

Consultation Paper No. 13/2008



Telecom Regulatory Authority of India

Consultation Paper on Media Ownership

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PREFACE

The media has significant role in a democracy. The television, radio and print media are the most popular and effective means of dissemination of information and communication in the masses. It is important to provide for competition, diversity and plurality of players, news and views. In leading democracies, like US, UK, Canada, France, Australia and many others have Media Ownership restrictions. Many of these countries have recently reviewed the media ownership rules.

The Ministry of Information and Broadcasting has sought recommendations of the Authority on the approach towards cross media and ownership restrictions for the future growth of these sectors. In India, the Authority has been entrusted with the specific task of regulating cable and broadcasting services since January 2004. 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 Media Ownership rules are designed to strike a balance between ensuring a degree of plurality on the one hand and providing freedom to companies to expand, innovate and invest on the other. The first is vital for democracy since plurality of ownership helps to ensure that citizens have access to a variety of sources of news, information and opinion. The Authority is conscious of the fact that consolidation offers benefits to the companies in terms of economies of scale, improved access to overseas capital, better news management, news gathering, editing and disseminating technology. It can also benefit citizens and consumers by providing a basis for delivering higher quality programmes, greater creativity and more risk-taking. So the objective is to strike a right balance and provide for competition, diversity and plurality of players, news and views.

The recommendations have been sought on whether there is need to rationalize the cross media and ownership restrictions in India or the existing laws are adequate. As of now such restrictions are in place with respect to DTH services and Private FM radio. Another issue is whether restrictions on ownership need to be provided for Broadcasting/ telecom companies having a control/ shareholding in cable / DTH/ IPTV/ Mobile TV companies or vice-versa.

The Consultation Paper gives a snapshot of the Indian media Market giving the present scenario in the various sectors such as Television, Radio and Print media, the extant policies and relevant Recommendations. The International Scenario, giving the comparative policy structure with respect to similar restrictions in other countries like Australia, Canada, European Union, France, United Kingdom and United States has been provided. The media ownership rules and control, the methodologies to measure concentration and plurality are discussed and the specific issues for consultation highlighted.

In keeping with Authority's commitment to transparency and wider consultation with stakeholders, this consultation paper is being brought out. The objective is to obtain the inputs of stakeholders and to generate a discussion on the appropriate policy relating to cross media and ownership restrictions in India. We also seek the comments of all stakeholders on the issues discussed in this Consultation Paper. The paper has been placed on the Authority's website (www.trai.gov.in). Written comments (also in electronic form) on the issues may please be furnished to Pr. Advisor (RE) **by 24th October 2008**. For any further clarification on the matter please contact Sh. N. Parameswaran, Pr. Advisor (RE) at e-mail: param.trai@gmail.com, Tel.: 011-23233291, Fax: 011-23235161.

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CHAPTER 1

INTRODUCTION

1.1 The Ministry of Information and Broadcasting has sought recommendations of the Telecom Regulatory Authority of India (hereinafter called the Authority) on the approach towards cross media and ownership restrictions for the future growth of the broadcasting sector. Copy of the Ministry of Information & Broadcasting letter is at Annex I. The specific issues on which recommendations have been sought are:

- 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?
- 1.2 The reference under consideration cuts across the broadcasting sector and the issues of cross media restrictions are to be addressed in an inclusive manner covering broadcasting services, print media and other miscellaneous ownership within the fold of telecom, information and broadcasting. In a subsequent communication, it has been clarified by the Ministry of Information & Broadcasting, that looking at the increasing trend

of Print Media entering into Broadcasting sector, to examine the issue in its entirety, the Authority in the present context should also include print media while examining the need for any cross media restrictions vis-à-vis broadcast media.

- 1.3 Media ownership is a subject of intense debate and government review in both developed and developing countries around the world. Unfortunately, there is scanty research, with no agreed parameters or techniques for the measurement of media concentration and diversity. It seems media ownership/concentration/ diversity supplies endless grist for the mill but little agreement about how to define, measure and regulate it. This notion is best summed up by Ben Bagdikian, author of “The Media Monopoly” and Pulitzer Prize winning journalist and professor:

“Modern democracies need a choice of politics and ideas, and that choice requires access to truly diverse and competing sources of news, literature, entertainment and popular culture.”

- 1.4 The debate centers on whether there is less diversity and choice while media conglomerates continue to grow in both national and international markets within respective media segments and across media segments. Both electronic media and print media are vulnerable to problems of concentration of media power. This is all happening within the existing rules and regulations of national and international market places.
- 1.5 Many analysts and observers equate media pluralism with a diversity of ownership and that concentration of ownership will skew information and public discussion by not exploring all viewpoints and interests. In their view, this can lead to abuse of media power in political and policy decision making.
- 1.6 While ownership is an important criterion in measuring diversity, other important factors include market share, rural/urban accessibility, number of services available and licensing requirements. In many of the countries

under review, the public service broadcaster has the mandate to ensure that minority voices are present in public discussion and cultural plurality is adequately reflected. However, the role of the public service broadcaster has diminished in many countries as the commercial sector has grown and many governments look forward to the commercial sector to deliver the diversity that government policies call for. Given the reality of the marketplace, commentators ask whether diversity as described above may be adequately ensured by a combination of market factors and regulation.

- 1.7 Media has essentially been subjected to policies and regulation within the individual segments of electronic media and print media with some cross segment rules within the respective media over the last few years. However, technological developments are creating new segments, new markets and new opportunities, which blur the traditional boundaries of different segments of the media market. The restructuring presents new opportunities for diversity while at the same time posing challenges for new entrants and traditional media alike.
- 1.8 It is interesting to note that the growth of Internet based companies is now rivaling traditional media for status as media conglomerates. The market capitalization of companies like Google and Yahoo are in many cases greater than some of their “traditional” media rivals. New entrants often combine all the elements of traditional media including the distribution and display of these services on “new media” devices such as computers, ipod, mobile phones, and similar devices flooding the market, giving rise to new platforms and content formats.
- 1.9 The potential for diversity and pluralism is obvious in this electronic age, but the issues as to who creates and owns the content and the pipes that deliver it are still the same ones found in the traditional media world and can be subject to the same debate and argument about diversity of

sources and concentration of ownership. The technology may be neutral but the content and its accessibility remain the crucial issues.

- 1.11 Media concentration gives rise to a demand for national policies and regulations to ensure a diversity of voices nationally, regionally and locally. It is probably fair to say that most jurisdictions around the world are increasingly giving more attention to this issue whenever concentration of ownership increases. Newspaper circulation and readership are generally falling in most countries while TV channels, radio, the internet and other distribution modes of electronic media continue to expand.
- 1.12 The diversity gains which have been made on account of growth of electronic media are in danger of slipping, leading the commentators to argue that this tendency towards concentration is a direct threat to democracy and informed public debate. Others argue that media concentration has little or no effect on diversity. The truth probably lies somewhere between the two extremes which is why the issue is so contentious and eludes consensus on policy and regulatory frameworks.
- 1.13 Government of India has provided for restrictions in ownership of companies seeking licenses/permissions/registrations under various Policy Guidelines issued from time to time for electronic media. As of now such restrictions are in place with respect to DTH services and Private FM radio. TRAI has also been recommending similar restrictions in its various recommendations including 'Private Terrestrial TV Broadcast Service' dated 29/8/2005, 'Headend-In-The-Sky (HITS)' dated 17/10/2007, and 'Issues Relating to Mobile Television Service' dated 23/1/08. However, neither the existing nor the proposed restrictions as of now have a holistic approach as these have come at different times and stages of growth. There is therefore a need to lay down a clear cut approach towards cross-media and ownership restrictions for the future growth of the Broadcasting Sector

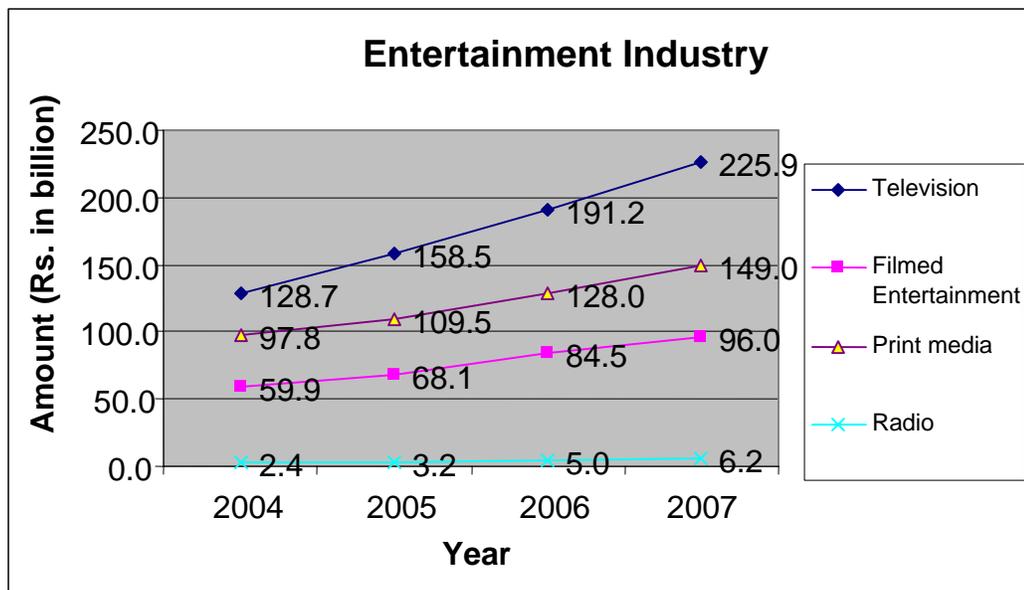
- 1.14 Given this background, it is possible to envisage three types of restrictions on accumulation of interest in the media. These are restrictions on: a) Cross media ownership across electronic and print media, b) Consolidation including 'vertical integration' within a media segment such as television or radio. c) Restrictions based on market share in a given geography within each media segment.
- 1.15 It has been seen that most of the developed countries that follow democratic traditions have one or more or a combination of all the three types of restrictions mentioned above.
- 1.16 This consultation paper is being brought out to raise various issues relating to the media ownership rules and controls and to elicit views of all stakeholders before finalizing the recommendations. Chapter 2 gives a snapshot of the Indian Media market. The extant policies and recommendations of TRAI relating to ownership issues are covered in Chapter 3. Chapter 4 gives the International Scenario on media ownership/control. The issues on Media ownership rules and control in the Indian context are discussed in chapter 5. The Issues for consultation are compiled in Chapter 6.

CHAPTER 2

SNAPSHOT OF INDIAN MEDIA MARKET

2.1 Entertainment and Media

2.1.1 The Indian Entertainment and Media (E&M) industry is undergoing remarkable change and is today one of the fastest growing sectors in the country. The entertainment industry is a blend of creativity and commerce and provides vast investment opportunities. The E&M industry worth was estimated to be Rs 513 billion in 2007, up from Rs 438 billion in 2006. In the last four years 2004-2007, the industry recorded a cumulative growth of 19% on an overall basis. According to a report by FICCI and Pricewaterhouse Coopers, the Indian entertainment and media industry is poised to become one trillion rupees (Rs 100,000 crore) industry by 2011¹.



¹ ITP Division, Ministry of External Affairs, GOI available at link: <http://www.indiabusiness.nic.in/industry-infrastructure/service-sectors/media-entertainment.htm>

2.1.2 The last few years have been good for the industry and it was characterized by realignment and growth in most segments of the industry. Further, the industry is expected to grow faster than India's GDP and consequently more investment is expected in media and entertainment.

2.1.3 The key drivers for the growth of the media industry are:-

- Economic growth of the country in general and rising disposable income levels in particular.
- Liberalization of Indian Economy.
- Greater interface with international companies.
- Privatization and growth of the radio industry.
- Advancement in Technology.
- Favorable regulatory measures.

2.1.4 The Indian media is dynamic and protective of its freedom and plays a crucial role in the country's democratic system.

2.2 Industry Status ²

2.2.1 The following facts and figures briefly indicate the position as of 2008: -

DD DTH - 50 TV Channels and 21 radio channels;
Private - 370 TV Channels and 239 radio channels (operational)

Coverage

- Total Radio coverage - 99.13% by population
- AIR FM channels - 159
- MW radio coverage - 98.3%
- AIR FM coverage - 31%
- Private FM coverage - 9% (42 stations)

Total population of India - 1027 million (2001 Census)
- 210 million house - holds (approx)

² Working Group Report of 11th Five Year Plan (2007-12) on Information and Broadcasting Sector, government of India, Ministry of Information & Broadcasting dated January 2007 and Media Partners Asia Report 2008

Television (as of March 2008)

- Number of TV Homes - Nearly 127 million
- Number of Cable and Satellite TV subscribers - 78 million
- Number of subscribers in CAS area with STBs- 0.6 million

2.2.2 The Industry status is indicated in the following table

Industry status at present ²

Sr. No.	Distribution Media	Present Status	Domain
1. (a)	Radio – Terrestrial MW,SW	Analogue	Public Sector
(b)	Radio –Terrestrial FM	Analogue AIR 159 stations Private 264 *stations	Public & Private sectors
(c)	Radio – Satellite (DTH/Satellite Radio)	Digital –only one provider-WorldSpace	Private sector
2.(a)	TV –Terrestrial	Analogue	Public sector
(b)	TV – Cable	Mostly Analogue (Approx. 6000 MSOs; approx 60,000 LCOs) * * CAS in limited areas	Private sector
(c)	TV -- Satellite	DTH –Digital (5 Operators)	Public & Private sectors
(d)	TV – Others(IPTV)/Mobile TV)	IPTV started in 2 metros since November 2006.	implemented primarily by PSUs, likely to be started by private sector.

