

Response from Bennett, Coleman & Co. Ltd. (BCCL) dated 22nd April, 2013, on Consultation Paper (CP) dated 15th February, 2013 on "Issues Relating to Media Ownership"

We have examined the CP issued by Telecom Regulatory Authority of India (TRAI) and our General Submissions on the CP are mentioned below, which are followed by comments on the specific issues raised in the CP.

- 1. No Jurisdiction under the TRAI Act :** It is submitted that TRAI has no jurisdiction to cover matters in relation to the print media. TRAI Act, 1997 defines functions of TRAI in section 11 and states that TRAI may make recommendations in relation to 'telecommunication services' only. Telecommunication service is defined to include services which are transmitted or received using wire, radio, visual or other electromagnetic means. Broadcasting services were included by way of specific Notification in 2004.

Any input that TRAI seeks in relation to print media, or any recommendations that TRAI may make in relation to print media, shall not be in accordance with the scheme of the TRAI Act. Given the fact that TRAI is a Statutory Regulator and has a specific role in terms of TRAI Act, even if a reference has been made by the Ministry of Information and Broadcasting (MIB), which goes beyond the statutory mandate of TRAI, TRAI may limit its consultation and recommendation to its Jurisdiction and may not offer any recommendations on the Print Media in this reference.

It may also be noted that Hon'ble Union Minister of MIB, Mr. Manish Tewari, is clear that TRAI should not overstep its remit and jurisdiction. With reference to the TRAI proposed 12-minute per hour cap on advertising in TV channels, Mr. Tewari stated on April 05, 2013 that TRAI was straying into areas that were outside its remit and suggested a separate "techno-commercial" regulator for the rapidly expanding broadcasting sector. Mr. Tewari further stated that "I am conversant with the TRAI Act, and I find it a bit of oxymoron that it is the broadcasting regulator as broadcasting was never supposed to be a part of the TRAI remit."

This statement from the Hon'ble Minister makes it amply clear that he respects jurisdiction of government authorities and wishes them to perform their due roles.

In light of this fact and as MIB itself has referred the matter under discussion to TRAI, it is TRAI's duty to send the matter back to MIB for removing issues related to print media from the scope of reference.

We wish to state that we are making further submissions in this note without prejudice to the above stand that TRAI has no jurisdiction to cover matters in relation to the print media.

2. **Role of TRAI under the Legislation:** It may also be noted that TRAI’s mandate includes facilitating competition and promoting efficiency in the operation of telecommunication services. Department of Telecommunications, Ministry of Communications and Information Technology, describes TRAI in the following words:

“**TRAI:** The Telecom Regulatory Authority of India (TRAI) was established and is governed by the Telecom Regulatory Authority of India Act, 1997, to regulate the telecommunications services and to protect the interest of service providers and consumers of the telecom sector, to promote and ensure orderly growth of the telecom sector and for matters connected therewith or incidental thereto. Its functions include making recommendations on (i) measures to facilitate competition and promote efficiency in the operation of telecommunication services (ii) technological improvements in the services provided by the service providers and (iii) measures for the development of telecommunication technology and related matters...”
(<http://www.dot.gov.in/vacancies/2012/ChairmanTRAI%20Advt.pdf>)

Section 11(1) (a) of TRAI Act 1997 also mentions:

“Section 11 - Functions of Authority

(1) Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the functions of the Authority shall be to-

(a) make recommendations, either suo motu or on a request from the licensor, on the following matters, namely:- ...

(iv) measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services; ...”

Given the above background, two key points emerge:

- i) The role of TRAI is not visualised in terms of placing restriction on the print media, which has an independent regulatory framework.
 - ii) TRAI is expected to facilitate the efficiency of the media segments, covered by its jurisdiction, and placing restrictions on cross holdings would be beyond the legislative mandate of TRAI.
3. **Diversity and plurality of views in the Indian Media Sector:** The Indian media sector has witnessed intense competition, be it areas of television, radio or print, and other new media segments. Indian media sector is sufficiently well diversified, thereby demonstrates active plurality of views.

Specifically on the print media, we submit that India has a plethora of newspapers, regulated by the Registrar of Newspapers for India, ensuring plurality of views. Tens of Thousands of publications are available in India in the form of newspapers and magazines, of different periodicity. For example, there are 13227 daily publications in different parts of India in different languages; there are 37504 monthly publications in different parts of India in different languages, etc. Cumulatively, the total number of registered publications, as on 31st March, 2012 was 86,754. (<http://rni.nic.in/>)

There is extensive language heterogeneity in print publications in India, which along with the fact that these publications have motleyed ownership, ensures plurality of views. Consequently, there is no need of any enforced plurality of views in the print media. This fact can be demonstrated further by the following examples: there are 4711 RNI registered publications in Bengali; 17211 in English; 4901 in Gujarati, 43450 in Hindi, 9 in Kashmiri, 1537 in Punjabi, 4973 in Tamil, 4281 in Telugu, 5813 in Urdu etc. Even in States, many publications of different languages are registered. For example, in Delhi, there are 43 Bengali publications, 40 Malayalam publications, 19 Gujarati publications etc. and in Tamil Nadu, there are 166 Telugu publications, 70 Malayalam publications, 39 Urdu publications, 3 Bengali publications, 3 Assamese publications, 6 Gujarati publications. (<http://rni.nic.in/>)

Responsible Media Groups ensure complete independence and autonomy of media segments, within the Group, which ensures plurality of views. For example, the editorial teams of Publishing (*The Times of India*, *The Economic Times*, *Navbharat Times*) have different views on the same subject / development. Additionally, the Broadcasting Division works completely independently (*Times NOW* & *ET NOW* news channels) and have diverse views on issues (as distinct from the views taken by the Publishing Division) and work as independent entities within the Times Group. This is in spite of common ownership.

