

Comments of the IBDF to the Consultation Paper on Issues relating to Media Ownership dated 12 April 2022 (“TRAI Media Ownership CP”), issued by Telecom Regulatory Authority of India (“TRAI”)

A. INTRODUCTION

1. The media informs, educates and entertains. In a democracy, news media plays an important role in the formation, projection and dissemination of public opinion. It is popularly referred to as the “Fourth Estate” as it plays a crucial role in democracy. The right to freedom of speech is protected by the Constitution of India and realised significantly through various media.
2. Digital media – whether it is livestreaming on YouTube; social media; stories on Instagram; snippets on Twitter; online publication of news and editorial (with or without interactive ability for discussion) - has changed the dynamics totally in the media sector. Now, more than ever, the plurality of voices and opinion is available for media across all mediums. In the tech age, one turns a corner and is inundated with content. The concerns of regulating cross media ownership, under such circumstances, do not seem necessary.
3. With convergence becoming a reality the world over, the term ‘cross-media’ is steadily gaining relevance – but in a different sense. Convergence, internet and mobile telephony bring any and every newspaper, TV and radio channel on a single screen thus, making the very concept of specific media markets / geographies irrelevant. With multiple technological methods developing to disseminate information and consumption by consumers, there remains no domination in any given market based on market share in a given geography. There is no reasonable basis therefore, to bring in any kind of cross media restrictions.
4. We note that Ministry of Information and Broadcasting (**MIB**) in its reference dated 19 February 2021 as well as TRAI in the present Consultation Paper on issues relating to media ownership dated 12 April 2022 have alluded to various aspects of the media and entertainment (**M&E**) sector with focus on print media and digital media (including over-the-top (**OTT**)). IBDF is submitting the present response on various aspects of / issues raised in the Consultation Paper to honour the consultation exercise being conducted by TRAI. However, it is respectfully submitted that the present exercise (where statutory recommendations have been sought and are contemplated to be provided by TRAI) ought to have been restricted only to matters (i.e., broadcasting services) envisaged in proviso to Section 2(1)(k) read with Section 11(1)(a) of the TRAI Act 1997 (as amended).
5. The Constitution of India guarantees the fundamental right of speech and expression which is central to and realised through the media industry. At the outset, it is our view that it would be fundamental to this consultation to give due consideration to the guarantee of a wide ambit of speech and expression against a very narrowly specified / applied scope for its regulation in any form, whether directly or indirectly. The stakeholders (across various mediums in the M&E Industry) operate within the specific frameworks guided by these principles, and in the face of comprehensive frameworks, there hardly remains any legitimate room for any additional regulatory intervention.

6. In addition, the MIB's reference as well as TRAI's current Consultation Paper delve into various aspects relating to media, e.g., control and ownership of media, cross-ownership in media, horizontal integration, and vertical integration. However, it is respectfully submitted that TRAI ought to consider that media enables citizens to exercise their rights enshrined under Articles 19(1)(a) and Article 19(1)(g) of the Constitution of India. As such, no measures ought to be considered / recommended that may have an impact of restricting dissemination of content as a form of freedom of speech and expression and right to carry on trade or occupation. Further, in addition to stakeholders' (including broadcasters' / content creators') aforesaid rights, TRAI also ought to keep in mind the rights of consumers under Article 19(1)(a) to receive and consume content of their choice and to be informed and entertained.
7. Further, Article 14 of the Constitution of India underscores the fundamental doctrine of treating dissimilar entities differently. There are several services that enable content consumption through variety of mediums and in different formats / stages. Further, each such service / medium has different capabilities to *inter-alia* make available content in differing manner thereby providing differing consumer experiences. Considering that discrimination also occurs when persons who are in unequal position are being treated in the same (equal) way therefore, any framework facilitating non-discrimination and enabling a level playing field to promote fair competition would necessarily need to identify all the relevant parameters and aspects for classification and categorisation as similar, or equal, or within the same relevant market. In any event, the possibility of concerns regarding competition, ownership, control, and plurality in one or more markets cannot be the cause for recommending regulation in any and all markets.

B. PLURALITY HAS INCREASED SINCE 2014

1. The MIB requested TRAI in 2014 to suggest measures that can be put in place to address vertical integration to ensure fair growth of the broadcasting sector and to suggest measures with respect to cross-media ownership with the objective to **ensure plurality of news and views** and *availability of quality services to the consumers*. Things have changed significantly since 2014. It is our view that both plurality and accessibility exist for the end consumer in the Indian market today.
2. "Plurality, in the context of the media, refers to the availability of fair, balanced and unbiased representation of a **wide range of opinions and views**. Ensuring both external plurality, namely multiple voices in the national media market, and internal plurality, i.e., presentation of a range of facts and news in an unbiased manner by a media outlet, are fundamental in the working of a democracy." (Michele Polo, *Regulation for pluralism in media markets*, in the *Economic Regulation of Broadcasting Markets*, Paul Seabright and Jurgen von Hagen (eds), Cambridge University Press, 2007, pp 150)
3. Plurality has existed at multiple levels and digital access has further enhanced this. Today plurality prevails in media sources as well as in media consumption in the media industry. There is (a) horizontal plurality; (b) vertical plurality; (c) plurality of owners; and (d) plurality of content creators, resulting in more choice and access than ever before for the consumer of content.

a) Horizontal plurality

- i. Digitisation has broken down the barriers of entry for traditional forms of media. Consequently, the consumer has access to more content than ever before –both from local and global platforms across television, print, radio, OTT and social media. There are 909 TV channels¹, 1,40,000+ registered publications², 300+ private FM radio stations³, 2000+ digital news publishing platforms⁴ and over 40⁵ OTT Platforms which are non-news Online Curated Content Providers (**OTT-OCCP**) available in India. This is, in addition the user generated content available across platforms such as YouTube and Twitter, to name a few.

Media	2014	2021
TV channels	826	909
Pvt FM radio stations	243	386
Registered publications	94,067 ⁶	1,46,756 ⁷
OTT-OCCP	<10	40+
Cinema screens	Approx. 10,000 ⁸	9,423 ⁹

- ii. The following free to air platforms are also available in India:
- 43 million subscribers on Free TV platform, DD FreeDish, which has over 200 television channels and radio stations¹⁰
 - Over 400 radio stations operated by Prasar Bharati, the public broadcaster, and around 300 community radio stations¹¹
 - 543 free to air (FTA) channels¹²
 - 450mn+ users on FTA YouTube¹³
- iii. In addition to this, with the advent of the Internet, the Indian consumer has access to various international media platforms across the world wide web and through applications, both free and paid for.

¹ TRAI Indian Telecom Services Performance Indicators (October – December 2021), May 2022

² MIB Annual Report 2020-21

³ TRAI Indian Telecom Services Performance Indicators (October – December 2021), May 2022

⁴ <https://internetfreedom.in/revealed-two-thousand-news-publishers-furnished-details-to-mib/>

⁵ <https://selectra.in/ott>

⁶ https://www.business-standard.com/article/pti-stories/indian-newspapers-buck-global-trend-grow-115080900238_1.html

⁷ https://www.business-standard.com/article/pti-stories/indian-newspapers-buck-global-trend-grow-115080900238_1.html

⁸ https://www.business-standard.com/article/companies/india-s-box-office-growth-runs-into-a-screen-problem-116011801209_1.html

⁹ FICCI-EY M&E report “Tuning into consumer”, March 2022

¹⁰ FICCI-EY M&E report “Tuning into consumer”, March 2022

¹¹ Prasar Bharti website

¹² TRAI Indian Telecom Services Performance Indicators (October – December 2021), May 2022

¹³ <https://www.statista.com/forecasts/1146150/youtube-users-in-india>

b) Vertical plurality

- i. There has been an increase in the “pipes” of distribution that carry diverse content to consumers and many such pipes exist today.

➤ Telecom

Telecom operator	Number of subscribers¹⁴
Jio	41,01,66,502
Airtel	36,61,81,564
Vi	26,13,47,210
BSNL	12,12,50,990
Others	79,87,375

➤ Television – Direct-to-home (DTH) and Headend in the sky (HITS)

Platform	Subscriber base (million)¹⁵
DD FreeDish	43+ ¹⁶
Tata Play	22.94
Airtel DTH	18.07
Dish TV	15.10
Sun Direct	12.41
NXT Digital (HITS)	2.25

- ii. In addition, there are 1,753 multi system operators (MSO) with an estimated subscriber base of 67 million.¹⁷
- iii. Further, with the advent of smart TVs, higher speeds of Internet and more Internet connectivity pan India, there is a movement towards digital consumption of content through OTT-OCCP such as, Disney+ Hotstar, Zee5, SonyLIV, VOOT, Netflix, Amazon Prime Video, etc.
- iv. The connected TV ecosystem has now exceeded 10 million homes in India and is expected to reach 40 million homes by 2025¹⁸. Products like Jio Fibre, Amazon Fire Stick and Tata Play Binge+ allow access to content of various producers, OTT apps, etc. through the content aggregation route.

c) Plurality of media owners in India resulting in plurality of views

- i. Public / State Owned Media – Doordarshan is operated under a special Act of Parliament and has 21 free to air channels available in 23

¹⁴ TRAI Indian Telecom Services Performance Indicators (October – December 2021), May 2022

¹⁵ TRAI Indian Telecom Services Performance Indicators (October – December 2021), May 2022

¹⁶ FICCI-EY M&E report “Tuning into Consumer”, March 2022

¹⁷ FICCI-EY M&E report “Tuning into Consumer”, March 2022

¹⁸ FICCI-EY M&E report “Tuning into Consumer”, March 2022

languages pan India, in addition to digital feeds on YouTube and social media, and 400+ radio stations¹⁹.

