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THE INDIAN NEWSPAPER SOCIETY

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TRAI/ 39 APRIL 22, 2013

The Chairman
TELECOM REGULATORY AUTHORITY OF INDIA
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi – 110 002.

Subject: **Cross Media Ownership in India**

Dear Sir,

This has reference to the Consultation Paper on issues relating to Media Ownership put out by the Telecom Regulatory Authority of India (TRAI) dated 15th February, 2013 inviting suggestions/comments from stakeholders.

The Indian Newspaper Society having more than 1000 newspaper establishments as its members represents all significant cross sections of small/medium/large newspaper establishments (including magazines and periodicals). The Society is the central organization of press (print media) in India.

In response to an earlier consultation paper issued by TRAI on 23rd September'2008, on the subject we had submitted our views vide our letter No.TERI/584 dated November 25, 2008 copy enclosed for ready reference. We wish to reiterate our stand communicated to you then that Print Media is not included within the scope and ambit of the Telecom Regulatory Authorities of India Act, 1997. Consequently, the TRAI would not, in our submission, have any jurisdiction or authority to even issue the Consultation Paper in respect of the cross media and ownership restrictions concerning the Print Media. In this regard, we wish to bring to the following contentions to your kind notice:

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(A) TRAI lacks jurisdiction:

1. The Consultation Paper has been issued under Section 11(1)(a)(ii) and (iv) of the **Telecom Regulatory Authority of India Act 1997 (the "Act")**. These Sections are quoted hereunder-

   "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:-

   (ii) terms and conditions of licence to a service provider;

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

   "Licensor" is defined under S.2(1)(ea) as "the Central Government or the telegraph authority who grants a licence under section 4 of the Indian Telegraph Act, 1885 (13 of 1885)"

   "Service Provider" is defined under S.2(1)(j) as "the Government as a service provider and includes a licensee"

"Licensee" is defined under S.2(1)(e) as "any person licensed under sub-section (1) of section 4 of the Indian Telegraph Act, 1885 (13 of 1885) for providing specified public telecommunication services;"

"Telecommunication Service" is defined under S.2(1)(k) "service of any description (including electronic mail, voice mail, data services, audio tax services, video tax services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means but shall not include broadcasting services:

(Provided that the Central Government may notify other service to be telecommunication service including broadcasting services.)"

The Central Government notified on 9th January 2004 Broadcasting Services and Cable Services to be Telecommunication Service.

2. A plain reading of the aforesaid provision clearly indicates that TRAI lacks jurisdiction and the requisite power under the act to make recommendations on any matters with respect to any service except telecommunication service. Hence the inclusion of Print Media within the scope of this consultation paper is clearly beyond the jurisdiction of TRAI.

TRAI Act clearly defines functions of TRAI in section 11 and states that TRAI may make recommendations in relation to 'telecommunication services' only. Telecommunication service is

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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, may 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 I&B, 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.

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..."

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 may be noted:

i) The role of TRAI is not visualised in terms of placing restriction on the print media, which has an independent regulatory framework.

ii) The 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. Consequently, it is submitted that TRAI's act of examining cross media restrictions while including Print Media, is a clear act of misdirection.

Without prejudice to our above submission, we make the following submission:

We also wish to state that no parallel can be drawn between the developed Western Nations and India for consideration of any restriction on cross media ownership.

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.

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 views does not arise. This is because 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.

The point which needs to be registered is our minds, is that Terrestrial TV in India is owned by Prasar Bharti, unlike US/UK where the major part of TV stations are in private hands.

