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June 07, 2022

Shri Anil Kumar Bharadwaj
Advisor (B&CS),
Telecom Regulatory Authority of India

Dear Sir:

We thank your good offices for issuing a consultation paper concerning media ownership (**Consultation Paper**) and allowing stakeholders such as Sun TV Network Ltd. to present our suggestions and concerns. In consideration of the comments that have been sought towards the consultation paper, we have made the following responses. For ease of reference and brevity, we have responded to certain queries collectively, as we have found them to be interlinked, hence, requiring a need to be addressed jointly. For the queries, that we have not addressed specifically, this stakeholder does not have any specific inputs.

Sun TV Network Ltd. (**Company/ we**) is a media conglomerate with interests across television, digital media, and radio sectors. As a responsible media entity, we have tried to focus on the impact that the inputs of the consultation paper will bring to stakeholders including media conglomerates.

Q1. **Media industry has expanded in an unprecedented manner. In addition to conventional television & print medium, the industry now comprises news & media-based portals, IP based website/ video portals (including You-tube/ Facebook/ Twitter/ Instagram/ Apps other OTT portals etc.). Considering overall scenario, is there a need for monitoring cross media ownership and Control?**

Q2. **Media has the capacity to influence opinion of masses, more so the news media. Accordingly, should there be a common mechanism to monitor ownership of print, television, radio, or other internet-based news media?**

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? Is there a need to monitor takeovers, acquisitions of media companies, especially the news media companies?**

1. Corporate restructuring such as mergers, acquisitions, amalgamations, generally require certain compliances: (i) from a competition point of view (upon breaching of a specified threshold); (ii) in terms of FDI compliance (reporting protocols, and where necessary approvals); (iii) in terms of disclosures to be made by companies with respect to the annual compliances, to either Ministry of Corporate Affairs

(**MCA**), or the Securities and Exchange Board of India (**SEBI**), as the case may be. It is in furtherance of this, that we wish to impress upon the fact that there are designate authorities in place, which consider the ownership, control and related issues which pertain to a company (public, private, listed or unlisted, both). Also, it is important to note that these regulators are sector agnostic, and would also be duty bound, to regulate all sectors irrespective of their business activities.

2. The provisions of the Competition Act, 2002 (**Competition Act**)[1], read with the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations 2011 (**Combination Regulations**) provide for an ex-ante analysis of combinations i.e., mergers, amalgamations, takeovers and acquisitions of shares or control in another entity. The Competition Act mandates notification of a proposed combination to CCI, upon satisfaction of the minimum asset or turnover threshold set out under Section 5 of the Act.[2] CCI reviews the market for any conflicting interests, larger entities being created, which challenge or threaten the competition that is fostered in the particular market.

3. For analyzing the appreciable adverse effect on competition (**AAEC**) associated with a combination, CCI considers different factors under Section 20 of the Competition Act. Additionally, CCI also applies several market metrics including the Herfindahl-Hirschman Index (**HHI**) to analyze market concentration prior to and post combination. We have noticed that the current consultation paper also makes references to the HHI index as one of the acceptable metrices for consideration of market practices.

4. Parties furnish detailed information in relation to the combination in prescribed forms to CCI. CCI also independently undertakes a market analysis to determine AAEC. It is pursuant to such detailed analysis, that CCI approves a combination in case there is no likelihood of AAEC in the relevant market. If the combination causes or is likely to cause AAEC in the relevant market, CCI rejects the combination or seeks modification in the combination. CCI is empowered to

[1] Sections 5, 6 and 20 of the Competition Act.

[2] Thresholds prescribed under the Act (as enhanced by the Central Government vide its Notification No. S.O. 675(E) dated March 4, 2016) may be accessed using the following link: https://www.cci.gov.in/sites/default/files/quick_link_document/Revised%20thresholds.pdf. While the transactions which satisfy the *de minimis* exemption i.e., transaction value below the asset value of INR 350 crores and turnover value of INR 1000 crores, are exempt from CCI's combination notification regime, CCI may still issue a show-cause notice if the appreciable adverse effect on competition (**AAEC**) is made out even in a *de minimis* case. It is noteworthy that the Act prohibits entering into any combination, which has or is likely to have an AAEC in the relevant market in India and treats all such combinations as void. Therefore, any combination resulting in AAEC, irrespective of the threshold, is open to CCI's regulatory supervision on an ex-post basis.

revisit and inquire into any combination within one year from the date on which a combination has taken effect.