- ii. Stock Market Traded and Privately Held Commercial Media – There are media companies which may be listed or privately held. The private sector has 888 channels²⁰ airing pan India. In addition, the private sector airs 40+ OTT-OCCP²¹ pan India and has 32,592 newspapers and magazines²².
 - iii. Civil Society and Not for Profit Media – Several trusts and not for profit organizations own and operate media vehicles. 573 newspapers are owned and operated by such trusts²³. There are over 300 community radio stations. In addition, several such bodies engage digitally with their audiences through online platforms like Facebook and YouTube amongst several others.
- d) Plurality of Content Creation / Creators
- i. India is estimated to produce over 5.5 lakh hours of audio video content each year, excluding user generated content. Of this, around 4 lakh hours is news content and 1.5 lakh hours is other content²⁴.
 - ii. The universe of content creators has expanded to meet this projected growth. Today, broadcasters and digital platforms do not air just content produced by them – most of it is outsourced and produced by several production houses. For example, Netflix worked with 70+ production houses since launch, including 30+ in 2021 itself²⁵. The Producers’ Guild of India has a directory of 131 production houses²⁶. EY estimates over 200 production houses in India.
 - iii. India also produced 878 films in 2021, of which 170 released on streaming platforms. Just 30% of films were in Hindi, the remaining 70% were produced in over 10 languages²⁷.
 - iv. With the advent of the OTT– OCCP and the popularity of web series there is spurt of production by various content producers. In addition to the shows produced by the prominent players such as, Sony, Star, Zee, Balaji, there are a host of smaller production houses which produced 2,500 hours of content, and which is expected to cross 3,000 hours in 2022²⁸. This ensures that there is diversity in content and plurality of voices. Consumption patterns have also changed and this causes further

¹⁹ Prasar Bharti web-site

²⁰ TRAI Indian Telecom Services Performance Indicators (October – December 2021), May 2022

²¹ <https://selectra.in/ott>

²² Press In India 2019-20, Registrar of Newspapers for India

²³ Press In India 2019-20, Registrar of Newspapers for India

²⁴ FICCI-EY M&E sector report “Tuning into consumer”, March 2022

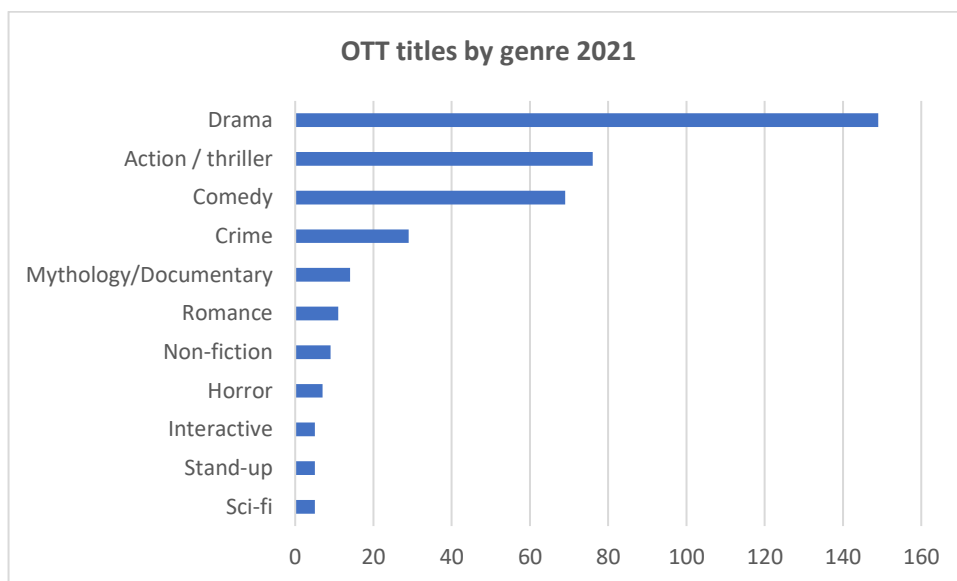
²⁵ FICCI-EY M&E sector report “Tuning into consumer”, March 2022

²⁶ <http://producersguildindia.com/Home/MembersDirectory>

²⁷ UFO Moviez, including dubbed versions

²⁸ FICCI-EY M&E sector report “Tuning into consumer”, March 2022

diversity as opposed to the 'stereotypical' dramas of yesteryears.



C. SUFFICIENT COMPETITION EXISTS ACROSS ALL MEDIA, COUPLED WITH FREE MARKET ECONOMICS

1. A multitude of players in the market means no one has a monopoly over the market. Operation of principles of free market economy ensure that even small players can compete.
2. A free market is one where there is “voluntary exchange” of goods and services without interference with the “prices” that are determined by the forces of demand and supply. In other words, decision regarding investment, production and distribution/ sale of goods and services is guided by market determined price signals without any government interventions, say in the form of investment restrictions, restrictions on the freedom to contract or price controls. Free markets are characterized by a spontaneous and decentralized order of arrangements through which individuals make economic decisions.
3. A free market approach to the M&E sector, as guided by the hyper-competitive and fast-growing market in India is well placed to determine price, innovation, plurality without any government interventions in the form of investment restrictions, price controls or any restrictions on the freedom to contract. In fact, the TRAI has, in the Explanatory Memorandum to the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (**Interconnect Regulations**) *inter alia* acknowledged that “*the channel carrying capacity of a DPO should be left to market forces and therefore, the same has not been regulated*”. Similar principles are also applicable to media ownership.
4. In the case of general entertainment, news and other genres of media, the prevalence of sufficient competition to ensure lowering of costs, rising quality of services, with low barriers to entry and the emergence of innovation have been in abundance. This is evidenced by the current state of the M&E industry, characterised by expansion and looking at hyper-growth mode.

5. Content is consumed by audiences across demographics and various avenues such as television, cinema, out-of-home (OOH), radio and audio, gaming, digital, live events, theatre and print.
 6. A sense of the M&E industry from the official site of Invest India, provides a positive picture of growth and competition for the media industry viewed as a sunrise sector for the economy which is making significant strides. Proving its resilience to the world, Indian M&E industry is on the cusp of a strong phase of growth, backed by rising consumer demand and expanding avenues, as set *inter-alia* out below:
 - a) India's M&E industry is expected to grow to reach around US\$50 billion by 2030 at 10-12% CAGR, led by OTT, Gaming, Animation and VFX.
 - b) Television households in India will continue to grow at over 5% per year to cross 71% of Indian households by 2025.
 - c) In 2020, Indians had the highest online video consumption per week in the world at an average of 10 hours 54 minutes, an increase of 30% from 2019.
 - d) India OTT Revenue is expected to grow to \$13-15 billion by 2030, growing at a CAGR of 22-25% over the next decade.
 - e) In 2020, Indians downloaded 9.2 billion game apps, i.e., 80% of entertainment app category downloads. Online gaming is expected to grow at a CAGR of 27% to reach INR 155 billion by 2023.
 - f) The Animation & VFX segment is expected to grow to INR 129 billion by 2023, where Indian VFX studios continue to work on several critically acclaimed international projects.
 7. Media businesses require huge capital investments to support business plans with long gestation period. Any impediment, including further regulation with respect to cross media ownership, will impact the efficiency and growth of the sector thus depriving consumers access to information and quality content. The TV entertainment business in India is one of the cheapest in the world.²⁹
- D. THE NET OF BROADCASTING SERVICES HAS WIDENED RESULTING IN INCREASE IN COMPETITION, PLURALITY IN CONTENT AND ACCESS FOR THE END CONSUMER
1. So far as the broadcasting sector is concerned, there is sufficient competition in the market as well as plurality. Further, market forces have ensured that both broadcasters as well as distribution platform operators (**DPO**) offer a wide variety of affordable channels for subscribers to choose from³⁰.
 2. It is submitted that the broadcasting sector encompasses 277³¹ broadcasters as on 31 August 2021. Further, as stated above, there were 1,753 registered MSOs as on

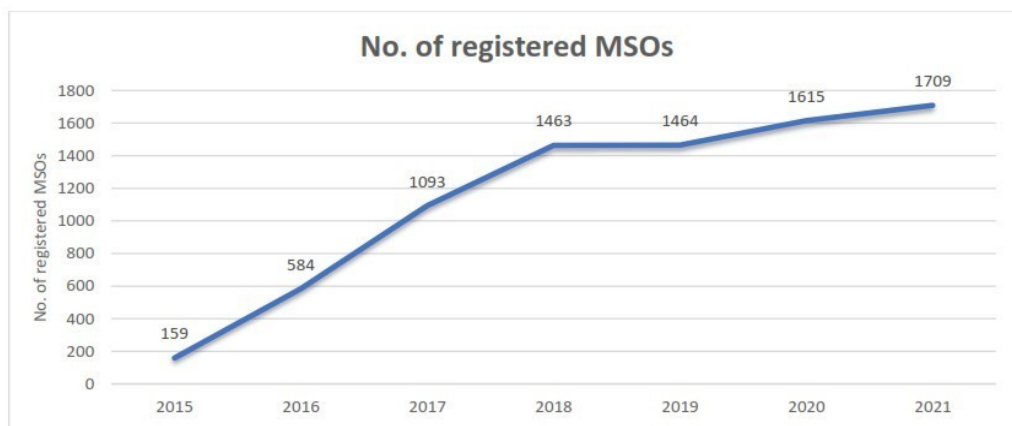
²⁹ Global Cable: Market trends & business models by Amper Analysis (January 2018)

³⁰ Paragraph 2.17 @page 11 of TRAI's Consultation Paper on Market Structure/Competition in cable TV services dated 25th October 2021

³¹ BARC

1 December 2021, approximately 1,55,303 cable operators³² as on March 2021, 1 HITS operator, 4 pay DTH operators, and few IPTV operators, in addition to the public service broadcaster – Doordarshan – providing a free-to-air DTH service in India.

