

CII's Response to TRAI's Consultation Paper (No. 01/2013) on the issues relating to Cross Media Ownership

TRAI's attempt to once again review the media ownership landscape is commendable. Such reviews are well intentioned – to safeguard viewpoint plurality and avoid any existing monopolistic practices. However, while reviewing the existing media rules TRAI needs to be certain that i) if at all there is a need to regulate the media sector in the existing market structure and ii) if there is already a mechanism in place to address the above mentioned media objectives.

It is understood that TRAI endeavoured the said consultation paper (CP) on the basis of two suppositions – *i) Vertical Integration which can seriously affect competition and promote monopoly and ii) Horizontal Integration that may prevent plurality of news and views which in turn have several implications on ensuring quality service at reasonable price*¹.

It is true that traditionally vertical integration is seen as a case for ‘possibility of monopoly’ and cross media ownership is correlated to ‘lack of viewpoint plurality’. However, over the last few years technology and business models have evolved tremendously and have taken quantum leaps making it difficult to fit the market behaviour into any archaic theoretical interpretations. An understanding of today’s media and entertainment (M&E) market structure itself would point out that these conventional implications are practically impossible. Also, today Indian media market is well regulated, at times over regulated with an assumption to counter act any possibilities of market anomalies.

In this response we explain I) how concerns of vertical integration are addressed by the existing market mechanism and how regulatory mechanisms already exercise its power on broadcasting value chain II) what are the inbuilt factors that ensures media plurality in the country III) how Competition Commission addresses all concerns arising out of vertical or horizontal integration IV) what are the basic approaches that TRAI should be mindful of while examining the media market integrations and V) responses specific to the consultation paper.

1. Vertical Integration Vs Monopoly in the Current Market Structure

The CP explains that the main concerns about vertical integration are “ills of monopolies” - viz *higher cost to the consumers, blocking of competition, higher entry barrier for the new*

¹ Letter by Secretary, MIB to Chairman, TRAI dated 16th May 2012

*players to venture into the sector, deter innovations, deterioration of the quality of service to the consumers*². Further the CP virtually narrows down the concept of vertical integration in the media landscape to the vertical integration that may exist in the TV broadcasting value chain alone (Chapter 6). In this context TRAI may take a fresh look at the existing market trend in the broadcasting and distribution industry and analyse if there is any possibility for the ills of vertical integration to take place.

Today in India there are about 800 TV channels³ at the broadcasting side and 7 DTH operators, 6000 MSOs and 60,000 LCOs at the distribution platform. Each year, numerous players are entering at each level of the broadcasting value chain. To cite an example, in the last two years 2011 and 2012 about 240 private satellite TV channels were given uplinking/downlinking permission by MIB to enter in to broadcasting industry⁴. Presence of business entities of this high magnitude in the market itself will come into play against all ills of monopolies and would lead to a natural course of market correction. In such a scenario, having monopoly for one firm by vertically integrating its value chain has become remote. Further, TRAI and Competition Commission of India (CCI) exercise its power to control the broadcasting industry from time to time at its own discretion to keep a check on any tendency towards monopolistic practice.

Thus all the ills of monopolies stated in the CP are taken care of by the existing market structure:

Ills of monopolies (as a result of vertical integration) cited in the CP	Market mechanism / new business models that counters ills of monopolies	Existing regulations that prevent ills of monopolies
Deterioration of the quality of services to the consumer	When a firm operates in a market that witness entry of numerous players, benchmarking the quality of service and quality of content is the key for any firm to connect with the consumers. For eg. High Definition (HD) channels, facility to record content and watch whenever required, video on demand are all steps taken towards ensuring quality of service to the consumer.	With gradual digitilisation of cable TV as mandated by the Ministry of Information and Broadcasting (MIB), the quality of TV viewing is only improving. Also, the Regulator intervenes at its discretion as the case may be with TRAI issuing notifications on Standards of Quality of Service (QoS) to be provided by service providers from time to time.