5. Additionally, CCI, as a market regulator, has displayed a proactive role in regulating entities in emerging technology segments including those in the digital media sector by analysing AAEC in the market under Section 3 as well as any abuse of dominant position in the relevant market under Section 4 of the Competition Act. As CCI is already in place and is actively overseeing the operations in the digital media domain, either on a suo moto basis or on the basis of information received, constituting a separate regulator to oversee media ownership and control may be an exercise which would not just denigrate the powers bestowed upon CCI, but would also create a body which could result in turf wars, *in re* overlapping roles and responsibilities.

6. Further to the above, in case of listed entities across all sectors, SEBI oversees the corporate restructuring. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**Takeover Regulations**) set out the procedure to be followed in case of acquisition of 25% or more of voting rights or control over the target company. These regulations have very specific reporting / compliance requirements, and focus on the intricate details particular to acquisitions, leading to detailed scrutiny.

7. In addition to the foregoing, the National Company Law Tribunal and National Company Law Appellate Tribunal are empowered to sanction and approve compromise, arrangements, and amalgamations under the Companies Act, 2013.

8. Further, prior approval of the Central Government, through the Foreign Investment Facilitation Portal of the DPIIT, is required in case of foreign direct investments in the print and media sector as well as foreign investments in entities involved in uploading/ streaming of news and current affairs through digital media, as per the applicable FDI Policy. Additionally, vide MIB's notification dated 16.11.2020[3], all news websites / portals, news aggregators and news agencies operating through digital media, with foreign investments under the prescribed threshold, must submit, inter alia, details such as the shareholding pattern, names and addresses of the shareholders, promoters and significant beneficial owners to the MIB.

9. With the aforesaid requirements in place, it is not prudent to have another regulator with the sole objective of focusing on the media sector.

[3] https://mib.gov.in/sites/default/files/Public%20Notice%20%20regarding%20FDI%20Policy%20.pdf

10. Additionally, it is noteworthy that over-regulation also affects growth of the industry, as opposed to forbearance which aids in the growth of an industry. Illustratively, telecom industry has grown exponentially on account of forbearance demonstrated by regulators including the TRAI. Similar to this, the evolving media segment comprising news & media-based portals, IP based website/ video portals should not be overregulated by instituting any further media ownership regulator. This will further propel the growth of the emerging media segments. Given the existence of sectoral regulators as elaborated above, it is in the best interest of stakeholders to not introduce any further regulator for monitoring and controlling media ownership.

11. In accordance with our aforesaid response, we have not made any additional comments with respect to question 4 for they are all discussing the requirements/ determinants for control and ownership.

Q.4. **Should the licensor, based on recommendations of the concerned monitoring agency/ regulator, restrain any entity from entering the media sector in public interest?**

12. In view of the suggestions to Issues 1 - 4, we are of the opinion that there is no requirement to restrain any entity from entering the media sector.

13. It is also pertinent to note that entities operating in the media sector have the right to commercial speech, a fundamental right protected under Article 19(1)(a) of the Constitution of India. Any restriction imposed on free speech must be within the reasonable restrictions under Article 19(2). It is noteworthy that public interest is not one of the 8 restrictions under Article 19(2).[4] Therefore, a restriction on commercial speech by restricting entities from entering media sector in the public interest is beyond the contours of Article 19(2) and will be open to constitutional challenge.

Q5. **What all genres shall be considered for the purpose of overseeing of media ownership to ensure viewpoint plurality? Please elaborate your response with justifications.**

Q6. **Which media segment amongst the following would be relevant for encouraging viewpoint plurality? 1. Print media viz. Newspaper & magazine 2. Television 3. Radio**

[4] *Shreya Singhal v. Union of India* (2015) 5 SCC 1

4. Online media/Digital media/OTT 5. All or some of the above Please substantiate your answer with appropriate reasons.

14. At this juncture, we do not agree that there is a need to oversee and regulate news and current affairs with an intent to ensure viewpoint plurality. There exist 17,573 registered newspapers in the country and over 1,00,000 periodicals. Additionally, there are over 165 private TV news channels that are registered in the country. Thus, there already exists viewpoint plurality in the country and there is no need to regulate news and current affairs in the country.

