

**Counter Comments to the Consultation Paper dated 15th February, 2013  
"Issues relating to Media Ownership"**

A review of the responses filed by several stakeholders that were made available on the Authority's website clearly concludes that a majority of the stakeholders have questioned the very need for the Authority to recommend sweeping restrictions by way of regulations on Media Ownerships when there already exists adequate laws and mechanisms, under effective competition laws in India. We however, do also note that stakeholder's views on some of the issues raised in this Consultation paper are diverse and varied.

We wish to submit our counter comments to some of the significantly diverse opinions and submissions made by few of the stakeholders. Kindly note that these counter comments, as elaborated below, are without prejudice to our confirmed position made vide our submissions to the Authority on April 22, 2013.

**Overall perspective:**

As elaborated in our submissions, we strongly believe that there is absolutely **NO** need whatsoever to consider or undertake steps of any kind that measure ownership/control of an entity over various media outlets, with specific regard to cross media holdings.

Cross-Media holdings allow cross-subsidizing for entities and bring in synergies between different arms of media entities that also allow them to operate in a free and democratic environment and not fall prey to solely commercial business objectives.

The Indian legal framework is sufficiently robust and already enshrines in its framework, specific provisions that regulate entities across sectors, be it retail, manufacturing or media. The Indian media landscape is very different from other international jurisdictions and this is evident from the high level of fragmentation and diversity seen in Indian media, which no other jurisdiction reflects. Any regulation that is attempted to be foisted on the Indian media industry, ignoring the prevalent dynamic and unique factors will not only be a failure but will be a regressive step for the media industry.

Even internationally, many countries which had earlier brought in cross-media regulations have now either relaxed or moved away from such regulatory regime to complete forbearance. To compete globally, Indian media has to be viewed similarly and not in a regressive manner, which the Authority through its recommendations on Media Ownership is in effect doing.

We re-affirm our earlier contention that regulations or restrictions on media ownership in the present Indian media environment is totally unwarranted and any such move will have a contrary impact on what the Authority is actually seeking to achieve by this very consultation.

**Specific Counter Comments:**

Our counter comments submitted herein are in response to comments made by certain stakeholders that warrant a rebuttal. We have dealt with such issue(s) that in our opinion call for a counter response.

Our issue wise counter comments are as under:

**I. “Only channels of news and current affairs genre should be considered while devising ways and means to ensure viewpoint plurality”**

**TTN Counter Comments:**

There have been unconvincing submissions made by certain stakeholders that only news and current affairs genre should be considered while devising ways and means to ensure viewpoint plurality in media, emphatically suggesting that other genres such as “entertainment” genres are not to be considered for achieving this objective.

To begin with, it is our strong submission (and of many others in the industry as well) that at the outset, there is no threat to viewpoint plurality or diversity of views in the Indian news media context. So the question or need for deriving ways and means to ensure the same does not arise at all.

We strongly oppose the Authority’s view and basic premise that cross media holdings negatively impact viewpoint plurality and hence measures need to be undertaken to devise rules/restrictions that can ensure the same. As detailed in our submissions, we draw attention to the fact that with the kind of fragmentation seen in the Indian media industry, with several players competing with one another, (82000 publications, over 800 TV channels, and over 200 private Radio stations), there is no threat whatsoever of dilution of plurality or dearth in diversity of opinions as regards any information presented to readers/viewers/listeners. Indian laws that govern television news media already contains specific provisions, as part of regulations, license conditions etc., that govern the functioning of news media. We do not see any additional need to bring in regulations and restrictions on the news genre on the premise of ensuring viewpoint plurality, which in our view already exists.

Foremost, it should not be ignored that the Indian media industry is one of 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. So to attribute the need to ensure plurality on the news and current affairs genre alone is unwarranted and devoid of reasoning and merit.

Our detailed reasoning to counter this misconception is as below:

**A. International bench-marking:**

Internationally, the regulations on horizontal and vertical integration in media do not make a differentiation between news and non-news genres.

**Australia:**

We can see below the Australia's Media Ownership restrictions as stipulated in The Broadcasting Services Amendment (Media Ownership) Act 2006. The act does not distinguish the channels on the basis of content.