3. TRAI will acknowledge that as on December 2021, out of ~909 TV channels, 62% were FTA, and the remaining 38% were pay channels³³.
4. Further, in so far as the news genre is concerned, it is estimated that total news channels were 388.³⁴
5. In so far as distribution platforms are concerned, TRAI is aware that the number of registered MSOs has increased significantly from around 160 at the beginning of 2015 to 1,753 in December 2021. Further, the following chart shows the pattern of increase in the number of registered MSOs³⁵:



6. TRAI will agree that as per the data of subscriber base of top 15 DPOs (MSOs and HITS) (as reported to TRAI), a large percentage of subscriber base of MSOs comes through 1,55,303 local cable operators³⁶ (LCOs). Further, out of the total number of subscribers of MSOs, approximately 97.5% of the subscribers are secondary subscribers (through LCOs). This is an important factor since, LCOs are not dependent on any single MSO, and that LCOs have the flexibility to shift to another MSO seeking additional profit or in case of any unfavourable circumstances. DPOs also operate more than 2,400³⁷ platform services across the country. In addition, LCOs can also reach remote far-flung areas through DTH and HITS operators as telecom bandwidth has become far more economical in the recent few years.³⁸
7. It is also important to note that TRAI has itself acknowledged that the broadcasting sector of the economy has engendered all round growth. Further, TRAI acknowledges that the sector presents a vibrant scenario with the presence of varied DPOs such as,

³² TRAI Consultation Paper on “Market Structure/Competition in cable TV services” (25 October 2021)

³³ TRAI Indian Telecom Services Performance Indicators (October – December 2021), May 2022

³⁴ List of Permitted Private Satellite TV Channels (Updated as on 28.02.2021 by MIB on Broadcast Seva)

³⁵ Paragraph 2.20 @ page 11 read with Chart 2.2 @page 12 of TRAI’s Consultation Paper on Market Structure/Competition in cable TV services dated 25th October 2021.

³⁶ TRAI Consultation Paper on “Market Structure/Competition in cable TV services” (25 October 2021)

³⁷ Para 2.26 of TRAI Recommendations dated 2 Feb 2021 on platform services

³⁸ Paragraph 2.27 @page 15 read with Chart 2.3 @page 15-16 of TRAI’s Consultation Paper on Market Structure/Competition in cable TV services dated 25th October 2021.

MSO, DTH, HITS, and IPTV, TRAI further acknowledges that the total number of MSOs in the country have been consistently growing in recent years, and that such developments augur well for ensuring competition.³⁹

8. From the above, it can be seen that there is already sufficient competition and plurality in the market and that the industry is not facing any issues including those relating to monopoly / market dominance or any that are caused or otherwise endangered by integration (both vertical and horizontal).

E. CONTENT CREATOR UNIVERSE HAS EXPLODED GIVING RISE TO MULTIPLE VOICES AND ENSURING EDITORIAL FREEDOM

1. In addition to the production houses mentioned above, today India has more than 1 million professional user generated content creators (**PUGC**) across social media platforms such as YouTube, Instagram, Snap, Twitter, etc., as well as homegrown platforms such as Trell, Moj, Josh, MX Takatak, among others⁴⁰. It is estimated that there are over 150,000 professional content creators in India⁴¹. In addition, Indian digital consumers have access to content created by global creators as well, which adds to plurality of voices.
2. According to a Redseer report⁴², users in smaller cities in India need local content for free and at a faster rate. The portfolio of regional content is rising in leaps and bounds on pure-play media platforms.⁴³ Indian language offerings from these short-form apps in over 15 languages have given users more options, which have in turn increased consumption and have created opportunities for the budding creators from the smaller towns. The Redseer report said monthly active users (**MAU**) for short-form content grew 9X in less than five years, growing from 20 million users in 2016 to 180 million in 2020.
3. The increase in content creators ensures that editorial freedom is maintained in India. A free, fair, honest and objective media is a potent instrument for enhancing transparency and accountability on all sides. Freedom of the media is one of the most important pillars of democracy.

F. ADEQUATE CHECKS & BALANCES EXIST IN THE CURRENT LEGAL FRAMEWORK TO ENSURE QUALITY & ACCURACY OF CONTENT

1. The Indian media industry is still in the growth phase. Traditional media is particularly burdened with arduous compliance requirements and faced with change in consumption patterns of viewers. There has been significant growth in the Indian market and there is sufficient plurality and competition today; therefore, restrictions are obsolete. The market players need a forbearance based light touch regulatory environment, which encourages growth, nurtures investment and allows them to turn profitable, which can further support creation of diverse and quality content.

³⁹ Paragraph 2.28 @ page 16 of TRAI's Consultation Paper on Market Structure/Competition in cable TV services dated 25th October 2021.

⁴⁰ EY estimate based on industry interviews, December 2021

⁴¹ <https://brandequity.economictimes.indiatimes.com/blog/creator-economy-how-creators-are-changing-the-marketing-landscape/90581460>

⁴² Redseer Report "Short form: Rising Amidst Cluttered Content Space"

⁴³ <https://www.businesstoday.in/latest/economy/story/year-ender-2021-big-bets-in-place-on-regional-content-growth-spurt-317149-2021-12-29>

Overregulation/ artificial regulations may reduce competition and hurt the media industry.

2. The current legal framework already provides for systems/ checks and balances. Further, media entities also have standards and practices (S&P) guidelines and are accountable by the terms of their licenses.
3. It is submitted that while plurality is essential, it is critical that regulations do not unnecessarily restrict growth and innovation. Though the maintenance of plurality is vital, as more and more services become available on different platforms, concerns over ownership have diminished to some extent and greater liberalisation has been permitted globally. India should adopt an approach that enhances growth and healthy competition while at the same time monitors that there are no monopolistic market conditions or market failures.
4. Several pre-emptive checks exist in the current legal framework as defined under industry specific laws:
 - a) Players across mediums work under the applicable frameworks as per the constitutional guidance, which sets out contours of regulation of speech and expressions, whether directly or indirectly. Regulation/ restriction needs to be by way of exception and only on the narrow grounds already specified under the existing constitutional framework.
 - b) The Policy Guidelines for Downlinking of Television Channels provides that all TV channels shall comply with the Programme Code and Advertising Code prescribed under the Cable Television Networks (Regulation) Act, 1995 (**Cable TV Act**). Further, broadcasters are also required to adhere to any other code/ standards guidelines/ restrictions prescribed by Government for regulation of content on TV channels from time to time. Additionally, broadcasters also comply with the code for self-regulation in advertising, as adopted by the Advertising Standards Council of India as well as the recently introduced Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements 2022.
 - c) The MIB, under its order dated 19 January 2017 had proscribed the community radio stations from broadcasting any programmes, which relate to news and current affairs and are otherwise political in nature. The said radio stations can broadcast news and current affairs contents sourced exclusively from AIR in its original form or translated, without any distortion or editing, into the local language/dialect. Such restrictions have the effect of having zero programme diversity i.e., there is duplication of programming on virtually all channels. This is an inefficient use of the scarce radio spectrum and a lost opportunity to use that precious spectrum to serve a community and offer plurality of viewpoints.
 - d) Regulations governing foreign investment contained *inter alia* in the Consolidated FDI Policy Circular of 2020 and Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 provide for permissible levels of foreign direct investment (**FDI**) *inter alia* in broadcasting and print media. While 100% investment is allowed for broadcasting carriage services under the automatic route, only 49% FDI is permitted for terrestrial broadcasting FM, subject to

government approval. FDI to the extent of only 26% is allowed under the government route for publishing of newspaper and periodicals dealing with news and current affairs.

- e) The MIB has by virtue of the Amendments to Guidelines for Obtaining License for Providing Direct to Home Services in India dated 30 December 2020 has *inter alia* provided that 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.
- f) The Guidelines for Obtaining License for Providing Direct-To-Home (**DTH**) Broadcasting Service in India dated 15 March 2001 as amended from time to time, issued by MIB provide for eligibility criteria for the applicants. Such eligibility criteria places restrictions on total foreign equity holding in an applicant company and further provides that broadcasting entities and/ or cable network entities shall not be eligible to collectively own more than 20% of the total equity of a company applying to set up and operate DTH services, at any time during the license period. Similarly, such an applicant company should not have more than 20% equity share in a broadcasting and/ or cable network company.
- g) Interconnect Regulations *inter alia* cover commercial and technical arrangements, among service providers for interconnection, for broadcasting services relating to television provided through addressable systems throughout the Territory of India. The said regulations contain provisions detailing the (i) general obligation of broadcasters which *inter alia* prohibit a broadcaster from engaging in any practice or activity or entering into any understanding or arrangement, including exclusive contracts with any distributor of television channels that prevents any other distributor of television channels from obtaining signals of television channel of such broadcaster for distribution. A similar obligation is placed on a distributor of television channels in relation to broadcaster; (ii) Further, every broadcaster is required to offer all its television channels on a-la-carte basis to the distributors of television channels; and (iii) A distributor of television channels is prohibited from engaging in any practice or activity or entering into any understanding or arrangement, including exclusive contracts with any local cable operator that prevents any other local cable operator from obtaining signals of television channels from such distributor for further distribution.
- h) The Policy Guidelines for Downlinking of Television Channels provide for intimation to be given to the MIB regarding security clearances and change in the directorship, key executives or foreign direct investment in the company, within 15 days of such a change taking place. Further, the Policy Guidelines for Uplinking of Television Channels contain a similar provision which mandates a company to 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 are required to be disclosed to the MIB, within 15 days of any changes, having a bearing on the foregoing agreements.