2.3 Television Industry

- 2.3.1 Starting with 41 sets in 1962 and one channel (Audience Research unit) at present satellite and terrestrial TV in India covers nearly 127 million homes offering about 370 channels to a viewing population of an estimated 500 million individuals. A large and yet a relatively untapped market, easy accessibility of relevant technology and a variety of programmes are the main reasons for rapid expansion of Television in India.
- 2.3.2 The television industry continues to dominate the E&M industry with a market share of over 43 per cent. It is projected to grow at an annual compound rate of 22 per cent per annum to reach a level of Rs.51,900 crore by 2011. The industry recorded a growth of 18% over the previous year and is estimated at Rs. 226 billion in 2007, up from Rs. 191 billion in 2006.
- 2.3.3 Television Entertainment in India is one of the cheapest in the world, with nearly 40 million homes watching free to air terrestrial television, while about 71 million cable and satellite homes have access to pay TV by paying only an average of four dollars a month.
- 2.3.4 India remains a leading market for broadcasting and pay-TV, one that is especially attractive because of its superior growth prospects. Annexure II gives the list of major broadcasters and pay channels.
- 2.3.5 Media consumption is growing rapidly, boosted by rising incomes and literacy. There is significant scope for market expansion as only 57% of households have a TV set. India will remain a leading pay TV market in Asia with superior growth prospects, indicating huge upside for the future. According to Media Partner Asia (MPA) the Pay TV market would grow from 82 million homes at the end of 2007 to 137 million by 2012 and approximately to 164 million by 2017. This means that pay TV penetration

could climb from 64% in 2007 to 82 % in 2012 and 85% by 2017. By 2017 cable is expected to have 67% of TV homes, DTH 17%, and IPTV 1%. MPA projections indicate that the total market for digital pay TV will grow from 4 million subscribers in 2007 to reach 38.2 million by 2012 and 57 million by 2017. This means that 30% of television homes in India will have digital TV by 2017, with 55% still on analog. The revenue forecasts indicate that the Pay TV industry will grow at a CAGR of 16% to generate US\$ 11.3 billion in revenues by 2012.

2.4 Cable television

2.4.1 In 1992, the government liberalized its policies, opening up the markets to cable television operators. The cable industry remains under-capitalized but a few Multiple System Operators (MSO) have emerged with credible last mile networks and reasonable levels of finance to consolidate and upgrade cable networks. Regional channels flourished along with a multitude of Hindi channels and a few English channels.. By 2001-2003, other international channels came into foray. In 2003 news channels started to boom followed by entry of Music channels and Movie based channels. As of March 2008, it is estimated that there are more than 6000 MSOs and around 60,000 Cable Operators catering to an estimated 71 million TV subscribers.

2.5 CAS - Conditional Access System³

2.5.1 CAS or conditional access system, is a digital mode of transmitting TV channels through a set-top box (STB). The transmission signals are encrypted and viewers need to buy a set-top box to receive and decrypt the signal. The STB is required to watch only pay channels.

³ ITP Division, Ministry of external Affairs, GOI, at <http://www.indianbusiness.nic.in/industry-infrastructure/service-sectors/media-entertainment.htm>

- 2.5.2 The idea of CAS was mooted in 2001, due to a furor over hikes in charges by broadcasters for their channels and subsequently by cable operators. The main issues that lead to the implementation of CAS are poor reception of certain channels, increase in prices of channels by broadcasters, bundling of channels, poor service delivery by Cable Television Operators (CTOs), monopolies in each area, lack of control/regulatory framework/ redressal.
- 2.5.3 It was decided by the government that CAS would be first introduced in the four metros. All the involved players and the viewers would benefit greatly if CAS is rolled out across the country. However, the price of STB's has been one of the reasons for delay in implementation of CAS all over India in a mandatory manner.
- 2.5.4 The move towards CAS/ DTH is considered to be the major driver for this growth with subscription revenues set to take the segment to the projected heights. As of March 2008, the number of MSOs operating in CAS areas City wise is 14. The number of subscribers in CAS areas with STBs is estimated to be 0.6 million which is increasing steadily.

2.6 Direct To Home

- 2.6.1 Direct To Home (DTH) eliminates the need for the local cable operator (LCOs) and puts the broadcaster directly in touch with the consumer and content providers. DTH can also reach the remotest of areas since it eliminates the intermediate step of a cable operator and the wires (cables). This direct relationship leads to stronger brand recognition, greater economy of scale and a more viable business proposition.
- 2.6.2 As of Dec. 2007, incumbent DTH providers Dish TV and Tata Sky had acquired 3.2 million subscribers in aggregate on a net basis. The number is relatively less given DTH's current focus on competing directly with cable in the mass market. A major jump is expected in numbers with the

new DTH services from Sun Direct and Reliance and the soon-to-be launched Bharti. Industry estimates suggest that India will have around 23 million DTH users by 2011.

2.6.3 As of March 2008, there are 7 DTH licensees operating in India. DTH services are currently being offered by Doordarshan (DD Direct), TataSky, Dish TV, Sun Direct and Reliance Communications (Big TV).

2.7 Internet Protocol TV (IPTV)

2.7.1 IPTV involves delivery of television and video signals over a broadband network. IPTV would be able to provide Internet (with VPN), IPTV and voice telephone all over one single line of telephone coming to the homes of the subscribers. It uses high speed internet to deliver television channels but also other value added services like time-shift TV, interactive advertising, movies without any advertisements, games among other such services.

2.7.2 IPTV is an example of Digital Convergence. In India, current downlinking norms allow broadcasters to only share their channels with cable and direct-to-home platforms. With the recent modification of downlinking guidelines (August 2008), IPTV service providers would be able to obtain content of registered satellite TV channels from the Broadcasters.

2.7.3 At present, MTNL and BSNL are the leading IPTV service providers over their ADSL and limited fiber networks, and RCOM and Bharti plan to join the foray.

2.7.4 Globally, IPTV is considered a niche segment as broadband access is not uniform. In India, there were about only 10,000 users of this service by December 2007. Industry estimates suggest that India will have around a million IPTV users by 2011.

2.8 Film Industry

2.8.1 The Indian film industry has experienced growth and advancements on all fronts including technology used, themes of the movies, finance, exhibition and marketing. The movie making business has got strong impetus from the growth of multiplex theatres. The Indian film industry is getting corporatized and has started looking overseas for co -production. India has the world's biggest movie industry and produces around 1000 movies each year. The Indian film industry is projected to reach around Rs.175 billion by 2011. The major reason for this high growth rate is that the industry is increasingly getting corporatised, highlighted by public issues of several film production, distribution and exhibition companies, long term contracts between film production companies and directors/ actors.

2.8.2 Film entertainment recorded a steady growth of 14% over the previous year and is at Rs. 96 billion in 2007, up from Rs. 85 billion in 2006.

2.9 Radio Industry

2.9.1 Radio has been the most cost effective source of entertainment in India. The radio industry was earlier dominated by the state broadcaster- All India Radio. However, the radio sector has been gradually liberalized and has been opened for private and foreign investment. As on March 2008, apart from the FM Radio stations of All India Radio, 205 private FM stations have become operational in the country since Phase-2 of the bidding for FM radio channel licences. FM Radio channels with the highest number of operational stations are Radio Mirchi with 32 stations, Radio City with 16 stations, Big FM with 44 stations and My FM with 17 stations⁴. The entry of FM channels into smaller markets will increase the reach of the medium

⁴ <http://www.livemint.com/2008/06/16002232/GroupM-Report--No-full-stops.htm>

2.9.2 The government is going to award more Radio licenses to private players through a bidding process. The liberalized government policy initiatives such as increasing the FDI limit to 20 per cent and migration to a revenue sharing regime has given a boost to the radio segment.

2.9.3 Radio industry too recorded an impressive performance in the last years, having recorded a growth of 24% and is at Rs. 6.2 billion in 2007, up from Rs. 5 billion in 2006.

2.10 Print Media

2.10.1 In a democratic set up, it is important that all the citizens have the right to information. The news regarding the happenings within and outside the country has to be disseminated to the people. In the past, the print media shouldered the responsibility of disseminating the news. But, today with the growth of information technology, audio and visual media are in the field with instant and wide coverage. The print media has responded to the new changes and challenges with its modernization. They have accepted the information technology, which resulted in better coverage with greater speed and affordable price. The statistics also shows that the people prefer their regional language newspapers and that is why the regional newspapers are venturing out to bring editions from other cities where there is sizeable population of the respective language.

2.10.2 The most significant development for the Indian print media has been the relaxation of foreign ownership norms. Publication of Indian editions of foreign scientific, technical and speciality magazines/periodicals/journals has been allowed and foreign investment upto 100% (earlier it was upto 74%) has been permitted in Indian entities publishing scientific/technical and speciality magazines/periodicals/journals. These promotional initiatives by the Government would enhance the growth of the print media.

2.10.3 Print media recorded a growth of 16% over the previous year and is at Rs. 149 billion in 2007, up from Rs. 128 billion in 2006.

2.10.4 Lately a trend of moving to other languages from English has been observed. Year 2007 witnessed the transition in areas such as business papers which have always been considered the domain of the English press. *The Economic Times* broke the trend by launching a Gujarati edition in Ahmedabad and a Hindi edition in Delhi. *Business Standard* launched its Hindi editions for Delhi and Mumbai.

2.10.5 The reader in India today has a multiple choice in print media and publishing houses are more than willing to cater to his/her preferences.

2.11 FDI in Entertainment and Media industry

2.11.1 The present status of foreign investment limits for different segments of Broadcasting sector along with the recommendations of the Authority are tabulated below:-

Sl.	Segment	Existing limit	Recommendations
1.	Teleport (Hub)	49% (FDI+FII)	74% (FDI+FII)
2.	DTH	49% (FDI+FII) FDI component not to exceed 20%.	74% (FDI+FII)
3.	Satellite Radio	No Policy as on date	74% (FDI+FII)
4.	HITS	No Policy as on date	74% (FDI+FII)
5.	Cable Network	49% (FDI+FII)	74% (FDI+FII)
6.	FM Radio	20% (FDI+FII)	49% (FDI+FII)
7.	Downlinking of TV Channels	100%	Status Quo
8.	Uplinking of TV News Channels	26% (FDI+FII)	49% (FDI+FII)
9.	Uplinking of Non News TV Channels	100%	Status Quo
10.	Mobile Television	No Policy as on date	74% (FDI+FII)

2.12 Media Industry-Looking Ahead

2.12.1 Digitalization is setting in the Indian television distribution network. Last two years witnessed an increasing penetration of DTH though the adoption of CAS was slower than expected. Clarity was brought in IPTV regulations and this will pave way for both cable operators and telcos to follow into IPTV without the need of any additional licenses. Public broadcaster Doordarshan launched its mobile TV pilot project with handset major Nokia in 2007. There have also been numerous initiatives by TV broadcasters in bringing various types of repurposed TV contents on the mobile handsets – these include Star TV's launch of PLUS application. Essel group DNCL collaboration with BSNL to launch a mobile application⁵.

2.12.2 According to a report by Crisil, Media and Entertainment industry is poised to double its revenues by 2010 with an annual growth rate of 15.6 percent. The study forecasts that the revenues will reach up to the level of Rs. 74,400 crore by 2010. The sector is riding high on the back of several factors such as presence of multiple players, greater choices to consumers and growing investor interest. According to another report by FICCI and PricewaterhouseCoopers, the media and entertainment sector is expected to cross turnover of Rs.100,000 crore by 2011 from the Rs.51300 crore in 2007, thereby registering around 18 per cent compounded annual growth.

2.12.3 Technology has changed the face of entertainment today. The ongoing change in technology, products and distribution channels has created significant opportunities in the industry for growth and development. The revolution in the information technology has resulted in the emergence of cable wires, networks and most importantly the "Internet" which has revolutionized the Media and Entertainment industry.

⁵ Cable quest Broadband – May 2008

CHAPTER 3

EXTANT POLICIES AND RECOMMENDATIONS

Overview

- 3.1 To examine the issue of restrictions on accumulation of interest in the media, it is necessary to undertake a comprehensive analysis of existing ownership and cross media restrictions. Presently there is no general policy on ownership and cross media restrictions in the country as far as restrictions between print and electronic media are concerned. However, the restrictions for different segments within the broadcasting sector have been put in place by the policy framework for each individual segment, such as DTH Guidelines or FM Radio Policy (Phase-II).
- 3.2 The issues relating to ownership restrictions and cross holding restrictions within the broadcasting sector have also been dealt with in different recommendations of the Authority. However, these recommendations have been made at different points of time and in respect of different segments of broadcasting sector. This chapter summarizes the recommendations made so far by the Authority and the existing Policy on the subject.

Existing Policies

- 3.3 The accumulation of interest in the media can be regulated through different types of restrictions on ownership. There can be restrictions on:
 - (a) Cross media ownership across different segments of media such as print/ television/ radio.
 - (b) Cross holding restrictions to prevent consolidation including 'vertical integration' within a media segment such as television or radio.
 - (c) Restrictions based on Market share in a given geography within each media segment.

- 3.4 Cross media restrictions of type mentioned at (a) in para above have not been imposed in any of the segments of broadcasting industry in the country so far. However, the Grant Of Permission Agreement (GOPA) for Operating FM Radio Broadcasting Service (Phase II) contains a clause, which requires the permission holders to conform to government policy on cross-media ownership, within a period of six months from the date it is announced. The extracts of the relevant clause of GOPA is given in **Text Box 1**.

Text Box 1: Extracts from the Grant Of Permission Agreement for Operating FM Radio Broadcasting Service (Phase II)

8. Cross Media Ownership

8.1 If during the currency of the Permission period, government policy on cross-media ownership is announced, the Permission holder shall be obliged to conform to such guidelines as may be prescribed in the said policy, within a period of six months from the date of such notification, failing which it shall be treated as non-compliant of Grant of Permission Agreement, and liable for punitive action. Provided however, that in case the Permission Holder is not in a position to comply with cross media restrictions for bonafide reasons to the satisfaction of the Grantor, the Permission Holder would be given an option of furnishing one month's exit notice and the entry fee for the remaining period, to be calculated on pro rata basis, shall be refunded to the Permission Holder.