The latest Indian Readership Survey (IRS 2012 Q3) has indicated that cumulative readership of top 10 English, Hindi dailies have shown marginal growth and that different publications are competing for readership in the market. (<http://www.campaignindia.in/Article/330472,irs-2012-q3-cumulative-readership-of-top-10-english-hindi-dailies-shows-marginal-growth.aspx>).

Instead of suggesting any cross holding restrictions, the Government policy should be targeted on fair consolidation in each media vertical, whereby quality of views is enhanced in each media vertical, in turn benefiting the Consumer through plurality of quality views.

It is not possible to make a case that any one entity in India can have influence over the entire news segment. Indians consume News through numerous languages and across different medium. All the TV channels focussed on News and all Newspapers reach only a

small part of India's population which is less than 10%. This presents us with a situation where the substantial majority of India's population do not consume any news at all. In such a scenario, it is not possible that any common ownership of newspapers & news channels will ever cause undue influence throughout the country. Also, there is no possibility that any one News Group can achieve dominance in this highly competitive and fragmented market.

In the last five years, competition in the media sector has almost doubled and there is far more competition in each segment.

Consequently, it is clear that there is a high level plurality of views in Indian media and that the players in this sector are competing heavily in the market.

- 4. Sufficiency of Indian Competition Law:** Objects of the Competition Act, 2002 ("Act") state that it is made "*...to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India...*" The Act regulates competition scenario in India extensively and it has been put into full force recently: Its provisions relating to *anti-competitive agreements* and *abuse of dominant position* were notified in May 2009; and its provisions relating to *regulation of combinations* came into effect in June, 2011. In view of the extensive provisions of the Act, any further regulation, in the garb of promoting '*plurality and diversity of views,*' would be excessive and may be suggestive of some other extraneous considerations.

Provisions of Merger Control, under the Act provide for effective regulation in case any combination or merger crosses a threshold. CP on the other hand, proposes blanket ban if thresholds are crossed, making it non-flexible. Act governs restrictive contracts, pricing and other arrangements and has various checks and balances to allow healthy market practices. Under the Act, *dominant position* is not banned, but its abuse is penalised. CP proposes to restrict the ownership above a threshold, without linking the threshold to any anti-competitive behaviour, thereby creating artificial and imposed competition, bereft of benefits of synergy and scaling up, which generate significant efficiencies and benefit the consumers. Further, given the fluid nature of media engagement by the consumer, it is practically impossible to establish monopolies / influence over a period of time. Consumer preferences are changing constantly and it is difficult to accept any definition of "threshold"

Any kind of additional form of regulation by TRAI on grounds of plurality is undesirable in light of the wider regulatory, economic, social and technological context in which Indian media sector operates. By enacting the Act, the parliament is already seized of the concern and has completely taken care of adverse effects on competition and the factors affecting pluralism, based on empirical studies of various economies worldwide.

5. Healthy Competition and Plurality are linked to economic behaviour: CP proposals are prohibitive in nature, rather than regulative. CP itself is a regressive step: it is similar to the repealed MRTP Act, which provided for prevention of economic concentration. CP proposes strict entry barriers, which will create segregation of efforts towards investigative journalism and accountability reporting, which is the need of the hour in India. Instead of benefiting the masses through plurality, the proposed action will remove the critical mass from media companies, which ensures focused research and analysis (which is often carried out through long period of time and involves immense efforts), resulting in relevant media coverage.

Creation of entry barriers may also result in shutting down of small media units which will lack investor interest, thereby forcing the creation of monopolies in each media segment. This will be counterproductive to the very idea of plurality that the CP highlights. It may be noted that ample plurality of views is present in newspaper media due to numerous companies publishing newspapers in various cities.

Effective *competition* may foster *plurality of views*, which is already being ensured under the Act. Concept of plurality, if imposed, without other relevant economic considerations, may be harmful and may take away the few benefits of healthy diversity within operations in the media sector.

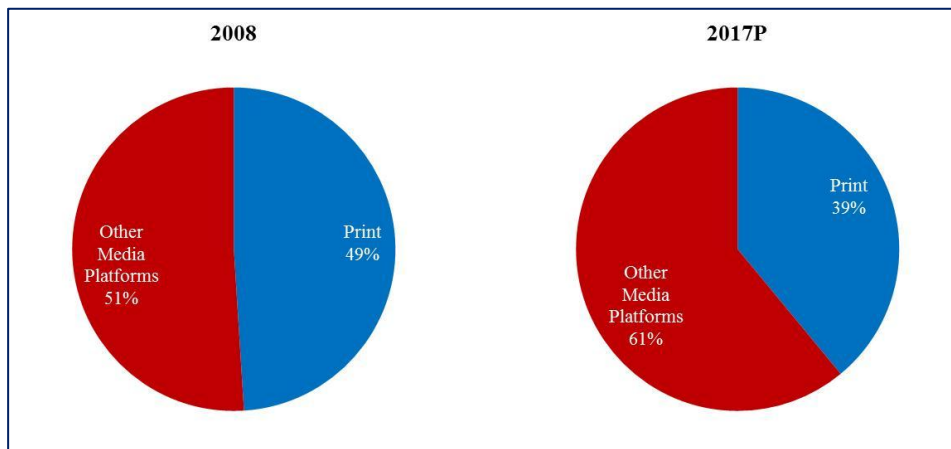
CP proposes to put barriers on media entities to enter more / new platforms to better utilise their content. For example, newspaper industry in India will lose scaling-up benefits of cross-ownership with an internet media / television media company, which may be required for it to remain economically viable. It is a known fact that internet and other forms of media are challenging printed news across the globe, resulting in closure of numerous newspaper companies and making them shift to online platform. No media company can survive in today’s evolving market conditions if it does not have access to medium of presenting content in form of text, audio and video. This will only be possible for a newspaper company if it may present augmented reality content readily to its readers, a proposition which is possible only if the newspaper company also has ready access to television media.