*"The Broadcasting Services Amendment (Media Ownership) Act 2006 introduced new provisions for the disclosure of cross-media relationships into the Broadcasting Services Act 1992 ("BSA").*

*The provisions apply when a person is in a position to exercise control of each media operation in a set of media operations.*

*The provisions require commercial television broadcasting licensees, commercial radio broadcasting licensees and newspaper publishers to publicly disclose cross-media relationships if they broadcast or publish matter about the business affairs of another party in a set of media operations.*

*The definition of matter or material about the business affairs of a broadcaster or publisher is provided in section 61BH of the BSA.*

*Section 61BA of the BSA defines a set of media operations as:*

- ***a commercial television broadcasting licensee and a commercial radio broadcasting licensee that have the same licence area; or***

- **a commercial television broadcasting licensee** and a newspaper that is associated with the licence area of the licence; or
- **a commercial radio broadcasting licensee** and a newspaper that is associated with the licence area of the licence<sup>1</sup>

### **United States of America:**

Like Australia, the United States of America do not specify genre of a channel while laying down the cross-media ownership restrictions. The following is the US's media cross-ownership rules:

**“Radio-television cross-ownership rule** —(1) This rule is triggered when: (i) The predicted or measured 1 mV/m contour of an existing or proposed FM station (computed in accordance with § 73.313) encompasses the entire community of license of an existing or proposed **commonly owned TV broadcast station(s)**, or the Grade A contour(s) of the TV broadcast station(s) (computed in accordance with § 73.684) encompasses the entire community of license of the FM station; or

(ii) The predicted or measured 2 mV/m ground wave contour of an existing or proposed AM station (computed in accordance with § 73.183 or § 73.386), encompasses the entire community of license of an existing or proposed **commonly owned TV broadcast station(s)**, or the Grade A contour(s) of the TV broadcast station(s) (computed in accordance with § 73.684) encompass(es) the entire community of license of the AM station.

(2) An entity may directly or indirectly own, operate, or control up to two **commercial TV stations** (if permitted by paragraph (b) of this section, the local television multiple ownership rule) and 1 commercial radio station situated as described in paragraph (c)(1) of this section. An entity may not exceed these numbers, except as follows:

(i) If at least 20 independently owned media voices would remain in the market post-merger, an entity can directly or indirectly own, operate, or control up to:

(A) Two commercial TV and six commercial radio stations (to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule); or

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<sup>1</sup> [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_310454](http://www.acma.gov.au/WEB/STANDARD/pc=PC_310454)

*(B) One commercial TV and seven commercial radio stations (to the extent that an entity would be permitted to own two commercial TV and six commercial radio stations under paragraph (c)(2)(i)(A) of this section, and to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule).*

*(ii) If at least 10 independently owned media voices would remain in the market post-merger, an entity can directly or indirectly own, operate, or control up to two commercial TV and four commercial radio stations (to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule).*

*(3) To determine how many media voices would remain in the market, count the following:*

*(i) TV stations:*

*independently owned and operating full-power broadcast TV stations within the DMA of the TV station's (or stations') community (or communities) of license that have Grade B signal contours that overlap with the Grade B signal contour(s) of the TV station(s) at issue;"<sup>2</sup>*

**“National television multiple ownership rule.** *(1) No license for a commercial television broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors having a cognizable interest in television stations which have an aggregate national audience reach exceeding thirty-nine (39) percent.*

*(2) For purposes of this paragraph (e):*

*(i) National audience reach means the total number of television households in the Nielsen Designated Market Areas (DMAs) in which the relevant stations are located divided by the total national television households as measured by DMA data at the time of a grant, transfer, or assignment of a license. For purposes of making this calculation, UHF television stations shall be attributed with 50 percent of the television households in their DMA market.”<sup>3</sup>*

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<sup>2</sup> Page 349, <http://www.gpo.gov/fdsys/pkg/CFR-2011-title47-vol4/pdf/CFR-2011-title47-vol4-sec73-3555.pdf>

<sup>3</sup> Page 351, Supra.