- 3.5 Restrictions on consolidation including 'vertical integration' within a media segment have been placed only in the Guidelines for obtaining license for providing Direct-To-Home (DTH) Broadcasting Service in India, vis-à-vis broadcasters and cable operators. The restrictions in the DTH Guidelines place a ceiling of 20% on the holding of total paid up equity in the DTH

Licensee by Broadcasting Companies and/or Cable Network Companies and vice versa. However, there are no ownership restrictions between Broadcasting Companies and Cable Network Companies. The extracts of the relevant clause of the License Agreement annexed to the DTH Guidelines are given in **Text Box 2**.

Text Box 2: Extracts from the License Agreement for providing Direct-To-Home (DTH) broadcasting service in India

1.4 The Licensee shall not allow Broadcasting Companies and/or Cable Network Companies to collectively hold or own more than 20% of the total paid up equity in its company at any time during the License period. The Licensee shall submit the equity distribution of the Company in the prescribed proforma (Table I and II of Form-A) once within one month of start of every financial year. The Government will also be able to call for details of equity holding of Licensee company at such times as considered necessary.

1.5 The Licensee company not to hold or own more than 20% equity share in a broadcasting and/or Cable Network Company. The Licensee shall submit the details of investment made by the Licensee company every year once within one month of start of that financial year. The Government will also be able to call for details of investment made by the Licensee company in the equity of other companies at such times as considered necessary.

3.6 Restrictions on market share in the city/ state /country within a media segment have been placed only in the case of private FM radio. The FM radio policy permitted the applicants to bid for only one channel per city. Further, a restriction on total number of channels that could be held by an applicant and its related entities was also put at 15% of the total number of

channels allocated in the country. For the purposes of calculating the total number of licenses held by an applicant and its related entities, the licenses issued in Phase – I of private FM radio licensing were also included. The extracts of the relevant clause of the Tender Document for FM Radio Broadcasting Phase II through Private Agencies are given in **Text Box 3**.

**Text Box 3: Extracts from the Tender Document For FM Radio Broadcasting
Phase II Through Private Agencies**

1.2.2 Every applicant and its related entities as defined in clause 2.4.1, shall be allowed to bid for only one Channel per city provided that the total number of Channels allocated to an applicant and its related entities shall not exceed the overall limit of 15% of the total Channels allocated in India. In the event an applicant and its related entities are allotted such number of Channels as exceed the aforesaid overall limit, the applicant shall at its own discretion select and surrender such number of Channels as would enable it to comply with the overall limit and shall be entitled to a refund of the financial bid(s) amount paid to the Ministry of I&B, Government of India.

Earlier Recommendations

3.7 The Authority has touched upon the issues relating to ownership and cross media restrictions in its recommendations on different segments of broadcasting sector at different points of time. These recommendations are briefly summarized in reverse chronological order in the succeeding paragraphs.

Private FM Radio (Phase-III)

3.8 The Authority has sent its recommendations on Phase-III of Private FM Radio licensing on February 22, 2008. In these recommendations the Authority has recommended:

- At least three channels excluding AIR in any district will be given to three different entities. Once this condition is met, then the existing operator/ permission holder can bid for the remaining channels and may be declared successful for any channel where his bid is highest subject to the condition that maximum number of channels to a permission holder in the district will not be more than 50% of total channels in the district.
- The existing ceiling limit of 15% of total FM Radio channels in the country permitted to a permission holder is no longer valid as the fear of monopoly is no longer real. This limit is also not practical, as the total number of channels will vary depending on availability. Hence such limit may be withdrawn.

Mobile Television

3.9 In its recommendations dated January 23, 2008 on issues relating to Mobile Television Services, the Authority made recommendations on consolidation and vertical integration which are similar to those prevalent for DTH services. The Authority held that the purpose of imposing cross holding restrictions is to ensure that content providers and different distribution platforms do not become vertically or horizontally integrated as such a situation would be against the interests of subscribers. Mobile television will also be a distribution platform for television channels. Accordingly, it would be appropriate for cross holding restrictions to be placed on the mobile television licensees vis-à-vis broadcasters to prevent monopolization of content and to foster healthy competition.

3.10 The Authority referred to the existing cross holding restrictions for DTH and recommended that *any mobile television licensee should not allow any broadcasting company or group of broadcasting companies to collectively hold or own more than 20% of the total paid up equity in its company at any time during the License period. Simultaneously, the mobile television licensee should not hold or own more than 20% equity share in a broadcasting company. Further, any entity or person (other than a financial institution) holding more than 20% equity in a mobile television license should not hold more than 20% equity in any other broadcasting company or broadcasting companies and vice-versa. However, there would not be any restriction on equity holdings between a mobile television licensee and a DTH licensee or a HITS licensee or a MSO/cable operator company.*

IPTV

3.11 IPTV is a newer method of delivering and viewing television programs using an IP network and high speed broadband technology. It is fast becoming a popular service in many countries. The fast development in telecom technologies, enormous capabilities of IP platform and increasing digitalization in broadcasting sector is driving the services like Internet Protocol TV (IPTV).

Licensing Issues:

3.12 Under the existing licensing conditions Unified Access Services license (UASL) and Cellular Mobile Telephony Service (CMTS) License are permitted to provide triple play service and IPTV is permitted under this provision. Recently the government has permitted ISPs having net worth of more than 100 crores to provide IPTV services after obtaining permission from the licensor.

- 3.13 Telecom service providers providing IPTV service will be subjected to percentage of Adjusted Gross Revenue (AGR) as license fee as applicable from time to time which is presently 6%, 8%, and 10% for access service licensees in category “C”, Category “B” and category “A” circles and 6% for ISPs.

Content Regulation:

- 3.14 Telecom licensees while providing TV channels through IPTV shall transmit only such channels in exactly same form (unaltered) for which broadcasters have received up-linking/down-linking permission from Government of India (Ministry of Information and Broadcasting).

Down linking Policy:

- 3.15 The up linking / down linking guidelines should be amended to enable the broadcasters to provide signals to all distributors of TV channels such as cable operators, multi-system operators, DTH operators, HITS operators, IPTV service providers.

Headend-In-The-Sky (HITS)

- 3.16 The Authority had sent its recommendations to the Government on Headend In The Sky (HITS) on October 17, 2007. While analyzing the issue of cross holding restrictions, the Authority expressed its view that *“...cross holding restrictions is a must to avoid vertical integration and to prevent discriminatory practices among the players in the distribution chain. Such cross holding restrictions are required to promote true competition. In order to ensure that vertical integration does not take place between broadcasters and the HITS operators, it is necessary to build cross holding restrictions between these two categories of service providers. Similarly, in order to maintain a clear dividing line between DTH*

operators and HITS operators so as to maximize competition between these two competing distribution platforms, stipulations regarding cross holding restrictions should be built in here as well.”

- 3.17 The Authority recommended that a HITS operator shall not allow Broadcasting Company(ies) and/or DTH licensee company(ies) to collectively hold or own more than 20% of the total paid up equity in its company at any time during the License period. Simultaneously, the HITS Licensee should not hold or own more than 20% equity share in a broadcasting company and/or DTH licensee company. Further, any entity or person holding more than 20% equity in a HITS license shall not hold more than 20% equity in any other Broadcasting Company(ies) and/or DTH licensee and vice-versa. This restriction, however, will not apply to financial institutional investors. However, there would not be any restriction on equity holdings between a HITS licensee and a MSO/cable operator company.

Digitalization of Cable Television

- 3.18 The issue of cross holding restrictions was also covered in the recommendations of the Authority on Digitalization of Cable Television, which were sent to the Government on September 14, 2005. In these recommendations, the Authority came to the conclusion which is reproduced below:

“Keeping the existing situation where several broadcasters have interest in cable networks, a decision on this issue of restrictions on the equity/ loans of broadcasters in cable networks needs to be taken after getting a clear picture of the interest of new licensees and after taking a general decision that will apply to all forms of delivery.”

- 3.19 The Authority recommended amendments in The Cable Television Networks (Regulation) Act 1995 to, inter alia, specify terms and conditions

containing restrictions on cross media holdings, accumulation of interest, License fee, and other conditions, like the roll out obligations.

Private FM Radio (Phase-II)

- 3.20 The Authority had sent its recommendations to the Government on Phase-II of Private FM Radio broadcasting on August 11, 2004. The Government referred back the recommendations to the Authority along with its reservations on some of the issues. The Authority responded to these observations on November 19, 2004. The reference from the Government also referred to the recommendations of the Authority on Ownership issues.
- 3.21 In these recommendations, the Authority had discussed the issue of multiple licenses and monopoly control and observed that the objective of securing variety in programmes could be achieved both by dispersing ownership and by allowing multiple licenses. It was accordingly recommended that *“The existing ban on multiple licenses in one centre should be given up –the maximum number of licenses that one entity can hold should not be more than 3 or one third of the licenses in one city whichever is less. Such multiple licenses should be given only in cities with at least 6 licenses. There should be no restriction on the number of licenses that can do news and current affairs. There should also be a restriction on the number of licenses that can be owned nationally – at 25%.”*
- 3.22 As regards accumulation of interest, the Authority observed that for prevention of concentration of ownership, there is a need to put a cap at 25% on the extent to which one entity can hold licenses nationally. However, at the same time the Authority clarified that this was perhaps not the best way of achieving the objective. The preferred way of doing this would be to have a conscious policy on cross media ownership. This 25% cap could thus be later merged as part of the exercise on cross media ownership. The Authority further recommended that *“A conscious view*

needs to be taken in India also on the need for such restrictions. At present there are a number of licensees who have interests in other media segments. Keeping these factors in mind it is recommended that as in the case of FDI there should be a consistent across the board policy laid down by government for all media segments. A suitable time frame should be laid down for licensees to dilute control, wherever necessary, and comply with whatever policy guidelines are laid down. Specific provision for this should be made in the license conditions. For the present there should be no restrictions and formulation of this policy should not delay Phase-II.”

- 3.23 The Authority’s response to the observations of the Government on the recommendations on Phase-II of Private FM Radio broadcasting reiterated its earlier recommendations regarding ownership issues. The response referred to the observations of the Supreme Court in the case titled Union of India through Secretary (I&B)-vs.-Cricket Association of Bengal and pointed out

“...The judgment seeks to prevent monopoly of broadcasting media by Government or by an individual, body or organization. Towards this objective, restrictions on multiple licenses and monopoly control were recommended...

...With these restrictions it would not be possible for any monopoly to exist – it could only lead to some concentration of market share, which is not the same as monopoly. Further, unless multiple licences are provided, it is unlikely that there would be a wide variety in the content made available. This has already been recognized in the recommendations and needs to be re-emphasised. Therefore, for these reasons, the earlier recommendations (as given in paragraph 4.4 of the recommendations) are reiterated”

Earlier Regulations

3.24 The Authority discussed the issue of promotion of competition in the distribution of TV channels in its recommendations dated October 1, 2004. It was stated that while vertical integration may improve efficiency but at the same time this vertical integration in certain circumstances could also lead to reduced competition. The possible forms of anti-competitive behaviour were identified as the following :

(i) Vertical Price Squeeze may happen when a vertically integrated broadcaster increases the price of a TV channel for competing operators but maintains the same price for operator affiliates. The effect would be to reduce or squeeze the margins.

(ii) Exclusivity of the Content could be another form whereby popular TV channels can be denied to a competitor so as to promote the broadcaster's own distribution network.

(iii) Denial of carriage by a vertically integrated cable system of TV channel of the rival company.

3.25 After analyzing the various advantages and disadvantages of different ways of promoting competition, the Authority came to the following conclusions:

(a) Every broadcaster shall provide on request signals of its TV channels on a non-discriminatory *basis to all distributors of TV channels including cable networks, Direct To Home, Head Ends in the Sky.*

(b) *No exclusive contracts would be permitted between broadcasters and distributors of TV channels.*

(c) *Broadcaster will not be held to be in violation of the 'must provide' condition if it is ensured that the signals are provided through a particular designated agent/distributor or any other intermediary and not directly.*

(d) Volume based discounting schemes would be allowed if there is a standard scheme applicable to all similarly based distributors of TV channels.

(e) The 'must provide' shall not apply for those distributors which have defaulted on payment.

(f) The Broadcasters and the Multi System Operators/ Independent Cable Operators shall not insist on minimum subscriber guarantees from MSOs/Cable of CAS areas where transparent subscriber management systems are installed. This regulation will be issued on acceptance of the recommendations by the Government."

3.26 These decisions of the Authority were implemented by issue of "The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004" on December 10, 2004. This regulation has been the mainstay of regulation of interconnection issues for different segments of the broadcasting sector. The most important feature of this regulation is the principle of non discriminatory access to content to all the distributors of television channels. This principle has been an effective tool in preventing ill effects of vertical integration in broadcasting sector and in spite of a number of large vertically integrated broadcaster-distributors in satellite television broadcasting segment, the regulation has been instrumental in promoting competition.

3.27 The shareholdings of major FM Radio service providers, MSO/DTH operators and broadcasters are available at Annex III

**3.28 Provisions in the draft Broadcasting Services Regulation Bill 2007 (since lapsed)
Restrictions on accumulation of interest (Clause 12):**

- 1) The Central Government shall have the authority to prescribe such eligibility conditions and restrictions with regard to accumulation of interest at national, state or local level in the broadcast segments of the media by the print or other media as may be considered necessary from time to time, to prevent monopolies across different segments of the media as well as within the broadcast segments, to ensure plurality and diversity of news and views.
- 2) No content broadcasting service provider together with its interconnected undertakings shall have more than the prescribed share of paid up equity or have any other financing or commercial arrangement that may give it management control over the financial, management or editorial policies of any broadcasting network service provider.