It may be noted that over the last 3-5 years the share of Print Advertising has been dropping precipitously. The following table confirms this beyond doubt:

Advertisement Revenue (INR Crores)	2008	2009	2010	2011	2012	CAGR (2008-2012)
	Print	10,800	11,040	12,600	13,940	15,000
Digital Advertising	600	800	1,000	1,540	2,170	38%

Advertisement Revenue (INR Crs.)	2013P	2014P	2015P	2016P	2017P	CAGR (2012-2017)
	Print	16,200	17,900	20,000	22,200	24,800
Digital Advertising	2,830	3,710	4,890	6,510	8,720	32%

Further, the share of print advertising is expected to drop by ten percentage points from 49% in 2008 to 39% by 2017 as displayed in the chart below:



Source: FICCI KPMG Report "Indian Media and Entertainment Industry Report 2013"

[The above estimates do not take into consideration the full impact of the roll out of the 4G Broadband services across the country. Going by the trend in mature markets (like the US & other G7 countries), the biggest casualty of increasing Broadband has been a massive drop in Newspaper Advertising. As per our internal assessment, the independent industry reports don't factor in the full impact of Broadband and therefore, the *actual* Print market share in 2017 **may actually drop to 25%**.]

Even if we go by the above chart, the overall revenue potential of Print industry is dropping dramatically – by over 10% with respect to total market share.. To make matters worse, the cost line for Print business has grown by over 15% per annum.

Therefore, with a slowing top-line & increasing cost pressures, Print Companies are currently headed for a gloomy future. Added to this is the huge pressure of advertisers who prefer visual media (Television & Internet). It is not be very far-fetched to suggest that in 5-7 years, many Print media Companies may have to file for liquidation since not all of them will be able to survive.

The print industry has witnessed declining/below average spends over the past five years from the following verticals:

INR Crores	10-11	11-12	12-13	CAGR (12-13 over 10-11)
Telecom/Internet Service Provider	139	79	70	-29%
Alcoholic Drinks	25	21	13	-28%
Computers	226	200	145	-20%
Banking/Finance/	953	722	716	-13%
Corporate/Brand Image	213	196	181	-8%
Telecom Products	217	151	204	-3%
Media	243	276	232	-2%
Textiles/Clothing	276	307	267	-2%
Building, Industrial & Land Material/Equipment	138	148	142	1%
Office Automation	17	11	18	3%
Durables	463	520	492	3%

Source: ADEX (Discounts applied to match industry estimates).

The current condition of the print industry is apparent with a slow but constant reduction of pagination and dropping quality of the finished product. On the other hand, costs have been going up constantly and this divergence (*revenues dropping and costs rising*) have left print media companies with only 2 options:

1. To shut businesses or the entire Company; or
2. To expand the offering to the ever shifting Consumer base.

We are not likely to see so many media groups in the future since most of the businesses don't have the following to survive this dramatic drop in fortunes:

- Skillsets: to grow horizontally in other media;
- Resources: to invest in new media categories; and
- Confidence: in the current depressing economic environment.

Therefore, it is very important for Media groups to have diversity in content which will allow diversity in platforms (multi media) which may result in widening the consumer base – cumulatively resulting in diversity of revenue streams.

It is also impossible for a Newspaper companies to compete with aggregators like *GoogleNews, YahooNews*, etc.

There is no denying the obvious advantage that such internet companies have – they can launch a **news-only** channel without any permission from the Government. The savvy Consumer (and there are many in this fast growing set), will be happy to read, see, listen to news on the Internet “Channel” rather than television channels on any other Broadcast medium.

Two other examples of foreign news aggregators, who offer rich video content, *and who are not licensed service providers in India*, are:

1. <http://live.huffingtonpost.com>
2. <http://www.youtube.com/live/all>

It may further be noted that newspapers need to be protected in the emerging digital economy. In fact, some governments across the world have already taken steps to protect their newspapers from the Online media. The best example here is how the *Bundestag* in Germany passed a law (proposed by the German Government) that will force search engines such as Google and other news aggregators to pay royalties to news publishers for showing extracts of their news articles in search results.

Google has understandably been a vocal opponent of the law. In France and Belgium Google has settled similar disputes with news publishers in deals that many have regarded seen as tantamount to a payoff.

