Submission: Response to TRAI's *Consultation Paper on Issues relating to Media Ownership*, dated 12th April 2022.

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To
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Sir
Please find below our submission in response to the Authority's 2022 consultation paper on 'Issues relating to media ownership'.

Kind Regards
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Section 1: Ownership and Diversity

Sec 1.1 Visualising Media Diversity
(Q.7, Q.9, Q.21)

The last recommendation of the Authority on media ownership called to put in place, ex-ante, a framework that will ensure plurality and diversity in the media (TRAI 2014:5). This framework would benefit from being further informed by conceptions of diversity and methods to measure it. This section captures the granular understandings of diversity being debated globally, and initiatives in other jurisdictions to operationalise such an understanding.

*If the news media is considered the oxygen for democracy, then media diversity indicates the quality of the oxygen sustaining a democracy.*Media diversity is recognised as one of the foundational normative principles guiding contemporary media policy (Napoli 2001). Four broad vantage points capture policy thinking globally on media diversity:

1. One vantage-point is about the *diversity of news content*, as reflected in the themes, prioritisation, sources, and voices of news reportage. Rooted in such a conception of 'viewpoint diversity', TRAI has consistently reiterated this in its 'plurality argument'. (TRAI 2008, 2013, 2014, 2022 *passim*)
2. The second vantage-point focuses on the *diversity of news-producers*, or the profile of actors from marginalised demographics (gender, caste, minorities), especially in newsrooms and in decision-making processes of news production. Advocating this 'cultural diversity' standpoint, the Canadian Radio-television and Telecommunications Commission instituted measures in 2001 to monitor broadcasters' diversity management. Shtern argued that "true media pluralism demands the elusive and seldom discussed policy goal of greater social justice and transparency in a screen media production labour market" (Shtern 2014).
3. The third vantage-point highlights the *diversity of news suppliers*, including the market and extra-market conditions under which news outlets are legally structured, financed, and owned. This reiterates longstanding conceptions of **'source diversity'** in media policy(see esp. Napoli 1999, Klimkiewicz 2010, Valcke et al 2010). If competing watchdogs have similar financial bases and organisational structures, their watchdog role is more likely vulnerable to one particular type of corrosion - not only "market-based corruption" (Baker 2002:907) but also that from extra-market and extra-constitutional forces.
4. Widening these three, 'supply-side' understandings of diversity, the fourth looks at the 'demand-side' – that is, the ability and constraints faced by news audiences to access and consume (the probable) plurality of views supplied by a (possible) variety of sources. The idea of **'exposure diversity'** neatly conceptualises these concerns (Napoli 2011, Helberger 2012). The idea of exposure diversity has been leveraged to view diversity challenges in both, the so called legacy media (see Napoli 1997, Duncan & Reid 2013) and online, digital media (see Helberger et al 2018, Moe et al 2021).

Clearly, each of these vantage points tend to prioritise a principal risk to media diversity --- viz. that stemming from an insufficient array of (a) voices and viewpoints in news, (b) producers and decision-makers in news outlets, (c) owners, investors, and ownership-models of news outlets, and (d) of audience exposure. While this may be, both scholars and regulators have thickly engaged with the numerous synergies across these four vantage points (such as, Napoli 1999, Valcke et al 2010, Karppinen 2013).

While TRAI has consistently underscored the importance of viewpoint diversity in expressing its concerns over Concentration, Cross Media Ownership, and Vertical Integration, it has engaged less with exposure and source diversity.

- For one, there is a **causal relationship between viewpoint and source diversity** (Napoli 2011:248), which directly implicates debates on ownership. This is implicit in the thinking underlying the Supreme Court's 'airwaves' judgement of 1995 when it insisted "unless multiple licences are provided, it is unlikely that there would be a wide variety in the content made available" – a sensibility that aligned with the authority's normative position in 2008 (TRAI 2008:27).
- Moreover, Webster and Phalen have pointed out that **diversity of supply does not guarantee a diversity of consumption** (cited in, Napoli 1997:65) **-** an insistence that complicates simplistic understandings of the importance and implications of ownership.
- There is a further argument of viewpoint and source diversity together contributing to exposure diversity (Napoli 1999:27).

RECOMMENDATIONS

The above necessitates deliberations on ownership evoking the diversity principle in general or the plurality argument in particular, like the TRAI has done, being obliged to consider viewpoint, source and exposure diversity in an integrated manner. TRAI's silence on the inter-relationship between different analytical standpoints on diversity contrasts the emphasis of other regulators. For instance, The Netherlands' Media Authority actively assesses the extent to which diversity of content is both produced and consumed (Napoli 2011:254).

Sec 1.2 Importance of monitoring Media Ownership

(Q.1, Q.2)

If media diversity fosters the quality of oxygen required to sustain a democracy, then media ownership determines the supply and hygiene of such oxygen.