- i) The Government should also, in the changed landscape, consider deregulation of some of the existing checks and balances, e.g., removal of the cross-media restrictions imposed via DTH and HITS license conditions; and the FDI restrictions as applicable.
5. Checks and balances are also prescribed by other laws:
- a) The Election Commission of India provides for guidelines for broadcast media to observe during elections, which *inter alia* deal with the availability of accurate, objective, and complete information to enable citizens to exercise their franchise. The guidelines *inter alia* provide for news channels to disclose any political affiliations, for news broadcasters to resist all political and financial pressures, and for distinction to be maintained between editorial and expert opinion. Further, norms and guidelines on paid news have been framed which seeks to curb the malpractice of fake/ paid news in relation to elections.
 - b) Additionally, there are principles laid out in various statutes like The Information Technology Act, 2000, Indian Penal Code, 1860, Emblems and Names (Prevention of Improper Use) Act, 1950, Indecent Representation of Women (Prohibition) Act, 1986, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Protection of Children from Sexual Offences Act, 2012, Prevention of Cruelty to Animals Act, 1960, Copyright Act, 1957 among others which media entities adhere to.
6. Occupied field by the Competition, Corporate and Securities Laws
- a) The Competition Act, 2002 (Competition Act) vests the Competition Commission of India (CCI) with the power to *inter alia* ex-post regulate anti-competitive agreements in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. The Competition Act also prohibits an entity/ group from abusing its dominant position, which may include practices resulting in denial of market access, in any manner. Subject to the prescribed thresholds under the Competition Act, combinations, which may include acquisition of one or more enterprises, mergers or amalgamations, which cause or are likely to cause an appreciable adverse effect on competition within the relevant market in India, are regulated by CCI.
 - b) CCI has been designated as the subject matter regulator to regulate, investigate and act upon any anti-competitive activity across sectors. It has already examined and evaluated multiple matters relating to ownership and competition in the media sector. The current regulatory regime is adequate to address all anti-competitive issues. The CCI is empowered to ex-ante regulate all acquisitions, mergers and amalgamations across all sectors, which exceed the thresholds provided under the Competition Act. The CCI has the machinery to undertake the required inquiries and analysis. There are also adequate mechanisms in place to ensure that the comments of the concerned statutory authority are considered.

- c) The Competition Act along with the rules and regulations framed thereunder form a comprehensive code to regulate, investigate and act upon anti-competitive activity which could threaten media plurality.
 - d) The Companies Act, 2013 (Companies Act) also provides for provisions governing compromise, arrangement, and amalgamations. It is to be noted that any scheme of merger, compromise or amalgamation is required to be approved by the National Company Law Tribunal, having jurisdiction. The Companies Act provides for the notice of proposed merger/ compromise/ arrangement to be sent to the concerned sectoral regulators. As such, Companies Act ensures that all stakeholders and sectoral regulators can raise concerns on the proposed merger/ compromise/ arrangement.
 - e) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Code), defines 'control' as 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: Provided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position'*. The Takeover Code provides for open offer requirements when the non-public shareholding in a listed company exceeds prescribed thresholds. Further, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 provide for various disclosures to be made by listed entities, irrespective of the sector in which such entity operates.
 - f) Introducing further regulatory oversight or a new regulatory oversight body will only lead to instances of overlap of jurisdiction with the existing regulators, impinging upon the ease of doing business.
7. Players in the M&E industry also practice robust self-regulation and responsible behaviour
- a) There are robust self-regulatory frameworks (including for compliance of content guidelines and grievance redressal) for all forms of media in existence today.
 - i. The **Norms of Journalistic Conduct** of the Press Council of India established under the Press Council Act, 1978 regulates the conduct of newspapers, news agencies and journalists.
 - ii. The Programme Code established under section 5 and the Advertising Code established under section 6 of the Cable TV Act and Rule 6 of the Cable Television Networks Rules, 1994 which regulates the transmission of re-transmission of any programme through a cable service. The Advertising Code established under section 6 of the Cable TV Act and Rule 7 of the Cable Television Networks Rules, 1994 which regulates the transmission of re-transmission of any advertisement through a cable service.

- iii. The government has also formulated a three-tier grievance redressal mechanism under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (**Intermediary Guidelines**) & Amended Cable TV Rules – though the validity and applicability of the same is pending the outcome of certain proceedings before the Hon'ble courts challenging the provisions of the Intermediary Guidelines and the Amended Cable TV Rules.
 - iv. The above-mentioned frameworks provide adequate regulation to the sector. Thus, there exists no need for further regulations to be introduced or for further restrictions to be created in order to monitor the sector.
- b) Presently, many effective self-regulatory bodies are operating in the sphere of broadcasting and digital sector:
- i. IBDF, BCCC & DMCRC
 - > The IBDF (formerly, IBF) is the apex industry body of broadcasters that was set up in 1999. In 2011, it established the Broadcasting Content Complaints Council (**BCCC**), an independent self-regulatory body for examining content-related complaints against non-news television channels. BCCC is a thirteen-member body headed by a retired Judge of Supreme Court or High Court and twelve other members. Four members are broadcaster members selected by voting at annual general body meeting of IBDF. Four members are from national statutory commissions [National Commission for Women (NCW), National Commission for Protection of Child Rights (NCPCR), National Commission for Minorities (NCM), National Commission for Schedule Caste, National Commission for Schedule Tribes, National Commission for Backward Classes, National Human Rights Commission (NHRC)]. Four members are renowned persons of impeccable integrity, high social standing and outstanding achievements from the fields of/experience of administration, media critic/expert, member of the CBFC for at least two years, and an eminent social worker. It is submitted that BCCC *inter-alia* has powers to impose financial penalty, which is based on gradation of violations ranging from mild to severe, and amount of financial penalty is determined accordingly.
 - > From time to time, BCCC has issued various advisories to IBDF's member broadcasters including on issues such as:
 - Advisory on depiction of Occult, Superstition, Black Magic, Exorcism & Witchcraft in TV programmes
 - Advisory on Portrayal of persons with Disabilities in TV Programmes
 - Advisory on Depiction & Use of National Flag, National Emblem, National Anthem & Map of India in TV Programmes
 - Advisory against Showing Acid Attacks on Television
 - Advisory on Telecast of Content Sensitive to Minorities
 - Advisory on Telecast of Content on Cartoon/ Children's channels Advisory on Comedy Shows

- Advisory on Sexualisation of Children
 - Advisory on Health & Safety of Children
 - Advisory on Depiction of Animals/Wildlife in Television Programmes
 - Advisory on Award Functions
 - Advisory on Participation of Children in TV Reality Shows
 - Advisory on Portrayal of Women in TV Programmes
- > The work of BCCC, as self-regulating body has been recognised by various courts in their Judgements and court Orders from time to time as mentioned below, thus, substantiating the fact that the existing self-regulation mechanism has substantial enforcement vitality against the stakeholders of the media and broadcasting sector.
- > In the case of *Rajeshwari Katoch vs. Union of India & Ors. OWP No. 40/2013* pending before High Court of J&K, MIB while recognising the self-regulatory mechanism for television channels acknowledged the constitution and functioning of BCCC.
- > The Hon'ble Delhi High Court in case of *Star India Pvt. Ltd. Vs. Union of India in WP (C) No. 879 of 2010* appreciated the creation and functioning of BCCC as a self-regulatory mechanism.
- > The Hon'ble High Court of Bombay (Nagpur Bench) in the case of *Bharatiya Stree Shakti Vs. Union of India (PIL No. 4 of 2013)* referred the complaint to BCCC to decide the same in accordance with the BCCC complaints redressal mechanism and also acknowledged the role of self-regulatory mechanism in regulating content of TV channels.
- > The Hon'ble Supreme Court in the case of *Common Cause vs. Union of India (WP No. 1204 of 2013)* in its Judgment delivered on 12.01.2017 acknowledged the existing self-regulatory mechanism of industry bodies.
- > Further, the BCCC provides inputs to the MIB for responding to Parliament questions from time to time.
- > In 2021, IBF expanded its purview to cover digital platforms as well so as to bring all digital (OTT) players under one roof. Pursuant to the said decision, IBF's name was changed to Indian Broadcasters and Digital Foundation. Further, in addition to BCCC, In line with the extant regulation, Digital Media Content Regulatory Council (DMCRC), was constituted in June 2021 under the aegis of Indian Broadcasting & Digital Foundation (IBDF), as an independent Self-Regulatory body for OTT-OCCPs. The Council is currently headed by a former Supreme Court Judge and comprises prominent personalities from the M&E industry and OTT-OCCPs, with experience in IPR, programming and content creation.

ii. NBDA and NBDSA

- > In the genre of news, the News Broadcasters & Digital Association (NBDA) (earlier, News Broadcasters Association) established News Broadcasting and Digital Standards Authority (NBDSA) (earlier, News Broadcasting Standards Authority) in 2008 as an independent self-regulatory body. NBDSA has prescribed various codes, guidelines and advisories, which *inter-alia* provide for principles of self-regulation (in areas such as, impartiality and objectivity in reporting, ensuring neutrality, reporting on crime and safeguards to ensure crime and violence are not glorified, corrigenda and viewer feedback). NBDSA has also set up a grievance redressal system.