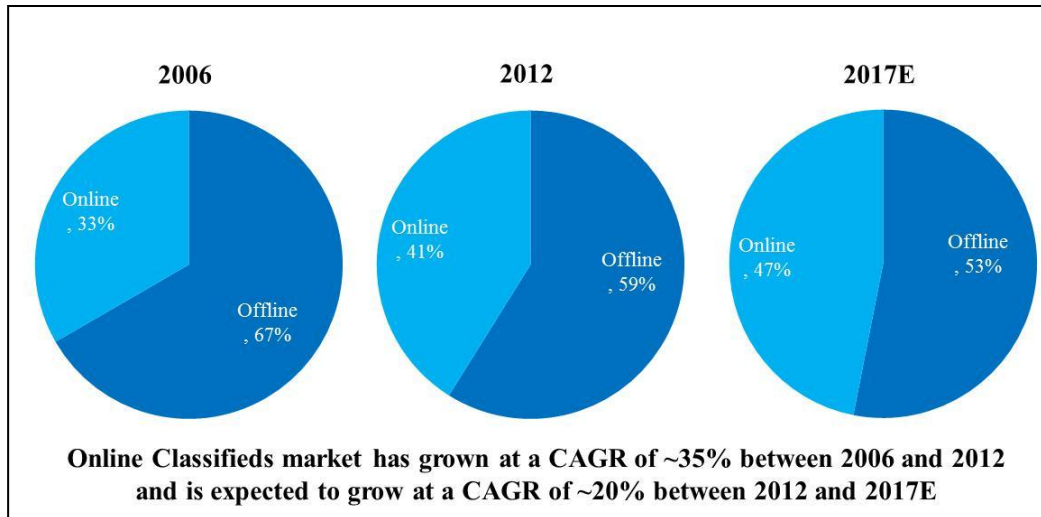
In light of the facts produced above, it is clear that the heavily regulated news sector cannot compete with the unregulated service providers, who are favourites of the internet savvy consumers.

The businesses of content aggregators are built on strong principles of licensing of content across Audio, Video & Text. Therefore, they can built the best by aggregating what they don't produce themselves

By questioning the logic of horizontal integration (across Newspapers & Broadcasting), the CP is indirectly suggesting that a newspaper should not have any video content on its website. It will not be possible to attract the interest of Internet Consumer on a newspaper website when s/he can get far more richer content, along with video clips attached to the news story, on another digital website. Therefore, for efficiencies of scale, production quality and Consumer preferences, it is critical that Newspaper companies be allowed to make relevant investments in TV, Radio, Internet & Distribution.

The Advertising Migration has started already:

The biggest proof of the Consumer migration is in the Classifieds business. This covers the traditional “LISTINGS” business for Employment/ Jobs, Matrimony & Real Estate. Each of these categories had a huge dependence on Print till about 5 years ago. With increasing Digital media penetration, the Classifieds business has found a far more effective medium. The below chart shows the growth of ONLINE Classifieds in India from 2006 to 2017:



Source: FICCI KPMG Report “Indian Media and Entertainment Industry Report 2013”
<http://anuraggupta.blogspot.in/2006/03/online-listings-classifieds-businesses.html>

[Again, the above estimates do not take into consideration the full impact of the roll out of the 4G Broadband services across the country. Going by the trend in mature markets (like the US & other G7 countries), the biggest casualty of increasing Broadband has been a massive drop in Newspaper Advertising. The independent industry reports don’t factor in the full impact of Broadband and therefore, the *actual* impact of this on Print market share of Classifieds will be **dramatically lower than the above estimates.**]

The newspaper industry cannot sleep through this certain migration – the significant segment of Consumer *has already stopped advertising* in newspapers for a recruitment advertisements.

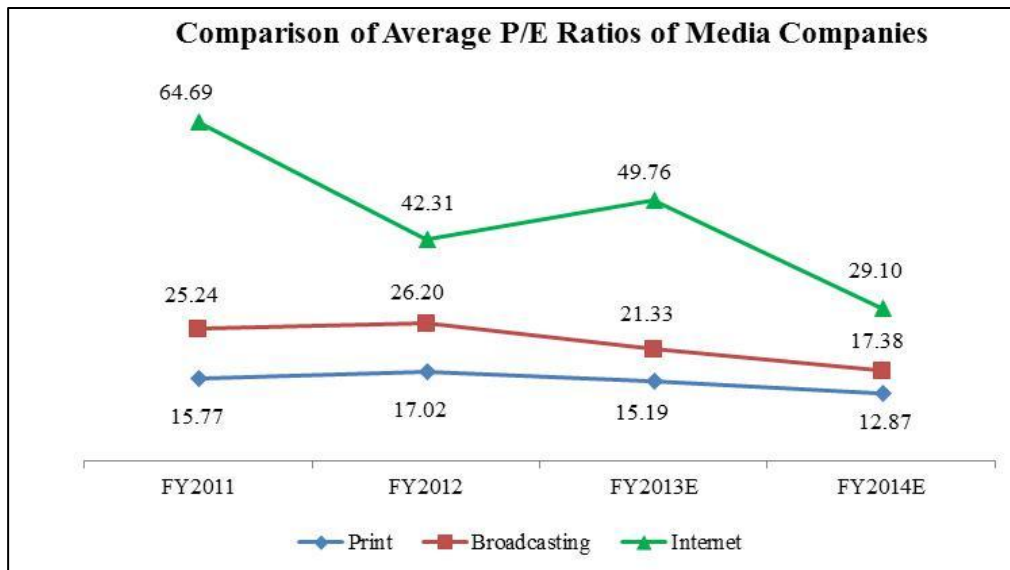
The situation is no different for the migration from Newspapers to Television. In some parts of India, the Consumer spends over 140 minutes per day in front of their TV sets and less than 20 mins reading their “favourite” newspaper. This has resulted in the obvious migration of large Advertisers away from the Newspaper industry. Television lends itself to a far wider reach than any other medium in India today.