TRAI rightly amplified **Ownership Concentration** in the media posing the following threats:

1. **Risking the 'Freedom of Speech and Expression'** as enshrined in Article 19(1)(a) of the Constitution of India (TRAI 2022). This gains added importance since TRAI also recognised the Supreme Court's insistence that public resources, such as airwaves, be utilised to ensure "plurality and diversity of views, opinions and ideas" (quoted in TRAI 2014:40).
2. **Reducing the number of perspectives fuelling public debate** (TRAI 2022). Here, we also recall convincing arguments about the concentration of audience-share translating into a large universe of audience receiving a limited set of "angles pursued" by news outlets (Baker 2002:906).
3. **Adversely impacting news outlets bereft of "chain ownership".** This is the case where an entity, while present in only one segment of the news market, is in a position to impede the competitive capabilities of its rivals. The argument here is about a few outlets, part of a chain, garnering a large share of audience, advertising, or key resources (like

newsprint and spectrum) enhancing the vulnerabilities of rivals to effectively perform their watchdog functions (see Valcke et al 2010). It is important to underscore the phenomenon of chain ownership not being limited to the market of news production; it equally plays out in the distribution market, for instance when an MSO has subsidiaries, joint ventures and/or affiliates in different parts of the country (see Parthasarathi and Srinivas 2019). This phenomenon was documented by the Authority in the early phases of mandatory digitalisation of cable (see TRAI 2013b).

The existence of numerous news outlets or distribution channels indicates a scenario of multiplicity, *but not of diversity*. For, among such a multiplicity, it is possible that a significant number, especially of leading players, are owned or controlled only by a handful of entities. It was this scenario that the Supreme Court's 1995 judgement was alluding to when it saw private broadcasting, whilst being a matter of policy for the Parliament to decide, "should not be left to market forces, in the interest of ensuring that a wide variety of voices enjoy access to it" (AIR 1996, para 205). Two decades later, the Authority had rightly articulated the difference between multiplicity and diversity: "There may be thousands of newspapers and hundreds of news channels in the news media market, but if they are all "controlled" by only a handful of entities, then there is insufficient plurality of news and views presented to the people" (TRAI 2014:8). **Recognising the difference between multiplicity and diversity makes is highlight two further risks of Ownership Concentration emphasised by policy researchers elsewhere:**

1. **Compromising democracy**. The diversity principle connects the risks of concentration squarely with democracy; that is to say, if media ownership is insufficiently dispersed and diverse, then there is a risk of democracy being undermined (see Collins & Cave 2013).
2. **Enabling media capture.** Concentration increases the chances of a few, leading players in the news media being easily won over by exogenous interests wanting to distort or disrupt their watchdog role (see Meir 2002). The risk of such media capture gets heightened in a scenario where, as prevalent in India, an entity is inhabited by exogenous business and political interests (see TRAI 2013a).

Apart from Concentration, the Authority has rightly continued to maintain two other facets of ownership being detrimental to the media landscape, and to society at large.

One facet, Cross Media Ownership, pertains to the accumulation of voice across different segments of the news media. There is an argument about these segments being differentiated by audience needs and their consumption patterns (TRAI 2022:35). However, such distinction is primarily transactional; what is common is the desire of news outlets to influence the views of audiences. Consequently, an entity garnering significant audience-share across the markets of newspapers, broadcast news, and/or online news outlets, enhances the risks of **viewpoint plurality**. This risk is greater when such an entity has concentrated audience shares in any one of these three segments it is operating in. Moreover, cross-media ownership carries the danger of malpractices by a particular actor, such as 'paid news' or bias observed by the Authority (TRAI 2013a:15-16), spreading to other segments of the news media – if not becoming endemic to the entire news economy.

The extent of cross-media ownership or horizontal integration in the news media has widened since the early years of broadcast news; this is palpable in the successive changes in the picture painted in 2008 (ASCI 2009) and that in the Authority's own analyses in 2014. Cognisant of this, the Standing Committee of the Parliament on IT had noted restrictions on cross media ownership merit urgent attention before it emerges as a threat to our democratic structure (TRAI 2013a:50).

However, cross-media ownership is but one dimension of horizontal integration; its other dimension involves an entity present in different distribution segments of news, viz. as a provider of cable, DTH, telecom, or internet. That certain access providers in the market of broadcast news (such as cable operators) have related companies providing access in the market for online news (as ISPs) is known, but could do with greater documentation by the Authority. **Much as horizontal integration by suppliers of news content operating across print, broadcasting, and internet could be seen similar to risks viewpoint diversity, that among distributors of news content operating across broadcasting and internet could replicate risks to exposure diversity.**

RECOMMENDATION
Instead of referring to cross-media ownership, the scientific terminology of horizontal integration should be adopted; this will enable the Authority to fruitfully visualise (risks of) players with interests in multiple distribution platforms - i.e., not only within the C&S TV market but (often additionally) within the online market as well.

The other facet of ownership detrimental to the media landscape is Vertical Ownership - such as that betweenbroadcasters and DPOs, or between online news outlets and ISP.

Nearly a decade ago, media groups owning a raft of companies managed to develop controlling stakes both in broadcasting and distribution by acquiring licences under their different subsidiary companies (Sarkar 2013). The list then included entities from the Zee and SUN group but since has expanded to include two notable others: the regional combine controlling Odisha TV and Ortel Communications, and the far larger, national combine controlling Network 18 and operations of leading cable companies, DEN and Hathway (also see TRAI 2022:55).

