

From: Puneet Jain <Puneet.Jain@ajtak.com>

Subject: Comments on TRAI Consultation process on "Issues relating to Media ownership"

To: "advbcs@trai.gov.in" <advbcs@trai.gov.in>, "traicable@yahoo.co.in" <traicable@yahoo.co.in>

Date: Friday, 29 March, 2013, 9:16 PM

To

Mr. Wasi Ahmad, Advisor (B&CS),
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan,
New Delhi – 110002,

Dear Mr. Ahmad.

The Media Ownership rules must be formulated & designed to strike a balance between ensuring a degree of plurality on the one hand and providing freedom to companies to expand, innovate and invest on the other. It is equally important to note that in a vast diverse democratic country like India where there are so many different languages, manifold cultures, diverse and fragmented population coupled with presence of approximately 82000 News papers in 2010-11, over 500 TV Channels, with approx 250 Radio stations in 2012 (existing & proposed), no one media player can dominate the country's media scenario.

Some of the undeniable benefits of horizontal cross media ownership include economies of scale and scope in news gathering and dissemination, which can reduce news costs as well as improve access to the international news. Given the digitalization scenario going forward, the synergy and sharing of content amongst the various Horizontal Media Activities within the company will be the key to the survival of Media Companies.

It would enable the media companies to absorb the costs of content and distribution over a large volume of revenue. This would certainly add impetus in allowing the companies to

- Invest in better resources such as talent or technical equipment
 - Access to better news management (e.g. from overseas and other media) and superior talent (e.g. journalists and presenters);
 - Improved access to overseas capital for investing in the news function
 - Improved access to news gathering, editing and disseminating technology.
 - Enhance future investment in news gathering and programme production in general.

While plurality is vital for democracy since it helps to ensure that citizens have access to a variety of sources of news, information and opinion, the benefits of horizontal cross media ownership cannot be overlooked. The objective of any regulation from the government should be to strike a right balance between the two and provide for competition, diversity and plurality of players, news and views.

In light of the above, it is stated that restrictions on horizontal cross media ownership should be nil in as much as such ownership/consolidation while ensuring the aforementioned benefits also protects the interests of citizens and consumers as providing a basis for delivering higher quality programmes, greater creativity and more risk-taking and fierce journalism.

However, it is the area of vertical cross media ownership (that is to say on media companies owning stakes in both broadcast and distribution companies within the same media) where restrictions are already existing and can be at best rationalized on merits, since vertical integration can result in anti-competitive behavior, whereby a distributor can favor its own broadcasters' content over the content of a competitive broadcaster.

The fear of media monopolies is unwarranted. Media is a slave to its audience and advertisers. They (barring news media, on whom an onus is placed to ensure that facts are reported as they happen) only publish what gets the most eye balls.

That being so, all commercial media tends to become uniform and cater to the lowest common denominator over time. Further it is a myth that only the media can shape people's opinions in India. The average Indian deserves more credit than that. Therefore, in growing media market like India, any kind of Government regulation would go against the fundamental right of occupation of media houses. Furthermore, restricting a person/company from starting a new venture in espousing their views also curbs the basic freedom of expression and therefore would be ultra virus the Constitution of India.

In view of the present media market scenario in India the question of monopolization in the media market (as far as horizontal cross-media ownership) and lack of plurality of news does not arise insofar as the number of news channels, newspapers and radio stations are enormous and only growing further. Therefore, instead of curbing consolidation, the regulations should focus on expanding the media market. Regulation that clamps down on consolidation but does not protect media plurality would only result in the opposite of the intended consequence -- fewer avenues for transparent reporting.

Most importantly, self-regulation and not government regulation is necessary if freedom of the press is to be ensured. No such regulations on restrictions of horizontal cross media ownership should be made in the garb of increasing governmental control on media.