**United Kingdom**

The only prohibited transactions in UK currently are local cross-media ownership pertaining to regional Channel 3 service<sup>4</sup>. The local cross-media ownership is subject to the “20/20” rule. This prevents an organization with more than 20% of national newspaper circulation from holding a share of 20% or more in a Channel 3 license or licensee. The Direct Broadcasting Service (‘DBS’ or also known as the DTH service, as called in India), Cable TV and IPTV do not have such kind of regulations or restrictions. Channel 3 is primarily a terrestrial service in UK and has limited competition that makes him vulnerable to anti-competition. It was thus quite natural for UK to put restrictions on local cross-media ownership. But even then there is **NO** distinction between channels on the basis of genres like news and non-news or entertainment channels.

**B. General Entertainment Channels also report live news and current affairs content:**

At the regional level, almost every entertainment channel carries dedicated news and current affairs programming covering the regional space. As regional news and current events are mostly left uncovered by the main stream (national) news channels, these entertainment channels offer such services as part of their programming. Though having been permitted to downlink as news and current affairs channels, these channels generally report themselves as regional general entertainment channels which is permissible under the prevalent laws and regulations. This clearly shows that channels not being purely news and current affairs channels can also influence ‘viewpoint’ and therefore cannot be left out of consideration while devising means to ensure diversity of views in media.

**C. General Entertainment Channels have greater impact:**

It is a known fact that GEC’s have a greater impact on viewers than news channels. TV news viewership is almost irrelevant in the overall TV viewership landscape.

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<sup>4</sup> Channel 3, the number 3 having no real meaning other than to distinguish it from the other analogue channels at the time, namely BBC 1, BBC 2 and Channel 4. In part, the number 3 was assigned as televisions would usually be tuned so that the regional Channel 3 station would be on the third button, the other stations being allocated to the number within their name.

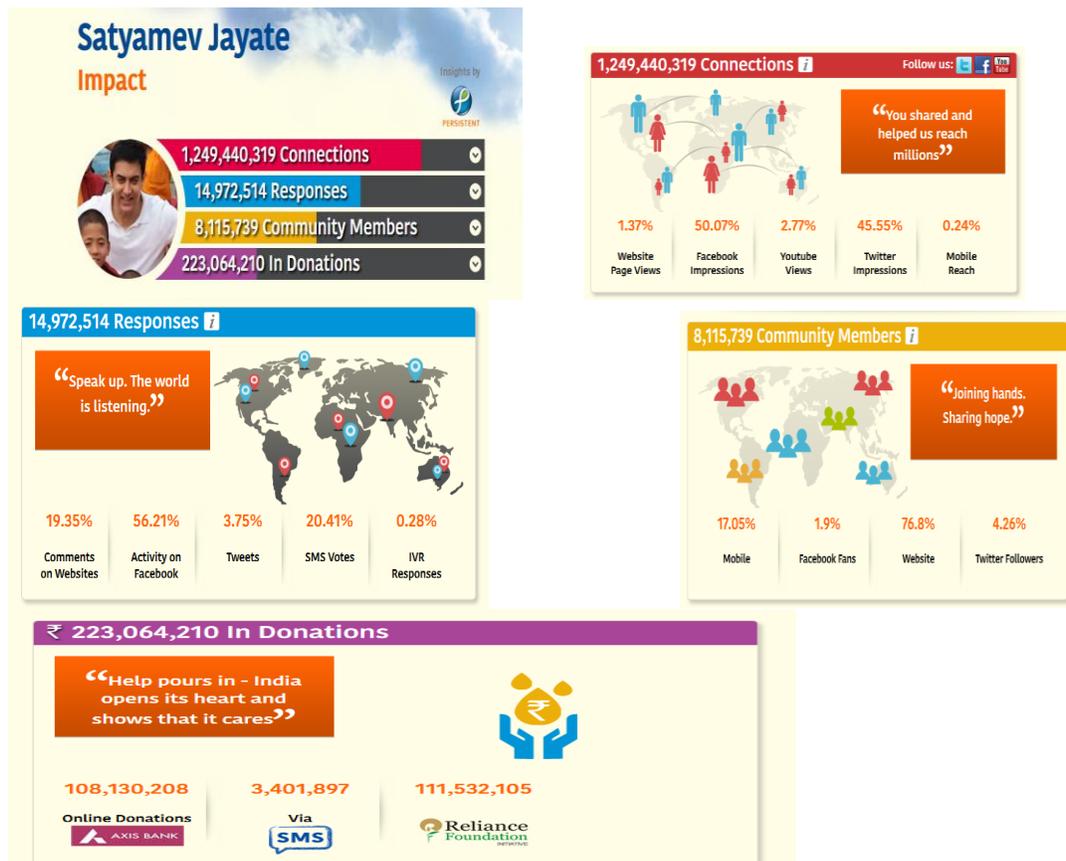
Channel Genres	Reach in Mns	Reach %	Count of Channels
HINDI GEC	238	93	16
REGIONAL GEC	236	92	138
HINDI MOVIES	224	87	17
Hindi MUSIC	214	83	19
REGIONAL NEWS	214	83	107
INFOTAINMENT AND LIFESTYLE	206	80	25
SPORTS	206	80	17
KIDS	206	80	15
HINDI NEWS	202	79	19
ENGLISH MOVIES	164	64	17
DEVOTIONAL	158	61	36
REGIONAL MUSIC	133	52	34
REGIONAL MOVIES	119	46	14
ENGLISH GEC	118	46	11
ENGLISH NEWS	101	39	8
HINDI BUSINESS NEWS	85	33	2
ENGLISH BUSINESS NEWS	64	25	4
ENGLISH MUSIC	49	19	2
REGIONAL KIDS	24	9	6
Others	248	96	194
<b>TOTAL TV</b>	<b>253</b>	<b>98</b>	