² TRAI Consultation Paper on Issues Relating to Media Ownership, Feb 15 2013, Chapter 6- Vertical Integration, para 6.2, pg 67

³ <http://mib.nic.in>ShowContent.aspx?uid1=2&uid2=84&uid3=0&uid4=0&uid5=0&uid6=0&uid7=0>

⁴ Compiled from

<http://mib.nic.in>ShowContent.aspx?uid1=2&uid2=84&uid3=0&uid4=0&uid5=0&uid6=0&uid7=0>

Higher entry barrier for new players	There is no entry barrier that has evolved as a result of the market mechanism. On the other hand, number of new players entering the market each year illustrates the easy entry to the broadcasting market. As per MIB's latest records, during the last two years alone around 240 private satellite TV channels were given uplinking/ downlinking license to enter in to the broadcasting industry.	Any entity which has a prescribed eligibility criteria put forward by MIB as per policy guidelines of uplinking and downlinking can enter broadcasting market ⁵ . This is a mark drawn by the Ministry with the assumption that such eligibility conditions for entry would ensure quality players in the broadcasting ecosystem.
Deters innovation	Today there is a massive change in the business model adopted by the business houses in the broadcasting sector. If it was just profit maximisation that guided them some years back, now the firms have moved to consumer – centric business models. Being constantly innovative is the only way to deal with the rapidly changing taste and preference of the consumer and to survive in the highly competitive environment. For eg: introduction of HD channels, providing match commentary in Hindi for international matches, broadcasters acquiring satellite permission of films and reducing time lag between theatrical release and TV screening are all results of innovative strategy adopted by broadcasters.	Understanding the need for greater innovation in the M&E sector, MIB has released the Report of Sectoral Innovation Council in July 2012 ⁶ . The report suggests many progressive ideas that would boost innovative ideas in the Sector. For eg. the report identifies that the government should redesign the existing guidelines to promote narrowcasting as a unique Indian innovation which has global potential ⁷ .
Blocking of competition	Competition is ensured with the mere number of players at each level of the value chain.	The Competition Commission of India (CCI) is empowered with the duty of ensuring competition in

⁵ 'Policy Guidelines for uplinking of television channels from India' / 'Policy guidelines for downlinking of television channels', Broadcasting wing, MIB, GoI, 5th Dec 2011.

⁶ The full Report of Sectoral Innovation Council is available at
http://iii.gov.in/images/stories/sectoral/Report_Sectoral_InC_M&E.pdf

⁷ Report of the Sectoral Innovation Council, MIB, GoI, July 2012, para 39, pg 26.

		the market. The Commission exercises its power to act against any anti- competitive tendency in the market and check the abuse of dominance of any entity to safeguard consumer welfare.
High cost to the consumers	With massive emergence of new media platforms, there is an increasing trend in consuming content through platforms like internet and mobile phones. In such a highly competitive market where consumers have numerous choices, providing content at a competitive price is the sustainable business strategy of any broadcasting firm. It may be noted that TV ARPU in India is very low at USD 3.5 compared to many other countries like US and UK where ARPU is around USD 45 to 60. This explains that consumers still enjoy TV content at a low cost.	All the prices in the value chain are already regulated by TRAI at the whole sale and at the retail level through various Tariff Orders, that the market mechanism or an individual entity cannot alter price.

I. Cross- Media Ownership Vs Viewpoint Plurality in the Current Market Structure

TRAI has correctly identified that the corner stone of any media ownership rule is to ensure plurality and diversity of content and guarantee competition in the media marketplace. While it is the duty of the Regulator to step in to safe guard the policy goal of view point diversity, certain features of Indian media landscape act as an enabler of media plurality and competition.

India is known for its unfathomable cultural diversity – and the same reflects when it comes to consumer's taste and preference with regard to entertainment as well. This in itself proves that a media entity cannot operate with standard content across the country- it has to be tailor made for each segment of consumer to ensure maximum outreach. Hence, the concern over plurality and diversity of content, outlets and viewpoints is taken care of by the inbuilt safeguards of being a culturally, linguistically and demographically diverse country. In addition to this, today's consumer is left with innumerable choice of media platform – be it large number of TV channels, many FM Radio stations, wide assortment of print media or a million websites. Modern media consumers are known for his/ her

characteristic of seamlessly switching between media to avail content they prefer and form a viewpoint of their own.