Foremost, this scenario **adversely impacts competition** between news outlets part of vertically integrated entities and those who do not own or control distribution networks. The Authority has particularly pointed at vertical integration manifesting in the "ills of monopolies", as it precipitates scenarios of market foreclosure for existing players and/or enhancing barriers to market entry for new players (TRAI 2013a:67). These **threats of competition, in turn, impact the audience**: here the principal risks of vertical integration is that of reducing exposure diversity - i.e. constricting the ability of audiences to access and consume news from a variety of sources. Vertical integration in distribution markets that have an effective monopoly, such as last mile cable in India, is particularly harmful to exposure diversity. The Authority has emphasised vertical integration penetrating the broadcasting market beyond a certain level adversely affecting plurality, especially if such entities held dominant market share and/or held cross media presence (TRAI 2013a:67) – a phenomenon that conveys the risks. In other words, the Authority rightly highlighted the adverse implications of what could be termed as the intersectionality of ownership: that is, **when one facet of ownership, such as horizontal integration or concentration, is heightened by another, such as vertical integration** – and vice versa.

The risks stemming from the intersectionality of ownership have multiplied with the internet and online media markets. In online markets, vertical integration is reflected in a group providing content (such as news or OTT media) and infrastructural access to such content – the latter through wired or wireless/mobile internet. While the internet has expanded the canvas of news outlets available and access to existing (legacy media) outlets, it has also created fresh scenarios of vertical integration. That is to say, it has widened the possible sites of vertical integration, from that in the market of broadcast news to that of online news. Here, it is pertinent to mention **certain vertically integrated players in the market of broadcast news have additionally come to be vertically integrated players in the market for online news, where they are both, online content providers and ISPs.**

Thus, the internet has intensified the phenomenon of horizontal and vertical integration prevalent in the legacy news market of newspapers and broadcasting; in doing so, it is only expected that the terrain where risks to source and exposure diversity emerge have also widened.

RECOMMENDATION
The category of Distribution Platform Operators (DPOs), hitherto referring to MSOs and DTH operators, should additionally include ISPs, both wired and wireless.

Sec 1.3 Relevant Genres and Markets
(Q.7; Q.8., Q.9, Q.10, Q.11, Q.12)

1.3.1 Media Genres
In the context of news media, the fourth pillar of democracy, the word "media" must justifiably include the **universe of players involved in supplying/producing <u>and</u> in distributing/retailing news.**

Suppliers: Newspapers, Broadcasters, Websites
- The Authority recommends that the News and Current Affairs genre, including business and financial news and information, is of utmost importance and direct relevance to the plurality and diversity of viewpoints and, hence, should be considered as the relevant genre in the product market for formulating cross-media ownership rules (TRAI 2014:22)
- The Authority recommends that television and print should be considered as the relevant segments in the product market. For print, only daily newspapers, including business and financial newspapers, should be considered (TRAI 2014:24).
- News outlets on the internet consist of two categories. One are online sites of newspapers; it is no coincidence that major newspapers commanding large audience-share have been pioneers in expanding their presence online (see Aneez et al 2016). The second are news outlets which are present only online, the so called 'native digital' news outlets (see Sen & Nielsen 2015). Both these types of sites also contain an increasing amount of audio-visual content; resultantly, they compete, besides among themselves, with broadcast news outlets who expanded their footprint of audiences and advertisers by commencing websites.
- Competition between audio-visual news content on the websites of newspapers, native digital news outlets, and broadcast news outlets is enhanced since they all find place on "aggregator" sites like YouTube, as rightly observed by the authority (TRAI 2022:41).

Distributors - Cable, DTH, Telecom, ISPs
- The risks imparted by concentration and of cross-media ownership get amplified when news outlets have affiliates in the business of TV distribution, telecommunications, and/or wired-ISPs.

- Since exposure diversity gets directly shaped by outlets and distributors together, it is crucial for normative or empirical assessments of media diversity factoring in the ownership of distributors.
- Broadcast news involves three distributors: Local Cable Operators (LCOs), MSOs and DTH operators, collectively known as Distribution Platform Operators (DPOs). Although regulators believe that broadcasters have the direct ability to influence public perception as they control the content (TRAI 2022:44), DPOs are also in a position to actualise viewpoint diversity in the news landscape.

Aggregators

- The jury is still out whether online aggregators of news are to be considered as publishers or distributors. Quite independent of how this debate gets resolved, aggregators will remain a key player in the news market; consequently, it is important they be considered in assessing ownership and diversity in the news media.

RECOMMENDATIONS

An expanded notion of "media" is justified on grounds of both the democratic principle and diversity principle. Retaining the traditional idea of "media" to publishers ignores the numerous and complex ways in which citizens gain access to and consume news, and thereby contribute to democratic debate. Moreover, a restricted idea of "media" ignores the importance of exposure diversity, catalysed by distributors and aggregators, in enabling a vibrant and pluralist media news landscape.

1.3.2 Relevant Market

The concept of 'relevant market' is defined in Section 2(r) of the Competition Act 2002. In large, multilingual media markets like India, language is an important variable in market definition (see Parthasarathi 2022, Parthasarathi & Athique 2020).

