Genre	Share%	No. of Channels
Regional GEC	31%	101
Hindi GEC	19%	31
Hindi Movies	16%	38
Regional Movies	10%	54

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Kids	6%	20
Sports	4%	31
Regional News	**4%**	**127**
Hindi News	**3%**	**28**
Regional Music	3%	34
Hindi Music	2%	15
Regional Comedy	0.8%	5
Regional Religious	0.7%	8
Hindi Religious	0.6%	4
Infotainment	0.6%	34
Regional Kids	0.6%	5
English Movies	0.2%	13
Hindi Business News	**0.03%**	**2**
English News	**0.03%**	**11**
English Music	0.03%	2
English GEC	0.01%	11
English Business News	**0.002%**	**3**
Hindi Tele Shopping	0.002%	1
TOTAL	100.00%	578

Source: BARC | India | NCCS 2+ | Wk10-20'22 | Share%

The above figures clearly show that the English News viewership has only .03% share, the Hindi news category has 3% share and all the regional news channels account for 4% share of total TV viewership. The Hindi & regional GEC genre holds 49% share of the total TV viewership. This makes the TV news segment extremely small and insignificant and even discussion of imposing any kind of restrictions on this segment is totally illogical and will be only designed to kill it.

5. **Argument by Big Tech/Social Media/UGC to curb ownership in news and keep Big Tech/SM/UGC/aggregators outside of ambit of processes is farcical and baseless as they have far, far more influence than traditional or "recognized" media:**

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(i) Chain of Command

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

  In Social media/Aggregators/UGC:

1. News Collection is not through the formal process of trained reporters and journalists but anyone (even those with malicious intent) can upload content and get distribution for millions of news consumers at one go.
2. There is no chain of command and editorial processes in such companies and any content with virality (usually that drives strong emotions and force people to take sides) can find distribution on such platforms risking the very nature of the Indian society which is built on shared values and respect for each other's culture, traditional and viewpoints

(ii) Viewpoint Plurality and Editorial Policies:

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

In Social media/Aggregators/UGC:

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

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

Control will not impact the nature of UGC. Platform monopoly hurts society and businesses. The algorithmic driven monopoly on content is monetized through the ads businesses of such large platforms and aggregators leading to unfair trade practices. One of the BigTech platforms is currently being probed on antitrust across multiple geographies in the world.
https://www.livemint.com/technology/tech-news/us-says-google-breakup-may-be-needed-to-end-violations-of-antitrust-law-11603240644171.html
https://www.cnbc.com/2022/05/19/new-bipartisan-bill-would-force-google-to-break-up-its-ad-business.html
https://www.forbes.com/sites/iainmartin/2021/11/10/google-loses-court-challenge-over-eu-28-billion-antitrust-fine/?sh=b28092879048
https://www.pymnts.com/cfo/2022/voice-of-the-cfo-growing-a-company-means-looking-beyond-the-books/

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

- The telecom-broadband convergence has been happening at a frenetic pace and has been wholly unregulated. This is expected to grow even further, with 750 million smartphones where all manner of content is available. However there is a total regulatory vacuum here, especially with the absence of adequate competition in the pipe.
- Hence, curbs on vertical integration in broadcast and cable services which were absolutely necessary to ensure fair and non-discriminatory treatment, must now be extended to all entities in distribution space incl telcos so as to ensure there is no self-preferencing by vertically integrated entities and to prevent instances of consumer harm by tariff regulations. This also falls squarely within TRAI Act 1997 whose remit is to promote competition and facilitate efficiency in the operation of telecommunications services.

- This is especially the case, when horizontal integration is heightened by vertical integration as well –and that these risks have multipled with internet and online media. In other words, with the convergence of broadcasting and telecommunications, the gap in regulation of telcos has to be plugged by extending the 20% vertical integration rule in broadcasting, to telcos.
- In fact we feel that tech advancements like intraoperability, broadcast-broadband convergence, cable TV digitization, etc make an integrated content value chain