Provided that this condition will not be applicable in cases where a content broadcasting service provider requires a teleport or such other infrastructure for captive use to make its content available to other broadcasting network service providers.

- 3) No broadcasting network service provider together with its interconnected undertakings shall have more than the prescribed share of paid up equity or have any other financing or commercial arrangement that may give it management control over the financial, management or editorial policies of any content broadcasting service provider.
- 4) No content broadcasting service provider together with its interconnected undertakings shall have more than the prescribed share of the total number of channels in a city or a state subject to a prescribed overall ceiling for the whole country.

5) The restrictions as required under subsections (1) to (4) above shall be laid down by the Central Government in consultation with the Authority, on the basis of a review to be conducted every 3 years by the Authority.

Provided that till such a review is done by the Authority and restrictions revised by the Government the prescribed share under subsection(2) and (3) shall be taken as 20% and the overall ceiling on the total number of channels under subsection(4) as 15%.

Provided further that in a subsequent review the Central Government shall not reduce the prescribed share to a level below that prescribed under first proviso.

Provided further that any broadcasting service provider, in breach of the restrictions as provided under the first proviso of this subsection , shall submit his compliance plan to the Government within two months and shall come into compliance within one year of the coming into force of this Act.

3.29 The relevant definitions as per the Draft Broadcasting services Regulation Bill 2007, are at Annexure IV.

CHAPTER 4

INTERNATIONAL SCENARIO

4.1 European Union⁶

- 4.1.1 The European Commission has embarked on a major review of media pluralism in Europe dealing with ownership and other measures which could help and enhance diversity. More particularly, they are focusing on finding an accepted method of concentration and diversity measurement.
- 4.1.2 The EU views media pluralism as a cornerstone of democracy, yet at the same time is mindful of the need for pragmatic market decisions. At the European level, they have historically tended to focus on Competition factors and Competition Law leaving the specific content and media diversity protection to Member States.
- 4.1.3 According to European Commission, the marked trend towards concentration in European communications and media sectors entails two dangers. The first danger is the creation of significant market power of undertakings, or even monopoly that significantly impedes competition, ultimately to the detriment of consumer welfare. The second danger is the possibility of a limited number of media companies which curtail media pluralism, diversity and freedom of information.
- 4.1.4 The European Commission responds to the market and economic conditions of the first danger and it is for the national regulator to manage the second concern. The European Commission provides the EU countries with wide principles reflecting market conditions that they would like to see and then national governments provide regulation of their specific their national markets. Characteristically, there are creative,

⁶ CRTC: A report on Media Ownership: Rules Regulations and practices in selected countries (July 2007)

political and regulatory tensions between the EU and some of their member states on these issues.

4.2 United Kingdom⁷

4.2.1 The UK media are regulated by the Office of Communications (OFCOM). It was set up by a new Act in 2003, which also changed the ownership rules. The media ownership rules (“MO rules”) are special rules governing the ownership of television, radio and newspapers in the UK.

4.2.2 The Media Ownership rules are designed to:

- Prevent/ limit control of television and radio by certain owners whose influence might cause concern (e.g. political parties and religious bodies);
- Prevent/ limit consolidation within a media market or between markets to decrease the likelihood that any one owner wields too much power, and to ensure that there are a sufficient number of media outlet owners to increase the likelihood of sufficient viewpoint plurality;
- Specify arrangements for the provision of national and international news to the main Television channels (other than BBC) to ensure that the news source for the largest commercial television channel is independent of the BBC, not under the control of political or religious bodies, and suitably well funded.

⁷ Ofcom: Review of Media Ownership Rules dated 14th Nov 2006

4.2.3 Television

- No restrictions on accumulation of TV licences
- Public interest test (presumption) under merger regime in areas where rules relaxed
- Prohibition on certain bodies (eg political bodies, local authorities, BBC, ad agencies) holding broadcasting licence
- Qualified restriction on certain bodies (eg religious bodies) holding certain licences
- Restrictions on national newspapers holding TV licences
- Appointed news provider rule for Television.

(a) Public interest investigation for television

Mergers in television remain subject to competition regulation by the competition authorities and, under the Enterprise Act 2002, the Secretary of State may issue an intervention notice allowing public interest considerations to be taken into account. These considerations include:

- plurality of the media;
- the need for a wide range of high quality broadcasting appealing to a wide range of tastes and interests; and
- the need to have a genuine commitment to the objectives of section 319 of the Communications Act which cover matters such as impartiality and the protection of viewers from offensive and harmful material

No such intervention notice has been issued to date and so there is no evidence as to whether use of the mechanism raises any problems. However, the rationale for such a provision is that television has a special influence which may require public

interest considerations, including plurality, to be taken into account in deciding whether or not to allow mergers to go ahead.

(b) Appointed news provider

Under the Act, the largest Commercial TV channel is obliged to source its national and international news from a single news provider, independent of the BBC. The justification for this obligation is that as the largest commercial television channel, it has an especially important role to play in ensuring plurality in the provision of news. There is also provision in the MO rules for the Secretary of State to introduce similar rules for other commercial TV channels if its influence increases to a level that would justify this.

(c) Cross-ownership between commercial TV channels and national newspapers

The MO rules provide that:

- No person may acquire a commercial TV channel licence if he or she runs one or more national newspapers with an aggregate market share of 20% or more; and
- The holder of a commercial TV channel licence may not acquire an interest of 20% or more in a body corporate running one or more national newspapers with an aggregate market share of 20% or more.

The justification for these rules is that commercial TV channel and national newspapers have a special influence.

(d) Religious ownership

Religious bodies are prohibited from holding the following television licences:

- commercial TV channel licence
- public teletext
- additional television services and
- television multiplex services.

This is on the basis that spectrum in these areas is severely limited and most of the services in question have significant influence. In these circumstances it would not be appropriate for these services to be controlled by religious bodies given the public interest concerns which might arise.

Other television licences can be held by religious bodies at Ofcom's discretion and guidance has been issued on this, the main effect of which is to exclude bodies which practise or advocate illegal behaviour. At present 10 licences to provide satellite/cable television services have been awarded to religious bodies, two since 2003.

4.2.4 Radio

There is a set of ownership rules relating to each of:

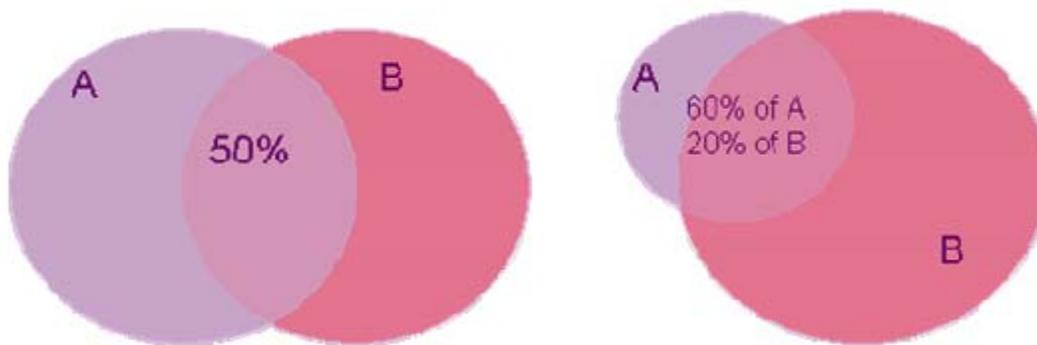
- (i) local analogue licences;
- (ii) national and local radio multiplex licences; and
- (iii) local digital sound programme service licences (the services that are carried on multiplexes).

4.2.5 Two sets of MO rules apply to local analogue radio licences and local digital radio licences. They are designed to ensure that wherever there is a well-developed choice of radio services, there will be at least two separate owners of local commercial radio services, both analogue and digital, in addition to the BBC.

4.2.6 Local analogue licence rules

4.2.6.1 These rules are concerned with licences which overlap. Two licences are considered to overlap, for the purpose of the rules, if the population shared between them is more than 50% of the total population of either licence⁸. For example licence A could overlap licence B by 60%, but B may overlap A by only 20%, depending on the total sizes of A and B. As long as one of these figures is over 50%, the two licences overlap for the purpose of the rules. Two examples are in Figure 1.

Figure 1: Examples of licences which overlap for the purposes of identifying a Cluster



Source: Ofcom

4.2.6.2 The analogue ownership rules apply only once an operator seeks to hold a third or subsequent licence such that the Measured coverage area (MCA) for this further licence shares a 50% overlap with the two or more licences already owned. Holding this third or subsequent licence would form a “cluster” of three or more overlapping licences. The points test is applied to each licence in the cluster, in order to see

⁸ The population coverage of a local licence (and hence any related overlap population) is defined by reference to its Measured Coverage Area or MCA. The MCA is the area within which a service is capable of being received at a level satisfying the technical standards set out in Ofcom in its "Coverage: Planning Policy, Definitions and Assessment" document. This area is combined with data from the latest census to produce population coverage, and population overlap, figures.

whether the points limit would be breached immediately after the operator became the holder of the further licence.

4.2.6.3 The points test is applied on a licence by licence basis. For each test, the licence in question is allocated four points; all other commercial licences which overlap with it by 5% or more are attributed points, as set out in Table 1. BBC local analogue stations are excluded from this calculation.

Table 1: Overlap and points attributable

Overlap	Points attributable
up to 5%	0
5-25%	1
25-75%	2
75% or more	4

Source: Ofcom

4.2.6.4 Once all overlapping licences have been considered then the points attributed to those licences plus the licence in question are summed. The points that are controlled by the operator in question are also added up. If the operator controls more than 55% of the total points then the points test is failed, and the operator may not hold the further licence in question.

4.2.7 Local analogue licence rules – cross media ownership

4.2.7.1 In any area where there are three or more overlapping local licences, a person who is the dominant local newspaper provider, or the holder of the local commercial television licence, may become the holder of one or more of those radio licences only if the points attributed to the licences held by that person would not account for more than 45% of the total points available in the area.

4.2.7.2 There is also a “backstop” rule that no person may hold a local radio licence and the local commercial television licence and be the dominant local newspaper provider in the same area.

4.2.8 Digital multiplex licence rules

4.2.8.1 No person may hold more than one national radio multiplex licence at the same time. The rule on local radio multiplex ownership states that no person may hold any two local radio multiplex licences that share a 50% or more population overlap.

4.2.9 Local digital sound programme service rules

4.2.9.1 The rules on ownership of local digital sound programme services apply to commercial services carried on local radio multiplexes.

4.2.9.2 If a multiplex does not share a 50% overlap with another, this means an operator may put up to four services on this multiplex before the threshold is reached. If a multiplex does share a 50% overlap with another multiplex, then an operator may spread four services across the two.

4.2.10 Cross Ownership Restrictions:

4.2.10.1 In every local area, there must be three separate media companies supplying radio, TV, and newspaper services.

4.2.10.2 No one person controlling more than 20% of national newspaper circulation may own more than 20% of an Independent TV license.

4.2.10.3 No one person owning a regional ITV license may control more than 20% of the newspaper market in that region.

4.2.10.4 No one person owning a regional ITV license may own a local radio station with more than 45% coverage of the same area.

4.2.10.5 No one person owning a local newspaper may own a local radio station where the newspaper accounts for more than 50% of the circulation within the station's coverage area.

4.3 United States⁶

4.3.1 The US has gone through a series of deregulation initiatives particularly since the overhaul of the Telecommunications Act in 1996. The Act built on the original 1934 Communications Act and was the first substantial change to the industry in 62 years. Telecom (Cable and Telephone), Broadcasting (Radio and Television), and the Internet were all part of what has been described as enabling "radical changes" in the Industry.

4.3.2 The Telecom changes permitted cross industry initiatives. For example, phone companies could now acquire and/or provide cable services. New mergers and acquisitions, consolidations, and integration of services across industry, which were previously barred, became legal. Ownership of cable systems by broadcasters also became legal.

4.3.3 Changes in the rules for broadcast ownership of both radio and television were relaxed. Ownership limits on television and radio stations were lifted. Group owners could now purchase television stations with a maximum service area cap of 35% of the U. S. population, up from the previous limit of 25% established in 1985. (This figure rose again in a 2003 review by the FCC to 39 %.) For radio, the cap was set on up to eight stations per market depending on the market size.

4.3.4 The 1996 Telecommunication Act did not allow cross ownership between broadcast and newspaper companies. The newspaper ownership consolidated significantly in the last 20 years and currently less than 275 of America's 1500 daily newspapers are independently owned. The Act was clearly designed to deregulate and create a new level playing field for both Telecom and broadcast industries.

4.3.5 Ownership regulation was not a major source of political and public outcry in 1996 but it became so when, in a mandated review in 2003, the FCC attempted to further relax the rules.

4.3.6 FCC in 2003 released an order that replaced the existing newspaper-broadcast station and radio-television station cross-ownership limits with a new rule setting a single set of media cross-ownership limits. The FCC also revised the local television ownership rule, retained the dual network rules, and amended its radio market definition and method of counting stations for purposes of the local radio ownership rule. Several parties challenged these new rules in federal court. In June 2004, the court issued an opinion that affirmed some of the new rules, but for others, stayed their effective date and remanded them to the FCC for reconsideration.

4.3.7 In June 2006, the FCC opened a new phase of its broadcast ownership rulemaking to reconsider the remanded rules and resume its periodic review of all broadcast ownership rules.

4.3.8 **National ownership rules**⁷

4.3.8.1 No one person may own TV stations that in aggregate reach more than 39% of households. "Reach" is defined as the number of TV households in the Designated Market Area (DMA) to which each owned station is assigned. There are 210 DMAs in the United States which are determined on the basis of Nielsen market analyses.