The Print media is considered to be the most educative among other forms of mass media communications. The print media is a sunset industry and its importance is certain to diminish in the next two decades in view of the fact that advertising is steadily getting directed to electronic media and that internet is fast emerging as a potent force in today's multimedia environment. Any attempt to bring in restriction on cross media ownership in India will almost certainly stop any further investments in the print media industry which currently operates on a fragile margin of profit. The horizontal cross media ownership is important to attain economies of scale and scope in news gathering and dissemination as it can reduce news cost as well as improve access to International news. This is the only way with which the Indian print media industry can sustain and grow with the objective to penetrate into the untapped large sections of our Society for a healthy and desirable readership levels comparable with the Western Nations within the next couple of years. Any attempt to restrict such synergy and sharing of content amongst the various horizontal media activities within the media sectors will throttle the well meaning objective of large scale penetration embarked upon by newspaper establishments across the country and result in de-growth of print media in India.

Some of the points which need serious consideration while you deal with the subject are listed below:

a) In a vast diverse democratic country like ours where there are so many different languages, manifold cultures, diverse & fragmented population coupled with presence of more than 84,000 Newspapers (RNI), over 570 TV Channels, with about 250 Radio stations (existing & proposed), no one media player can dominate the country's media scenario. Therefore, in our view there should not be any concern on cross media ownership. Business houses are in different segments of the Media not because they can dominate mind share of the country but because of the need to survive in a highly competitive market by leveraging & synergizing their different media segments to a better and cost-effective business model.

   Additionally, there are already burdensome controls over the media houses on content & ownership which need to be liberalized rather than consider further regulations which could only stifle the growth in any developing country like India.

b) India is a developing nation. In India the objective of Media Houses is to grow a nascent sector in the teeth of huge competition – rather than to control the presence in various sectors of Media.

c) It is an undisputable fact that no single media house present in India has more than a fraction of the market share in various media segment/vehicle. The example is Dainik Jagran, which is the biggest print media circulation company has less than 10% market share of the total print market segment.

d) In India, Government agencies namely Prasar Bharti, All India Radio, Doordarshan, etc. are present in Television/Radio segment and have biggest share of the respective markets. This situation is totally contrary to the developed nations wherein all Media operations including Television, Radio & print, are mainly controlled by private players.

e) 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.

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.

Responsible Media Groups ensure complete independence and autonomy of media segments, within the Group, which ensures plurality of views.

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.

Consequently, it is clear that there is an high level plurality of views in print media and that the players in this industry are competing heavily in the market.

f) The wide use of multiple languages in India do away with any fear of monopoly. There is no single media house which is engaged in all 15 official languages of India with as many as 1500 dialects. Even in the present scenario, it is not possible for a single media house to engage themselves in all such languages of India or influence viewer or reader of any other language media channel. Hence the fear of monopoly has no basis of whatsoever in relation to India.

g) India is a vast and diverse country; there is no single Media Company in India which has pan India presence, so the fear of control of media by any single entity throughout the country is without any basis.

h) Birth of newer media vehicles gives unprecedented appetite for choice. Instead of creating a monopoly in the market, it's becoming difficult for media companies to retain their readers, viewers, listeners or audiences. Availability of various media vehicles is leading to changes in preferences of customers every now and then. Therefore, no media company is in a position to dominate all media vehicles/sectors, leading to fear of monopoly - atleast in India till it becomes a developed country.

i) It is a fact that technology is moving faster than the law. Good advanced laws provide fertile soil for growth while bad laws or obsolete laws, hold us from growth.

j) In economic theory, regulation is justified by market failure or abuse of dominance. India has one of the most rapidly growing, vibrant, variedly owned and diverse media industries in the world. Therefore, there can be no question of market failure. Neither is there any dominance let alone abuse of dominance.

k) Media is an industry in the process of globalization and growth in India and abroad, in consonance with the nation's growing stature – a process which needs to be supported and not smothered by imposing an unimaginative regulatory framework.

l) The intention to restrict cross media ownership is perhaps based on the desire to promote diversity and competition in

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the media and subsequently legislate protections against the undesirable consequences of monopolistic tendencies. As mentioned herein above, these considerations are ill-conceived and out of place.