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possible *and is all the more reason to ensure that the same telco does not own more than 20% equity stake in both content and the pipe.* Moreover, TRAI's CP on Market Structure of Multiple System Operators (MSOs) observed that 'in a well-functioning market, where firms are competing on fair terms and there are no artificially erected barriers of entry, there is no need to impose restrictions. However, if there is little or no competition or in case where barriers to entry exist, there is the distinct possibility of abuse of dominance by the service providers'. We are concerned that the situation is ripe for a potential abuse of market power especially given the handful of entities owning all distribution infrastructure as well as content across all formats-- so regulatory measures on vertical integration ought to be introduced along the same lines as for DTH/HITS since there is no framework to regulate any anti-competitive integration by the handful of telcos. The DTH guidelines have had a restriction on vertical integration since 2001 and the HITS guidelines of 2009 followed suit and were necessary given the very low number of operators apart from the vertical integration issue. Moreover these have stood the test of time and are a suitable benchmark for action to regulate telcos along the same lines.

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PART C : STAKEHOLDER-WISE COUNTER COMMENTS:

With the above submissions, we would like to offer our specific counter comments on some of the comments of the stakeholders for easy reference as below:

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

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

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

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

i. Many entities have already commented that with convergence and the internet, there is absolutely no question of geographical markets and that in any case, India is the most pluralistic and competitive media market in the world, with the numbers of newspapers running into lakhs, and TV and radio channels in the hundreds – all in several dozen languages. Hence there is absolutely no question of monopolies hence no question of "abuse" in the private sector** as there is already dissemination of every possible diversified view and opinion on every conceivable topic in Indian media. Therefore, there is also no possibility that any rules curbing horizontal media ownership can ever "strike a balance between warranting a degree of plurality on one hand and ensuring that the entities are rendered with optimum opportunities of expansion, innovation and ease of doing business". **The only entity that AIDCF comment is true for, is government controlled Prasar Bharati --which holds an absolute monopoly in not just terrestrial TV and AM radio –but also original news and current affairs on the entire radio sector.

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

ii. Given all of the above taken in conjunction with multiple other arguments, AIDCF/GTPL Hathway's suggestion of tool/ a formula that can be used for measuring market share of any entity across all media segments in a relevant market or of limiting ownership to maximum of 2 segment types in so-called "user based" and "consumer based" interfaces or of setting up a media advisory committee to examine entities wanting to enter into media has no logic, basis or justification; infact the advisory body suggestion is illegal and goes against Constitutional and legal strictures. Interestingly, AIDCF contradicts itself later by conceding that in the "present era of convergence, it is significantly difficult to ascertain the individual market shares of each entity"even as it says that the "relevant geographic and relevant product market should be determined by virtue of the framework as enshrined under the Competition Act, 2002. In terms of the same, it is stated that language should be one of the criteria for analysing market dominance".

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

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

iii. In fact, in their entire set of comments, it is the monopoly by Prasar Bharati's AIR—which operates as many as 479 stations in 23 languages, reaching 92% of the

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country's area and covering as many as 99% of India's population – which they have ended up inadvertently emphasising. AIR also has an absolute monopoly over AM broadcasting as well as news and current affairs. In stark contrast, the entire private sector combined has only 385 FM radio stations –all won through open and transparent bidding, while AIR gets free spectrum –and these are present in only a fraction of India's land area, as they cover only 50 square km of the 112 cities they are present in. Moreover, NO original news and current affairs is allowed on private FM radio stations, and the only news they can carry, are AIR bulletins rebroadcast in original or translation.

iv. We would like to flag a non-serious and unaware/ridiculous claim by AIDCF/GTPL Hathway wrt newsprint:*"A convergence/ significant exercise of control between the newsprint agency and a newspaper owner is likely to stand advantageous for the concerned newspaper owner as the latter might be incentivized by the newsprint agency, thereby providing an avenue to the newspaper owner to get its content printed and disseminated at a competitive advantage as against the others".*We are surprised that why raw material of a product is being brought into discussion on ownership? It is like saying is there a nexus between manufacturers of copper and aluminium raw materials used in cable hardware and that it will impact news plurality! This is ridiculous and we are surprised that an entity in the media sector is not aware that newspapers buy newsprint from many external foreign and domestic companies and have, in fact, been lobbying government to remove the customs duty on newsprint so as to bring down their usuriously high rates. Hence there is absolutely no question of a convergence between the newsprint agency and the newspaper owner in aforementioned line in AIDCF/GTPL Hathway comment which is incomprehensible and utterly ridiculous.