4.3.8.2 Only 50% of the households reached by a UHF TV station will be taken into account in determining the reach of a TV station.

4.3.9 Local ownership rules

4.3.9.1 Local TV multiple ownership rule

A person may own more than one television station in the same DMA provided that:

- at least one of the stations is not ranked among the four highest-ranked stations in the DMA (based on market share); and
- at least 8 independently-owned commercial or non-commercial television stations would remain in the DMA.

4.3.9.2 Local radio ownership rule

The following limits apply to local radio ownership:

- In a radio market with 45 or more commercial radio stations, a person may own, operate or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM).
- In a radio market with between 30 and 44 commercial radio stations, a person may own, operate or control up to 7 commercial radio stations, not more than 4 of which are in the same service (AM or FM);
- In a radio market with between 15 and 29 commercial radio stations, a person may own, operate or control up to 6 commercial radio station, not more than 4 of which are in the same service (AM or FM).
- In a radio market with 14 or fewer commercial radio stations, a person may own, operate or control up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM) BUT a person may not own, operate or control more than 50% of the stations in that market.

For the purposes of the above calculation, a relevant radio market is assessed for each radio station according to the signal contour overlap method.

4.3.10 Radio/TV Cross-ownership rule

- 4.3.10.1 The original (1970) radio/TV cross-ownership rule prohibited common ownership of a radio and TV station in the same market. The current rule allows common ownership of at least one television and one radio station in a market. In larger markets, a single entity may own additional radio stations depending on the number of other independently owned media outlets in the market.
- 4.3.10.2 A person may own up to 6 commercial radio stations and 2 commercial TV stations, or 7 commercial radio stations and 1 commercial TV station, in a particular market, provided that at least 20 independently "media voices" remain in that market. A media voice in this context comprises radio stations and TV stations (both commercial and non-commercial), cable television systems and newspapers of general circulation.
- 4.3.10.3 A person may own up to 4 commercial radio stations and 2 commercial TV stations in a particular market, provided that at least 10 independently owned media voices remain in that market.
- 4.3.10.4 A person may own one radio station and one TV station in the same market, regardless of the number of other radio/TV stations in that market.

4.3.11 Dual TV network rule

4.3.11.1 A person may not own more than one of the four main national TV networks: ABC, CBS, Fox and NBC.

4.3.12 Newspaper/Broadcast Cross-Ownership Rule

4.3.12.1 The rule, put in place in 1975, prohibits common ownership of a broadcast station and a daily newspaper in the same market. A person may not own a full-service broadcast station (either a radio station or a TV station) and a daily newspaper when the broadcast station's service area covers the newspaper's city of publication

4.3.12.2 The Commission amended the 32-year-old absolute ban on newspaper/broadcast cross-ownership, in December 2007, that would allow a newspaper to own one television station or one radio station in the 20 largest markets, where there exists competition and numerous voices, subject to strict criteria and limitations. Permitting cross-ownership can preserve the viability of newspapers by allowing them to share their operational costs across multiple media platforms.

4.3.12.3 However, in May 2008, the senate adopted a resolution disapproving the FCC's decision of removing the Cross-Ownership ban.

4.4 Canada⁹

4.4.1 Canada is one of the most competitive of media markets in the world. A balance between the economics of a small media market place and the needs of a geographically and culturally diverse population is a challenge for regulatory framework intent upon preserving and enhancing a diversity of voices and views.

⁹ <http://www.crtc.gc.ca/eng/NEWS/RELEASES/2008>

4.4.2 The Canadian Radio-television and Telecommunications Commission (CRTC) in January, 2008 introduced new policies to ensure that a diversity of voices is maintained in the Canadian broadcasting system.

4.4.3 With these new policies CRTC has developed an approach to preserve the plurality of voices and the diversity of programming available to Canadians, both locally and nationally, while allowing for a strong and competitive industry. The new policy restricting cross-media ownership has the following main features :-

4.4.3.1 Common ownership policies

The Commission reaffirmed its existing common ownership policies under which, a person may own no more than one conventional television station in one language in a given market. In large markets, a person may control as many as two AM and two FM stations in the same language. For smaller radio markets, a person may control as many as three stations operating in the same language, with a maximum of two stations in any one frequency band.

4.4.3.2 Cross-media ownership

The CRTC decided to restrict cross-media ownership in order to ensure that Canadians continue to benefit from a range of perspectives in their local news coverage. Under the new approach, a person or entity may only control two of the following types of media that serve the same market:

- a local radio station,
- a local television station, or
- a local newspaper.

No single person or entity controls all three types of media at this time.

4.4.3.3 Ownership of television services

The Commission has imposed limits on the ownership of television broadcasting licences to maintain the diversity of programming. As a result, the CRTC will not approve a transaction that would result in one party controlling more than 45 per cent of the total audience share, including conventional, pay and specialty television services.

Additionally, the Commission will:

- carefully examine transactions that would result in one party controlling between 35 per cent and 45 per cent of the total audience share, and
- expeditiously approve transactions that would result in one party controlling less than 35 per cent of the total audience share, assuming there are no other concerns.

However, an ownership group can increase its audience share beyond 45 per cent by operating and growing its existing assets without causing the Commission concern.

4.4.3.4 Broadcasting distribution

Companies that distribute broadcasting services also play an important role in providing a diversity of voices in the broadcasting system through their acquisition and packaging of channels. The Commission is of the view that competition in the distribution of broadcasting services translates into increased programming diversity for consumers. To further this objective, the CRTC will not approve a transaction that would result in one person effectively controlling the delivery of programming services in a single market.

4.4.3.5 Journalistic Independence Code

The Commission has granted conditional approval to the Journalistic Independence Code proposed by the Canadian Broadcast Standards Council (CBSC). The Code sets out procedures to ensure that broadcasters maintain news management and presentation structures that are separate and distinct from those of their affiliated newspapers.

The general public and members of the broadcasting industry may submit complaints about issues relating to the Journalistic Independence Code. Any complaint requiring adjudication is brought to the attention of the CBSC's Journalistic Independence Panel.

4.5 Australia⁶

4.5.1 There are three large and dominant private television networks in Australia with a number of affiliated regional stations. The public broadcaster, ABC, has two television networks and two radio networks with local and regional services. Another public broadcaster focussing on cultural and multi lingual diversity, the SBS, has both a radio and television network. There are about 275 commercial radio operators in Australia some of them formed into thematic networks and some 300-community radio stations (publicly funded).

4.5.2 There are 12 major national/state newspapers, some 35 regional dailies and 470 other regional and suburban papers. Ownership is concentrated in two major companies for the national and large regional papers.

4.5.3 Cable and satellite services are now becoming a market factor but still represent less than 30% of Australian households.

4.5.4 As per the Broadcasting Service Act of 1992 the regulations before amendment are as under: -

4.5.5 Television Ownership:

A person must not control television broadcasting licenses whose combined license area exceeds 75 per cent of the population of Australia, or more than one license within a license area. Foreign persons must not be in a position to control a license and the total of foreign interests must not exceed 20 per cent. There are also limits on multiple directorships and foreign directors.

4.5.6 Radio Ownership

A person must not be in a position to control more than two licenses in the same license area. Multiple directorships were also limited.

4.5.7 Print Ownership:

There were few regulatory rules for domestic ownership in the print industry but as noted below there were some strong cross ownership restrictions.

4.5.8 Cross-Media Restrictions:

Under the previous Act, a person must not control:

- a commercial television broadcasting license and a commercial radio broadcasting license having the same license area
- a commercial television broadcasting license and a newspaper associated with that license area
- or a commercial radio broadcasting license and newspaper associated with that license area.

There are also limits on cross-media directorships.

4.5.9 Subscription Television Broadcasting Licenses:

A foreign person must not have company interests exceeding 20 per cent in a broadcasting subscription license, and the total of foreign company interests in any license must not exceed 35 per cent.

4.5.10 Foreign Investment Controls

There are a number of controls on foreign investment in the media in addition to those contained in the Broadcasting Services Act. All direct (i.e. non-portfolio) proposals by foreign interests to invest in the media sector irrespective of size are subject to prior approval under the Government's foreign investment policy. Proposals involving portfolio share holdings of five per cent or more must also be approved.

The maximum permitted aggregate foreign (non-portfolio) interest in national and metropolitan newspapers is 30 per cent, with a 25 per cent limit on any single foreign shareholder. The aggregate non-portfolio limit for provincial and suburban newspapers is 50 per cent.

4.5.11 The New Broadcast Services Act

The Amendment to the Broadcasting Service Act of 1992 was passed in April 2007 and new regulations and processes are being enacted. It introduces key concepts relating to media ownership including prohibitions relating to unacceptable media diversity situations and unacceptable 3-way control situations.

On the issue of cross ownership, the Government proposed relaxing the rules on TV/Radio/newspaper ownership in a given market subject to a diversity test and the maintenance of the current limits on ownership:

- A person must not be in a position to control more than one TV license in a market.

- A person must not be in a position to control more than 75% reach of the national audience for commercial television.
- A person must not be in a position to control more than two radio licenses in a market

The Government considered that “media diversity would be best served by clear protection against excessive ownership concentration among traditional media outlets, combined with a liberalization of market entry opportunities and relaxed regulatory barriers for new platforms and services.” The following amendments were cleared:

- “repeal of broadcasting-specific restrictions on foreign investment in the commercial television and subscription pay-television sectors;
- repeal of the cross-media rules in the Broadcast Services Act (BSA); and
- Rescission of the newspaper-specific foreign ownership rules under Australia's foreign investment policy (FIP)”.

4.5.11.1 **Disclosure of Cross-media relationships**¹⁰

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

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

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

¹⁰ http://www.acma.gov.au/WEB/STANDARD/pc=PC_310454

(i) Obligations for commercial radio broadcasting licensees

Where a person is in a position to exercise control of each media operation in a set of media operations that includes a commercial radio broadcasting licensee, the provisions require the commercial radio licensee to broadcast a statement describing the relationship between itself and the commercial television broadcasting licensee or newspaper publisher in the set, when broadcasting matter about the business affairs of that television licensee or newspaper publisher.

Commercial radio broadcasting licensees can broadcast this statement in one of two ways:

- they must disclose any cross-media relationship when they broadcast material about the business affairs of another party (business affairs disclosure), or
- they can choose to make regular disclosure of any cross-media relationships by giving ACMA written notice under section 61BC (regular disclosure).

Business affairs disclosure method

Commercial radio broadcasting licensees who do not elect to make regular disclosure must disclose any cross-media relationship whenever they broadcast material about the business affairs of another party.

Regular disclosure method

Commercial radio broadcasting licensees who elect to make regular disclosure by notice to ACMA must regularly broadcast a statement of any cross-media relationships.

(ii) Disclosure of cross-media relationship by publisher of a newspaper

Where a person is in a position to exercise control of each media operation in a set of media operations that includes a newspaper, the provisions require the publisher of a newspaper to publish a statement describing the relationship between the publisher and the commercial television or radio licensee in the set when publishing material about the business affairs of that television or radio licensee.

Publishers of newspapers can publish this statement in a way that will adequately bring the cross-media relationship to the attention of a reasonable person.

(iii) Disclosure of cross-media relationship by a commercial television licensee

Where a person is in a position to exercise control of each media operation in a set of media operations that include a commercial television licensee, the provisions require the commercial television licensee to broadcast a statement describing the relationship between itself and the commercial radio licensee or newspaper when broadcasting matter about the business affairs of that television licensee or newspaper publisher.

Commercial television licensees can broadcast this statement in a way that will adequately bring the cross-media relationship to the attention of a reasonable person.

4.6 France¹¹

4.6.1 Apart from the general obligations imposed on all broadcasters, commercial broadcasters have only a few specific obligations. Although there are complex cross-ownership rules, they do not prevent broadcasters from being part of larger communication groups involved in cable and satellite operations, television production or video publishing.

4.6.2 The commercial broadcasting system

France's three national commercial television stations are each part of larger broadcasting groups involved in production, video-publishing, cable and satellite operations. The radio sector is dominated by three main groups, which run several networks of radio stations. In addition, there are about 1,000 independent radio stations, some of them affiliated to national networks.

4.6.3 Commercial television ownership and cross-ownership

Ownership and cross-ownership in the media sector are governed by the Law on Freedom of Communication 1986, supplemented by subsequent laws and decrees. On the one hand, various provisions impose limits on concentration of ownership for each type of medium (terrestrial television, terrestrial radio, satellite platform and cable systems). There is no limitation on the number of cable or satellite channels that one single company may own. Foreign ownership is also limited to a maximum share of 20 per cent in one broadcasting company. On the other hand, cross-ownership is limited by the so-called "two-out-of-three situations" (2/3 rule) rule applying both at national and regional levels (see Table on "Ownership Regulation" below)¹². These provisions seek to ensure

¹¹http://www.eumap.org/topics/media/television_europe/national/france/media_fra1.pdf

¹² Derieux Emmanuel, Droit de la communication, (Communication Law), LGDJ, Paris, 2003. (This book is regularly updated)

political and programming pluralism through diversity in media corporations.

Ownership limitations are also said to be excessively rigid and do not allow for quick necessary adjustments in such a fast-developing sector as broadcasting. These limitations are also criticised for not being sufficient to guarantee pluralism in society. The existence of many owners may not translate into pluralistic diversity if owners hold similar views and values. Moreover, market forces can push even diverse owners toward providing similar content in order to reach the same dominant segment of audience. That is why the French regulation of ownership and cross-ownership is complemented by regulation of the content provided by each outlet.

To date, the main effect of cross-ownership regulations has been to keep broadcast media apart from print media. These regulations have not closed the audiovisual market to foreign companies. To take into account the new situation that digital transmission will create, additional cross-ownership regulations were passed in 2001¹³, including a maximum of seven licences for digital television services held by the same company.

¹³ Through Law No. 2001-624 of 17 July 2001.