While this remains the extent of diversity with consumer's choice and preference, we may also accept that today Indian media market place is extremely diverse and vast. The CP itself states that "*In India there are more than 82, 000 publications and over 800 television channels which are in different/ multiple languages*"⁸. As mentioned above, there are multiple media options for the customer to choose from. This in its own ensures that the market is sufficiently competitive even without any media ownership rule imposed by the government.

Other policy goal TRAI seeks to guarantee is 'localism'. With the emergence of new technologies and media "Engaging Consumer" has become the tag line for the strategic positioning of any media house. With this motive there exist powerful incentives for group owners to satisfy the local news and information needs of the communities they serve. Most of the national newspapers have region specific editions to accommodate the local content of each region. A prominent national English newspaper has about 40 different editions across various cities of the country. The group also publishes newspaper in Hindi and in other local languages like Marathi, Kannada and Bengali seeing the need to appeal local readers. Even for regional newspapers, there would be multiple editions within the region they operate. A leading newspaper based in Kerala features about 10 editions within Kerala considering the diversified need even in a regional market. Same is the case with TV broadcasters – there are number of national broadcasters that are strengthening their regional presence to offer diversified content that would attract regional markets. Economic imperatives drive all media owners to cover local events and developments, which will ensure that the policy goal of 'localism' is achieved.

Further, the CP suggests that "*There appears to be a strong correlation between media ownership plurality and viewpoint plurality and, therefore, media ownership plurality may be taken as a proxy for viewpoint plurality*"⁹

If one goes by this notion, it may be noted that media ownership in India is diverse than ever. To cite an example from the CP itself- table no. 1.3¹⁰ depicting the presence of business houses across various segments of media shows there are ample number of players in each of the verticals of print, broadcasting and distribution platform.

Thus in the light of above mentioned market phenomenon, TRAI should accommodate the present market realities and recommend futuristic policy measures that would unleash the real economic and social potential of Indian media sector rather than revising the extant media rules in the same orbit.

⁸ CP- Para5.15, pg 51

⁹ CP- Para 5.9, pg 49

¹⁰ CP- table no. 1.3, pg 15

II. Competition Law adequate to address market failures

While TRAI is a sector specific regulator, the Competition Commission of India (CCI) ensures healthy market mechanism across sectors based on The Competition Act 2002. The Act prescribes way and means to keep a check on abuse of dominance and safeguard consumer welfare. The Commission has proven track records of adequately taking care of any abnormalities in the business practise that affected healthy competition and consumer well-being. As of now, CCI probes the monopoly concerns on an 'ex-ante' basis in case of combinations and 'ex-post' basis in case of abuse of dominance. The Commission is empowered to act on the basis on any complaint received from any citizen or an entity about irrational market behaviour. The Commission also mandates prior approval if a combination is expected to cross the threshold level prescribed by the Commission.

All the concerns raised by TRAI in the CP that may arise of vertical or horizontal integration can be dealt with the existing provisions in the Competition Act. TRAI has completely ignored the presence of a body like CCI and has not made any case to support the need to have an additional sector specific regulation to address concerns out of above mentioned business practices. Such a move could be duplication of regulation and will result in more confusion. If at all TRAI feels any anti - competitive tendencies in the market, the regulator should have mandatory consultation with CCI to device ways to ensure media plurality and a healthy competitive market structure.

III. A Balanced Approach

From the above sections it is clear that with the current market structure neither vertical integration can lead to monopoly nor cross- media ownership affects viewpoint plurality. However, Industry is of the view that the prime motto of any regulation should be to compliment the growth prospects of the industry and should not affect the investment climate of the sector. While recommending a roadmap for media restrictions we suggest the following points for TRAI to delve into:

- 1. Blanket restriction not desirable:** Simply putting a blanket restriction on all kind of cross media ownership may not be the right approach to deal with issue of viewpoint plurality. It may be noted that while doing so, the genres taken for consideration may be of great significance. The CP itself states that it is the 'News and Current Affairs' genre that provide the greatest potential to inform citizen and ensure an effective democratic process¹¹. Therefore, while examining cross media ownership issues, only the genre news and current affairs genre should be considered.