[Source: TAM | Period: Wk 01 to Wk 13'13 | Market: All India | TG: CS 4+ | Day part: All days, 24 Hours]

The above figures clearly show that the Hindi GEC reaches 238 Mn people and is about 93% of the total TV reach, clearly showing how impactful and dominant the non-news genres really are.

1. We come back to the pertinent question, as to whether only mainstream news and current affairs channels can influence viewpoint plurality? The answer as is apparent is in the negative.
2. The effect of “impact” of GEC Channels can be drawn out by looking at the following analysis of one such GEC show, ‘Satyamev Jayate’ (“SJ”) that aired simultaneously on Star channels and Doordarshan:

- a. SJ’s first season ended around nine months ago and it still has a high recall value among the audiences. The show created a stir with its first season and still has a crucial impact on some of the country's major social issues. The show influenced people’s viewpoint on social issues such as child sex abuse and female foeticide.
- b. A measure of SJ’s impact on the consumers can be seen from the below charts:



[The above snapshots are taken from <http://www.satyamevjayate.in/impact/impact.php/>]

- c. The above are significant numbers and can’t be simply ignored as a marketing gimmick. SJ’s popularity can also be ascertained from the television ratings it clocked as it was far ahead of the other entertainment programmes on the popularity charts.
- d. The show’s news impact can also be seen from the below headlines:

**“Maharashtra flags off generic medicine stores across the state”**  
**“Lok Sabha passes Child Protection Bill courtesy Aamir”**  
**“Satyamev Jayate impact: five Rajasthan doctors booked”**  
**“Satyamev Jayate effect: 7 abortion centre’s licence cancelled”**  
**“‘Satyameva Jayate’ inspires sarpanch to act against female foeticide”**

[Above quotes are reported on <http://www.satyamevjayate.in/impact/impact.php/>]

- e. In fact there were several felicitations for the show, one in which its anchor, film star Aamir Khan, and CEO of the channel (Star India) were honoured by the National Commission for Scheduled Castes for creating awareness against social discrimination in one of the episodes of SJ. The channel CEO on the occasion said: *“Television is not just a source of entertainment and with Satyamev Jayate we proved that it also has the power to contribute towards the growth of a nation and **change the mindsets of people.**<sup>5</sup>”*
- D. General Entertainment Channels have far more reach and popularity. Even a small opinion conveyed through content has a huge impact on viewer’s viewpoint. This is why GECs have often been used as effective platforms to carry social messaging, for promotion by celebrities of various causes and by few political personalities being regularly featured on it to promote their sponsored social causes, in effect, their own political agendas.
- E. Entertainment channels have been using sensational social issues and crime events as the basis for their prime time content. In this context, it will be useful to recall a recent occasion when a popular Hindi GEC attempted to portray the Delhi Gang rape case as the basis of one of its episodes on a prime time series. The Ministry of I&B did not permit the airing of this episode. This was because of the impact such content could create in the minds of the audience, especially on such a sensitive incident that shook the nation. A directive was issued to all other channels not to attempt showcasing such episodes on their channels as it would impact public sentiments. Such is the reach and immense influence GECs create on the viewing public.
- F. In comparison, the news genre is driven by content in the form of reporting on current incidents and developments and primarily broadcasting of views of people involved in a story, comments and