m) It is important to recognize that in its history of over 200 years, the Indian press has developed a large number of responsible newspaper enterprises. The entry of these enterprises into the electronic media has ensured standards of responsible media management and perhaps also prevented the entry of irresponsible entrepreneurs in the electronic media. This phenomenon is an asset to the Indian democratic polity and needs to be preserved and strengthened.

n) Any regulatory initiative which seeks to unreasonably curtail the freedom of generation, selection and delivery of content in any possible medium is a potential threat to the freedom of all media. Such initiatives need to be discouraged as these are undemocratic and unconstitutional.

o) During the last two decades, enterprises engaged in newspaper/magazine publishing, have contributed immensely to the evolution of news and current affairs coverage in the nascent electronic media. Their contribution is valuable for the entrepreneurial skill, editorial maturity, and the investments they have brought to bear on the orderly growth of the electronic media. This is an on-going process, which shall be adversely hit by restrictions on cross media ownership.

p) The contributions of newspaper/magazine publishers to the electronic media have ensured a diversity and plurality of views and perspectives and averted the dangers of state monopoly over the airwaves. In a pluralistic democratic society, which discourages monopolies of any variety,

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multimedia enterprises are a national asset and need to be permitted unrestricted growth and diversification.

q) In the United States, which is the most regulated media environment, the Federal Communications Commission has been steadily rolling back and relaxing some of the restrictions on cross media ownership, recognizing that the growing influence of the Internet makes most of them irrelevant.

r) Most countries, which restrict cross media ownership, concern themselves with the dominance of a media owner throughout a territory. Such territorial concentration is virtually inconceivable in the highly fragmented pluralistic Indian media environment.

s) A look at the national readership survey would show that not a single newspaper in the country commands more than 12 per cent of the total readership of newspapers in the country. This is an indication of the highly fragmented nature of the Indian print media environment.

t) If the Indian media environment has any monopolistic tendencies, they are most evident in the case of Doordarshan, whose reach is 50 per cent higher than all private TV channels put together, and Akashvani, whose reach is four times that of all the private FM channels put together. It would be difficult to accept that a state monopoly of the airwaves contributes to the diversity of content and constitutes any protection against undesirable consequences of accumulation of interest.

u) Restrictions on cross-media holdings militate against convergence and economics. Globally, audio/video/text and pictures are now converging in the media space. Restricting the use of content assets to any specific medium will deny to media owners the technological and commercial advantages of convergence. Multimedia ownership and operations also grant to media enterprises significant advantages in terms of amortizing the cost of sales promotion and administration over a larger volume of revenue. This advantage need not be denied to media enterprises.

v) Newspaper enterprises have a very sound logic for diversifying into the electronic media. Such diversification insulates them against the financial risks of dealing with the excessive volatility of the market for newsprint, their primary raw material. Diversification into the electronic media imparts a greater degree of financial stability to the economics of newspaper enterprises, which is itself a desirable objective for State policy to pursue.

w) At the current stage in their revolution, the electronic media are attracting a large number of entrepreneurs. Many of these Radio and TV channels may fail for a variety of reasons: primarily the incompetence of the entrepreneur and/or inadequate financial strength. Government policy must provide for such failures to be bailed out by well established media entrepreneurs from all forms of media, in order to prevent large scale unemployment amongst media professionals.

x) Ill-effects of dominance in any industry has been well regulated under the Competition Act of 2002. The 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 hidden agenda.

Provisions of Merger Control, under the Act provide for effective regulation in case any combination or merger crosses a threshold. Consultation paper 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. Consultation paper 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/ consolidation/ 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.