Reach of Television channels will be more than the reach of Newspapers in India in the days to come. In light of this:

- **Newspaper companies cannot afford to ignore this clear market shift.**
- **Newspaper companies must convince its (existing) Advertiser base that the smaller reach and tiny time spent on Newspaper is better than TV advertising.**
- **Newspaper companies must expand its footprint and *capture* this migration.**
- **Newspaper companies must find innovative ways to slow the disengagement of consumers and popularise print medium.**

- **The Newspaper companies must have the flexibility to take all commercial decisions which are in its benefit and are required for its survival.**

The Investor community has already recognized this migration and Media Companies who are only in the Newspaper business are struggling to get attention from Investors. Investors are paying a huge premium for Internet Companies (nearly 250% more). Even Broadcasting/ Television Companies are at a 50% premium to the multiples enjoyed by Print Companies. This is evident by the below chart:



Source: Bloomberg as on April 4th 2013

[Note: Print includes HT Media, Hindustan Media Ventures Ltd., Jagran Prakashan Ltd. and DB Corp.
Broadcasting includes Zee Entertainment, Zee News and SUN TV
Internet includes Infoedge, Make My Trip and Onmobile]

The combined market capitalization of two print companies (HT Media and Hindustan Media Ventures Ltd.) is less than the market capitalization of *Infoedge* (the company that runs the popular website www.naukri.com) despite the combined Sales and EBITDA of the two print companies being approximately 6.5 times and 4.0 times of the Sales and EBITDA of *Infoedge* respectively, as mentioned in the table below:

All figs in INR Crores	HT Media (1)	Hindustan Media Ventures Ltd. (2)	HT Print Group (1 + 2)	Infoedge
Market Capitalization (As on April 4th 2013)	2,296	1,026	3,322	3,950
Sales (FY2012)	1,972	598	2,570	392
EBITDA (FY2012)	354	96	450	118

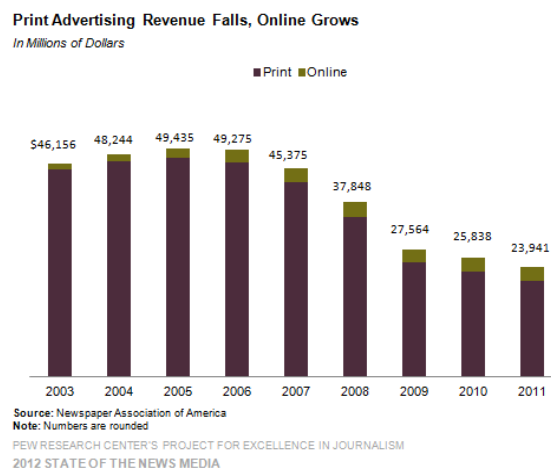
Source: Bloomberg

If cross media restrictions are imposed, the same shall not be in the interest of consumers and shall adversely affect their choice. In today’s scenario of convergence of media, the same news content is viewed by consumers using different media platforms which shall be adversely affected by cross media restrictions. . This choice of the consumer shall not be possible if cross media restrictions are in place. Technology has forced convergence, whereby the same content is available on multiple platforms, which, by their nature, are accessible digitally across the world. It is pertinent here to point out that this does away with the concept of geographical markets as a website can be viewed anywhere in the world.

Additionally it is not 100% certain that the Consumer will be loyal to the same brand across mediums – therefore, the media company will have to ensure that they are very efficient & competitive to retain the Consumer as he flirts across mediums. Given the huge competition across mediums, the Consumer will chose what he wants from whom.

6. **Global pressure on Print Media Sector:** CP proposed restriction shall have adverse effect on the competition scenario of the newspaper industry. The newspaper industry shall be further restricted, which is already reeling under pressure from various circumstances viz. decline of print media globally following popularity of online content, sharp decline in news print capacity globally, significant depreciation of rupee - making procurement of raw material a challenge. *Added restrictions shall clearly be an act to muzzle the press.*

The below statistics and facts clearly showcase the scenario in USA in relation to print media:



- a) Statistics showcasing decline of print media is available at: <http://stateofthemediamedia.org/2012/newspapers-building-digital-revenues-proves-painfully-slow/newspapers-by-the-numbers/>

- b) The website <http://newspaperdeathwatch.com/> showcases more than 10 newspapers in the USA which have been shut down since 2007.
- c) Newsweek, one of USA's largest news weekly magazines, has closed print editions and henceforth will only be available on the internet. Its December 31, 2012 issue was its last print magazine. (<http://en.wikipedia.org/wiki/Newsweek>)



- d) More than 150 year old USA's *Seattle P-I Newspaper* officially went online-only in 2009. This caused job losses as their staff was cut to about 20 people, a mere fraction of the former 165 person operation. (<http://www.switched.com/2009/03/17/150-year-old-seattle-p-i-newspaper-officially-going-online-only/>).