¹¹ CP para 5.20, pg 52

2. **Cross media ownership allows commercial viability:** Also, imposing a standard cross ownership rule on the genre news and current affairs across media platforms may prevent investment incentives of media houses because of the commercial viability concerns of already cash strapped news media segment. An entity attains some level of economies of scales by using the same set of resources (eg. journalists, infrastructure) to produce news sufficient enough to cater through different media platforms. Thus cross ownership clearly lowers cost of operation and augments revenue, consequently making the entity commercially viable. Such an operation style is preferred by media owners as it would help an entity to invest back the additional revenue on research and development and attain quality content. Also from the risk mitigation point of view, a media entrepreneur needs to have a diversified portfolio. This benefits the media house to compensate the loss that might incur from one of the platform with the gain from another platform.
3. **Emergence of new media:** TRAI cannot ignore the fact that traditional medium like TV, print or radio are no more the only way of news/ view point dissemination. New media platforms especially internet/ mobile give ample opportunity for any individual or media house to reach to the consumers. These medium are becoming more central to the Indian media consumption experience than ever before as it allows the consumer to access content ‘any time at any place’. The latest Indian Readership Survey (2012, Q4) shows that the compound annual growth rate (CAGR) of media consumption between Q2 and Q4 is high for internet (24%) compared to traditional mediums like press (1%), TV (5%) and radio (2%)¹². Any policy recommendations by TRAI should foresee and reflect this massive shift in media landscape.
4. **Efficiencies out of Vertical Integration:** Imposing a standard restriction on all vertical integration will hamper the possibility of economic efficiencies of vertical integration of the value chain and the resultant consumer welfare quotient. Vertical integration brings in production efficiency, operation and transaction cost saving and competitive pricing of the product that would ultimately benefit the end consumer .
5. **TRAI already exercise enough regulation:** Extant TRAI regulations for broadcasting sector like “must provide”, “non- discriminatory”, “non exclusivity” and “must carry”

¹² IRS 2012 Q4 Topline Findings, available at <http://mruc.net/>

(with digital addressable system) obligations are stipulated with a notion to ensure fair play in the vertical value chain. Also, TRAI mandates a 20% equity share restriction on vertical integration in the broadcaster value chain. Such stringent regulations would only make the investment procedures complicated making it less attractive for potential domestic and international entrepreneurs and chill investment scope. Needless to say that such a tendency would have a direct impact on sector's growth and innovation prospects. The sector regulator may not want to derail the growth prospects of a vibrant industry like M&E which is now growing at a rate of 12.6%. This would certainly have severe implication on the employment opportunity the sector provides now. TRAI should rather consider the possibility of dismantling the existing restrictions to move on to a sustained growth trajectory instead of regulating the value chain.

6. **TRAI may keep the Report of Sectoral Innovation Council as base point of reference:** Many of the references used in the CP are taken from the study commissioned to ASCI in 2009, which is outdated and has many factual errors and flawed analysis. While framing its recommendation TRAI should extensively make use of the Report of Sectoral Innovation Council¹³ published by MIB in July 2012. The said report analyses the media sector with a very progressive approach.

IV. Other Responses Specific to Consultation Paper

Issue: Are there other entities, apart from the entities 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?

TRAI's existing recommendation correctly identifies the entities like political parties, religious bodies, government or government aided bodies to be disqualified from entering into the broadcasting and distribution sector. The same entities may also be disqualified from entering into media sector. In addition to this any other entity which does not fit in to the qualificatory criterion set forth by the Authority should be disqualified from entering into the said sector. The entry criterion should be also vetted by MIB, TRAI, CCI, MHRD, MEA wherever appropriate. This would keep the players with vested interest at bay and allow only serious players that would ensure the quality of the media ecosystem.

Issue: 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

¹³ http://iii.gov.in/images/stories/sectoral/Report_Sectoral_InC_M&E.pdf

TRAI in its recommendations on Media Ownership dated 25th Feb 2009) be an appropriate threshold?