It is emphasised that this Act has sought to restrict the "Abuse of a dominant position" and not dominance, per se. Restrictions on cross-media holdings are sought to be imposed in the interest of preserving a competitive environment. Since there already exists a recent and well defined law to handle these concerns, there is no need to have new regulations to cover the same area of law. It may also be noted that competition in the market gives rise to plurality of views, which is already being ensured by the Competition Act. Any forcible meddling with the existing legal environment shall be harmful for the media.

y) It is often forgotten that the Indian media industry is miniscule in its scale of operations, even by Indian standards. The entire turnover of the Indian press (approx: Rs. 149 billion) or even the turnover of TV industry (approx: Rs. 226 billion) is smaller than the total turnover of just one IT Company. The issues of scale and dominance have to be considered also in this light.

z) The Society is of the opinion that any fear of monopolistic segment is unfounded and no public benefit or laudable objective would be served by bringing in any form of cross media ownership restrictions, an issue which is clearly illusory in view of prevailing market situations and pressing needs of media organisations.

aa) The market for media companies is highly developed sensitive, niche, fragmented and no single company dominates across all medias and is in a position to 'restrict expression of plural views'.

ab) As mentioned above, Indians have access to over 850 channels in varied geographies running from small towns to big cities. With increased connectivity to internet and future Broadband homes no one could acquire control over people's minds.

ac) No pan Indian Media Company akin to retail chains, or a large FMCG enterprise exists. Each city has a vibrant culture, and each city supports a different media. Our culture eminently guards against the dominance of any one media company.

ad) The Consultation paper proposes to put barriers on media entities to enter more / new platforms to better utilise their content but this will kill the industry. 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 / internet media.

Over the last 3-5 years that the share of Print Advertising is dropping precipitously is beyond doubt. The current condition of the 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 Media companies with only 2 options:

1. To shut businesses OR the entire Co
2. To expand the offering to the ever shifting Consumer

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 Consumer which may result in diversity of revenues. It is impossible for a Newspaper to compete with aggregators like GoogleNews, YahooNews, etc.

ae) Our comments on various questions are: -

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.

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

Q. 3 and Q. 4
Competition law takes care of these concerns extensively and there is no further requirement to raise these issues.

Q. 5 and Q. 6
The print sector is well diversified to ensure plurality of views. No filters should be applied. 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 Cos themselves.

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Q. 7 to Q. 23
The primary basis of TRAI's recommendations to devise media ownership rules is to ensure viewpoint plurality. 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, 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 kms.

Q. 24 and 25
We are of the strong view that TRAI should not suggest any cross media ownership rules in India.

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

Q. 28
Competition law takes care of these concerns extensively and there is no further requirement to raise these issues. 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. 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 Co decides to invest in Cable, they need to go through the process of evaluation and then arrive at

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a decision that they can live with – why should the Government tell them whether that is good or bad ???

The Government should allow vertical integration while putting in place rules what ensure that there is fairplay 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 fairplay & plurality 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.

Q. 29, Q.30 and Q.31
TRAI has no jurisdiction to cover matters in relation to print media.

af) We are of the opinion that any regulation of 'cross media ownership' would be ultra vires of Articles 19(1)(a), 19(1)(g) of the Constitution of India.

Thanking you,

Yours faithfully,

V. Shankaran

V. Shankaran
Secretary General

Encl : as above

TERI/ 584 November 25, 2008

The Chairman,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
New Delhi-110 002.

Dear Sir,

The Indian Newspaper Society having more than 850 newspaper establishments as its members represents all significant cross section of small/medium/large newspaper establishments (including magazines and periodicals. The Society is the central organisation of press (print media) in India.

We have persued the consultation paper on media ownership issued by TRAI on 23rd September 2008. We are surprised to find that the consultation paper issued on the recommendations of the Ministry of Information & Broadcasting includes within its ambit the Print Media whilst discussing the aspect of cross media and ownership restrictions.

On closer examination of the letter dated 22nd May 2008 written by the Secretary, Ministry of Information & Broadcasting to the TRAI, it is evident that the said letter does not seek any recommendations from the TRAI in relation to the Print Media whilst considering the aspect of cross media and ownership restrictions.