15. We believe that the news and current affairs sector in India, with the exclusion of news content on intermediary platforms and over the top platforms, have sufficient laws in place to regulate ownership and content.

16. The digital domain has overseen a sudden proliferation of novel platforms for disseminating content in a variety of genres. However, there is little to no control over the content or access to such platforms unless the platforms fall within the definition of a publisher of news and current affairs under the IT Rules 2021.

Q7. **Should the word 'media' include television, print media, digital/online media, and other media entities? Alternatively, whether 'television' as a media segment should include only DPOs (including LCOs) or only Broadcasters or both for ensuring viewpoint plurality in the television segment? Please justify your answer.**

It is imperative that the term 'media' is restricted to the general modes of information transmission, such as television, print, digital media, and the likes.

Q8. **What should be the basis of classification of relevant geographic markets for evaluating concentration in media ownership? Should it be aligned with state or a region/ Metro/ Non-metro cities or the whole country?**

Q9. **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.**

Q10. **Should the relevant geographic market be defined uniformly for the whole country? Is there a need to adopt separate criteria for certain states and/or Union Territories in light of their peculiar circumstances such as difficult terrain, hilly region, huge distance from mainland, low media penetration etc.?**

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17. Section 2(s) of the Competition Act defines 'relevant geographic market' as a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring areas.

18. In view of the aforesaid definition, relevant geographic market analysis will vary from case to case and that there cannot be a water-tight delineation of the relevant geographic market or criteria in relation thereto, as the concept of relevant geographic market in the media segment will be influenced by multiple factors including but not limited to: (i) type of media segment i.e., a. Print media viz. newspaper & magazine; b. Television; c. Radio; and d. Online media/Digital media/OTT, respectively; (ii) nature of content i.e., news content, music channels, religious channels, sports content, movies segment, etc. (iii) language of content/ linguistic criteria, based on the language used in the content; (iv) target audience i.e., urban or rural, etc.

19. In view of the aforesaid dynamic factors, it is suggested that the criteria to be considered in the determination of relevant geographic market should not be fixed as the same would vary from case to case. Furthermore, for evaluating concentration in media ownership, such delineation cannot be strictly made on the basis of: (a) state or a region/ Metro/ Non-metro city(ies) or the whole country; or (b) a list of predefined linguistic criteria. The regulator should analyze the relevant geographic market only when required, by considering the components and factors that influence the definition of relevant geographic market as under Section 2(s) of the Competition Act.

Q11. **Whether circulation details of newspapers should be used as a proxy for readership to measure the reach of media outlet in print segment in a relevant market? In case stakeholders disagree, they should provide a detailed methodology to measure the level of consumption of print media segment.**

20. We respond to the issue in the affirmative. Circulation details of newspapers have been used to measure the reach of media outlet in print segment in a relevant market for a long time.

21. Surveys such as the Indian Readership Survey (**IRS**) and National Readership Survey (**NRS**) have been in use to measure the reach of print media on the basis of circulation details. IRS offers a robust measure on media and product consumption behaviour along with the Indian Demographic Report at a Pan-India level. Similarly, NRS offers data on the number of readers, type of readers in

demographic terms, spread of these readers, and lifestyle parameters such as product ownership and consumption patterns.

22. Given the detailed parameters included in IRS and NRS, we are of the view that there is no necessity to alter or device new standards for audience measurement in the print segment.

Q12. **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.**

23. According to us, the bouquet system as envisaged and implemented vide the TRAI regulatory framework of 2017 consisting of the tariff order and interconnection regulations of 2017 is a good and reasonable working methodology to provide access to the widest variety of content to the viewers. Hence there is no need to adopt any measures to discount the impact of bouquet system of channel distribution in the country.

Q13. **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?**

24. We state that there is no requirement to impose restrictions on cross media ownership due to the mere presence of an entity in a separate segment is a consumer/ business-friendly solution to ensure viewpoint plurality in the market. Market trends demonstrate that the entry of an established player in one market to an adjacent market yields greater consumer benefit, options, and instils consumer confidence in the offerings of the established market player.