 The image is a screenshot of the seattlepi.com website homepage as of Tuesday, March 17, 2009. At the top left is a globe logo with "P-I" on it. To its right is the text "seattlepi.com". Below this is a navigation menu with tabs for "Local", "US/World", "Sports", "Business", "A&E", "Life", "Comics", and "Photos". The main headline reads "SEATTLE POST-INTELLIGENCER: 1863-2009" and "ONE ERA ENDS, ANOTHER BEGINS". To the left of the main text is a small image of a newspaper cover with the headline "You've meant the world to us". To the right of the main text is a list of links and information:

- The Seattle Post-Intelligencer will print its final edition Tuesday and become the nation's largest daily newspaper to shift to an entirely digital news product.
- **Photo gallery:** Last publication day at the P-I
- **Video:** The P-I staff: What we'll remember about the paper
- seattlepi.com to continue
- **Video:** Publisher's announcement
- **Special section:** P-I memories
- Letter to readers
- More about the new seattlepi.com
- **Connolly:** Online-only P-I will be a journalism adventure
- PDF of commemorative P-I page
- Questions and answers for Seattle P-I subscribers

In the UK, the publisher of the Guardian and Observer newspapers of UK are discussing closing the print editions of the newspapers, and are planning a move to an entirely online operation. (<http://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/media/9614953/Guardian-seriously-discussing-end-to-print-edition.html>)

These facts highlight the necessity to have availability of different forms of media platforms for the newspaper industry in India currently and in the future. Any restriction on this would result in closure of companies and will result in job losses. It may be noted that sustaining employment in the Indian newspaper industry is a matter of concern with the Government of India, and it has cited this reason for not increasing FDI in this sector to over 26%.

In December 2011, the then I&B Minister Ambika Soni said, "With the liberalization process, 26% FDI has been allowed in foreign news and that category of newspapers. But it has been our considered policy and there is no unanimity in the country on increasing the FDI quotient. It is also an endeavour on the part of the government to encourage the newspaper industry which is indigenous, which is Indian, so that our people do not lose their source of employment."

(http://articles.timesofindia.indiatimes.com/2011-12-21/india/30542110_1_foreign-newspapers-facsimile-edition-fdi)

- 7. Economic and Viability Challenges for the Print Media :** Economic pressure on print media in India will also become acute in the near future as there is a lack of regulations for internet media in India and globally. As internet penetration in India will go up, internet media will increase its footprint - further challenging print media, which is heavily regulated.

In India, revenues generation at newspaper companies is already witnessing considerable pressure. One of the reasons for this is movement of *classified* advertisements to the internet, thereby taking away from newspapers one of its key driving forces and creators of utility.

This has also created fragmentation in the market and it is challenging to operate in this industry, which situation is made acute because the industry is facing an assured sunset event, given the global trends in relation to decline in print media, as indicated below. The proposed restrictions in the CP will make the situation acute for print media and will also create a loss of viability.

In the near future, newspaper companies in India will be in need of government subsidies and advertisements to survive.

In such a scenario, creation of entry barriers will take away from the Indian newspaper industry the few avenues of survival it may have in the future.

As we have seen in the earlier data:

- Print media is not seeing any meaningful growth in Revenues;
- Print media is seeing Costs increase much faster than Revenues – resulting in a massive squeeze on investible surpluses.
- Digital & Television Advertising is much bigger and continues to grow at a faster clip (*Digital media is growing at over 30% year-on-year.*)
- The new 4G (4th Generation) Broadband Networks will soon start business in India – these will *further* hasten the process of Print *extinction*. Consumers will have no reason to *read newspapers* since they will get a much more richer platform with videos and text on the 4G & 3G enabled phones, tablets & TV sets.

8. **Draft Competition Policy, 2011:** The Policy Direction of the Government of India in terms of the Draft Competition Policy, 2011 (which in an evolved form is available at http://www.mca.gov.in/Ministry/pdf/Draft_National_Competition_Policy.pdf; emphasis supplied).

Few relevant parts of the draft policy which put forth the need of reconsideration by TRAI are produced below:

“2.2 Importantly, competition is not automatic, and requires to be promoted, protected and nurtured through appropriate regulatory mechanism, by minimising market restrictions and distortions and access to related productive inputs as markets, capital, technology, infrastructure services, human capital etc.”

“3.1 Competition is regarded as a sine qua non to a liberalized economy... The basic premise of competition policy is that Government should not restrict market activity any more than is necessary to achieve its social and other goals.”

“3.6 ... It explicitly recognises the need of government intervention in markets through optimal regulation, where it is justified. It seeks to strike a balance, between competition policy objectives on the one hand, and other policy considerations such as prudential supervision, service quality, social service commitments, safety etc. on the other, and only expects a considered and conscious view to be taken by the concerned authorities.”

“5.2 Any deviation from the principles of competition should be only to meet desirable social or other national objective, which should be clearly spelt out. The deviations should adhere to the following rules:

- i. the desirable objective be well defined,
- ii. should be decided in a transparent and rule bound manner,
- iii. should be non-discriminatory between public and private enterprises
- iv. the mode, manner and extent of deviation should have the least anticompetitive effect.”

“5.3 There should be accountability in the process so that deviations are not made without adhering to the accepted competition principles. As a general rule, any deviation should be an exception with pre-determined tenure. There should be an inbuilt sun-set clause to limit its continuation until it is found necessary.”

“6.1 The following initiatives are envisaged to effectively generate a culture of competition and to enhance competition in the domestic markets with the involvement of all stakeholders:...