G. GLOBAL TRENDS ON CROSS-MEDIA OWNERSHIP INDICATE A LESSENING OF REGULATIONS

1. Global positions on cross media ownership, in particular, the US and UK show that the concept of cross media ownership has been dropped/substantially diluted as plurality exists in the market due to free market economics. In fact, this is acknowledged in Paragraph 4.39 of the TRAI Media Ownership CP which *inter alia* states as follows:

“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.”

H. SO LONG AS THERE ARE NO RESTRICTIONS ON CONTENT CREATION & DISTRIBUTION AND ACCESS TO THE END CONSUMER REMAINS FREELY AVAILABLE, ANY RESTRICTION ON CROSS-MEDIA OWNERSHIP IS NOT NECESSARY IN TODAY’S MULTI-MEDIA CONSUMPTION ENVIRONMENT: IN FACT, IT IS CRITICAL FOR SURVIVAL OF MEDIA COMPANIES

1. With the advent of technology, the consumer today is exposed to a wide array of media options which he/ she can chose to satisfy the need for information and entertainment, which till recently was dominated by traditional forms of media.
2. An average Indian transits from one media platform to another media platform, across the day, choosing the media platform most suitable to her/ his needs and convenience:

Media segment	Reach
TV (Unique viewers)	892 Mn ⁴⁴
Digital (Unique video viewers)	497 Mn ⁴⁵

⁴⁴ BARC TV universe estimates 2020

⁴⁵ Comscore India

<i>Media segment</i>	<i>Reach</i>
Print (Unique readership)	407 MN ⁴⁶
Radio (Unique listenership)	226 Mn ⁴⁷
Cinema (audiences)	146 Mn ⁴⁸

Given that the total of the above reach is greater than the content consuming Indian population, it can be concluded that consumers in India use multiple sources and media platforms.

- Convergence has made it possible for content to travel across media platforms, pipes and vehicles. For e.g., a news item can be consumed on a textual app, a news aggregator's app, a website, on television, on radio, on a device like Alexa, on an OTT platform, in a magazine or on a social media platform. Similarly, a song can be heard on television, in a cinema hall, on a digital aggregator music platform, a pre-loaded music player, and even a non-media app e.g., a food delivery platform.
- Eventually, media content will be medium and pipe agnostic and will be available across four verticals⁴⁹:

	2021	2024E
Audio Video	68%	61%
Experiential	16%	22%
Textual	13%	14%
Audio	3%	3%
Total	100%	100%

Revenue share / Includes related data consumption cost estimates

- Audio Video – TV, video OTT, short video platforms, social media platforms
 - Experiential – Online gaming, cinemas, events, OOH
 - Textual – print, online news
 - Audio – radio, music, audio OTT
- Hence, consumers will consume content online and offline, on mobile, tablet, TV, cinema screens and other devices, across geographical boundaries - thereby removing any kind of demarcation whatsoever to any given media platform or pipe.
 - The consumer today is making decisions about his/ her unique mix, being much more active than conventional media would allow. Hence, given that the content being circulated by newspapers, TV and radio is available across devices and platforms, the term “cross-media” is becoming a way of life for consumers and hence the concept of “cross media restrictions” is irrelevant.
 - Thus, any media ownership restrictions at this stage represent an unnecessary and counterproductive throwback to an era when consumers had far fewer choices for news and information than they have today. One needs to take into account the emerging and significantly changing trends in media consumption and the manner in

⁴⁶ [Print readership in India jumps 4.4% to 425 million in two years: Report | Business Standard News \(business-standard.com\)](#)

⁴⁷ IRS - Q4 2019 Report

⁴⁸ Sizing the Cinema report by Ormax Media

⁴⁹ FICCI-EY M&E report “Tuning into Consumer”, March 2022

which viewers/ audiences consume information or seek entertainment before concluding that there is a need to 'measure' or 'define' relevant markets in order to formulate media ownership/ control rules.

8. For a media entity or content producer, the focus lies in being able to cater to this audience on as many occasions as possible. Cross-media is now a matter for survival for media entities. In this scenario, cross media ownership needs to be encouraged, so that media enterprises, which built expertise and rich experience in domains of news and entertainment, can help the Indian consumer to be informed and entertained in the manner the consumer chooses. This will preserve media freedom, ensure plurality and protect the fundamental principles of democracy.
9. Globally, print media entities are also moving into the digital domain as the consumer is spending more time on these platforms. With number of players in print media as well as circulation of print media already on the decline globally, and facing stiff challenges from online media, further restrictions on cross media holdings across media sectors will make it impossible for print media entities to survive. This has been acknowledged in Paragraph 2.9 of the TRAI Media Ownership CP which states as follows:

"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."
10. Radio segment revenues are languishing, having fallen from INR31 billion in 2019 to INR16 billion in 2021. Further, the television sector has lost over 10 million paid subscriber base over the last two years⁵⁰. With stagnant or low growth in advertising revenues and no concrete prospects of subscription, television entities are under tremendous pressure to deliver quality content at high costs.
11. The efficiencies gained from vertical or horizontal integration allows entities to save costs, improve infrastructure, improve margins and diversify, all of which are necessary to compete and/or survive in today's changing marketplace.
12. Must Carry Obligations
 - a) The 'must provide' provision under which the broadcasters are obliged to mandatorily provide their channels to the DPOs, helps DPOs in making available TV channels to its subscribers on the basis of demand in a market. In addition, 'must carry' provision removes entry barrier for a television channel to enter into a target market, as a broadcaster can distribute its channel(s) through the DPOs available in that target market.⁵¹

⁵⁰ FICCI-EY M&E report "Tuning into consumer", March 2022

⁵¹ Explanatory Memorandum to the Telecommunication (Broadcasting And Cable) Services Interconnection (Addressable Systems) Regulations, 2017 https://www.trai.gov.in/sites/default/files/Interconnection_Regulation_03_mar_2917.pdf

- b) Section 8 of the Cable TV Act provides that the Central Government may, by notification, specify the names of Doordarshan channels or the channels operated by or on behalf of Parliament, to be mandatorily carried by the cable operators in their cable service. The said channels are required to be re-transmitted without any deletion or alteration of any programme transmitted on such channels. In furtherance of the powers conferred under the Section 8 of the Cable TV Act, the MIB by notification dated 05 September 2013 (**2013 Notification**), provided for a list of channels to be mandatorily carried by cable operators irrespective of the introduction of the digital addressable systems. The 2013 Notification also provides that every cable operator shall provide the channels mentioned therein to the subscribers, irrespective of any bouquet(s) or a-la-carte channel(s) being subscribed by them. Further, every cable operator is required to place the channels mentioned in the 2013 Notification in the respective genre and display them in full television screen. The list of channels to be mandatorily carried has been further amended by the MIB, from time to time.
- c) Recently, the MIB by advisory dated 24 September 2021 stated that all MSOs and cable operators are advised to carry the mandatory channels appropriately in respective genre on their cable TV networks and that any violation of Section 8 of the Cable TV Act would attract penalties as provided in the Cable TV Act and the rules framed thereunder as well as the terms and conditions stipulated in the MSO permission.
- d) In addition, under the Interconnect Regulations, the 'must carry' provision has therefore been uniformly applicable to all types of DPOs subject to availability of spare capacity. In this way, while the DPOs have the freedom to plan their networks, the broadcasters would be able to get access to the distribution networks on non-discriminatory basis. The provisions relating to 'must carry' make it obligatory on part of DPOs to carry signals of TV channels of broadcasters, on receipt of written request for the same, on non-discriminatory basis.
- e) Further, principles of net neutrality are important for access on digital platforms and are already covered in (a) Regulatory Framework on Net Neutrality dated 31 July 2018 issued by the Department of Telecommunications; (b) Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016 dated 08 February 2016 issued by TRAI which inter alia aim at (i) ensuring that consumers get an unhindered and non-discriminatory access to the internet; and (ii) making data tariffs for access to the internet non-discriminatory on the basis of the content.
- f) Technology companies have the ability to cater end to end from creation to distribution across platforms and pipes blurring the boundaries between horizontal and vertical distribution. Coupled with the assistance algorithms (ad tech and AI) such behemoths have access to enormous data which gives them an edge over other players. In addition, algorithms used for curation of content by intermediaries must not suppress content.