Table: Ownership regulation

	Licence Terms (years)	Ownership by a single company (percent)	Foreign Ownership (percent)	Cross Ownership restrictions
National Terrestrial Television ¹⁴	An initial ten year licence with one possible extension of five years ¹⁵	Less than 49 percent (except if the average audience share is below 2.5 percent) If above 15 percent in one station, then less than 15 percent in the second station If above 5 percent in 2 stations, then less than 5 percent in the third station	Below 20 percent	One company may not hold more than one licence for national licence 2/3 rule ¹⁶
Local Terrestrial Television	An initial ten year licence with two possible extensions, each for five years	Below 49 percent	Below 20 percent	If several television stations operated, total served population must be less than 12 million inhabitants 2/3 rule
Terrestrial Radio	An initial ten year licence with two possible extensions, each for five years	None	Below 20 percent	If several networks owned, total served population must be less than 150 million inhabitants and the audience share below 20 percent of the total radio
Satellite Television Service	10 years	Below 50 percent, If more than 1/3 in one service, then less than 1/3 in the second service, If more than 5 percent in two services, then less than 5 percent in two service, then less than 5 percent in the third service	None	One Company may not hold more than two licences for satellite TV service
Satellite Radio	5 Years	Below 50 percent	None	None
Cable System	20 Years	None	None	2/3 Rule

Source: Adapted from E.Derieux¹⁷

¹⁴ Defined by the Law on Freedom of Communication 1986 (Article 41-3) as reaching a population of over 1 0 million habitants.

¹⁵ Before 1 January 2002, MVO extensions (each of five years) were possible

¹⁶ 2/3 rule: a company may not meet more than two of the following situations: holding a licence for one or several terrestrial television services reaching more than four million viewers; holding a licence for one or more radio services reaching more than 30 million viewers; publishing or controlling one or several daily newspapers with a national market share over 20 per cent. (An equivalent rule applies at the regional level.) This rule was changed by the Law on Electronic Communications 2004, which removed a fourth situation; holding one or more authorizations to operate cable systems serving more than eight million viewers

¹⁷ Ernmanuel Derieux, Droit de la communication, (Communication Law). LG DI, Paris, 2003.

4.7 South Africa

4.7.1 Limitations on foreign control of commercial broadcasting services¹⁸

A foreigner may not, whether directly or indirectly-

- (a) exercise control over a commercial broadcasting licensee; or
- (b) have a financial interest or an interest either in voting shares or paid-up capital in a commercial broadcasting licensee, exceeding twenty (20) percent.

Not more than twenty (20) percent of the directors of a commercial broadcasting licensee may be foreigners.

4.7.2 Limitations on control of commercial broadcasting services

No person may-

- (a) directly or indirectly exercise control over more than one commercial broadcasting service licence in the television broadcasting service; or (b) be a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than one commercial broadcasting service licence in the television broadcasting service; or
- (b) be in a position to exercise control over a commercial broadcasting service licence in the television broadcasting service and be a director of any company which is in a position to exercise control over any other commercial broadcasting service license in the television broadcasting service.

¹⁸ Abstracts of Electronic Communications Act, 2005 at <http://www.info.gov.za/gazette/bills/2005/b9b-05.pdf>

No person may-

(a) be in a position to exercise control over more than two commercial broadcasting service licences in the FM sound broadcasting service;

(b) be a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than two commercial broadcasting service licences in the FM sound broadcasting service;

(c) be in a position to exercise control over two commercial broadcasting service licences in the FM sound broadcasting service and be a director of any company which is in a position to exercise control over any other commercial broadcasting licence in the FM sound broadcasting service.

A person must not be in a position to control two commercial broadcasting service licences in the FM sound broadcasting service, which either have the same licence areas or substantially overlapping licence areas.

No person may-

(a) be in a position to exercise control over more than two commercial broadcasting service licences in the AM sound broadcasting service;

(b) be a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than two commercial broadcasting service licences in the AM sound broadcasting services; or

(c) be in a position to exercise control over two commercial broadcasting service licences in the AM sound broadcasting service and be a director of any company which is in a position to exercise control over any other commercial broadcasting service licence in the AM sound broadcasting service.

No person may be in a position to control two commercial broadcasting service licences in the AM sound broadcasting service, which either have the same licence areas or substantially overlapping licence areas.

4.7.3 Limitations on cross-media control of commercial broadcasting services

(i) No person who controls a newspaper, may acquire or retain financial control of a commercial broadcasting service licence in both the television broadcasting service and sound broadcasting service.

(ii) No person who is in a position to control a newspaper may be in a position to control a commercial broadcasting service licence, either in the television broadcasting service or sound broadcasting service, in an area where the newspaper has an average ABC circulation of twenty (20%) percent of the total newspaper readership in the area, if the licence area of the commercial broadcasting service licence overlaps substantially with the said circulation area of the newspaper. In this section “Substantial overlap” means an overlap by fifty (50%) percent or more.

(iii) A twenty (20%) percent shareholding in a commercial broadcasting service licence, in either the television broadcasting service or sound broadcasting service, is considered as constituting control.

4.8 Germany⁶

4.8.1 Media regulation rests with various state governments in Germany (Länder) as called for by their constitution. However, there has been a great deal of work done in harmonizing their ownership and diversity regulations to create a national policy. The latest update of their consensus and regulatory agreement (Rundfunkstaatsvertrag) was completed in 2005. The German Cartel Office (BKA) and The Commission on Concentration in the Media Industry (KEK) regulate competition in the media environment.

4.8.2 Ownership restrictions are laid down in the Länder broadcasting laws, but, as with many other regulatory areas, the most important legal document is the Inter-state Treaty on Broadcasting. Until 1995, the limits on ownership

were based on the number of channels controlled by a company. This regulation proved to be inefficient with the advent of multi-channel systems using cable and satellite. The major broadcasting groups complained that they were not allowed to diversify their product, for example by launching additional channels that complement their existing offerings. In 1996, the Länder agreed on a reform of the ownership regulation. Since then, ownership restrictions are based on audience shares instead of a maximum number of channels.

4.8.3 Private broadcasters do not have to fulfil the same obligations on the range of programmes as public service broadcasters, but the inter-state treaty stipulates that private broadcasting generally has to provide a platform for the major political and social interests in society, and minorities also have to be given an opportunity to express their views. It is considered unacceptable for a single channel to dominate public opinion in an unbalanced way.

4.8.4 There are several measures in place to achieve pluralism and diversity. The most important elements of these are as follows: In order to stimulate diversity at the regional level, the two nationally distributed general interest channels with the largest audience reach have to produce so-called “regional window programmes”, which offer local content.

4.8.5 KEK is entrusted with the control of media ownership. KEK is a commission consisting of six independent experts appointed by the heads of government of the Länder for a term of five years.

4.8.6 **Ownership of Television and Radio**

The rules provide for intervention if a company’s media holdings (including newspapers) comprise more than 30% of a viewer share in a year. This is considered a predominate impact on public opinion. For television, exclusively that share is set at 25% of viewers in a given year for a

dominate position. There is a system of assessment that provides percentage allowances for regional programming, independently produced programming, and shares of a company's ownership reducing the impact of the aforementioned percentage thresholds. It is a somewhat complicated system that critics have observed is not easy to use or operate in the public interest. For radio, there are no aggregate ownership levels for national or regional services.

4.8.7 **Newspaper Ownership:** No specifics apply beyond the normal Competition rules as noted and administered by the BKA.

4.8.8 **Cross Ownership:** There are no specific restrictions on cross ownership between radio and television beyond the principle of predominate impact as defined above.

There are a number of commentators who argue these rules are not only difficult to use, but have not prevented issues of media concentration. This includes the failed Kirsch conglomerate and the Bertelsmann group from acquiring a dominant commercial position in German media. This criticism assumes they are a problem for German media pluralism and thus far, the authorities have not taken action to address any perceived problem.

4.8.9 **Foreign Ownership:** No restrictions.

4.8.10 **Restrictions on Political Parties and Organizations:** These groups are excluded from holding a broadcasting license.

4.9 Hong Kong

4.9.1 The "disqualified person" provision applies to a domestic free and a domestic pay television programme service licensee. In essence, no "disqualified person" shall exercise control of a domestic free and a domestic pay television programme service licensee except with the prior approval. This restriction is necessary to minimize conflict of interest, build-up of monopoly of the media and editorial uniformity.¹⁹

¹⁹ http://www.hkba.hk/en/policy/ownership_control.html

4.9.2 A "disqualified person" is defined as:

- a licensee (except that a non-domestic licensee is not a disqualified person in relation to a domestic Pay licence);
- an advertising agency;
- a sound broadcasting licensee;
- a proprietor of a newspaper printed or produced in Hong Kong;
- a person who exercise control over the categories mentioned above; and
- an associate of any of the above-mentioned categories of persons.

4.9.3 A sound broadcasting licensee is also subject to disqualified person restrictions where "disqualified person" is defined as:

- an advertising agent;
- a person who in the course of business supplies material for broadcasting by a licensee;
- a licensee;
- a person who in the course of business transmits sound or television material, whether in Hong Kong or outside Hong Kong;
- a domestic free or a domestic pay licensee, or an associate of such licensees; and
- a person who exercises control of a corporation that is a person referred to in the above categories of persons.

4.10 Austria⁶

4.10.1 Komm-Austria is the regulatory authority that looks after private and radio television in Austria; licensing, administration, technologies and complaints. It reports to the Federal Communications Board, which supervises the Public Broadcaster ORF. Another federal body called RFR, who also looks after Telecom issues and reports to the Federal Chancellor

for broadcasting and the Minister of Transport for telecommunications, supports Komm-Austria administratively.

4.10.2 This all seems top heavy in oversight for a small country with very concentrated ownership. It is worth noting that private television and radio didn't really begin until 1997 and it wasn't until 2003 that a private TV network was available. The public broadcaster ORF and the newspaper owners had the market to themselves for a very long time and it is still sorting itself out. There is no regulatory framework for the press although the standards of the Media Law would apply to them (pornography, violence, etc)

4.10.3 **Ownership of Television and Radio:** One entity may not own more than one radio or TV license in any service area. Media conglomerates who own more than 25% of shares in one another may not hold more than one analogue or digital TV license. The commercial TV and radio industry is not yet a decade old and is considered nascent at this stage of its development. ORF after decades of monopoly still dominates the electronic market and is separately regulated.

4.10.4 Radio has similar licensing as TV but with one difference, another media company may own 100% of a radio license if their service areas don't overlap.

4.10.5 **Newspaper Ownership:** No media regulatory restrictions except for the Cartel Act.

4.10.6 **Foreign Ownership:** 49% maximum investment from non European Economic Area members (mostly EU countries)

4.10.7 **Restrictions on Political Parties and Organizations:** They are not allowed to hold a Radio or TV license.

4.11 Luxembourg⁷

4.11.1 No individual or organisation may own more than 25% of the voting rights in any low power²⁰ radio station

4.11.2 There are no other restrictions, and no restrictions on foreign ownership, although media ownership is monitored because licenses (called “concessions” and “permissions”) are personal and not transferable.

4.12 Finland

4.12.1 There are no specific restrictions on media concentration, cross-ownership or foreign ownership.

4.12.2 The Finnish Competition Authority enforces competition regulations that encompass media markets.

4.13 Netherlands

4.13.1 No commercial radiobroadcaster may use more than one FM-network (this restriction may be waived and has been waived). In 2003 it was allowed that a national commercial radiobroadcaster may use two FM-networks, but only in a combination for a general programme and a specified programme.

4.13.2 Editorial statutes of newspapers guarantee journalists’ independence. For commercial broadcasters these statutes are obligatory when programmes are sponsored.

²⁰ There are no ownership restrictions on high power radio stations but they have obligations with regard to neutrality/pluralism

4.13.3 When a newspaper owner, or a group where he is part of, reaches a share of more than 25% of the Dutch newspaper market he/the group is not allowed to fully own a commercial broadcaster. In that case the newspaper owner has to limit his control of a commercial broadcaster to a maximum of 1/3.

4.13.4 Newspaper owners (or the group where they are part of) with more than 50% share in a certain regional or local newspaper market may not own a regional or local commercial broadcaster in that region unless there is also a regional or local public broadcaster. This is always the case so this provision has never been used.

4.13.5 Proposals are being put forward by the Dutch Ministry of Education, Science and Culture for the liberalization of the media ownership rules in the Netherlands. Under these proposals, the cross-media ownership rules will be abolished and replaced with a threshold based on audience share for all forms of media within a given area. Competition law will continue to apply to media concentrations although a maximum threshold of 35% of total circulation in a relevant newspaper market is currently proposed for mergers between newspapers.

4.14 Sweden

4.14.1 No restrictions exist beyond normal competition law (there is, however, a legal uncertainty whether the regulations laid down in the Competition Act can penetrate the right of establishment, protected by the Freedom of the Press Act and the Fundamental Law on Freedom of Expression). Owners of periodical publications must be from the European Economic Area.

4.14.2 In 2001, following the recommendation of the Media Concentration Committee (1999), the Swedish Government was about to send a proposed bill on Media Concentration to the Legal Council for approval.

The proposal was to introduce a special law that would be complementary to the Competition Act. This special law would have resulted in provisions that were better adapted to the special conditions that apply in the media sector. Because of constitutional uncertainties (as mentioned above) the proposal required some changes in the Constitution (the Freedom of the Press act and the Fundamental Law on Freedom of Expression). However, since there was not enough support for these constitutional changes among the other political parties, the Government did not present the proposed bill.