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<sup>5</sup><http://indiatoday.intoday.in/story/satyamev-jayate-aamir-khan-dalit-award-social-discrimination/1/225332.html>

reviews of experts, analysts, and reactions from concerned groups, individuals and affected factions. The self-regulatory guidelines imposed on news channels effectively ensure that the channel portrays neutral views and is objective in its reporting. So to presume that only the news and current affairs genres 'influence' public opinion is totally baseless.

**Conclusion:**

Viewpoint Plurality is sourced from accountability in news and current affairs reporting which propels from the principles of a diverse news landscape and high quality journalism in public interest, protection from unethical and unlawful newsroom practices and through transparent mechanisms of accountability and not from defining ownership of the media entity.

It is impractical and uncalled for to allow seamless freedom to a genre thereby allowing it to become dominant on the one hand and impose unreasonable restrictions on the other genre in the name of ensuring 'viewpoint plurality', when clearly no one genre can be held singly accountable for impact on plurality.

We therefore strongly oppose the view that news and current affairs genre alone impacts viewpoint plurality. We do not see any additional need to bring in regulations and restrictions on the news genre on the premise of ensuring viewpoint plurality, which in our view already exists.

**II. Restrictions on Vertical Integration**

Some stakeholders have voiced their demand for maintaining status quo on the current 20% ownership restriction on a broadcaster in a distribution entity and vice versa. Some others have sought a blanket ban on broadcasters having any holding in distribution entities and vice versa.

**TTN Counter Comments:**

- A. Vertical Integration is an essential aspect for optimum utilization of resources. This is a pivotal aspect of any industry be it media, software or retail. Vertical Integration is prevalent in the cable and satellite space wherein certain broadcasters have significant holdings either directly or indirectly, in the downstream distribution entities be it aggregators, DTH, MSOs, etc.

- B. For Vertical Integration not to be misused and serve as a detriment to the growth of this industry, certain pertinent and critical decisions need to be taken. Today, the real challenge that the Government and regulators across the world are concerned about, is the abuse of 'last mile distribution ownership' and the need for neutral treatment of customers by distributors for the sake of a healthy and competitive industry.
- C. The existing regulations have to be strongly imposed across cable platforms as the LCO and MSO control the last mile cable delivery of channels. Allowing or removing restrictions on cross-ownership amongst distribution entities would endanger last mile neutrality and promote monopolistic practices at the last mile. There already exists regulatory forbearance in the retail rates, channel packaging, carriage and other areas. Relaxations of cross-ownership between distribution entities will make intermediaries over increasingly dominant in the distribution eco-system.
- D. The distribution intermediaries or the platform owners are important as they bridge the gap between channels and the viewers. Generally, intermediaries have an interest in delivering what their users demand — a wide range of 'relevant' content, and competition rules offer a degree of protection from any monopoly behavior. But the consumer interest (or indeed their own business' interests) might not always equate to public interest. Many players align with a particular broadcaster, who is their equity holder, give their channels favorable treatment and adopt such practices to limit the competition coming from their partner's competitors. This is a most potential anti-competitive practice that results in restricting media diversity and plurality. To guarantee that all citizens continue to have access to a wide and diverse range of news & entertainment, it will be important to ensure that, these players take a neutral position and do not discriminate between their affiliate channels and other third party channels.
- E. The solution to this, to start with is to maintain a status quo on vertical integration rule in TV where broadcasters cannot own more than 20% of cable/DTH and vice versa. It is necessary to have safeguards – checks and balances on the last mile of the consumer - to ensure last mile neutrality, by clarifying the position by way of supplementary regulations on the provisions of 'must carry' and non-discriminatory treatment of channel vis-à-vis other channels by a platform owner.
- F. In order to ensure a level playing field for all participants in a given media sector it is imperative that specific and strict measures are put into place,

in the absence of which vertically integrated groups/entities could dominate the market and render it uncompetitive, thus leaving the industry in bad health.