In a given linguistic market, news outlets competing in the same content genre (general, business etc) across print, broadcast and online can be considered as substitutable by the audience - much as they are considered substitutable by proprietors wanting to influence audiences. This must be caveated by attending to distinctions in the "product" characteristic of news (including affordability and access) constituted by these three segments of the news media. But the **relevant product market would be re-construed if, rather than news, advertisements in news outlets competing in a content genre is seen as the primary commodity being transacted.**

The relevant geographical market can be more difficult to calibrate in a country like India. For one, language markets do spill across physical and administrative geographies where conditions of competition could be distinct. Nevertheless, the Authority in its recommendations dated 12.8.2014 determined 12 geographic markets. While accepting this, one must also recognise that tremendous migration within India has led to the once 'regional language markets' no longer being located only in regional geographies. For instance, a fair amount of audiences and revenues for Bhojpuri content are garnered outside the Bhojpur region contiguous in Uttar Pradesh and Bihar (see Kumar 2021). Moreover, **within these linguistic markets, since (broadcast and online) news is retailed through wired and wireless means[i], the conditions of competition, and that for audiences to exercise choice, within a particular territory of operation may not be homogenous.** This leads to some

[i] such as cable and wired ISPs, and mobile/telecom ISPs and DTH, respectively.

peculiar challenges in market definition in India and require a heterodox understanding of "the market", as often grappled by the CCI (see Parthasarathi 2019).

RECOMMENDATIONS

Given the longstanding consensus on the dual-product nature of media goods (see Picard 1989), it is beneficial to calibrate a relevant product market by simultaneously factoring in content genre, audiences, and advertisements. Given news distribution involves both wired and wireless platforms - i.e. technologies respectively grounded in and agnostic to physical territory - calibrating the relevant geographical market must simultaneously factor in the territory of operations and the kinds of distribution platforms available to audiences.

Sec 1.4 Measuring Ownership and Diversity

(Q.2, Q.6, Q.21)

1.4.1 Ownership Index

Enumerating media ownership must entail granularly measuring concentration, horizontal integration and vertical integration in themselves, as well as calibrating their inter-locking effects.

RECOMMENDATIONS

For an accurate measure of Concentration the enumerations based on HHI or CR(n) require to be tweaked to triangulate the market share of audience and advertisers in the relevant product and geographical market.

However, successive reports of the Authority have shown media entities possessing operations across several (hitherto separate) segments of news supply. Measures of Horizontal Integration in the relevant markets of news content genres across print, broadcast, and online segments require triangulating the market share of audience and advertisers.

In calculating Vertical integration, it is important to give due weight to the extent of market share an entity holds in both the content and distribution segments. Doing so would help to visualise the relative market possession of two vertically integrated entities operating in broadcast news or online news. Lastly, vertical Integration in the broadcast and online news markets need to be enumerated both separately and together to give a clearer picture of the levels of integration underway in India's digital news economy.

All these considerations could be blended with the *Company Power Index* (CPI)initiated (see Noam 2009). A media entity's CPI is an indication of the influence it wields based on its market share in and across different segments of the news landscape. It is the sum of a company's HHI scores in various content and distribution segments, each weighted by its share in the overall media business (Noam 2016). Doing so accounts for changes in the size of a particular segment, such as a decline in audience (or/and advertisers) in print news as a whole, or the rise of that in online news as a whole.

1.4.2 Diversity Index

We must point out that the measurement of Ownership and that of Diversity could involve different pursuits. No doubt the measurement of these facets of ownership will give some indication of diversity; however, this would be partial and incomplete since there are many facets to media diversity itself, as explained and unpacked earlierin this submission.

Even the FCC's *Diversity Index* essentially enumerates diversity from one vantage point, that of source diversity, albeit it does so with greater nuance than other methods.

RECOMMENDATIONS

The EU's *Media Pluralism Monitor* needs to be adapted to the Indian news market towards evolving a Diversity Index. The *Media Pluralism Monitor* (MPM) embodies a multidisciplinary and holistic approach by blending indicators drawn from law, economics and social science. It identifies and offers to measure risks relating to various aspects of diversity, including not only ownership and plurality issues, but also cultural, political and geographic dimensions (see Valcke et al 2010). The appeal of MPM can be captured as follows:

1. **It offers a measurement tool based on a refreshed understanding of media diversity.**
2. **It includes but goes beyond matters of concentration, cross media, and vertical ownership**
3. **It is readily applicable to scenarios of media convergence**
4. **It offers comparison and increased transparency enabling empirical and rational deliberations**
5. **Its intent is not to regulate, but create the necessary tools to assess media environments**

The MPM is a data tool to compare the scenarios of risks to diversity in linguistically different member countries of the Council of Europe. However, its normative and empirical framework is also adaptable to safeguard the plurality of views, sources, and exposure in other jurisdictions, including our large (almost Europe-like) country. In doing so, two matters deserve to be underscored:

A. **In light of the Authority's concerns, the MPM's unit of analysis, the countries of Europe, could be replaced with states of India to build on this highly tested and testified tool.**
B. **The MPM is methodologically malleable to weave in measures of ownership being currently debated by the Authority (such as HHI, CR(n)x, CPI etc) into its different levels of assessment.**

A pilot initiative adapted the MPM to evolve a *Media Diversity Index* (MDI) for our country. It offers a framework to enumerate risks to ownership and diversity in India's principal linguistic media markets. Data tools like this will tremendously benefit from the kinds of disclosures recommended by the Authority (TRAI 2014: Annex 2) and those further elaborated in the next section of this submission. Since the linguistic markets mapped in the pilot Media Diversity Index approximate states, it was possible to rank the sampled states. Such a ranking holds a further potential, that could locate the media within wider societal developments; for instance, state ranks in the Media Diversity Index could be compared with those reflected in other types of indexes, such as Human Development, or Ease of Doing Business.