I. RESPONSES TO CERTAIN QUESTIONS

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<p>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 the overall scenario, do you think there is a need for monitoring cross media ownership and Control? Please provide detailed reasoning to support your answer.</p>	<p>No, there is no need for monitoring cross media ownership and control as plurality of options exist for the consumer today.</p> <p>(a) Plurality of content options has only increased since 2014, with new media and new vehicles within each media:</p> <p>(i) Today India has 909 TV channels (826 in 2014), 386 private FM radio stations (243 in 2014), 1,46,756 registered publications (94,067 in 2014), and over 40 digital content platforms (less than 10 in 2014).</p> <p>(ii) Number of news options on digital media is 2100+ (apart from news on traditional media) which ensures plurality.⁵²</p> <p>(iii) We reiterate submissions made above (including those in Paragraph B), which are not being repeated for the sake of brevity.</p> <p>(b) Consumption patterns of content have changed since 2014:</p> <p>(i) The reach of TV is 892 million, the internet is over 500 million⁵³, print is 407 million (IRS 2019), radio is 226 million (IRS 2019) etc. which clearly indicates that consumers consume content across multiple media – as the sum of reach is much more than India’s population of 1,400 million.</p> <p>(ii) Given that a consumer today is not limited by medium, any discussion around plurality would need to be conducted across all media available to the consumer, and not any one media alone.</p> <p>(iii) Consumption infrastructure has grown, resulting in consumers consuming media</p>

⁵² <https://internetfreedom.in/rule-18-it-rules-rti-appeal/>; MIB

⁵³ Statista



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	<p>cross different screens (750 million mobile smartphone screens⁵⁴ and 168 million TV homes.⁵⁵)</p> <p>(iv) Media entities need to provide content across different media to reach their consumers as and where they consume content. This is important for survival of media entities, as can be seen from falling consumption across traditional media⁵⁶:</p> <ul style="list-style-type: none"> ▪ TV segment revenue has fallen from INR 787 billion in 2019 to INR 720 billion in 2021. ▪ Radio segment revenue has fallen from INR 31 billion in 2019 to INR 15 billion in 2021. ▪ Print segment revenue has fallen from INR 296 billion in 2019 to INR 227 billion in 2021. <p>(c) As there (i) is an increase in plurality; (ii) change in consumption patterns and access of content to consumers across pipes and platforms; and (iii) are regulations in the existing legal framework which have controls on ownership (See Paragraph F above for details), there is no need to monitor cross media ownership further. We reiterate submissions made above (including those in Paragraph F), which are not being repeated for the sake of brevity.</p>
<p>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?</p> <p>a. If yes, elaborate on the Authority, structure and mechanism of such monitoring mechanism/ regime?</p> <p>b. If no, should there be a self-regulatory</p>	<p>(a) A2. No, there should not be an additional common mechanism to monitor ownership of print, television, radio, or other Internet-based news media as there are already sufficient existing legal checks and balances (See Paragraph F above for details). In addition to monitoring foreign investment in the sector, there is sufficient monitoring (both <i>vis-à-vis</i> ownership and content) across all media</p>

⁵⁴ https://www.business-standard.com/article/current-affairs/india-to-have-1-billion-smartphone-users-by-2026-deloitte-report-122022200996_1.html#:~:text=India%20had%201.2%20billion%20mobile.750%20million%20are%20smartphone%20users.

⁵⁵ FICCI-EY M&E report “Tuning into consumer”, March 2022

⁵⁶ FICCI-EY M&E report “Tuning into consumer”, March 2022

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<p>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?</p>	<p>including TV, radio, digital and print. We reiterate submissions made above (including those in (See Paragraph F), which are not being repeated for the sake of brevity.</p> <p>(b) A2a. Not applicable.</p> <p>(c) A2.b.</p> <p>(i) The industry is already operating under well-established grievance redressal and self-regulatory mechanisms through the BCCC, DMCR, NBSA, ASCI, etc.</p> <p>(ii) The government has also formulated a three-tier grievance redressal mechanism under the Intermediary Guidelines & Amended Cable TV Rules – though the validity and applicability of the same is pending the outcome of certain proceedings before the Hon’ble courts challenging the provisions of the Intermediary Guidelines and the Amended Cable TV Rules.</p>
<p>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?</p> <p>3.1 If yes, which agency/ ministry should be entrusted with the task of such data collection, regulation & monitoring?</p> <p>a. Whether such monitoring/ control be ex-ante as is the case with combinations in the Competition Act 2002?</p> <p>b. What should be the procedure of reporting and monitoring? What should be the periodicity of such reporting?</p> <p>c. What should be the powers of the concerned authority for enforcing regulatory provisions, <i>inter-alia</i> including imposition of financial disincentives, cancellation of license/ registration etc.?</p> <p>Q3.2 If no, please provide an elaborate justification as to why there is no need for</p>	<p>(a) A3. No. There is no need for any additional regulatory / monitoring mechanism as:</p> <p>(i) Ownership of entities is governed sufficiently under the FDI Policy, Corporate Laws, SEBI Act and rules thereunder and the Competition Act. The CCI is in charge of ensuring that healthy competition exists in all industries and sectors in India.</p> <p>(ii) The legislative field is occupied by the all-encompassing competition law framework. The Competition Act, along with the rules and regulations framed thereunder, form a comprehensive code to regulate, investigate and act upon <u>activities that may threaten media plurality or accessibility by consumers.</u></p> <p>(iii) CCI has been designated as the subject matter regulator to regulate, investigate and act on all matters pertaining to competition issues across sectors. It has already examined and evaluated multiple matters relating to ownership and competition in the media</p>



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<p>such a mechanism? Provide market data to substantiate your opinion.</p>	<p>sector. Monitoring by the CCI will also ensure plurality exists as a by-product of healthy competition.</p> <p>(iv) There are already many authorities regulating different aspects of ownership and other issues of media entities such as the CCI, SEBI for listed media entities, DPIIT for foreign investment in media entities, MIB & MEITY for sector specific laws governing media entities. Press Council of India is mandated to preserve the freedom of the press and to maintain and improve the standards of newspapers and news agencies in India.⁵⁷ Further, there exist a number of self-regulatory bodies like News Broadcasters Association, Digital News Publishers Association, Digital Media Publishers & News Portal Grievance Council of India, DIGIPUB News India Foundation, Confederation of Online Media (India) - Indian Digital Publishers Content Grievance Council, WJAI-Web Journalists Standards Authority, NBF-Professional News Broadcasting Standards Authority, IAMAI- Digital Publisher Content Grievances Council⁵⁸, registered with the MIB.</p> <p>(b) A 3.1. Not applicable.</p> <p>(c) A3.2a. Additional regulatory/monitoring mechanism (i) may lead to jurisdictional overlaps and regulatory complexities; (ii) would be against the principles of Ease of Doing Business in India and the Digital India initiative; and (iii) will kill growth in the sector and consequently is against the Make in India initiative in support of Indian content production.</p>
<p>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.</p>	<p>(a) No new criteria required as the issue of ownership/control is covered under the following existing legislations:</p> <p>(i) Companies Act, 2013 and rules framed thereunder, as amended from time to</p>

⁵⁷ Please refer section 13 of the Press Council Act, 1978

⁵⁸ <https://mib.gov.in/self-regulatory-bodies>

ISSUES FOR CONSULTATION	IBDF COMMENTS
	<p>time.⁵⁹</p> <p>(ii) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.⁶⁰</p> <p>(iii) Competition Act, 2002 and the rules framed thereunder, as amended from time to time – CCI has the power to regulate competition in India⁶¹.</p> <p>(b) In addition, the Consolidated FDI Policy Circular of 2020 and Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 provide for permissible levels of FDI in media sector⁶².</p> <p>(c) There are sufficient safeguards in disclosures in existing licenses as already recorded in Chapter VI – Part II of the TRAI Media Ownership CP. The said requirements are reiterated and are not set out here for the purpose of brevity.</p> <p>(d) The above regulations also provide for provisions governing mergers and acquisitions and approvals from relevant bodies under the statutes for the same.</p>
<p>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.</p>	<p>In a free market economy, and to maintain plurality, there should be few or no limitations on people and organizations entering the media business, especially in light of the existing rights on freedom of speech which are sacrosanct in a democracy and enshrined in our constitution. However, in order to ensure that media remains independent, we agree with the sentiment in the</p>

⁵⁹ 'Control' is defined as *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.*

⁶⁰ 'Control' is defined to 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: Provided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position.* SEBI has minutely analysed the facts and circumstances of cases before it (for instance, In the matter of Re: NDTV Limited and Ors.) and has even held that loan agreements and call option agreements are in the nature of exercise of control.

⁶¹ E.g. (a) anti-competitive agreements which have an appreciable adverse effect on competition within India, under Section 3; (b) abuse of market dominance if an enterprise or group inter alia indulges in practice or practices resulting in denial of market access, in any manner, under Section 4; and (c) regulation of combinations which cause or are likely to cause an appreciable adverse effect on competition within the relevant market in India, under Section 6.

⁶² For instance, while 100% investment is allowed for broadcasting carriage services under the automatic route, only 49% FDI is permitted for terrestrial broadcasting FM, subject to government approval. FDI to the extent of 26% is allowed under the government route for publishing of newspaper and periodicals dealing with news and current affairs.



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	<p>Recommendations on Issues relating to entry of certain entities into Broadcasting and Distribution activities, issued by TRAI dated November 12, 2008 and reiterated in Chapter III and Appendix II of the TRAI Media Ownership CP that: (i) political bodies, (ii) religious bodies, (iii) urban and local bodies, central and state government entities and entities controlled and/or funded by the above do not enter into the business of media. Wherever permission has already been granted to such bodies, then suitable exit route should be provided to them. Further, the arm's length relationship between Prasar Bharati and the Government ought to be further strengthened and that suitable measures ought to be introduced that ensure functional independence and autonomy of Prasar Bharati.</p>
<p>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</p> <p>Please comment on the suitability of HHI for measuring concentration in a media segment in a relevant market.</p> <p>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.</p>	<p>(a) None of these methods should be used for measuring market concentration. Market concentration need not be measured in a free market economy which has plurality of voices.</p> <p>(b) Given the objective of plurality of voices and opinions, revenue and reach are not the most preferred modes for any calculation: revenue, as different audience sets are monetized at different rates (e.g., English vs regional newspaper readers) while reach, which can be achieved <i>inter-alia</i> through various marketing, sales and promotional measures, does not necessarily mean that the content is viewed. Hence, actual consumption is most relevant.</p> <p>(c) There are <i>inter-alia</i> various problems, however, with using consumption data:</p> <p>(i) In the absence of verifiable metrics (e.g., robust return path data which can be one such metric), calculating actual consumption is impossible to ascertain.</p> <p>(ii) Even if consumption data is available, the same will be voluminous, making data analytics susceptible to be misinterpreted.</p> <p>(iii) Actual consumption data will always vary with time-bands, target audience, genre, language and region (e.g., cities (metros/non-metros) and states), and as</p>