4.15 Denmark

4.15.1 There are no restrictions beyond normal competition law on press ownership.

4.15.2 Licenses for broadcasting are only granted if: the majority of board members reside in the local area; the sole objective of the company is to provide local radio/TV; commercial companies do not have a dominant influence in the company

4.15.3 A person may not be a member of the board, or be responsible for programming, in more than one local broadcasting station

CHAPTER 5

MEDIA OWNERSHIP RULES AND CONTROL

- 5.1 Media is a powerful purveyor of ideas and values and plays a pivotal role in not only providing entertainment but also disseminating information networking and cultivating diverse opinions, educating and empowering the people of India to be informed citizens so as to effectively participate in the democratic process; preserving, promoting and projecting the diversity of Indian culture and talent.
- 5.2 The Media Ownership rules are designed to strike a balance between ensuring a degree of plurality on the one hand and providing freedom to companies to expand, innovate and invest on the other hand. The first is vital for democracy since plurality of ownership helps to ensure that citizens have access to a variety of sources of news, information and opinion. The second can also benefit citizens and consumers by providing a basis for delivering higher quality programmes, greater creativity and more risk-taking.
- 5.3 Framing of media ownership rules will help to ensure that citizens have access to diverse view points enabling them to participate fully in the democratic process. One of the main objectives for having such rules on accumulation of interest to provide for competition, diversity and plurality of players, news and views in a democratic country like India and also to ensure that the delivery platforms owned by broadcasters do not block competition/content from others.
- 5.4 As the diversity of services and choice of content from different owners in the market increase and as the consumer acquires increasing levels of choice over what sources of news they use and when, the features and need for specific ownership rules to guarantee plurality will undergo change.

5.5 Measuring Concentration²¹

5.5.1 There is no single universal measuring methodology for Media Concentration but there are four, which generally seem to have some acceptance by the countries.

- (i) **Concentration Ratios** compare the revenues of the top four or eight companies to the total revenues of that industry. If the top four is higher than 50% or the top eight higher than 75% of total revenues then concentration may be considered high. This can be also applied to cross communication industry ownership by including all the cross industry revenues and comparing individual conglomerates' revenue to the whole
- (ii) **The Herfindahl-Hirschman Index (HHI)** is used by the US Anti Trust Division of the Department of Justice and is calculated by summing the squared market shares of all firms in a given market. It is more definitive than Concentration ratios but can be tedious in a multiple company market in that each company's revenue needs to be accounted for and totalled for the total market revenue.
 - The FCC uses a method inspired by the HHI approach called the **Diversity Index**. This approach identifies all media in the market (radio, TV and press) and then uses a recognized consumer measurement of how they receive news and information from each media to arrive at a percentage of each media share of the market. Then each company of a specific media industry is assigned an equal share of that industry's total market share. Finally, each company's market share is added up including multiple and cross ownership shares. If the Diversity Index is high for a company then this denotes a high concentration of ownership. The goal is to determine which markets are at risk for a significant loss of diversity if particular

²¹ CRTC; A report on Media Ownership: Rules Regulations and Practices

ownership combinations were allowed. The FCC has used this Index to help them decide on threshold levels on multiple television ownership and cross media ownership. These techniques remain a work in progress and they are often used in combination with a “case by case” market/ownership approach.

- (iii) **The Lorenz Curve** assumes each player of a market has a theoretical equal share of the market and then graphs out the actual share compared to the theoretical model. The difficulty lies in interpretation of the graph and dealing with multiple players in a market.
- (iv) **Public Policy** as a measurement is applied on a case-by-case basis and is usually applied by the regulator or government. The analysis is based on ownership in one industry and cross industry company(s), diversity of ownership and sources at the national, regional and local levels, economic viability, and license or ownership obligations.

5.5.2 While there is no single accepted measure that meets the needs of all interested parties, the work continues to refine measurement techniques, which reflect both market realities and public service goals. Since concentration has been an increasing market reality and public concern over the last two decades, attention is being directed by governments, regulators, interest groups and media companies themselves to find mechanisms that preserve and enhance diversity.

5.6 **Plurality**

5.6.1 By and large Pluralism is defined to mean, ensuring fair, balanced and unbiased representation of a wide range of opinions and views which is a critical requirement for functioning of modern democracies. Media sector today encompasses diverse segments that include written press, television, radio broadcasting and electronic communications over the internet.

5.6.2 Development of digital television broadcasting and transmission, most likely will lead to proliferation of the number and nature of TV broadcasting

services offered to the public, with a convergence between media and telecommunication industries. Today the internet is offering a new and cheap method of diffusion of ideas and contents in addition to what traditional media has to offer. These developments may suggest that pluralism as an objective is achievable today with the plethora of media available for the diffusion of ideas.

- 5.6.3 On the contrary it could be argued that, most of the suppliers in media markets are private enterprises and these markets are characterized by tendencies towards concentration with the attendant risks of foreclosure given the rising costs of content creation. It is therefore necessary to evaluate the media markets in their respective context to assess the extent to which the objective of pluralism is achievable. The fundamental question before us is whether market forces are sufficient to achieve the objective of pluralism or whether there is a need for an ex-ante regulatory policy to be put in place certain time tested checks and balances to ensure that nothing in the market places a constraint in the pursuit of that objective.
- 5.6.4 Often it is argued by the media groups that the existence of a competition policy framework is sufficient and that there is no need for any ex-ante regulatory instrument to achieve the objectives of pluralism. It is important to realize that competition policy is guided by public policy goals such as welfare and efficiency whereas pluralism as an objective is on a different footing. Although in some respects pluralism gains by way of interventions from a purely competition perspective, competition policy cannot be considered to be a complete substitute for public policies for pluralism.
- 5.6.5 Competition policy assigned by constant monitoring and preventing practices that would reduce competition in media markets can be of great help for achieving objectives of pluralism. This leads us to conclude that measures to promote competition in the media markets have the additional benefits of pluralism besides the traditional public policy goals of welfare and efficiency.

5.6.6 Removal of entry barriers and opening the markets for new entrants create favorable environment not only for competition but also for pluralism. Standard competition analysis and the attendant interventions have been advocated to address concerns arising out of lack of competition in any market. Therefore it may be appropriate to use the techniques of competition analysis to understand whether there are concerns relating to adequacy or otherwise of competition in the market. More importantly, the objective would be to ensure that attempts to consolidate either through horizontal or through vertical integration do not result in dominance which has serious implications not only for pluralism but also for competition in the market.

5.6.7 Allan and John have aptly summarized this concern which is reproduced below:

'Increasing conglomerations within various communication industries have been criticized by scholars who have argued that consolidation leads to decline in diversity of expressions and homogeneity of content products. Across- industry concentration has been an invisible form of concentration, but it is one that seems to have become increasingly important to the large media corporations. This type of concentration should be measured and monitored by scholars and regulatory bodies just as within industry concentration is monitored. In within industry concentration, the communication firm acts to own and control businesses within the same industry, whereas in across-industry concentration, the firms' behavior is directed towards control of business in different industries. Achieving economies of multiformity²² across industries may be one of the most viable means of growth for the large communication corporation. If this is the case one would expect across-industry concentration to increase and to pose a challenge

²² *Economies of multiformity are a form of corporate efficiency analogous to economies of scale; however, it is realized not within a single industry but from corporate operations in two or more industries.*

*to the regulatory bodies charged with ensuring the survival of competition in the communication industries.*²³

5.6.8 Gavin Davis expresses a similar concern relating to concentration of ownership owing to certain technological developments like digitization which is reproduced below:

*'Digitization of information is increasing economies of scope in the broadcasting market. Exploitation of economies of scope and scale increases pressure towards concentration of ownership. Rather than promoting free competition, there is a risk that the digital era will foster high concentration in private broadcasting. There is a danger that if broadcasting were left entirely to the market the industry could become overly concentrated.'*²⁴

5.6.9 Media industries including TV and radio Broadcasting and the press are termed as 'Two-sided markets' because advertising is an important source of revenue for them besides subscription revenue from the consumers. In that sense media outlets are considered as platforms linking the markets for audience and the market for advertising. Size of the audience for a particular media has direct positive relationship with the major source of revenue viz advertisement. In other words the advertisers' willingness to pay depends on the audience reached by the media. The co-existence of different methods of revenue generation within the Broadcasting sector is also identified to be a cause for concern from the competition perspective. Vickers (2002) has documented certain apprehensions on this score which is reproduced below:

²³ Allan B. Albarran and John Dimmick, 'Concentration and Economies of Multifirmity in the communication industries', *Journal of Media Economics*, 9(4)

²⁴ Gavin Davies, 'Market Failure in the broadcasting Industry', in *The Future funding of BBC: Independent Review panel*, London, 1999.

*'Broadcasting is a multi-layered industry, in which market power at one level of the supply chain may have far reaching effects at other levels. All this is relevant for analysis of competition in the sector.'*²⁵

5.6.10 Competition for the more attractive contents coupled with the vertical links between producers and distributors is said to be an ideal condition conducive for creating constraints on the market. Exclusive right of transmission for certain special types has similar effect without formal integration. A channel that already owns major sports and a large subscriber base is able to offer more for the transmission rights of other discipline and events. Real possibility of market foreclosure leading to substantial lessening of competition can emerge if single operator were to obtain most of the content on an exclusive basis. Dominance of ownership of attractive and differentiated content by a broadcaster who also owns directly or indirectly media outlets in distribution/delivery platforms in the downstream segments may become a source of serious concern as such a market structure in any context is likely to encourage tendencies for the integrated firm to force vertical price squeeze.

5.7 **Measuring plurality**

5.7.1 There is currently no commonly accepted way of measuring the degree of viewpoint plurality in the media. As a proxy for viewpoint plurality, the Media Ownership rules aim to ensure plurality of media ownership. This approach assumes a correlation between viewpoint and ownership plurality: different owners may be different sources of news and may also provide different perspectives on what is going on in the world.

²⁵ *Vickers. J. 2002, Competition policy and Broadcasting, Speech at IEA conference on Future of Broadcasting.*

5.7.2 Clearly, this proxy is imperfect:

- Ownership /control plurality *does not ensure a plurality of news sources*. For example, two local radio stations might have different owners and yet obtain all their news from the same source;
- Ownership/control plurality *does not necessarily ensure editorial or viewpoint diversity*.

Whilst diversity of ownership may have an effect on plurality, it may also be the case that different sources of news offer the same perspective. In addition, journalists, editors or producers, rather than owners, may have a more direct impact on the views expressed via a media outlet.

5.7.3 However, in the absence of a better means of assessment, placing limits on the ownership is recognized by many as the best proxy for viewpoint plurality.

5.8 **Competition and Media Regulation**

5.8.1 A mixed bag of tools, policies and regulations guide the debate and decision making around the world. In most jurisdictions, it is primarily media policy and regulation, which define media pluralism.

5.8.2 The relevant parts of a particular country's competition and foreign ownership laws and regulations will also play a role but are usually only a floor by which media regulation will add specific requirements to media ownership. Often the competition and media authorities cooperate on questions of media mergers and acquisitions with the goal of preserving competition, access to content and a diversity of choice and source.

5.8.3 The cultural and democratic imperatives in most countries demand that media law and regulation define more than a minimum requirement in

competition law and regulation. Ensuring a diversity of voices and ideas requires more than economic regulation, they require media rules to ensure that this diversity of voices and views are present.

5.9 **Benefits of consolidation**

5.9.1 It is also important to remember that consolidation can offer benefits. For example, it can produce:

- (i) *Economies of scale and scope* in news gathering and dissemination which can reduce news costs as well as improve access to international news;
- (ii) *Access to better news management* (e.g. from overseas and other media) and superior talent (e.g. journalists and presenters);
- (iii) Improved access to *overseas capital* for investing in the news function;
- (iv) Improved access to news gathering, editing and disseminating *technology*.

5.9.2 Consolidation can also enhance future investment in news gathering and programme production in general.

5.10 **INDIAN CONTEXT**

5.10.1 The issues under consideration in India are:

- a) Cross media ownership across different segments of media such as print/ television/radio (horizontal integration).
- b) Cross holding restrictions to prevent consolidation including 'vertical integration' within a media segment such as television or radio.
- c) Market share in the city/state/country within each media segment.

5.11 Before we examine the issues it is necessary to identify the segments that are present in the three different categories of media viz. Print, Radio and Television. They are as follows:

i) Print Media

- Newspapers (National and Regional)
- Magazines & other publications.

ii) Radio

- FM Radio
- Satellite Radio.

iii) Television

- Broadcasters
- Distributors :-
 - o Private terrestrial TV (not existing today)
 - o Mobile TV
 - o Cable Operator
 - o DTH
 - o Multi-system Operator (MSO)
 - o Headend-in-the-Sky (HITS)

5.12 Having identified the segments in the media the next step is to identify the parameters that can be used for measuring the plurality in the Indian context. As we have seen internationally the broad parameters that have been used are geographical coverage, target audience, equity participation, revenue and number of channels. The restrictions are generally based on the principle of ownership or control. They include placing restrictions on the number of different types of media (print, radio, TV) an entity can own/control (say two out of three), number of channels in TV or radio an entity can own/control, percentage of revenue or target audience the entities can control etc

5.13 **Geographical coverage:**

5.13.1 Geographical coverage applicable to various media segments in India are as follows:

FM Radio – City

Cable Operator – To register in the Head Post Office within the area of operation (almost concurrent with District)

DTH – All India

HITS – All India

IPTV – Concurrent with the service area of telecom service provider/ cable Operator.

5.14 **Target Audience:**

5.14.1 The target audience in the case of newspapers is their readership and information on readership of prominent newspapers are available. The target audience in the case of TV would be viewership or number of households. It may be possible to have some indication of the viewership for TV in an indirect manner. However, no confirmed data is available.

5.15 **Equity Holding:**

5.15.1 The percentage of equity holding is commonly used as a measure of control/ownership in a company. Established sources of information are available for obtaining the equity holding. Equity participation is quantifiable and can be monitored and enforced. However, there are cable operators who are not registered companies; in such cases the equity holding will not be relevant.

5.16 **Revenue:**

5.16.1 The revenues of companies are published information and as such like equity participation can be easily quantified, monitored and enforced.