Whichever method, or blend of methods, the Authority decides to devise will benefit from wide-ranging stakeholder participation. Such participation and deliberations will greatly contribute to formulate a 'Made in India' data tool, if not an original Index, to assess the unique media challenges repeatedly laid out by the Authority.

Section 2: "Ownership and Control"
(Q.4, Q.25, Q.27)

Section 2.1 Ownership and Control

In both the current Consultation Paper (CP) and in the 2014 recommendations, TRAI rightly observed that ownership of a news media company, through equity stakes, is a subset of control, which can be exercised through several other mechanisms. We agree that both ownership and control need to be taken into account to understand the dynamics of media and cross-media ownership. However, both the CP and the 2014 recommendations focus on existing ownership and control via direct equity stakes (with threshold limits), options to appoint majority directors on boards, veto powers of the directors, contractual arrangements and agreements, loans, etc. **What is missing is how the ownership and control in media companies, as in other firms, can change in the future due to loans, contracts and agreements, and financial instruments. This is crucial because the ownership of several large media companies have changed, and passed on to new owners, in the recent past due to these factors.** It is not merely important in the media sector to pinpoint who are the current owners, and which entities or individuals exercise control at the moment. It is equally crucial to know if a media company's ownership and control structure is likely to change in the future because of current arrangements and instruments. The following issues need to be addressed in the context of media and cross-media ownership.

2.1.1 Loans converted into equity

Section 62(3) of the Companies Act of India allows for the conversion of loans into equity of accompany. However, the loan amount has to be linked to an option to convert it into equity at some point in the future, and the option has to be approved by the shareholders of the company through a special resolution. In Raj Singh Chopra versus Jagat Singh Chopra, the National Company Law Tribunal (NCLT) upheld the order of NCLT (Kolkata Bench) that the conversion of loan into equity needs to be approved through a special resolution before the loan is raised (NCLT 2018).

Since the conversion of such an approved loan into equity at a later date can lead to changes in either ownership or control in the future. Hence, apart from considering loans, which are 51% of the book value of a company, as mentioned in the CP as one of the ways to exercise control, any loan amount, without any restrictions or limits but which can lead to an ownership of 10% or more of the paid-up equity capital in the future, needs to be considered as an instrument of ownership and control. This is especially crucial because the conversion option can and may lead to a change in the ownership structure in the future. In the recent past, several media companies, as well as conglomerates, have changed owners because of the conversion of loans into majority stakes.

The threshold limit for loans that can be converted into equity in specific company's case has to be 10%, i.e. there is a possibility that the loan given by a third party to a media company can be converted into a minimum 10% of the equity of the media company. The lower threshold is crucial because several lending agencies, including the state-owned ones, can exercise unusually high control over companies with lower equity stakes.

Similarly, if the existing promoters of a media company offer their shares and equity stakes as collateral for a single and multiple loans, from a single or multiple lending agencies, the chances of future changes in ownership and control increase. Experiences show that such collateral arrangements too can lead to changes in the ownership and control of several companies because of the media company's inability to repay the loans for some reasons. In such cases, the lending agencies end up either owning the promoters' shares kept as collateral, or sell the shares to a third party. In both cases, a new entity can own a substantial stake in the media company. This too has been a common feature in the recent past through which the ownership of media companies has changed hands, and passed on to new owners. Here too, the threshold limit can be 10%, i.e. any loan arrangement with a single party, where at least 10% of the media company's equity capital is put as collateral by the promoters.

2.1.2 Debt instruments converted into equity

Apart from loans that can be converted into equity, there are a plethora of financial debt instruments, which too can be converted into shares. These include convertible debentures, partially converted debentures, put options, complex derivatives, among others. All these come with an option for the debt to be changed into shares at a future date, based on pre-fixed conversion ratio or future valuations of the shares. These too can change the ownership (equity) and control structure of a media company in the future. Hence, any of these instruments have to be considered as a future mechanism to exercise ownership and control. Section 62(3) of the Companies Act deals with these instruments too.

In this case too, like loans, the threshold limit can be set as 10% i.e., if NCDs, PCDS, and derivatives, etc can allow a single entity, who may be non-promoters, to own at least 10% of the equity capital base of the media company. The instruments included as part of future control need to be reviewed regularly, every two to three years, because new and innovative instruments are floated regularly in the corporate world and, hence, those that carry the possibility of a change in ownership and control of a media company in the future have to be pinpointed.