As far as comparison with the international scenario is concerned, note may be taken of the fact that, in the present day the media business companies in our country can stand at par with those that have international acclaim only because they have consolidated and capitalized on the economies of scale in the process, the benefits of which have already been stated above.

To our understanding blindly applying a few of the international regulations without distinguishing the highly fragmented market in India and or studying the history behind such rules in those countries and the time period over which such rules have been imposed may only backfire and lead to a regression of the media in our country.

Below are the point wise comments from TV Today Network Limited.

TRAI – the TRAI seeks comments on the necessity for restrictions on cross media ownership and raises the question as to whether a particular political and/or religious groups should be prohibited/regulated from participating in the media sector.

TV Today comment :-

The electronic media is governed by the MIB's program and advertising code along with the provisions of the Uplinking Guidelines and the rules of self governance/regulation. The print media is governed by the principles of journalistic conduct as laid down by the Press Council of India. For all other media there are other acts like the Information Technology Act, Indian Penal Code, etc. which are an interim check on these media in the absence of specific regulations. The MIB requires companies to meet with certain eligibility requirements. The Uplinking Guidelines

require TV channels to follow norms which prescribe the nature of content to be shown and that the penalty for not following the same is the revocation of licenses to operate as such TV channel.

Ultimately the government gets to decide whether or not a TV channel can be permitted to operate. Therefore it cannot be concluded that there exists no regulation in the area. How would bringing a new regulating mechanism ensure that the regulator/licensor's decision to unilaterally disqualify an entity from entering the media sector, is not politically/religiously motivated?

Besides, to my understanding, it's also a violation of the basic principle to a fair hearing being given to the applicant who is being disqualified. Where a person meets the eligibility requirements as laid down by the law, for having a license to broadcast, the penalties for breach of the conditions of license should be made strict. This has now been achieved for TV through the rule that states that 5 mistakes by a TV channel contributes to the channel's license being revoked.

The imposition of restrictions by the government poses as an oxymoron as, on the one hand the government is looking to impose restrictions on cross media ownership on the pretext that in the absence of these restrictions plurality of views will be affected, while on the other hand the mere imposition of restrictions in anticipation of the adverse effect that may follow would amount to a violation of the fundamental right to the freedom of speech and expression.

Even if political or religious parties did not own channels/newspapers etc. they will find a way of gaining access to the public. This could be through the medium of paid news (which the government permits). Also, insisting that the set up as it currently exists being insufficient seems to also suggest that the governing bodies like the PCI, NBA, IBF etc. have been ineffective in ensuring objectivity in the reporting of news.

If that is the case, then how can it be guaranteed that a new regulator would not be as ineffective? Depending upon the audience each media is relevant. One cannot undermine the importance of digital media even in a predominantly illiterate area. Therefore, narrowing down on any one medium will not provide accuracy as to which form of media is relevant to ensure viewpoint plurality.

TRAI – the TRAI has sought to place restrictions on the ownership of media. For this they seek to take into account the kind of audience that the each form of media caters to.

TV Today comment :- There are a lot of members of the media who have been pioneers in one kind of business, say for instance – print, but have not and/or do not wish to enter into the other spheres of media. Does this, by itself, mean that these members of the media do not have any audience to diversify? Why then is it assumed that if one does diversify then it will occupy the entire market and public opinion will be swayed by the way in which this one player wishes to mould the same?

The TRAI has short-listed 8 languages along with English which are to be considered for evaluating concentration in media ownership. However, what the TRAI does not seem to have taken into consideration is the fact that these aren't the only languages spoken in India and prominent languages like Punjabi, Gujarati, Urdu etc. have been left out.

Also, the basis on which these 8 languages have been narrowed down on by the ASCI, are not clear. TVTN is not in favor of restrictions on cross media ownership, since the plurality of factors determining viewership/readership etc. is immense. While a certain area/sex/age group of consumers/viewers may prefer one kind of media, there will be anomalies within that

area/sex/age group. Taking so many varying factors into account may prove to be a mammoth task.