There is no logic of applying 20% equity holding as threshold for ownership/ control of a firm as 20% ownership doesn't provide any kind of ownership or control to a party. The threshold value if at all that needs to be applied should be nothing less than 50 per cent or more or the ability to nominate more than half the members on the board of directors or the ability to direct and control the management on the basis of other means. For example, control could be exercised even without majority shareholding through a shareholders' agreement or other contractual agreement. It should be on the basis of a 'decision making ability' approach.

Issue: Should only news and current affairs genre or all genres be considered while devising ways and means to ensure viewpoint plurality?

While analysing ways and means to ensure viewpoint plurality, the genre 'news and current affairs' alone may be considered as it is this particular genre that mostly influences the opinion making of consumer. However, it may be noted here that while viewpoint plurality is ensured today with around 400 news channels in the country¹⁴, what is needed in this genre is not restrictions, but further liberalisation of FDI. The present 26% restriction on news channels by foreign entities should atleast be raised to 49%. This if at all will only serve to ensure greater plurality and also help companies to avail better financial, technological resources and easier access to international quality of journalism.

Issue: Should the relevant markets be distinguished on the basis of languages spoken in them for evaluating concentration in media ownership?

While considering relevant market for any market analysis, there should be a holistic approach based on geography, demography, linguistics and medium through which content is consumed depending on the nature of analysis instead of describing relevant market based just on the languages spoken. The Competition Commission Act clearly specifies factors determining relevant market under 'relevant product market' and relevant geographic market. Any move by TRAI on deciding the relevant market may be done in close consultation with CCI authority.

Issue: 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?

To measure the level of media outlets in a relevant market, parameters like volume of consumption, reach, revenue – all three should be considered as considering just one of them may not yield desired result. Depending on the purpose for which consumption is

¹⁴ <http://mib.nic.in>ShowContent.aspx?uid1=2&uid2=84&uid3=0&uid4=0&uid5=0&uid6=0&uid7=0>

measured an appropriate variable or a combination of variables may be taken. For eg. if the authority is trying to analyse the plurality of news, considering the parameter revenue may not give a right measure as there may not be any proportional relationship between plurality and revenue. Also with new media platforms and with the changing pattern of media consumption the measurement consumption of media may not only depend on the defined boundaries of market.

Issue: 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?

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

Herfindahl – Hirschman Index (HHI) is the commonly accepted tool to measure the level of market concentration. As per the ‘Horizontal Merger Guidelines’ of Department of Justice of Federal Trade Commission¹⁵

if	HHI < 1500	Unconcentrated market which implies a Competitive market
	1500 < HHI < 2500	Moderately concentrated market
	HHI > 2500	Highly concentrated market

While HHI can be used to measure market concentration in the same platform Diversity Index may be used to measure concentration across different platforms.

Issue: Would it be appropriate to have a “1out of 3”/ “2 out of 3”/ “1 out of 2 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?

TRAI may not adopt a blanket “1out of 3”/ “2 out of 3”/ “1 out of 2 rule” 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. Only if an entity is proven to have an instance of abuse of dominance or any other anti- competitive conduct should be subject to any of the above mentioned restrictions. It falls under the ambit of CCI to analyse the anti- competitive practice of any entity.

Issue: 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 threshold level (say 20%)

¹⁵ US Department of Justice and Federal Trade Commission, ‘Horizontal Merger Guidelines’, Aug 19, 2010. <http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf>

in that media segment from acquiring or retaining ownership/ control in the other media segments of the relevant market?

It would not 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. Here also the subject matter should be examined under CCI with an 'ex post' rather than an 'ex ante' approach.

Issue: Should additional restrictions be applied for M&A in media sector?

There is absolutely no need for any kind of additional restriction for M&A in media sector. Currently the CCI has a detailed filing process to assess all aspects of the proposed M&A which is 'ex-ante' in nature. Restrictions by multiple layers of Authority will only hamper the investment motivation and business strategies of prospective investors.

Issue: What additional parameters could be relevant with respect to mandatory disclosures for effective monitoring and compliance of media ownership rules?

While Authority may set mandatory disclosure norms, such norms shouldn't be intervening with the strategic competitive edge of an entity with its competitors. Also the extent of placing the disclosures in the public domain should be decided on a mutual agreement between the Authority and the entity so that fair competition is not hampered by lack of innovation because of too much disclosure.