2.1.3 Entities to be included to define ownership and control

In both this CP and 2014 recommendations, TRAI stated that the individuals and entities, which can exercise ownership and control over a media company will be governed by the Companies Act. Thus, the promoters of a media company shall include Associate Company, Subsidiary, Subsidiary of a Subsidiary (Step-Down Subsidiary), and Relatives (up to five generations), as mentioned in the Companies Act. **However, we feel that this definition has to be expanded, and be more broad-based, given the criticality of the media sector.** There are several new ways that promoters exhibit ownership and control, and these realities have to be taken into account (see Parthasarathi and Srinivas 2022).

One of the concepts that can be added in the context of ownership and control is persons or actors acting in concert", as defined by SEBI, the stock market regulator, in its laws and rules on takeovers and acquisitions. SEBI states that persons acting in concert are "persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over a target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly cooperate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company". Although this SEBI definition is for takeovers and acquisitions, it can easily be applied in the context of ownership and control of media companies. **The operative part in this definition is "for a common objective or purpose"**. Hence, if there is a group of individuals and/or entities, who may not be deemed as promoters as per the Companies Act, but who act together with a common purpose and/or objective to own, control, and influence a media company, this group shall be clubbed together, and deemed to be persons or actors acting in concert. **This broadens the definition of promoters, as well as unites differing entities that may act together to exercise direct and indirect control.**

SEBI's definition of persons acting in concert, as we said, is broad, and is more likely to capture the ownership nuances in the media sector. As large corporate conglomerates enter the media sector, they are more likely to use different ways to exercise ownership and control. Including SEBI's definition, along with the one in the Companies Act, to look at issues of ownership and control in a media company can better highlight the nuances in the media sector.

2.1.4 New-Age Investors

Both the 2022 CP of TRAI and its 2014 recommendations deal with traditional media owners, such as politicians and political parties, companies, individuals, trusts, etc. In effect, the focus is on the promoters. However, over the past two decades, as the start-up culture has expanded in the business ecosystem, and as corporate philanthropy has captured the minds and hearts of businesspersons, a new set of non-promoter investors have emerged. These include venture capitalists, private equity players, hedge funds, angel investors, non-profit companies, corporate foundations and trusts, NGOs, and others. More importantly, such entities today own sizeable and substantial interests in media companies. More importantly, many of them have huge cross-media presence because they invest in several, even dozens, of media companies. Although these investors may hold minority stakes, even less than 20% threshold mentioned in TRAI CP, and are non-promoters, they have the ability to exercise control in the media ventures through several mechanisms that are largely invisible, hidden, or little-known. There is now a need to specifically look at the ownership and contractual agreements between these new-age investors, and the media companies and/or their promoters.

2.1.4.1 Clauses with ownership implications

In the case of hedge funds, private equity players, venture capitalists, as also other players mentioned above, there are clauses that can change the existing structures of ownership and control. In fact, under specific circumstances, innocuous clauses can become instruments to change the ownership of media companies. A few years ago, in the Amar Ujjala versus DE Shaw (hedge fund) case, it was disclosed that DE Shaw, which had 18% stake (less than the 20% threshold limit mentioned in the TRAI's CP and its earlier recommendations) in Amar Ujjala media company, had far-reaching contractual rights to sell the entire promoters' (existing owners) stake to a third party. **This was due to the "dragging rights", which are now curtailed.**

As per the "dragging rights" mentioned in the agreement between DE Shaw and Amar Ujjala, the former could sell its stake of 18%, as well as the majority stake owned by the promoters, in the open market. This is how it worked. Hedge funds, like VCs and PEs, invest in a company because the promoters offer the former an exit option, or the option to sell their stakes at higher valuations within a specified period (three years, generally). In the case of unlisted company, the promoters promise investors like VCs, PEs and hedge funds that they will come out with an

IPO to allow the latter to sell their stakes. In DE Shaw case, there was the dragging clause, whereby if the promoters were unable to do so i.e., allow it an exit option to sell its shares, the hedge fund could drag the entire promoters' majority equity stakes, club it with its 18%, and sell the combined stakes to a third party to enable a profitable exit. Although dragging rights are now curtailed, there can be similar clauses in existing contracts between the promoters and start-up investors. **Since these clauses can result in changes in ownership and control, they need to be considered as important mechanism to exercise control.**

2.1.4.2 Cross-media ownership of new-age investors

As mentioned earlier, the new-age investors like hedge funds, PEs, VCs, angel investors, corporate philanthropies, and trusts have a large cross-media presence. Thus, there are VCs and PEs, who specialise in investments in media companies, and own sizeable, though minority, stakes in TV, print, distribution, online properties, as well as telecom. We feel that despite their minority stakes in specific companies, which are below the 20% threshold limit in each case, there is a need to consider these investors, apart from existing and future promoters, when it comes to issues related to ownership and control. This is not only because these non-promoter investors can exercise future control in myriad ways, as explained above, but because their cross-media presence, can be a threat to diversity, pluralism, and independence of the media. **This is especially true in the case of online, web, and Internet media companies, which now converge with both print and TV.** Most of the new start-ups in the online, as well as TV and print, are funded regularly and substantially by these new set of investors. Hence, their equity presence and contracts and agreements with promoters, have to be taken into consideration in the context of ownership and control.