The reason for this, is that the Print Media is not included within the scope and ambit of the Telecom Regulatory Authorities of India Act, 1997. Consequently, the TRAI would not, in our submission, have any jurisdiction or authority to even issue the Consultation Paper in respect of the cross media and ownership restrictions concerning the Print Media. Details are below:

a. TRAI lacks jurisdiction:

1. The Consultation Paper has been issued on the request of the Ministry of I & B under Section 11(1) (a) (ii) and (iv) of the TRAI Act. These Sections are quoted hereunder-

"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-

..2..

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

(ii) terms and conditions of licence to a service provider;

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

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"Telecommunication Service" is defined under S.2(1)(k) "service of any description (including electronic mail, voice mail, data services, audio tax services, video tax services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means but shall not include broadcasting services:

(Provided that the Central Government may notify other service to be telecommunication service including broadcasting services.)"

The Central Government notified on 9th January 2004 Broadcasting Services and Cable Services to be Telecommunication Service.

2. A plain reading of the aforesaid provision clearly indicates that TRAI lacks jurisdiction and the requisite power under the act to make recommendations on any matter with respect to any service except telecommunication service. Hence the inclusion of Print Media within the scope of this consultation paper is beyond the jurisdiction of TRAI.

3. Hence, TRAI has misdirected itself in examining the cross media restrictions by including Print Media.

4. In fact the letter dated 22nd May 2008 written by Secretary, I & B, I & B to TRAI did not direct TRAI to include Print Media in its purview. This was solely because the Ministry was conscious that it could not seek recommendations from TRAI on Print-related issues.

5. This is also borne out from your clarification in the preface to the Consultation Paper. You have indicated in the second para that you had sought clarifications from the Ministry on this account.

B. The scope of Consultation Paper is at variance with the issues on which the Government has sought TRAI's recommendations-

6. The Government had asked TRAI to deliberate and forward recommendations to the Government on the following-

   i) Whether there is any need for cross media and ownership restrictions? Whether the existing laws are adequate to address the concerns or should a separate legislation cover this important parameter of broadcasting sector?

   ii) With more and more broadcasting/telecom companies entering into cable service/DTH/IPTV/Mobile TV platforms, whether restrictions on ownership need to be provided for such Broadcasting/telecom companies having control/shareholding in cable/DTH/IPTV/Mobile TV companies or vice-versa and if so what should be the framework provided?

   iii) What is the comparative policy structure with respect to similar restrictions in other parts of the world and what lessons can be drawn for India, based on their experience?

Please note that at no stage does the Government seek TRAI's recommendation vis-à-vis the Print Media.

7. On looking at the issues framed by TRAI, it is observed that Issue No.1, No.2, No.3, No.5 and No.6 (in part / in whole) are beyond the scope of the aforesaid mandate. These issues are highlighted hereunder and the relevant portions where the TRAI has exceeded the mandate / jurisdiction are marked in bold.

Issue No.1: (dealing with market definition)

Should the Authority adopt the relevant markets identified as above in paras 5.22.8 and 5.22.9 and assess these markets in the context of this consultation?

Relevant market identified under 5.22.8-

(i) **Newspapers in English in the country**
(ii) **Newspapers in Hindi/vernacular language in the states where that language is spoken.**
(iii) Broadcasting of Hindi/vernacular channels in the states where that language is spoken.
(iv) Broadcasting of English TV channels in the country.
(v) FM radio channels in Hindi/vernacular language in the states where that language is spoken.

Relevant market in the context of vertical integration and its implications for competition (para 5.22.9) are identified as follows-

(i) Broadcasting of Hindi/vernacular channels in the states where that language is spoken.
(ii) Broadcasting of English TV channels in the country.
(iii) Distribution of TV channels via DTH for the country.
(iv) Distribution of TV channels via MSO/Cable in the respective states where Hindi or other general languages are spoken.