- ii. Review of such existing policies, statutes and regulations, which may restrict or undermine competition, shall be undertaken with a view to removing or minimising their competition restricting effect.”

“7.2 Competition Impact Assessment: It has been envisaged that the NCPC [National Competition Policy Council] will work with and assist various Government Departments and Ministries in undertaking Competition Impact Assessment to see if any anti-competitive effect is exerted by a provision in the existing or proposed laws, regulations and policies, enforced by them. While undertaking Competition Impact Assessments, the Ministries and Departments shall among others include the following points:

(A) Limits the number or range of suppliers

This is likely to be the case if a clause:

- i. Grants exclusive rights for a supplier to provide goods or services
- ii. Establishes a license, permit or authorisation process as a requirement of operation. Creates natural barriers affecting prospective entrants or significantly raises cost of entry or exit by a supplier....

.....”

“8.2 Regulation may be justified or warranted in sectors which have natural monopolies or network industries; more so where a universal service obligation exists. However, regulation may not be required where these features do not prevail. Such sectors should ideally be left to the forces of competition. Even sectors where regulation is required, it should be competition based or competition driven. One of the objectives of the regulation, incorporated in the sectoral regulatory law, should be to create a competitive market in so far, as this is feasible.....

...”

BCCL's comments to each of the specific issues raised by TRAI in the CP, which are without prejudice to our contention that TRAI has no jurisdiction to cover matters in relation to the print media, are produced below:

Q. No. 1:

In your opinion, are there other entities, apart from entities such as political parties, religious bodies, Government or government aided bodies which have already been recommended by TRAI to be disqualified from entry into the broadcasting and distribution sectors, which should also be disqualified from entry into the media sector? Please elaborate your response with justifications.

Q. No. 2:

Should the licensor, either suo motu or based on the recommendations of the regulator, be empowered to disqualify any entity from entering the media sector in public interest? For instance, should the licensor or the regulator be empowered to disqualify (or recommend for disqualification) a person who is subject to undue influence by a disqualified person.

BCCL Comments on Q. 1 and Q. 2

The issues are in relation to the broadcasting and distribution sectors and are not relevant for the print sector. Furthermore, TRAI has no jurisdiction to cover matters in relation to print media, (please refer to our General Submission 1 above) which is already regulated in relation to this issue by the Registrar of Newspapers for India. However, we are in favour of debarring the following entities from having any form of association with Media: political parties, religious bodies, Government or government aided bodies, etc.

Media Companies should be allowed to decide on the staffing of their Editorial department (or for that matter, all their Departments) without any interference from any Regulator/ Government Authority.

Q. No. 3:

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

Q. No. 4:

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

BCCL Comments on Q. 3 and Q. 4

Competition law takes care of these concerns extensively and there is no further requirement to raise these issues. Please refer to our **General Submissions Paras 4 and 5**.

Q. No. 5:

Should only news and current affairs genre or all genres be considered while devising ways and means to ensure viewpoint plurality? Please elaborate your response with justifications.

Q. No. 6:

Which media amongst the following would be relevant for devising ways and means of ensuring viewpoint plurality?

- (i) Print media viz. Newspaper & magazine
- (ii) Television
- (iii) Radio
- (iv) Online media
- (v) All or some of the above

BCCL Comments on Q. 5 and Q. 6

The print sector is well diversified to ensure plurality of views. No filters should be applied to examine plurality against all the above sectors. The only way the Government can really contribute is by allowing unfettered growth of the Media Industry and let economic decisions on horizontal & vertical integration be taken by the Media Companies themselves. Also please refer to our **General Submissions Para 3**.

Q. No. 7:

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

Q. No. 8:

If your response to Q7 is in the negative, what should be the alternative basis for distinguishing between various relevant markets?

Q. No. 9:

Which of the following metrics should be used to measure the level of consumption of media outlets in a relevant market?

- (i) Volume of consumption
- (ii) Reach
- (iii) Revenue

(iv) Any other

Please elaborate your response with justifications.

Q. No. 10:

In case your response to Q9 is „Any other“ metric, you may support your view with a fully developed methodology to measure the level of consumption of various media outlets using this metric.

Q. No. 11:

Which of the following methods should be used for measuring concentration in any media segment of a relevant market?

- (i) C3
- (ii) HHI
- (iii) Any other

Q. No. 12:

If your response to Q11 is „Any other“ method, you may support your view with a fully developed methodology for measuring concentration in any media segment of a relevant market using this method.

Q. No. 13:

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

Q. No. 14:

In case your response to Q13 is in the affirmative, how should the weights be assigned to the different media segments in a relevant market in order to calculate the Diversity Index Score of the relevant market?

Q. No. 15:

Would it be appropriate to have a “1 out of 3 rule” i.e. to restrict any entity having ownership/control in an outlet of a media segment of a relevant market from acquiring or retaining ownership/control over outlets belonging to any other media segment? Please elaborate your response with justifications.

Q. No.16:

Alternatively, would it be appropriate to have a “2 out of 3 rule” or a “1 out of 2 rule”? In case you support the “1 out of 2 rule”, which media segments should be considered for imposition of restriction? Please elaborate your response with justifications.

Q. No. 17:

Would it be appropriate 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 (say 20%) 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.

Q. No. 18:

In case your response to Q17 is in the affirmative, what should be such threshold level of market share? Please elaborate your response with justifications.