2.1.4.3 Minority stakes, considerable control

Although the VCs, PEs, hedge funds, and philanthropic arrangements own minority stakes in media companies, they exercise considerable control and influence. These can be through contractual clauses, like dragging rights and similar ones, as also because the investments made at the initial stages, and second or third phases, are huge. In fact, it is these investments, which may be below TRAI's stated threshold limit of 20%, which enable the promoters of the media companies to run and manage their operations. Minus these investments, the promoters may be forced to close down operations, or find it unable to start the ventures. Yet again, if these new-age investors own at least 10% in a media company, and also have considerable cross-media presence, the equity stakes of these non-promoter investors, along with the specific clauses in contracts and agreements, and ability to keep the media firms afloat, can result in considerable control over the media companies they invest in.

RECOMMENDATIONS

In its CP, as also past recommendations, TRAI has given a long list to pinpoint how control is exercised in media companies, apart from ownership or equity structure. These include equity stakes, ability to appoint majority directors, veto powers of directors, contractual obligations and agreements, etc. We propose to add the following to the list.

- **Third-party loans, even if loans by a single entity is less than 51% of the book value of the media company, but can be converted into at least 10% equity of the media company in the future. TRAI needs to finetune this as in many cases the**

price of conversion may not be specified, and may emerge as a formula based on future stock valuations

- **Debt instruments that can be converted into at least 10% equity of the media company in the future. TRAI needs to finetune this as in many cases the price of conversion may not be specified, and may emerge as a formula based on future stock valuations**
- **Apart from promoters, as defined by Companies Act (promoter companies, subsidiaries, step-down subsidiaries, associate companies, family members), SEBI's definition of "persons and actors acting in concert" should be added to emphasise the people and entities who own and/or control the media companies**
- **Equity holdings of certain non-promoter, but influential and crucial, investors such as VCs, PEs, angel investors, hedge funds, corporate philanthropies, NGOs, trusts, etc needs to be included to pinpoint control in media companies. The threshold limit for each investment needs to be 10% of the paid-up equity capital of a media company. TRAI needs to finalise a list of such non-promoter investors, and list can be reviewed every three years. As the names and nature of these non-promoter investors change, as most exit from one company and invest elsewhere, such changes need to be updated at regular interval, say, annually**
- **Cross-media ownership of these above-mentioned non-promoter investors has to be included in the list to pinpoint ownership and control in media companies. The threshold limit for equity ownership by these investors is at least 10% each in multiple and cross-media ventures**
- **Clauses in contracts and agreements signed between the promoters of media companies and non-promoter investors mentioned above, which can lead to future changes in ownership and/or control over the media companies, have to be included the TRAI list to assess control**

Section 2.2: "Disclosure Norms"

We believe that a ban on media ownership by specific entities and individuals, such as politicians, political parties, religious bodies, religious leaders, etc may directly or indirectly confront the Indian Constitution's Article 19(1)(g) on right to business and Article 19(1)(a) on the overall freedom of speech and expression. Such bans, even if proposed by a regulatory body like TRAI, and backed by government legislation or rules, may lead to legal contestations by the various stakeholders. Hence, we feel that the correct way to deal with such sensitive issues related to media and cross-media ownership/control is through absolute transparency and expansive disclosure norms. We favour disclosures that are accessible to the masses, and are in public domain, rather than restrictions on certain actors. However, there can be laws and rules to curb concentration – force existing media owners to sell some properties in case of monopolistic, duopolistic and oligopolistic situations in relevant markets – and disallow specific mergers and acquisitions. In the context of disclosures, the following issues are pertinent.

2.2.1 Lifting the Corporate Veil

The idea of corporate veil, which separates the actions of an organization or entity from those of an individual, is a contentious and problematic issue. We understand that it includes the notion of individual rights and privacy. However, if the major objective vis-à-vis ownership and control in the media sector is truly to pinpoint – and as the 2014 recommendations

propose to ban certain individuals and entities from entering the sector – individual actors, who are behind the media companies and can inhibit or curtail media diversity, and enhance media concentration, there is a need to lift the corporate veil. **Thus, it is no longer important which corporate entities own the media companies. It is crucial to know the details of the various individuals behind the corporate entities that own and/or control the media companies. If the individuals remain hidden, the purpose of pinpointing ownership and control in the media companies will be defeated.** It is imperative to pinpoint ownership and control in media companies through individuals, both behind the promoters and non-promoter investors, and not just through the intermediate companies, which own the media firms. **In order to make media ownership more transparent, and to enable the public to understand the individual actors and their interests behind media companies, the piercing of corporate veil is imperative and pertinent.** Thus, ownership and control can be better understood, and become more relevant, if we can unveil and layers of ownership, and reach back to the individuals behind the media companies. If Company A is the promoter of Media Company B, it is critical to examine the persons and individuals behind Company A, and to keep going back until one reaches the names of individuals.
At the same time, an examination of the political, ideological, religious and corporate interests and biases of these individuals needs to be known. This is, of course, relevant, if TRAI feels the compulsion to either pressure certain set of owners such as politicians, political parties, religious groups, religious leaders, state agencies, etc to disclose their links with media companies, or to ban such actors from owning media companies. For example, the ownership of a well-known TV broadcaster becomes more relevant, if we know that one of the individual promoters is related to a renowned politician from a mainstream political party. **Thus, there may be a need to ask these individual promoters and non-promoter investors to reveal if they are office bearers of a political party, whether they have contested in elections (organized and monitored by the Election Commission), whether they are related to politicians, whether they are existing or were past elected or nominated political representatives, whether they have other media and corporate interests, and whether they are or linked to office bearers of registered religious bodies, organizations, trusts, charities, etc.**

Various studies stand out as ~~an~~ exemplification of the kind of granularity of details that can be obtained if one can lift the corporate veil to reach ownership by individuals, rather than mere corporate entities. Several country studies on media ownership, including India, reveal that the real patterns, incongruences, and biases in media and cross-media ownership emerge only when the individuals who own and/or control the media companies, and their political, religious and ideological links and connections are known.