Issue 2: (dealing with Cross Media Control / Ownership or horizontal integration)

(a) *What restrictions should be imposed on cross-media control/ownership **across print, radio and television media** to ensure plurality?*
(b) *What should be criteria for measuring cross-media control/ownership?*

Issue 3: (dealing with vertical integration)

(a) *Are the current restrictions adequate to address the concerns regarding vertical integration in the television segment? If not what modifications/additions do you suggest?*
(b) ***Should similar restrictions be imposed to address the concerns regarding vertical integration in other segments of the media?***

Issue 5: (dealing with concentration of control / ownership that an entity could have of media outlets or market share across all media segments)
Should restrictions be imposed on concentration of control/ownership across media? If yes,

(a) What restrictions should be imposed?
(b) ***What criteria should be used for measuring concentration of control/ownership across media?***

Issue 6:

Should restrictions be imposed on Cross control / ownership across Telecom ***and Media segments?*** *If yes,*

(a) What restriction should be imposed?
(b) What should be the criteria for measuring control/ownership across the telecom ***and media segments?***

8. TRAI should have framed the first and foremost question on whether a need for Cross Media and ownership restriction exists in the country. Rather, it has proceeded on an assumption that the need exists while discussing issues No.1 to 4. It is only the 5th and 6th issue that deals with this question.

   Hence, TRAI cannot include Print Media within the scope and ambit of the consultation paper whilst examining the issue of cross media and ownership restrictions. It bears no repetition that the TRAI has to function within the scope and ambit of the statute which, in our submission, does not include the Print Media.

   We, therefore, request you to kindly amend the consultation papers accordingly after taking into consideration our views.

   Your kind attention is also drawn to the preface to the Consultation Papers, in which it has been stated as follows:

> "Looking at the increasing trend of the print media entering into broadcasting sector and in order to lay down a holistic and clear cut approach towards cross-media and ownership restrictions for the future growth of these sectors, in the present context, the Authority has been asked to include print media also, while examining the need for any cross media restrictions vis-à-vis broadcast media."

The aforesaid conveys an impression that the TRAI may have sought certain clarifications from the Government (Ministry of Information & Broadcasting) pursuant to the letter dated 22nd May 2008. **If so, we hereby request you to kindly make available such correspondence to us and we reserve our rights to respond to the same.**

Without prejudice to above we would like to submit that in our considered view there is no need and in fact any talk of cross media ownership restrictions/rules/regulations is ill conceived, out of place and premature. No purpose is going to be served by introducing any such rules/regulations.

In a vast diverse democratic country like ours where there are so many different languages, manifold cultures, diverse & fragmented population coupled with presence of more than 4,000 Newspapers, over 370 TV Channels, with about 250 Radio stations (existing & proposed), no one media player can dominate the country's media scenario. Therefore, in our view there should not be any concern on cross media ownership. Business houses are in different segments of the Media not because they can dominate mind share of the country but because of the need to survive in a highly competitive market by leveraging & synergizing their different media segments to a better cost effective business model. Additionally, there are already burdensome controls over the media houses on content & ownership which need to be liberalized rather than consider further regulations which could only stifle the growth in any developing country like India.

India is a developing nation. In India the objective of Media Houses is to consolidate their positions to run the business in most efficient and in a profitable manner instead of controlling the presence in various sectors of Media.

It is an undisputable fact that no single media house present in India has more than a fraction of the market share in various media segment/vehicle. The example is Dainik Jagran, which is the biggest print media circulation company has less than 10% market share of the total print market segment.

In India, Government agencies namely Prasar Bharti, All India Radio, Doordarshan, etc. are present in Television/Radio segment and have biggest share of the respective markets. This situation is totally contrary to the developed nations wherein all Media operations including Television, Radio & print, are mainly controlled by private players.

Multiple languages preclude any fear of monopoly. There is no single media house which is engaged in all 15 official languages of India with as many as 1500 dialects. Even in the present scenario, it is not possible for a single media house to engage themselves in all such languages of India or influence viewer or reader of any other language media channel. Hence the fear of monopoly has no basis of whatsoever in relation to India.

India is a vast and diverse country; even there is no single Media Company in India which has pan India presence, so the fear of control throughout the country is without any basis.