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

Moreover, AIDCF/GTPL Hathway's observations on broadcasters are vicious and baseless. Channel pricing is the prerogative of the broadcasters and they are obliged to offer their channels on a-la-carte basis as well as in form of bundled bouquets in terms of the regulations. The packaging at the retail level is principally done by the

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DPOs and hence, further restrictions in bouquet packaging, if any, may be imposed on the DPOs for redistribution of TV channels in a fair manner as contemplated in the regulations. The DPOs advocate cross holdings in their area of operations like offering broadband along with TV services and are suggesting unreasonable restrictions on broadcasting entities.

vi. The suggestion to set up a Media Advisory Body to work with CCI is not tenable as if such bodies are proposed to be set up, then it puts question on the entire structure, constitution and functioning of an expert body like CCI which is competent enough to look any anti-trust issues. Further, even the need for having such body is not given nor any examples of market failures have been quoted.

3. Broadband India Forum (BIF)

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

ii. Contrary to BIF claims, UGC/SM content is far more dangerous then recognised media entities which have a trained manpower curating content as per the prevailing laws, rules and regulations **and in India alone, follow more than 5 layers of rules – while algorithmic-led entities follow no rules. Moreover, Big Tech like Google is facing a split in many jurisdictions. Hence the argument to curb ownership in news and keep UGC and entertainment incl OTT out of the ambit of controls is farcical. A detailed outline of our points is made ***under Part B (4) as above.***

- In fact, we strongly object to the view that UGC is unlikely to hold significant amount of influence over public opinion and that there should be a conscious effort to avoid any restrictions in relation thereto. In our opinion, UGC has a greater impact on the consumers/viewers given the vast platforms that showcase them (like FB's 400 million users in India) as compared to the far smaller "recognised" media entities. Even among the well-educated people, there is a very small percentage of people who put in the effort of identifying the authenticity of the source of such information or check on veracity of such information before sharing/distributing such content, which effectively is has much larger impact and becomes far more dangerous as the source, distributors or consumers are not easily traceable - as compared to the content made available to the consumers/viewers by Broadcasters which is sourced by highly trained journalists/professionals, who follow the many layers of

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registrations and regulation and consumed only by the registered subscribers. Notwithstanding anything contained herein before, any issues relating to content is beyond TRAI's jurisdiction and all such issues should be kept outside the scope, ambit and purview of this CP.

iii. Contrary to claims, the non-news media has greater influence on viewers for many reasons including having far, far greater reach on hot button trends and topics, many of which can have overt or covert socio-political themes or undercurrents that can become massive trends that can impact the body politic in many ways. In fact, this can be proven by the much higher numbers of take-down notices and other action by the government against non news as well as Big Tech/SM platforms as compared to those sent to news media. Just a few examples of the many are cited below:

- OTT shows –

    a. https://www.scoopwhoop.com/entertainment/indian-movies-shows-on-ott-accused-of-allegedly-hurting-religious-sentiments-offending-people/
    b. https://www.indiatoday.in/binge-watch/story/tandav-to-aashram-ott-shows-and-film-accused-of-hurting-religious-sentiments-1970454-2022-07-05
    c. https://interviewtimes.net/controversial-ott-shows-which-grabbed-indias-attention/
    d. https://www.bollywoodhungama.com/news/features/tandav-mirzapur-leila-5-web-series-might-get-banned/
- YouTube terminates kids channel - https://techcrunch.com/2017/11/17/youtube-terminates-exploitive-kids-channel-toyfreaks-among-broader-tightening-of-its-endangerment-policies/
- https://indianexpress.com/article/cities/mumbai/two-arrested-in-obscenity-case-against-ott-platforms-in-maharashtra-7256557/
- Twitter has been asked by authorities in India over the past year to act on content including posts alleged to have spread misinformation about protests by farmers and over tweets critical of the government's handling of the Covid-19 pandemic.
- Google and Facebook along with a handful of other websites including Yahoo! and Microsoft were ordered by a court to remove all "objectionable" content from their respective domains or face legal consequences viz content that portrayed derogatory images of the country's political leaders, as well also those that could hurt religious sentiments. https://gadgets360.com/internet/news/google-facebook-remove-content-on-indias-order-224568