25. Cross ownership enables entities to uplift the delivery/ quality of services in the relevant market and may generate greater viewership for the products/ services made available by such player. This also fosters innovation and brings in healthy competition to the market, empowering the consumers to have access to wider and better services to choose from.

26. Further, we believe pre-emptive actions to restrict cross media ownership based on the mere presence of an entity in an adjoining market, is against the principles of free market affairs, and in contravention of the fundamental dogma of competition law. Competition law does not impose liability upon an entity for observing a dominant position in the market, unless the entity utilizes its dominant position to create an appreciable adverse effect on competition (AAEC)

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in the relevant market. Further, we believe the CCI is the appropriate authority for this determination and has the necessary legislative backing to conduct such an exercise.

27. To conclude, at a juncture where the digital media is just in the growth phase and increasingly being adopted as the preferred medium of consumption of content, it would be unwise to limit the range of investments, entries which may be made in these sectors, to reinvigorate the industry and provide greater impetus to the media industry.

Q14. **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.

28. For the sake of brevity, we reiterate the contents of our representations in response to Question 16 and opine that any pre-emptive action to restrict cross media ownership, in the absence of any AAEC on competition in the relevant market, is against the principles of free market affairs, and in contravention of the core principles of competition law. In view of the ever-evolving technological landscape for delivery of multimedia services, diversification across different media is a necessity to remain viable in this digital age.

29. In the alternative, should the regulators find a need to regulate such investments from a player in a relevant media segment, it is advisable to impose necessary compliance requirements upon their operations, instead of absolute restrictions to their entry in such market. This would enable a degree of control over their operations in such relevant market and ensure that there is no unaccounted growth/ advantage enjoyed by the player vide their participation in related markets.

Q15. **Whether 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?**

Q16. **In case stakeholders' response to the above question is in the affirmative, comments are sought on the suitability of the following rules for cross media**

ownership: a. No restriction on cross-media ownership is applied on any entity having Ownership/ Control in the media segments of such a relevant market in case its contribution to the HHI of not more than one concentrated media segment is above 1000. b. 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.

30. At the outset, it is reiterated and suggested that no restriction should be imposed on cross media ownership in a relevant market, irrespective of nature of concentration. The CCI undertakes a detailed analysis of different factors as per Section 20 of the Competition Act, including market concentration to determine AAEC likely to be caused or caused on account of the proposed combination, on an ex-ante basis, when such a combination meets notification thresholds. In case of combinations that do not meet the threshold, CCI may still undertake an AAEC analysis on a suo moto basis, in an ex-post basis.

31. It is noteworthy that CCI, in the past, has used Herfindahl-Hirschman Index (**HHI**)[5] as one of the metrics to assess the level of market concentration and the changes in concentration due to a combination. As per the CCI, markets with post-merger HHI more than 2000 are considered as highly concentrated and markets with post-merger HHI between 1000 and 2000 are considered as moderately concentrated. In highly concentrated markets, if post-merger increase in HHI is 150 or more and in a moderately concentrated market, if the post-merger increase in HHI is 250 or more, the same would be an indication of adverse effect on competition in the market.[6]

32. Given the depth of analysis, particularly market concentration on the basis of HHI, undertaken by CCI, there is no further requirement to impose any kind of restriction on cross media ownership in the relevant markets.

Q17. **In case you consider any other criteria for devising cross media ownership rules to be more appropriate, please suggest the same with sufficient justifications.**

32. As stated hereinabove, it is our view that the current mechanisms in place for examination and analysis of media ownership are sufficient and in fact already

[5] HHI is a common measure of market concentration and is used to determine market competitiveness, often pre and post-merger & acquisition transactions.
[6] CCI has adopted this standard in its decision on the combination between PVR Ltd. and DLF Utilities Ltd. in Combination Registration No. C-2015/07/288, https://www.cci.gov.in/sites/default/files/whats_newdocument/C-2015-07-288.pdf

stringent for addressing any issues which may arise with respect to the market concentration and cross media ownership. The Competition Act provides for powers to the CCI to investigate any abuse of market position and factors to analyze the market concentration of any entity and take appropriate action in such regard.