Birth of newer media vehicles gives unprecedented appetite for choice. Instead of creating a monopoly in the market, it's becoming difficult for media companies to retain its readers, viewers, listeners or audiences because due to availability of various media vehicles customers are getting changed every minute. Therefore, no media company is in a position to dominate all media vehicles/sectors leading to fear of monopoly atleast in India till it becomes developed country.

It is a fact that technology is moving faster than the law. Good advanced laws provide fertile soil for growth while bad or outdated obsolete laws, hold us from growth.

In economic theory, regulation is justified by market failure or abuse of dominance. India has one of the most rapidly growing, vibrant, pluraly owned and diverse media industries in the world. Therefore, there can be no question of market failure. Neither is there any dominance let alone abuse of dominance.

This is an industry in the process of globalization and growth in India and abroad in consonance with the nation's growing stature – a process which needs to be supported and not smothered by imposing an unimaginative regulatory framework.

The intention to restrict cross media ownership is perhaps based on the desire to promote diversity and competition in the media and subsequently legislate protections against the undesirable consequences of monopolistic tendencies. As mentioned herein above, these considerations are ill-conceived and out of place--

a) It is important to recognize that in its history of over 200 years, the Indian press has developed a large number of responsible newspaper enterprises. The entry of these enterprises into the electronic media has ensured standards of responsible media management and perhaps also prevented the entry of irresponsible entrepreneurs in the electronic media. This phenomenon is an asset to the Indian democratic polity and needs to be preserved and strengthened.

Any regulatory initiative which seeks to unreasonably curtail the freedom of generation, selection and delivery of content in any medium is a potential threat to the freedom of all media. Such initiatives need to be discouraged for being undemocratic and unconstitutional.

During the last two decades, enterprises engaged in newspaper/magazine publishing, have contributed immensely to the evolution of news and current affairs coverage in the nascent electronic media. Their contribution is valuable for the entrepreneurial skill, editorial maturity, and the investments they have brought to bear on the orderly growth of the electronic media.

This contribution of newspaper/magazine publishers to the electronic media has ensured a diversity of views and perspectives and averted the dangers of state monopoly over the airwaves. In a pluralistic democratic society, which discourages monopolies of any variety, multimedia enterprises are a national asset and need to be permitted unrestricted growth and diversification.

(b) In the United States, which is the most regulated media environment, the Federal Communications Commission has been steadily rolling back and relaxing some of the restrictions on cross media ownership, recognizing that the growing influence of the Internet makes most of them irrelevant.

(c) Most countries, which restrict cross media ownership, concern themselves with the dominance of a media owner through media ownership within a territory. Such territorial concentration is virtually inconceivable in the highly fragmented pluralistic India media environment.

(d) A look at the national readership survey would show that not a single newspaper in the country commands more than 12 per cent of the total readership of newspapers in the country. This is an indication of the highly fragmented nature of the Indian media environment.

(e) If the Indian media environment has any monopolistic tendencies, they are most evident in the case of Doordarshan, whose reach is 50 per cent higher than all private TV channels put together, and Akashvani, whose reach is four times that of all the private FM channels put together. It would be difficult to accept that a state monopoly of the airwaves contributes to the diversity of content and constitutes any protection against undesirable consequences of accumulation of interest.

(f) Restrictions on cross-media holdings militate against convergence and economics. Globally, audio/video/text and pictures are now converging in the media space. Restricting the use of content assets to any specific medium will deny to media owners the technological and commercial advantages of convergence. Multimedia ownership and operations also grant to media enterprises significant advantages in terms of amortizing the cost of sales promotion and administration over a larger volume of revenue. This advantage need not be denied to media enterprises.

(g) Newspaper enterprises have a very sound logic for diversifying into the electronic media. Such diversification insulates them against the financial risks of dealing with the excessive volatility of the market for newsprint, their primary raw material. Diversification into the electronic media imparts a greater degree of financial stability to the economics of newspaper enterprises, which is itself a desirable objective for State policy to pursue.