2.2.2 Additional Disclosures

TRAI's 2022 CP and 2014 recommendations list out a large number of disclosures for media companies. However, in the light of the above observations and analysis (Points 2.1, 2.1.1, 2.1.2, 2.1.3, 2.1.4), we feel that future recommendations on disclosures need to include all of them. Third party loans and debt instruments, which can be converted into equity at a future date, need to be disclosed by media companies because they can result in changes in ownership structure and/or control. The same applies to loans for which the promoters have offered their shares as collateral. Similarly, the definition of those who own and control media companies has to be expanded to include SEBI's definition of "persons acting in concert", and this set of individuals and entities has to be disclosed. The names of New-age investors such as Venture Capitalists, Private Equity Players, Hedge Funds, and Philanthropic

Organizations and entities, who have invested in media companies, and the extent of their investments, has to be disclosed. In addition, and contracts and agreements that these investors have signed with the promoters and companies, and which can lead to future changes in ownership and control, need to be disclosed. The cross-media presence of these new-age investors, which is growing and expanding, needs to be disclosed, as is the case with the traditional media owners. In the cases related to conversion of loans and debt instruments into equity, promoters' shares as collateral, investments in specific media companies by non-promoter but influential investors, cross-media presence of these non-promoter investors, critical relevant clauses in contracts and agreements between the promoters and non-promoter investors in media companies, the threshold limit needs to be 10%. If the existing or future ownership can be at least 10%, it needs to be disclosed both in the case of third parties and non-promoter investors.

2.2.3 Periodicity of Disclosures, and towhom

Periodicity in terms of the above-mentioned disclosures is a redundant idea. Like in the case of listed companies, which are bound to make mandatory disclosures to the stock exchanges and SEBI, all media companies can disclose the above details, as also those mentioned in TRAI's 2022 CP and 2014 recommendations in "real time". This implies that, like the disclosures are made to the stock exchanges the same day a decision is taken after the stock markets close, media companies can make the disclosures at the end of the day after the board of directors or shareholders have taken a specific decision that either alters, or can alter at a future date, ownership and control. This will imply that there is no gap between a crucial and critical corporate decision, and the disclosure to the adequate authority or agency. We believe this is the best way to inculcate complete transparency.

These disclosures, which TRAI rightly observed have to be mandatory, have to be made either to MIB, TRAI, or a new Independent Media Regulator. We believe that disclosures to self-regulating bodies, like corporate associations and authorities, will defeat the very purpose of disclosures and transparency. We also believe that such mandatory disclosures, even if made to either a government agency or autonomous body or regulator, have to be in the public domain, and accessible to the masses, i.e. readers and viewers. If the disclosures remain hidden, they don't matter as the public will not know the ownership and control structures of the media companies.

RECOMMENDATIONS

Based on TRAI's 2022 CP and earlier recommendations on ownership and control of media companies, there is a long list of disclosure norms for the media sector. However, based on the above arguments, we propose the following inclusions in disclosures.

- **Disclosures need to be mandatory; whether they are made to a government or autonomous body, or to an existing or new regulator, they should be public domain and easily accessible by the public. All disclosures can be in real-time, and like in the case of listed companies' disclosures to the stock exchanges and SEBI, made at the end of the working day after a media company's board or its shareholders have approved the specific decision**
- **Apart from the disclosures mentioned in the 2022 CP and earlier recommendations, they should include loans and debt instruments given and purchased by third-parties that can be converted into at least 10% equity of a media company**
- **Apart from related companies and family members, who comprise promoters, SEBI definition of "actors and persons acting in concert" to be additionally used**

to disclose the names of entities and individuals that may own/control a media company. Such latter names to be disclosed too

- **Names of non-promoter, but influential investors, whose list TRAI can finalise and which should include angel investors, venture capitalists, private equity players, hedge funds, corporate philanthropies, NGOs, trusts, and foundations, and who own at least 10% in a media company, has to be mandatorily disclosed, along with the extent of the equity holding, and possible additional equity that they can purchase as per contractual clauses**
- **Names of non-promoter investors, whose list TRAI can finalise, who have cross-media presence, or multiple media presence in the same genre (several newspapers or several TV channels and several websites) needs to be disclosed, along with their equity holdings in each company. Here too, the threshold can be 10% in each media company**
- **Contractual clauses or sections in agreements signed between the promoters of media companies, and non-promoter investors, as finalised by TRAI, which can change ownership structure and control mechanism of the media company in the future have to be disclosed**

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