Via Email

Date: July 12, 2022

To,
Shri Anil Kumar Bhardwaj
Advisor (B&CS)
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Sub: Counter Arguments on the submissions made on "Issue relating to Media Ownership"

Dear Mr. Bhardwaj,

At the outset, we, Entertainment Network (India) Limited ('We'/ 'ENIL'), would like to thank your good offices for providing us an opportunity to put forth our counter views to the submissions made by various stakeholders. This gives us a chance to further clarify the rationale behind our primary submissions.

Having reviewed submissions by various stakeholders across the media, entertainment, and telecommunications industries as well as law firms and individual submissions, we feel that there is overwhelming and overarching unanimity of opinion against imposition of any restrictions on cross media ownership.

The data points in the consultation paper as well as in the submission of the stakeholders are enough to highlight the inherent heterogeneity of Indian market. The data points also make it evident as to how the Indian audience have access to plethora of sources for consuming news and entertainment from local as well as international sources, thanks to the convergence in the digital era.

However, there are few contentions in some of the submissions, to which we wish to respectfully put down our counter views as given below:

1. **Existence of multiple media outlets signifies multiplicity but not diversity-**

   A view has been expressed that concentration of ownership of multiple media outlets in hands of few big companies will affect viewpoint plurality. However, <u>the same has no practical application in Indian market scenario</u> for the following reasons:

   a. There are enough data points shared in the consultation paper as well as stakeholders' submissions which show the sheer number of publications, media outlets and platforms available to Indian consumers across numerous dialects and languages. It is practically impossible that any single or even few entitles control these numerous media outlets. by

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b. In addition to diverse ownership existing in media and entertainment sector in India, there are also government media platforms like Doordarshan and All India Radio, to add to the viewpoint plurality.

c. As highlighted in the submissions, even in a scenario where a group of companies have various media interest across TV, print, radio etc. all these are professionally managed and operated independent of each other. They also cater to varying target audiences and as such vary in content and viewpoints, thus posing no risk whatsoever of affecting viewpoint plurality.

d. As acknowledged in almost all submissions on this topic, it can be seen that any concern of concentration of ownership is adequately taken care of by the existing legal framework comprising of competent mechanisms of Competition Commission, SEBI etc. In view of the same, there is no need for introduction of any additional regulator to monitor cross-media ownership. Any such attempt will only increase the compliance burdens and will affect the ease of doing business for media sector.

e. The cross-media ownership is thus of no consequence as regards hampering viewpoint plurality. The real issue lies with the vertical integrations taking place, particularly in telecom sector. In addition to being communication service providers, the telecom giants are also internet service providers (ISPs) and also have controlling interests in content creation and broadcasting as well as its distribution through DPOs. Consequently, the owner of pipes are also controlling the content which is distributed through it, which in turns translates into market dominance. Hence, to keep a check on abuse of such dominance, there should be restrictions introduced similar to those existing for DTH/HITS operators where regulations mandate a ceiling of 20% equity holding for broadcaster in any distributor (DPOs).

2. **If at all cross-media restrictions are to be considered only News genre is relevant for considering such restrictions** –

There has been over-emphasis on particularly 'News' segment in few submissions, as the only area of concern for influencing viewpoint of the audience. This is an archaic and constricted view and we strongly disagree with this proposition for the following reasons-

a. Firstly, for the reasons explained in our detailed submissions, we reiterate that there is no requirement of even considering cross media ownership restrictions given the current market scenario or even otherwise for any segment let alone the News segment.

b. Secondly, viewpoints are not only influenced by News content put out only by news outlets, but also by a lot of other sources of non-news content for e.g., the non-news blogs, comments and other form of expressions like short videos on social media i.e., User Generated Content, movies, television serials, documentaries and other entertainment content, which have equal impact on the persons consuming such content. These sources and particularly the 'User Generated Content' on social media including tweets, comments, blogs etc.

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greatly influence viewpoints of people as it comes from peers in many cases and it harps on people's emotions (rather than facts) by giving colourable interpretation of actual news to drive their personal/ religious/political agenda.

c. The phenomena of abuse of dominant position is completely genre agnostic and hence selective restrictions only on news genre is completely absurd to suggest.

3. No need for restrictions on Vertical integrations:

There is a general consensus against any restrictions on horizontal cross-media ownership amongst the various stakeholders as can be seen from the various submissions. However, additionally, there are few submissions which support vertical integrations too. This in our view can be a major concern for the entire country, since–

a. In the media sector, vertical integration lets the entity which produces content also control the distribution platforms and vice-versa.
b. This naturally leads to abuse of dominance as the owner of the pipe can prioritize and promote the content of their own company/group and if unchecked, will obviously lead to a monopolistic scenario.
c. This can be clearly seen in case of telecom companies who, along with mobile networks, now have the broadband supply (pipe), media production houses (content) as well as distribution platforms like DTH, IPTV, OTTs, and others.
d. This naturally creates an entry barrier for individual players who are not able to compete with the content and distribution capabilities of these telecom giants.
e. As such to ensure a level playing field for all, we had suggested in our submission, to apply the 20% equity ceiling for the telecom service providers in content production and distribution platforms akin to those applicable for DTH/HITS service providers.

4. Licensing regime to be introduced for OTT platforms:

We have noticed in few submissions that there is a suggestion to bring regulatory parity for OTT platforms in terms of licensing and well as to introduce 'Must Carry" and "Must Provide" for Broadcasters in respect of supplying content to OTT platforms. In our view –

a. We do not think licensing of OTT platforms is currently necessary. The aim of licensing mechanisms is to ensure socially responsible use of natural resources, such as spectrum, for two main reasons. First, to ensure fair allocation of scarce resources and second, to prevent any social harm that may arise from their misuse for private benefit. For example, unsystematic and rapid mineral mining is known to cause long-term damage to the environment. Hence, the government licenses mining operations to mitigate degradation of the natural resources and to redistribute gains like license fees, for social welfare. The same rationale applies to the use of the electromagnetic spectrum, which telecom service providers (TSPs) or DTH service providers or Radio operators use to broadcast.

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b. However, no similar reason exists for subjecting internet-based applications to a licensing regime. Unlike spectrum, the internet is not a public resource because telecom and internet service providers control access to it. Further, the internet is not a scarce resource. In other words, its consumption by one person does not reduce the amount available for another, except if constrained by network capacity.

c. In the absence of an underlying legal or economic rationale, licensing regime can also violate the intent of net neutrality and adversely impact freedom of speech and expression. According to the principle of net neutrality, the internet must treat all applications, content, and services, equally. At present, Indian users can access internet-based services and applications for free, or at a very low price. If a licensing regime is imposed, only larger entities may be able to absorb compliance costs for internet-based services, while smaller ones may become inaccessible. Consequently, consumers may have to pay for any increase in tariffs, and only those with deep pockets may be able to exercise their freedom of expression.

d. Even TRAI in its recommendation released in September 2020 has not recommended any licensing regime to be imposed for OTT platforms after due consideration.

e. However, we do re-iterate that there is a need to put a tab on the vertical integration between content creators, broadcasters and DPOs to ensure that monopolistic situation is avoided, and it does not create an entry barrier for smaller OTT players.

f. We believe that a check on vertical integration can itself ensure that a level playing field is available for all and there is no possibility of any abuse of dominance.

We hope that counter arguments cited above shall be given due consideration on merits.

Sincerely,

For Entertainment Network (India) Limited

ENTERTAINMENT NETWORK (INDIA) LIMITED
MUMBAI

Prashant Ramdas
Vice President & Head-Legal