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	<p>such, making consumption data subjective due to various permutations and combinations.</p> <p>(iv) Building any model on consumption only will penalize those media entities which produce and distribute good content.</p> <p>(d) Hence, so long as plurality of voices exists, and there is freedom of its dissemination (net neutrality on digital; cable neutrality / 'must carry' on TV, etc.) all content has an equal opportunity of being consumed then market concentration loses relevance and need not be an area of focus requiring calculation in any form.</p>
<p>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.</p>	<p>(a) Every single human interaction can impact popular perception and impact a person's value systems and beliefs. Hence, any and all content would create an impact including (i) TV, radio, print and digital (which are covered in the current TRAI Media Ownership CP); and (ii) songs, podcasts, movies, games, theatre, books, magazines, billboards, school text books, etc. (which are not covered in the TRAI Media Ownership CP) would have to be considered.</p> <p>(b) The industry level regulator's role is to oversee ownership at the time of granting licenses (e.g., TRAI, MIB, RNI, as applicable). Once the entity is allowed to do business as per applicable law, the industry level regulator's role is to monitor compliance with applicable laws. The forces of the free-market economy coupled with the diversity in content and access to content will automatically ensure that there is diverse content available for consumption.</p> <p>(c) Further, where ownership impacts competition, which may have the effect of influencing plurality of opinion, then the provisions of the Competition Act kick in and are vigilantly monitored and implemented by the CCI. In addition, foreign investment is restricted in sectors which require protection from a national security perspective, which serves as an additional check for cross-border ownership issues.</p>



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<p>Q8. Which media segment amongst the following would be relevant for encouraging viewpoint plurality?</p> <ol style="list-style-type: none"> 1. Print media viz. Newspaper & magazine 2. Television 3. Radio 4. Online media/Digital media/OTT 5. All or some of the above <p>Please substantiate your answer with appropriate reasons.</p>	<p>Given the shift in consumption of content to multi-media by consumers, all of the media (including those not covered by the TRAI Media Ownership CP) aid in ensuring viewpoint plurality. India has a diverse population, and the media caters to each and every segment of the population from different age groups, e.g., an 18 year old may prefer to receive and use digital means for information and a 60 year old may prefer radio, print or TV.</p>
<p>Q9. Should the word 'media' include television, print media, digital/online media, and other media entities?</p> <p>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.</p>	<p>(a) Media should include TV, print, radio, digital, etc. as consumers have moved to multi-media consumption, as shown above. Further, television as a media segment should include both (i) broadcasters which will ensure horizontal plurality; and (ii) DPO (including LCOs) which will ensure vertical plurality.</p> <p>(b) Plurality exists for Indian consumers, as evidenced by data provided in this document. Further, plurality is ensured under various existing regulations as set out below:</p> <ol style="list-style-type: none"> (i) TRAI has notified Interconnect Regulations which <i>inter alia</i> provided 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. (ii) Principles of net neutrality are important for access on digital platforms and are already covered in (a) Regulatory Framework on Net Neutrality dated 31 July 2018 issued by the Department of Telecommunications; (b) Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016 dated 08 February 2016 issued by TRAI which <i>inter alia</i> aim at (i) ensuring that consumers get an unhindered and non-discriminatory access to the Internet; and (ii) making data tariffs for access to the Internet non-discriminatory on the basis of the content.



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	<p>(c) There already exists substantial regulatory framework that seeks to protect the interest of the consumers in case of vertical integration of entities:</p> <p>(i) 'Must provide' exists in the current framework – the Interconnect Regulations contain provisions detailing the (i) general obligation of broadcasters which <i>inter alia</i> prohibit a broadcaster from engaging in any practice or activity or entering into any understanding or arrangement, including exclusive contracts with any distributor of television channels that prevents any other distributor of television channels from obtaining signals of television channel of such broadcaster for distribution. A similar obligation is placed on a distributor of television channels in relation to broadcaster; (ii) A distributor of television channels is also prohibited from engaging in any practice or activity or entering into any understanding or arrangement, including exclusive contracts with any local cable operator that prevents any other local cable operator from obtaining signals of television channels from such distributor for further distribution.</p> <p>The 'must carry' obligation also exists under the Interconnect Regulations. Since generally, the channels available on a distribution platform are a mix of channels obtained through 'must provide', 'must carry' and free to air channels distributed by a DPO as per demand in the market. Therefore, it is necessary that the available capacity of a distribution network is best utilised to meet the demand of consumers in a particular market. Therefore, these regulations provide full right to the DPO on the used capacity of its network. However, on spare channel capacity, it has been made obligatory to allocate every alternate channel capacity in sequential manner from the pending list. For such channels the DPOs will get the carriage fee till the average channel subscriber base reaches 20%.</p>
Q10. What should be the basis of classification	(a) Content travels across India and abroad to the



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<p>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.</p>	<p>Indian diaspora living there. English and Hindi content is viewed in all states. Further, with the aid of dubbing and sub-titling, content of one language is being viewed across other states:</p> <p>(i) Theatrical revenues of KGF – 86% were from outside the home state.⁶³</p> <p>(ii) In 2021, OTT streaming platforms saw films in the four south Indian languages, including their dubbed versions, gain big audiences and as much as 10% of overall viewing minutes.⁶⁴</p> <p>(iii) 20% of viewership of regional content on Amazon Prime Video is watched outside its home state ⁶⁵.</p> <p>(b) Accordingly, media concentration should ideally be considered at a national level.</p> <p>(c) Further, determining the ‘relevant market’ is the prerogative of the Competition Commission of India. Section 2(r) of the Competition Act, 2002 defines ‘relevant market’ as “<i>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.</i>” It is clear from this definition that the CCI determines the ‘relevant market’, so determination of ‘relevant market’ by the TRAI is uncalled for.</p>
<p>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.</p>	<p>No. Geographic market should be computed at a national level only. Language is no longer something which defines a market, as mentioned above.</p> <p>Further, given that most common boards like ICSE, HSC, CBSE, etc. require students to learn a minimum of two languages, the relevant geographic market should be defined uniformly for the whole country, and not at a state level.</p>
<p>Q12. Should the relevant geographic market be defined uniformly for the whole country? Is there a need to adopt separate criteria for</p>	<p>As per answer 11 above.</p>

⁶³ <https://indianexpress.com/article/entertainment/regional/kgf-2-box-office-collections-yash-film-1148-cr-new-records-7909462/>

⁶⁴ <https://www.livemint.com/industry/media/south-indian-films-lead-viewership-on-ott-platforms-11641288062395.html>

⁶⁵ FICCI-EY M&E sector report “Tuning into consumer”, March 2022

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<p>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.</p>	
<p>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.</p>	<p>(a) Though the metrics, as delineated above have not been provided for in the Competition Act, while assessing the abuse of dominance by an entity, CCI has regard to the ‘relevant market’. Further, Section 19(4) of the Competition Act provides that CCI while inquiring whether an enterprise enjoys a dominant position or not, is required to consider factors such as (a) market share of the enterprise; (b) size and resources of the enterprise; (c) size and importance of the competitors; (d) economic power of the enterprise including commercial advantages over competitors; (e) vertical integration of the enterprises or sale or service network of such enterprises; (f) dependence of consumers on the enterprise; (g) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers; (h) market structure and size of market, etc. Additionally, please note that the Competition Act is sector agnostic⁶⁶.</p> <p>(b) Consumption volume is best suited to understand the level of consumption, as:</p> <p>(i) Reach is just a measure of availability, and does not consider time spent. Only when time is spent, can opinions be formed or modified.</p> <p>(ii) Revenue does not treat all audiences equally. Urban and affluent audiences tend to be monetized at a far higher rate than</p>

⁶⁶ Please refer: <https://www.azbpartners.com/bank/role-of-cci-in-regulated-sectors-overlapping-jurisdictions/>



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	<p>rural and less affluent audiences. Hence, an English newspaper in Mumbai may earn more revenue than a much more widely read regional newspaper in a small town.</p> <p>(c) Consumption volume is highly dynamic and ever changing as it depends on many variable factors. Further, the actual consumption may be quite different than the perceived consumption derived by any methodology. The various problems, with using consumption data <i>inter alia</i> include:</p> <ul style="list-style-type: none"> (i) In the absence of verifiable metrics (e.g., robust return path data which can be one such metric), calculating actual consumption is impossible to ascertain. (ii) Even if consumption data is available, the same will be voluminous, making data analytics susceptible to be misinterpreted. (iii) Actual consumption data will always vary with time-bands, target audience, genre, language and region (e.g., cities (metros/non-metros) and states), and as such, making consumption data subjective due to various permutations and combinations. (iv) Building any model on consumption only will penalize those media entities which produce and distribute good content.
<p>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.</p>	<p>The main function of a bouquet is to generate access to a channel, so that trial/sampling can be induced. It does not directly impact viewership or create media concentration. Hence, its impact can be ignored.</p>
<p>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?</p>	<p>As consumer consumes content across different media, putting restrictions based on mere presence is detrimental to reach and monetization of content produced by a media company, as well as deprives consumers of content on their media of choice – hence cross-media presence should not be restricted in any manner.</p>