(h) At the current stage in their revolution, the electronic media are attracting a large number of entrepreneurs. Many of these Radio and TV channels will fail for a variety of reasons: primarily the incompetence of the entrepreneur and/or inadequate financial strength. Government policy must provide for such failures to be bailed out by well established media entrepreneurs in order to prevent large scale unemployment amongst media professionals.

(i) Ill-effects of dominance in any industry have been successfully dealt with under the amended Companies Act 2001, the MRTP Act 1969 and Competition Act of 2002. It may be emphasised that these Acts have sought to restrict the "Abuse of a dominant position" and not dominance, per se. Restrictions on cross-media holdings are sought to be imposed in the interest of preserving a competitive environment. Since there exist laws to handle these societal concerns, there is no need to have new regulations.

(j) It is often forgotten that the Indian media industry is miniscule in its scale of operations, even by Indian standards. The entire turnover of the Indian press (approx: Rs. 149 billion) or even the turnover of TV industry (approx: Rs. 226 billion) is smaller than the total turnover of just one IT Company. The issues of scale and dominance have to be considered also in this light.

The Society is of the opinion that any fear of monopolistic segment is unfounded and no public benefit or laudable objective would be served by bringing in any form of cross media ownership restrictions, an issue which is clearly illusory in view of prevailing market situations and pressing need of media organisations. We have already pointed out that as far as 'Print Media' is concerned TRAI does not have any jurisdiction to examine the issue, and there is need to amend the consultation paper. Accordingly, the Society is for the present **not addressing the various issues raised and reserve its rights to do so at a later stage.**

Our preliminary views on various issues are :

a) The need to define the market is not clearly made out.

b) No individual enterprise can own or monopolise all medias.

c) India cannot be treated as one media market.

d) No fear of any major TV company gobbling up print. Terrestrial TV is owned by Prasar Bharti, unlike US/UK where the major part of TV stations are in private hands.

e) The market for media companies is highly developed sensitive, niche, fragmented and no single company dominates across all medias and is in a position to 'restrict expression of plural views'.

f) Indians have access to over 370 channels in varied geographies running from small towns to big cities. With increased connectivity to Net and future Broadband homes no one could acquire control over people's minds.

g) Multiple languages preclude any fear of monopoly. India is not the land of one language (15 official languages – 1500 dialects).

h) No pan Indian Media Company akin to chains, FMCG exists. Each city has a vibrant culture, and each city supports a different media. Our culture eminently guards against the dominant of the company.

i) The fear of monopolization/concentration/or horizontal integration are unfounded and do not have any factual basis.

India has more than 4000 newspapers, thousands of websites, 370 private channels, 50 Doordarshan channels, 239 private radio channels and 21 Government owned radio channels. The existence of such a segmented market is sufficient to curb any monopolistic practices and permits plural expression of views. There is no need for any kind of restrictions on cross media ownership and any concerns could well be addressed by Competition Commission of India/M.R.T.P.

j) No restrictions need to be imposed for vertical integration as any such restrictions would be unnecessary.

k) The present regulations are sufficient enough in FM radio segment.

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l) We believe that no restrictions should be imposed on concentration of control/ ownership across media as none exist and such restrictions would hamper its growth.

m) At present the Telecom and Media segments are very distinct and keeping in view the competition amongst the existing players, any fear of market concentration is premature and without basis.

n) We are of the opinion that any regulation of 'cross media ownership' would be ultra vires of Articles 19(1)(a), 19(1)(g) of the Constitution of India.

o) The existing laws/regulations are sufficient to prevent monopolistic and abuse of dominant position.

p) None of the existing players are in a position to gain monopoly. India is still an underdeveloped country with low penetration of internet, TV, radio, etc. The media companies instead need to consolidate in terms economies of scales, improved news management etc.

q) New technologies preclude need for any regulations.

Thanking you,

Yours faithfully,

V. Shankaran

V. SHANKAR AN
OFFICIATIANG SECRETARY GENERAL