- Government blocked several social media handles that were circulating "fake and inciting" content on Twitter, YouTube and Facebook with respect to offensive content viz a fake video of a cabinet briefing, an animated fake video showing violence against the Prime Minister and derogatory/hateful posts targeting women. https://indianexpress.com/article/india/govt-blocks-social-media-handles-fake-news-7712900/

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- MIB directed a TV channel and social media - Twitter and YT to pull down from their platforms the "derogatory and obscene" advertisements of a deodorant brand.

iv. Moreover, general entertainment channels have a greater impact on viewers than news channels. Even a small opinion conveyed through general entertainment channels have huge impact on viewer's viewpoint. It is, therefore, general entertainment channels are often used as effective genre to carry social messaging, for promotion by celebrities of various causes and by few political personalities being regularly featured on it to promote their sponsored social causes, in effect, their own political agendas.

In comparison, the news and current affairs genre is driven by content in the form of reporting on current incidents and developments and primarily broadcasting of views of people involved in a story, comments and reviews of experts, analysts, and reactions from concerned groups, individuals and affected factions. Journalists outline all sides of the story while panel discussions showcase the views of people from all ends of the spectrum and all shades of opinion. Moreover, the many layers of regulation as well as self-regulatory guidelines followed by news channels effectively ensure that the news entities portray neutral views and are objective in their reporting.

4. <u>Internet Freedom Foundation (IFF)</u>

i. We totally oppose the baseless effort by IFF to imply that cross-media ownership rules may be considered for the news and current affairs and reiterate our counter comments made to the comments made by Broadband India Forum and our iterations ***under Part B (4) as above.***

ii. We do not agree that common ownership of different content media reduces pluralism, in fact we are clear that it increases it due to many reasons including the basic requirement to have different content entities with different content strategies with vastly differing viewpoints/focus so as to tap different target groups/audiences. It also follows that we are also clear that restricting ownership will not lead to more viewpoint plurality and will only diminish/reduce it.

iii. Moreover, there is no dominance, and hence there is no question of lack of market plurality in content. In fact we are clear that creating a mechanism for monitoring ownership will not lead to diversity and pluralism.

iv. Big Tech and social media are today far more influential than traditional news media.

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

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vi. We are very clear that no segment needs to be singled out for monitoring ownership/viewpoint plurality and hence any calls to include radio and Internet are totally unwarranted.

5. **Alam Srinivas, Vibodh Parthasarathi and Others**

- There is no data to establish a causal linkage between market concentration and media plurality and media ownership and media plurality.
- More importantly, India is an absolutely unique media market in the world, with an unimaginable array of media products in dozens of languages. These are both multiple AND diverse/pluralistic.
- There also is not a single argument that outlines what is the desired level of media plurality, how is media ownership connected to it and what at all can curbs on media ownership do for this media plurality.
- Western academic studies cited by the authors are not relevant to the unique Indian market which is indeed diverse and has a vast array of multiple and pluralistic viewpoints. This is more than evident by the lakhs of options in both traditional and new media whether news or non-news.
- Similarly, methods and tools cited are outdated and have no relevance in the digital age.
- We reiterate that common ownership of horizontal cross media is not just no threat to plurality, but is necessary for it, as it is these entities which seek to capturediverse markets through differing media products with differentiated content. In any case, these differentiated media products are put together by entirely different editorial teams, usually part of entirely different companies.
- We agree with the authors that vertical integration ie common ownership and control of broadcasters and DPOs, or digital entities and ISPs, or a combination of these, is exceedingly detrimental to the media landscape, and hence have recommended extension of the 20% vertical integration rule to telcos to ensure a level playing field. This is especially the case, when as the authors point out, horizontal integration is heightened by vertical integration as well –and that these risks have multipled with internet and online media. In other words, with the convergence of broadcasting and telecommunications, the action point required from TRAI (which also falls squarely within the TRAI Act, 1997—the only segment of CP that does so) is to propose plugging this gap in regulation of telcos by extending the 20% vertical integration rule in broadcasting, to telcos.
- No examples/evidence that current state of media ownership is adversely affecting media plurality in India in any manner:
  We are very clear that there is no concentration of ownership in the media and that in any case, concentration does not impact media plurality. This is because different media products in the same entity are structured under different companies, have

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separate editorial/content and management teams and have totally differentiated content strategies designed to address different target audiences. Hence, common ownership actually builds up plurality as there is a conscious effort to have differentiated products with entirely differing viewpoints. Without establishing an objective relationship between media concentration and plurality, the CP proposes in paragraph 1.5 to analyse the "anomalies caused by media concentration" through cross-media ownership and vertical integration. Attempting to use tools such as regulation or restriction of vertical integration or cross-media ownership, without showing *how* they influence the theoretical "desired level" of media plurality is an exercise in futility.