Therefore, looking at the current situation, it appears that the kind of restrictions already in place in terms of the eligibility criteria (for TV channels, radio stations, newspapers, periodicals, etc.) laid down by law, are doing a good job of regulating cross media ownership. It is the enforcement of the existing regulations that needs to be monitored.

TRAI – There is an argument made that in South India there are a few prominent players that have their operations in several different forms of the media.

TV Today comment :-

This argument does not take into account the fact that even in these states the government channels (DD Kannada, DD Malayalam, DD Podhigai, etc.) has an equal presence, as do other national channels like Aaj Tak, IBN7, Star News, NDTV India.

One can also not ignore the fact that in these states English channels such as NDTV, CNN IBN, Headlines Today, Times Now, etc. also are prominently placed. It is entirely upto the viewer to decide and choose what he/she wishes to watch. Thus, stating that the plurality cannot be ensured if cross media ownership is allowed is a mistaken belief. The assumption that it is only the news genre that formulates opinions is a fallacy.

General Entertainment Channels and Motion Films combined with Radio discussions etc. also contribute to formulating public opinion. Therefore being unreasonably harsh on one genre and not on the other is as unfair as imposing unreasonable restrictions on the right of any genre to be heard.

The argument for restrictions on cross media ownership seems to be targeting the electronic media more than any other form of media. However, the consultation paper does not seem to take into account the fact that there are so many other mediums through which news/views can be brought to the public.

There are some underlying assumptions that seem to have been made by those advocating restrictions on cross media ownership which are –

- (a) that every household in India has a television set and would not depend on print media for news and information;
- (b) that the average citizen is so easily swayed by one single opinion over several media, as if there is no opinion to the contrary;
- (c) that the average citizen will never exercise the option of changing the channel to a different opinion.

As per the Constitution of India, the right to free speech is as much a fundamental right as is the right to carry on one's own choice of trade/profession. However, the government currently allows the exercise of both these rights in a controlled manner. Adding further fetters to the exercise of these rights is a gross violation of the rights guaranteed by Article 19 of the constitution.

TRAI – The TRAI has suggested that a media entity can be said to be controlled by a person who has 20% or more equity stake in such media entity, and therefore the media entity is likely to be influenced by the point of view of that stakeholder.

TV Today comment :-

What is the basis of the TRAI defining “control” as having 20% of the equity in an entity?

TRAI – The issue of vertical cross media ownership has been raised and there is a pertinent question put forth as to the necessity for regulation of vertical cross media ownership.

TV Today comment :-

The Competition Commission has proved its efficacy in ensuring that competition thrives and even when vertical cross media ownership (which most broadcasters have objected to) has been attempted the Competition Commission has taken the matter up and has inquired into whether competition is affected by the such vertical cross media ownership.

For eg – when the JV MediaPro was set up, all broadcasters were called and a proper inquiry was conducted into whether competition was affected by the JV. That having been said, TVTN does not support the idea of vertical cross media ownership being permitted. Plurality of opinion is to be determined by “content”, but if monopoly in the “platforms of distribution” of this content is permitted, then that is where competition may be thwarted (the Competition Commission looking into the operations of JVs set up as distributors where broadcasters hold a major share, is proof enough), and that is where the restrictions must be imposed.

Therefore, objecting to vertical cross media ownership is far more essential.

TRAI – Several international examples have been cited as to the manner in which restrictions may be placed on cross media ownership.

TV Today comment :-

The fact that the plurality of audience/viewers/readers is not a factor for international laws thereby resulting in restrictions like the “2 out of 3” rule has not been taken into account by the TRAI while considering the international set up

Best Wishes

Puneet Jain

Head Legal & Compliances and Company Secretary & Vice President- I&A

TV Today Network Ltd.

India Today Mediaplex

FC 8, Sec. 16 A, Film City

Noida 201301

Tel: +91 120 4807100