33. The formulation of cross media ownership rules will stifle the growth of the Indian market and would act as a barrier to any media companies seeking to partake in the growth of the media and entertainment industry. Therefore, there is no requirement for devising cross media ownership rules, and the current mechanism is sufficient to prevent any market abuse in the media and entertainment industry.

Q18. **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.**

34. The current requirement in case of Mergers and Acquisitions under the Indian regulatory framework is that for any "acquisition" as defined under the Competition Act exceeding notification thresholds, must be notified and necessary approval would have to be obtained from the CCI. As such, the CCI has ex-ante powers to analyze and examine the impact of a merger or acquisition, and if it is of the view that any combination would cause an AAEC basis the factors under Section 20 of the Competition Act, it may reject such combination or suggest a modification in the combination.

35. It is our view that the introduction of sector specific regulations with respect to mergers and acquisitions would dilute the inquiry powers of the CCI and constrain analysis conducted by the CCI within the scope of the specific regulations.

36. Additionally, the NCLT is also empowered to examine a proposed combination from the perspective of the effect on the corporate circumstances of particular entities and the effect on the entities' stakeholders. There is no delineation or separate provision for examination based on the entities' sector. Any addition of sector specific regulations, particularly with respect to the multi-layered media sector, would require revision and amendment in the mechanisms of the CCI as well as the NCLT.

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37. The current growth in the media sector has been possible due to the existing regulatory mechanisms, and any change thereto, might directly or indirectly hamper the growth of Indian media companies. Therefore, it is our suggestion that the current mechanism be adhered to by the respective regulators to ensure smooth and equitable growth of the media sector.

Q19. **In your opinion, should any entity be allowed to have an interest in both broadcasting and distribution companies/entities?**

38. In our opinion, there should be no bar to entities having an interest in both broadcasting and distribution sectors. As has been specified in the Consultation Paper, the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 *inter alia* provide for obligations on broadcasters and distributors in order to prevent exclusionary/discriminatory practices in the sector with respect to the carrying of signals. Further, the Guidelines for Direct-To-Home (DTH) Broadcasting Services has also been amended in late 2020 to prevent regulation of vertical integration to the extent of reservation of operational channel capacity.

39. Any expansion in regulations pertaining to vertical integration would have to be weighed against the backdrop of the effect of growth of distribution services in the past few years. The involvement of entities in both broadcasting and distribution has encouraged the growth of both sectors and has not had any detrimental impact on the relevant market. In fact, the last few years has seen the rise of several new broadcasting and distribution entities, and having an understanding of the know-how and operation of both the sectors has encouraged companies to expand the range of services offered, which has directly benefitted the consumers.

40. Therefore, the question regarding vertical integration must be looked at from varied perspectives, as the market has shown that competition and self-regulation has prevented anti-competitive practices rather than promote them. We believe that the current regime has adequately and satisfactorily prevented anti-discriminatory practices and therefore should be continued in its present form.

Q. 20. **Should any entity be allowed to have an interest in both broadcasting and distribution companies/entities?**

41. Statutorily, a broadcaster is permitted to provide Satellite TV Channel signal reception decoders to distribution platforms. Clause 5.6 of the Downlinking

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Guidelines 2011 impose this restriction on the direct provisioning of signals to viewers/ users by a broadcaster. Further, TRAI's extant regulations impose the obligation to 'must provide' and 'must carry' signals on broadcasters and distributors, respectively. As long as these principles of must carry and must provide obligations are satisfied, there would be no conflict if a distributor entity is owned by a broadcaster, as the distributor cannot deny carrying signals of other broadcasters.

42. In any event, a distributor will only flourish if varied content is provided, which would compel it to carry more content from different broadcasters. Therefore, ultimately market forces will balance themselves. Additionally, the pattern of media consumption is shifting gradually to digital media where content is broadcast without the presence of any intermediary akin to a distributor. Therefore, markets would not be affected if entities are allowed to have an interest in both broadcasting and distribution companies/entities.

We thank you for affording us the opportunity to respond to the Consultation Paper, and we would be happy to assist your good offices should there be any requirement to delve into the specifics of anything that we have cited within this response of ours.

For Sun TV Network Limited

By:
Name: R. Mahesh Kumar
Authorised Signatory