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

- We disagree that any entity should be allowed entry into media and reiterate the point that certain categories of media like those owned by political and state/Central government entities must not be allowed as these would not be independent and impartial entities and their only motive would be to sway public opinion towards only one point of view.
- These individuals are of the view that that restrictions on cross-media should not be made applicable –but if they are, then these should be limited to news and current affairs. We strongly object to this point of view; infact even the authors contradict themselves in the same para by stating that the thousands of newspapers and hundreds of TV channels "evidences a healthy competition in the media sector of different mediums and existence of viewpoint plurality". It is denied that news and current affairs is the most relevant genre and also oppose any attempt to cite curbs for legacy news media, especially when it is Big Tech/SM/UGC which are the new giants before which traditional media and their digital arms are absolute pygmies. We wish to reiterate our counter comments made to the comments made by Broadband India Forum and our iterations ***under Part B (4) as above***.
- Moreover, we disagree totally on the contradictory assumption by these individuals that there can be the possibility of a "geographic market" in the digital age. Details have been mentioned elsewhere in this Note. Hence their suggestion of how to measure "market share" or "reach" or "volume of consumption" of any legacy/traditional media while keeping digital entities (including their own digital arms) out of the picture is illogical and unjustified. We have already commented in detail how individuals access content through a variety of platforms and devices in any given day, and in any corner of the country in what is today a boundary-less world.
- These individuals are of the view that LCOs and DPOs are sufficiently governed and there is no further regulations required. However, the ills of monopolies due to vertical integration is clearly evident and to ensure a level playing field, we are of the view that 20% ownership restrictions on vertically integrated companies (like for DTH, HITS, etc.) must be extended to other competing entities like telcos.

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7. **Rishab Bailey and Ajay Shah**

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

8. **Bharti Telemedia**

Re comment to bring OTTs under the broadcasting and cable services regulatory framework. At the outset, it is stated that OTTs currently are not under the TRAI purview. Any such inclusion, would require parliamentary approval. Moreover, OTTs cannot be compared with DPOs. Unlike DPOs, OTTs are not aggregators of multiple broadcaster channels. Like the broadcaster website, OTT is merely another extension of the broadcaster where it can showcase its own content.

9. **Discovery Communications India /SUN TV Network Ltd**

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

- As regards the comments that news media has influence and the non-news media has no or little influence on viewers, we wish to reiterate that this is not based on a correct premise. As outlined above in reference to our counter comments on BIF, the non-snews media has greater influence on viewers for many reasons including having far, far greater reach on hot button trends and topics, many of which can have overt or covert socio-political themes or undercurrents that can become massive trends that can impact the body politic in many ways. This is also proven by the much greater numbers of take-down notices sent by government to Big Tech/SM

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platforms as compared to news media as outlined in our counter comments to BIF as above.

10. TATA PLAY

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

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

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PART C : CONCLUSION

1. There is no requirement or justification for any cross-media restrictions on horizontal cross-media ownership. In fact each of these content sectors would benefit from active de-regulation so as to reduce entry barriers.
2. There does, however, exist a need to extend the 20% vertical integration ownership rule present in broadcasting, to telcos owning content and vice versa, as well as to telcos owning any part of the media distribution value chain.
3. There is no basis to consider that the news media has more influence than other media and hence no there is no rationale to selectively introduce curbs on News Media.
4. An overwhelming consensus can be observed across all submissions that the existing legal framework is more than enough to keep a check on any perceived threat to viewpoint plurality resulting from market dominance. Introduction of any additional regulator or reporting mechanism will only add to the already onerous compliance burdens and will only affect the ease of doing business in media.

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