Q. No. 19:

Would it be appropriate to lay down restrictions on cross media ownership 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.

Q. No. 20:

In case your response to Q19 is in the affirmative, please comment on the suitability of the following rules for cross media ownership:

- (i) 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. (For methodology of calculation please refer para 5.42)
- (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.

Q. No. 21:

Would it be appropriate to lay down the restrictions on cross media ownership only in highly concentrated relevant markets using Diversity Index Score as a tool to measure concentration? Please elaborate your response with justifications.

Q. No. 22:

In case your response to Q21 is in the affirmative, please comment on the suitability of the following rules for cross media ownership in such relevant markets:

- (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.

- (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.

Q. No. 23:

You may also suggest any other method for devising cross media ownership rules along with a detailed methodology.

BCCL Comments on Q. 7 to Q. 23

The primary basis of TRAI's recommendations to devise media ownership rules is to ensure viewpoint plurality. As stated in **General Submissions Paras 3, 4 and 5**, extensive plurality of views already exists in print sector in India, which addresses TRAI's concern.

With this concern being addressed, there is no need of going into in-depth review of the 'methods' suggested by TRAI to arrive at 'relevant market' and its parameters of measurement.

India is a Heterogeneous market with thousands of dialects being spoken across the length and breadth of the Country. Any one language has little ability to influence the people across that consumption set. Even within the same language, the younger consumer may be reading the news on his I-pad (tablet) or other Internet enabled device and the older consumer may be reading the newspaper for news. Therefore, its near impossible to suggest that the ability to influence the consumers is large with horizontal or vertical integration. The concept of influence is perhaps far more relevant in Homogenous markets like the USA or UK – where one politically motivated story in (say) Birmingham could be understood as easily across the entire United Kingdom. That's simply because, they speak one language and therefore, the consumer preferences are far more easily understood and his media consumptions habits/ needs are less dissimilar. In India, the market & the Consumer changes every 5 kilometres.

Q. No. 24:

In case cross media ownership rules are laid down in the country, what should be the periodicity of review of such rules?

Q. No. 25:

In case media ownership rules are laid down in the country, how much time should be given for complying with the prescribed rules to existing entities in the media sector, which are in breach of the rules? Please elaborate your response with justifications.

BCCL Comments on Q. 24 and 25

We are of the strong view that TRAI should not suggest any cross media ownership rules in India. Please refer to our **General Submissions**, Para 1 and 4.

Q. No. 26:

In your opinion, should additional restrictions be applied for M&A in media sector? Please elaborate your response with justifications.

Q. No. 27:

In case your response to Q26 is in the affirmative, should such restrictions be in terms of minimum number of independent entities in the relevant market or maximum Diversity Index Score or any other method. Please elaborate your response with justifications.

BCCL Comments on Q. 24 and Q.25

In our view, no additional restrictions should be imposed for M&A in media sector. M&A's are regulated fully under the Competition Act, 2002. Please refer to our **General submissions, Para 4**.

Q. No. 28:

Should any entity be allowed to have interest in both broadcasting and distribution companies/entities?

If "Yes", how would the issues that arise out of vertical integration be addressed?

If "No", whether a restriction on equity holding of 20% 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?

You are welcome to suggest any other measures to determine "control" and the limits thereof between the broadcasting and distribution entities.

BCCL Comments on Q. 28

Competition law takes care of these concerns extensively and there is no further requirement to raise these issues. Please refer to our **General Submissions, Para 4 and 5**.

However, we strongly believe that vertical integration is very important for economic viability of any enterprise. The challenges that any Industry faces are:

- The costs of doing business have never reduced,

- Ever increasing competition has always ensured that the revenue is far more difficult to predict,
- The Consumer has definitely become far more unpredictable,
- In this scenario, the Media Industry is most heavily exposed due to the constant evolving Technology platforms and Internet enabled devices.

To sustain any business model, the Company may consider backward or forward integration – this is not new to any industry. Hospitals have Medical Stores, Automobile Companies have their own retail outlets. Textile Companies have their own stores.

Obviously, the rationale for this investment will be required with all relevant stakeholders. We should presume that people know what they are doing on economic decisions. In case a Broadcasting Company decides to invest in Cable business, they need to go through the process of evaluation and then arrive at a decision that they can live with – the Government should not have a role in this process.

The Government should allow vertical integration while putting in place rules that ensure that there is fair-play by such vertically integrated media groups and “third parties” are not treated unfairly or disadvantaged with this muscle.

We believe that the Government should strongly encourage media groups who have demonstrated fair-play & plurality of views over a long period of time. There should not be any restrictions at level of ownership, instead there should be clear-cut rules in place at level of last mile to prevent abuse and to ensure last mile neutrality, i.e. to ensure that distribution platforms carry TV channels of rival media companies, for instance, without them being at any disadvantage to those of their own.

Q. No. 29:

What additional parameters, other than those listed in para 7.10 (i), could be relevant with respect to mandatory disclosures for effective monitoring and compliance of media ownership rules?

Q. No. 30:

What should be the periodicity of such disclosures?

Q. No. 31:

Should the disclosures made by the media entities be made available in the public domain?

BCCL Comments on Q. 29, Q.30 and Q.31

TRAI has no jurisdiction to cover matters in relation to print media (please refer to our **General Submission, Para 1 and 2** above). Relevant disclosures are made in accordance with law by the print sector to its regulator the Registrar of Newspapers for India.