**Conclusion:**

In our view, the Government should allow vertical integration but ensure that stringent rules and regulations are effectively put in place to safeguard and ensure the above mentioned guidelines for fair play amongst players and there exists no opportunity for vertically integrated groups to treat other constituents in an unfair manner using the advantage they hold in the segment.

**III. Restrictions on cross media holdings, cap on investments in media, issues of monopoly and dominance in media**

Some stakeholders have voiced their concerns over cross-media holdings, creation of monopolistic environment due to such holdings and have sought restrictions on investments in the media sector. We summarize our counter comments to such issues as below:

**TTN Counter Comments:**

- Television, Radio, Internet and Print are different mediums by which news, views, information, and entertainment are disseminated to the general public. The right to disseminate ideas, views or news by the media is protected under Article 19 of the Indian Constitution. Any restriction on means to disseminate would amount to infringement of this right.
- Allowing unrestricted access to a media entity to voice its views on all available delivery platforms is in fact propagating media pluralism. A media entity must be allowed to use print, television, radio or internet, at the same time, to air its views. Any form of ownership control will restrict the freedom of press and would in fact be a hurdle to achieving 'media pluralism'.
- Restriction on investment (on the basis of equity holding threshold) in the Indian media sector will restrict companies from achieving technological developments at reasonable costs and deprive companies of optimum use of resources. For efficiencies of scale, production quality and satisfying consumer preferences, it is critical that media companies are allowed to invest across media sectors.

- Unlike Indian media industry, many international democracies had very few players in the market, thereby giving rise to the concentration of power in few hands, which prompted restrictions. In comparison, India hosts over 800 TV Channels (350 news channels amongst them).
- The need for cross media restrictions arose because print players moved into terrestrial TV, which is not possible in India as the terrestrial TV ownership has always been monopolized by the Government through Prasar Bharti as is the case with short/medium wave radio through All India Radio. Currently, this imposes the biggest dominance with its massive influence over Radio & Television broadcasting. Additionally, cable companies have to carry these channels at non-commercial rates. This indirectly puts pressure on them to recover revenues from private sector players. For fair play and to ensure an unbiased democratic approach the Government should refrain from controlling media houses/platforms since the Government is the most powerful and influential entity of the country.
- Advancement in technology and convergence has made a big impact on the way news and information is delivered to the consumer. The world is witnessing the growth of alternative service providers in the form of mediums like blogs, social media platforms like Twitter and Face book that also cater to news and information. News consumption is drifting away from News papers and other traditional forms of dissemination and more and more consumers are accessing their need for news and infotainment through such new mediums.
- The Internet and new digital mediums are posing stiff competition to print and television across the world. There is no denying the obvious advantage that Internet companies have over other media forms. An internet company can launch an exclusive platform for news without any permission from the Government. Chris Goodall<sup>6</sup> aptly said - "In ten years time the threat is not going to be BSkyB, it's going to be the influence of Google over mass media." What Goodall said was in context of media plurality in UK, but keeping in view the emphatic rise of new media in the field of information, news and current affairs, the same holds true for the entire world.
- Online media has made it possible for consumers to read text, watch videos, listen to audio and also interact on one single platform,

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<sup>6</sup> *Chris Goodall* is an English businessman, author and climate change expert.

completely dispensing with traditional forms of viewing. With the defined borders of platforms steadily diminishing, how can one define a 'relevant market' or calculate 'reach' in light of such changing trends in Indian media, let alone impose 'ownership' rules?

**CONCLUSION:**

We conclude by reiterating that 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 spill over effects into other segments of the media.

We request the Authority to factor the above counter comments while considering the submissions made on the issues raised in its Consultation Paper on Media Ownership.

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