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<p>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?</p> <p>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?</p>	<p>We do not support any restriction based on mere presence in a market. Please see our response 16 above.</p>
<p>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.</p>	<p>Restricting an entity from a multi-media presence only reduces the plurality / number of voices and makes a media business less efficient, as well as deprives consumers of choice. Hence, cross-media restrictions should not be enabled in any manner. Further, the Competition Act has suitable safeguards for evaluating the relevant market and any appreciable adverse effect on competition in India.</p>
<p>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.</p>	<p>(a) No restrictions should be imposed on cross media ownership.</p> <p>(b) Plurality of voices is desirable and can be ensured so long as there is no restriction on content creation (no entry barriers), distribution (equitable distribution of content) and access for consumers.</p> <p>(c) Concentration of ownership is therefore not relevant, as long as plurality exists.</p> <p>(d) We reiterate our submissions made above (including those in Paragraph B), which are not being repeated for the sake of brevity.</p>
<p>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:</p> <p>(i). No restriction on cross-media ownership is applied on any entity having Ownership/ Control in the media segments of such a</p>	<p>(a) No restrictions should be imposed on cross media ownership.</p> <p>(b) Please see our response to question 19 above.</p>



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<p>relevant market in case its contribution to the HHI of not more than one concentrated media segment is above 1000.</p> <p>(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.</p>	
<p>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.</p> <p>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:</p> <p>(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.</p> <p>(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.</p>	<p>(a) No restrictions should be imposed on cross media ownership, as this could undo the gains media has made over the last few decades.</p> <p>(b) Plurality of voices is desirable and can be ensured so long as there is no restriction on content creation (no entry barriers), distribution (equitable distribution of content) and access for consumers.</p> <p>(c) Concentration of ownership is therefore not relevant, as long as plurality exists.</p> <p>(d) We reiterate our submissions made above (including those in Paragraph B [<i>plurality</i>]), which are not being repeated for the sake of brevity.</p>
<p>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.</p>	<p>(a) No restrictions should be imposed on cross media ownership, as this could undo the gains media has made over the last few decades.</p> <p>(b) Plurality of voices is desirable and can be ensured so long as there is no restriction on content creation (no entry barriers), distribution (equitable distribution of content) and access for consumers.</p> <p>(c) Concentration of ownership is therefore not</p>

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	<p>relevant, as long as plurality exists.</p> <p>(d) We reiterate our submissions made above (including those in Paragraph B [<i>plurality</i>]), which are not being repeated for the sake of brevity.</p>
<p>Q 23. 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.</p> <p>Q23a. If yes, which among the following should be taken as the criteria for the same-</p> <p>(i) minimum number of independent entities in the relevant market (ii) maximum Diversity Index Score (iii) any other measure</p> <p>Q23b. If no, what mechanism would you suggest for regulator to use for ensuring smooth and equitable growth of the sector?</p>	<p>No. The media business is just like any other business and is subject to same laws on mergers and competition.</p>
<p>Q24. In your opinion, should any entity be allowed to have an interest in both broadcasting and distribution companies/entities?</p> <p>Q24a. If “Yes”, how would the issues of vertical integration be addressed?</p> <p>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?</p>	<p>Yes, an entity should be permitted to own interests in broadcasting and distribution entities. Provisions for enabling an equal footing for the treatment of all broadcasters and distributors are envisaged by certain existing regulations of TRAI <i>inter alia</i> including the following:</p> <p>(i) ‘Must provide’ (restricts broadcasters from denying the provision of their content to DPOs).</p> <p>(ii) ‘Must carry’ of channels, subject to availability of channel carrying capacity.</p> <p>(iii) The principle of pricing and bundling terms for end consumers in a market.</p> <p>Additionally, there are obligations on DPOs for mandatory carriage of certain channels of Prasar Bharti. Further, for DTH, there is limitation of 15% capacity reservation for vertically integrated</p>



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	<p>broadcasters.</p> <p>The Government should also, in the changed landscape, consider removal of cross media restrictions imposed via DTH and HITS License conditions.</p>
<p>Q25. Please suggest any other measures to determine “Control” and the limits thereof between the broadcasting and distribution entities.</p>	<p>No other measures are required to determine control. The existing legal framework contains sufficient measures to determine control. Please refer to response in Q18 above.</p>
<p>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.</p>	<p>(a) Yes, the prevailing disclosure requirements and compliance reports are sufficient.</p> <p>(b) In addition to disclosures/compliance reports provided, existing regulations, i.e., Companies Act, 2013, regulations framed by SEBI, and regulations governing foreign investment also provide for various details to be submitted/compliances to be undertaken by entities, from time to time.</p> <p>(c) MIB by notification dated 16 November 2020 has provided that all news websites/portals, news aggregators and news agencies operating through digital media, with foreign investments under the prescribed threshold, must submit, <i>inter alia</i>, details such as the shareholding pattern, names and addresses of the shareholders, promoters and significant beneficial owners to the MIB.</p> <p>(d) No additional measures are required. In case, any additional measures are prescribed, then the same would hamper growth of M&E sector and bring-in regulatory uncertainty. Further, the same would also adversely impact ‘ease of doing business’ in M&E sector.</p>
<p>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</p>	<p>None required.</p>



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such disclosures? Please justify your answer.	
<p>Q28. Stakeholders may also provide their comments on any other issue relevant to the present consultation.</p>	<p>Confidential Business Information</p> <p>(a) Viewership metrics and other data on user interaction collected by digital businesses are commercially sensitive and are confidential in nature and are protected under the Copyright Act, 1957 and rules thereunder as amended from time to time. Government access to such data without adequate safeguards could affect India's global competitiveness, especially in the M&E sector.</p> <p>(b) Paragraph 4.37 of the TRAI Media Ownership CP asserts that there is a need to create a new mechanism for measuring the volume of consumption and reach of digital platforms, especially in case of advertising-led content platforms. We state that there is no need for creation of any mechanism for measuring consumption / reach of digital platforms <i>inter-alia</i> for reasons explained in Paragraph (c) in response to question 6 above. We further submit that in any event, private businesses should not be required to share any business information that they may hold including in the form of datasets and algorithms.</p> <p>(c) Efficient use of data is the backbone of the Indian digital economy. Digital businesses deploy various strategies to acquire customers and rely on multiple datasets and insights to improve consumer experience and retain their interest. In case of an online video streaming platform, data from viewers give insights on popular titles and preferred genres and the platforms use these insights to design a better consumer experience. Each platform may have multiple unique formulae working in various permutations and combinations with an aim to remain competitive, and the same may be in the form of confidential/ proprietary algorithms and/or datasets. These intangible IP assets are essential for an online video streaming service to survive in a competitive ecosystem.</p> <p>(d) The Copyright Act, 1957 protects datasets and source codes, and metadata and data insights as</p>

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	<p>they are trade secrets. Further, datasets and source code could reveal sensitive information about business strategies. IP assets also involves considerable investment of time and resources.</p> <p><u>Easing of FDI restrictions should be considered</u></p> <p>(a) Media is very informative and gives perspective of both sides of issues in hand – it presents diverse opinions and helps an individual form a healthy perspective. The Consolidated FDI Policy Circular of 2020 and Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 provide for permissible levels of FDI in media sector⁶⁷. These legacy stipulations incorporated from the earlier FDI Policy to the 2019 Rules should be withdrawn given how the sector has evolved and expanded.</p> <p>(b) Further, the Government should also, in the changed landscape, consider removal of cross media restrictions imposed via DTH and HITS License conditions.</p>

J. CONCLUSION

1. **Today's extraordinarily vast and exceptionally diverse media provides for more than enough competition to ensure that the Government's policy objective of viewpoint plurality is met.** The Indian media marketplace is so ferociously competitive and extra-ordinarily diverse that the objective of promoting viewpoint plurality is being automatically satisfied and hence any further restrictions may damage the equilibrium of growth and diversity that the industry has been successfully maintaining. With multiple technological methods developing to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium. It is also not possible for a single entity to dominate any given market based on market share in a given geography within a media segment.
2. **TRAI** in its own Consultation Paper on Market Structure/Competition in Cable TV Services⁶⁸ dated 25 October 2021, **has 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*

⁶⁷ For instance, while 100% investment is allowed for broadcasting carriage services under the automatic route, only 49% FDI is permitted for terrestrial broadcasting FM, subject to government approval. FDI to the extent of 26% is allowed under the government route for publishing of newspaper and periodicals dealing with news and current affairs.

⁶⁸ https://www.trai.gov.in/sites/default/files/CP_25102021_0.pdf; Please refer paragraph 3.5 on page 21

or no competition or in case where barriers to entry exist, there is the distinct possibility of abuse of dominance by the service providers'. In this regard, it is submitted that there are no entry/ exit barriers and that all stakeholders are competing on fair terms determined by market forces.

3. The Indian media industry is the most complex and competitive in the world and has tremendous potential to grow. With the sheer number of players in the market today, in every media segment, there is not even the remotest possibility of viewpoint scarcity. **Media plurality has increased in the last decade** as evidenced by the various data points provided in this response. The media ownership rules/controls in cross media holdings are unnecessary in India in the absence of demonstrable risk that any media owner's control of a particular segment presents concerns of spillover effects into other segments of the media. Hence, we believe that no cross-media ownership restrictions need apply until there is a significant imbalance noted in ownership viz, a hypothetical situation where say there is a risk of a monopoly/ duopoly in control of the multi-media market or a total market failure.
4. In the current environment it is, therefore, **essential to drive proportionate regulatory approach to keep up with advances in technology, removing unnecessary burdens** wherever they are found and offering clarity and confidence to businesses and consumers. The government should be committed to proportionate regulation and, where appropriate, deregulation.
5. The factors contributing to consumption, pluralism and competition have only amplified in the media sector – this is supported by data which shows increase in the number of participants across segments. Therefore, there is no reasonable basis to further regulate media ownerships separately by introducing new legislation or a separate regulator for the same. On the contrary, there is a need to remove the existing fetters.