Here again for entities which are not companies (example: individuals operating as cable service providers) the figures are not publicly available and getting authentic revenue figures will be difficult.

5.17 Number of Channels:

5.17.1 Presently restrictions have been put on the number of radio FM channels that an entity can own in a service area. This restriction has been put primarily because of limited availability of spectrum. Besides FM radio the finite natural resource of spectrum is also used by DTH, HITS, Mobile TV, Terrestrial TV and Satellite TV. As the availability of spectrum is limited, there is a view point favouring restrictions of channels allotted to an entity with a defined area to provide for competition, diversity and plurality of players.

5.18 Distinct features of Indian Scenario:

5.18.1 Every country has its own distinct features. The distinct features of the Indian Media are as follows:

- (i) Terrestrial TV is not opened up for private participation in India whereas in many countries there are a number of private terrestrial TV operators.
- (ii) There are a large number of pay TV channels in India as in other countries.
- (iii) India has a fragmented cable service provider industry. The number of cable service providers is estimated to be between 30,000 to 60,000 in the country.
- (iv) A number of leading newspapers (national and regional) already own TV and radio channels.
- (v) A number of broadcasters have some ownership in distribution chain such as cable operations, DTH etc

5.19 News and Entertainment Channels:

5.19.1 In TV there are two distinct types of channels i.e. News and Entertainment Channels. There are different foreign ownership restrictions on these two categories. One could argue that the news channels have far greater impact on providing diversity and plurality of views when compared to entertainment channels.

5.20 Definition of “entity”

5.20.1 An entity would include an individuals, group of individuals, companies, firms, trusts , undertakings and inter-connected undertakings where inter-connected undertaking is as defined in the MRTPC Act, as given below.

5.20.2 An inter-connected undertaking means two or more undertakings which are inter-connected with each other in any of the following manner, namely:-

- (vi) *if one owns or controls the other,*
- (vii) *where the undertakings are owned by firms, if such firms have one or more common partners,*
- (viii) *where the undertakings are owned by bodies corporate -*
 - (a) *if one body corporate manages the other body corporate, or*
 - (b) *if one body corporate is a subsidiary of the other body corporate, or*
 - (c) *if the bodies corporate are under the same management, or*
 - (d) *if one body corporate exercises control over the other body corporate in any other manner;*
- (ix) *where one undertaking is owned by a body corporate and the other is owned by a firm, if one or more partners of the firm –*

- (a) *hold, directly or indirectly, not less than 50% of the shares, whether preference or equity, of the body corporate, or*
- (b) *exercise, control, directly or indirectly, whether as director or otherwise, over the body corporate,*
- (x) *if one is owned by a body corporate and the other is owned by a firm having bodies corporate as its partner, is such bodies corporate are under the same management*
- (xi) *if the undertakings are owned or controlled by the same person or by the same group*
- (xii) *if one is connected with the other, either directly or through any number of undertakings which are inter connected undertakings within the meaning of one or more of the foregoing sub-clauses.*

5.20.3 Explanation: - Two bodies corporate shall be deemed to be under the same management

- (i) *if one such body corporate exercises control over the other or both are under the control of the same group or any of the constituents of the same group; or*
- (ii) *if the Managing Director or manager of one such body corporate is the MD or manager of the other; or*
- (iii) *if one such body corporate holds not less than 1/4th of the equity shares in the other or controls the composition of not less than 1/4th of the total membership of the Board of directors of the other; or*
- (iv) *if one or more directors of one such body corporate constitute, or at any time within a period of 6 months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management, constituted whether independently or together with relatives of such*

- directors or the employees of the first mentioned body corporate or 1/4th of the directors of the other; or*
- (v) *if the same individual or individuals belonging to a group, while holding whether by themselves or together with their relatives not less than 1/4th of the equity shares in one such body corporate also hold whether by themselves or together with their relatives not less than 1/4th of the equity shares in the other; or*
 - (vi) *if the same body corporate or bodies corporate belonging to a group, holding, whether independently or along with its or their subsidiary or subsidiaries, not less than 1/4th of the equity shares in one body corporate, also hold not less than 1/4th of the equity shares in the other; or*
 - (vii) *if not less than 1/4th of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individual whether independently or together with his relatives or the same body corporate whether independently or together with its subsidiaries; or*
 - (viii) *if not less than 1/4th of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individual belonging to a group or by the same bodies corporate belonging to a group, or jointly by such individual or individuals and one or more of such bodies corporate; or*
 - (ix) *if the directors of the one such body corporate are accustomed to act in accordance with the directions or instruction of one or more of the directors of the other, or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of an individual, whether belonging to a group or not.*

5.21 Specific Issues For Consultation

5.21.1 The media has a very important role in any democratic country. It is important to provide for competition, diversity and plurality of players, news and views. From the International scenario we can see that all the leading democratic countries in the world like US, UK, Canada, France, Australia and many others have Media Ownership restrictions. Most of these countries have recently, during the past 2 years, reviewed the media ownership rules. India is hailed as the largest democracy in the world. We have certain restrictions regarding ownership in FM radio, TV (DTH,IPTV, Mobile TV) and HITS. There is a need to take a holistic view and rationalize the media ownership restrictions for the future growth of the Broadcasting sector.

5.22 Market Definition

5.22.1 The first step in any competition analysis is to define the relevant market. The purpose of market definition is to determine the boundaries of a given market. Within the contours of the relevant market, an analysis is then made of the prospects for competition in the market, opportunities of competing firms to acquire and exercise market power and the welfare implications for the consumer.

5.22.2 The definition of the relevant market is of fundamental importance because effective competition can be assessed only with reference to the market thus defined. Broadly, the criteria for defining the relevant market that have been followed in many jurisdictions include (i) demand side substitution, (ii) supply side substitution, (iii) competitive constraints arising out of potential competition. Demand side substitutability is used to measure the extent to which consumers are prepared to substitute other services for the service in question, whereas supply side substitutability indicates whether suppliers other than those offering the service in

question could offer the relevant product or services without incurring significant costs. The existence of potential competition is required to be examined for the purpose of assessing whether the market is effectively competitive. Hence, it is also necessary to examine the existing legal or other regulatory requirements which could deny a 'time efficient entry' into the relevant market.

5.22.3 When defining the relevant market, we need to consider firms and products that are in competition with each other and this involves careful assessment of a) The relevant product market and b) The relevant geography.

5.22.4 In general, the relevant market comprises of all those products or services that are sufficiently interchangeable or substitutable not only in terms of consumer preference, usage and prices but also in terms of conditions of competition and/or the structure of supply and demand on the market in question²⁶

5.22.5 Once the relevant product/service market is identified the next step is to define the geographical dimension of the market. The relevant geographic market comprises an area in which the firms concerned are engaged in the supply of the relevant product/service, in which area the conditions of competition are similar or sufficiently homogenous. In the electronics communication sector, the geographical scope of the relevant market has more or less been determined with reference to the area covered by a network and the existence of legal/regulatory requirements.

5.22.6 **Market definition in the Media sector**

Market definition for this purpose needs to distinguish between different media markets viz Newspapers, Television(free-to-air and Pay-TV channels) and Radio as it is important to assess each market. For each of

²⁶ Commission guidelines on market analysis and the assessment of significant market power under the community regulatory framework for electronic communication networks and services (2002), official journal of the European Communities 11.7.2002.

the product market, the relevant geographical market is to be segregated and evaluated. In the Indian context, certain other peculiarities need to be factored in the delineation of the boundaries of media markets. The relevant market could either be the state or the country.

5.22.7 Take for example the regional press that caters to a particular vernacular language and there are many in India. Separately, they may be dominant in separate geographies but may be insignificant in reach and influence from a national perspective. There may also be a case where a newspaper has significant market share among the National dailies but may not be significant in any region/province when assessed along with other regional/local news papers. Readership data published by the National Readership Survey is a useful source of information/data for any analysis in this context.

5.22.8 Keeping in view the objectives of the exercise and keeping in view the methodology outlined above, the following relevant markets have been identified for assessment with regard to cross-media ownership:

- (i) News papers in English in the country
- (ii) News papers 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.

5.22.9 In the context of assessment with regard to vertical integration and its implications for competition, the following relevant markets have been identified:

- (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 regional languages are spoken.

Issue 1: 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?

If not, provide your classification of the relevant markets with appropriate reasoning.

5.23 Cross-media control/ ownership or Horizontal Integration

5.23.1 Cross media ownership or horizontal integration refers to the ownership/control by one entity, of different categories of media which are print, radio and TV, in a given market.

5.23.2 In Canada a person or entity may only control two of the following types of media that serve the same market:

- a local radio station,
- a local television station, or
- a local newspaper.

5.23.3 In UK, the following guidelines apply -

- a) In every local area, there must be three separate media companies supplying radio, TV, and newspaper services.
- b) No one person controlling more than 20% of national newspaper circulation may own more than 20% of an Independent TV license.

- c) No one person owning a regional TV license may control more than 20% of the newspaper market in that region.
- d) No one person owning a regional TV license may own a local radio station with more than 45% coverage of the same area.
- e) No one person owning a local newspaper may own a local radio station where the newspaper accounts for more than 50% of the circulation within the station's coverage area.
- f) No person may acquire a commercial TV Channel licence if he or she runs one or more national newspapers with an aggregate market share of 20% or more;
- g) The holder of a commercial TV Channel licence may not acquire an interest of 20% or more in a body corporate running one or more national newspapers with an aggregate market share of 20% or more.

5.23.4 In US, the following restrictions in reference to ownership of different segments is applicable -

- a) A person can own 6 commercial radio stations and 2 commercial TV stations, or 7 commercial radio stations and 1 commercial TV station, in a particular market, provided that at least 20 independently "media voices" remain in that market.
- b) A person may not own a full-service broadcast station (either a radio station or a TV station) and a daily newspaper when the broadcast station's service area covers the newspaper's city of publication. This rule was relaxed in Dec 2007, but in May 2008, the senate adopted a resolution disapproving the FCC's decision of removing the Cross-Ownership ban.

5.23.5 In Australia, a person must not control:

- a commercial television broadcasting license and a commercial radio broadcasting license having the same license area

- a commercial television broadcasting license and a newspaper associated with that license area
- or a commercial radio broadcasting license and newspaper associated with that license area.

There are also limits on cross-media directorships.

5.23.6 Thus it is seen that almost all of the developed democratic countries like UK, USA, Canada, Australia, France etc have restrictions on cross-media control/ownership.

5.23.7 Currently there are no restrictions in this regard in India

Issue 2: (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?

Please elaborate your comment with appropriate reasoning.

5.24 Vertical Integration

5.24.1 Vertical Integration refers to the ownership/control, by one entity, of programming and distribution undertakings and/or programming undertaking and production companies within the same media i.e. print, radio or television.

5.24.2 In Canada for Television markets, one party controlling more than 45 per cent of the total audience share, including conventional, pay and specialty television services is not permitted. For broadcasting distribution, one person effectively controlling the delivery of programming services in a single market is not permitted.

5.24.3 The current restrictions/ recommendations in India in this regard are:

- (i) The restrictions in the DTH guidelines place a ceiling of 20% on the holding of total paid up equity in the DTH licensee by Broadcasting companies and/or cable network companies and vice versa.
- (ii) The Authority has recommended that any mobile television licensee should not allow any broadcasting company or group of broadcasting companies to collectively hold or own more than 20% of the total paid up equity in its company at any time during the License period. Simultaneously, the mobile television licensee should not hold or own more than 20% equity share in a broadcasting company. Further, any entity or person (other than a financial institution) holding more than 20% equity in a mobile television license should not hold more than 20% equity in any other broadcasting company or broadcasting companies and vice-versa. However, there would not be any restriction on equity holdings between a mobile television licensee and a DTH licensee or a HITS licensee or a MSO/cable operator company.
- (iii) The Authority has recommended that a HITS operator shall not allow Broadcasting Company(ies) and/or DTH licensee company(ies) to collectively hold or own more than 20% of the total paid up equity in its company at any time during the License period. Simultaneously, the HITS Licensee should not hold or own more than 20% equity share in a broadcasting company and/or DTH licensee company. Further, any entity or person holding more than 20% equity in a HITS license shall not hold more than 20% equity in any other Broadcasting Company(ies) and/or DTH licensee and vice-versa. This restriction, however, will not apply to financial institutional investors. However, there would not be any restriction on equity holdings between a HITS licensee and a MSO/cable operator company.

5.24.4 The additional existing provisions in this regard are:

(a) Every broadcaster *shall provide on request signals of its TV channels on a non-discriminatory basis to all distributors of TV channels including cable networks, Direct To Home, Head Ends in the Sky.*

(b) *No exclusive contracts would be permitted between broadcasters and distributors of TV channels.*

(c) *Broadcaster will not be held to be in violation of the 'must provide' condition if it is ensured that the signals are provided through a particular designated agent/distributor or any other intermediary and not directly.*

(d) *Volume based discounting schemes would be allowed if there is a standard scheme applicable to all similarly based distributors of TV channels.*

(e) *The 'must provide' shall not apply for those distributors which have defaulted on payment.*

(f) *The Broadcasters and the Multi System Operators/ Independent Cable Operators shall not insist on minimum subscriber guarantees from MSOs/Cable of CAS areas where transparent subscriber management systems are installed. This regulation will be issued on acceptance of the recommendations by the Government."*

Issue 3: (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?

(c) What parameters should be used to measure vertical integration?

Please elaborate your comments with appropriate reasoning.

5.25 Limit on number of Licenses by a single entity

5.25.1 Limit on number of Licenses by a single entity or Common control/ ownership refers to the number of media licenses in a single media segment (television or radio), held or controlled by a single entity operating in one market. For example, number of Radio channels owned/controlled by an entity in a state/country.

5.25.2 In Australia a person must not be in a position to control more than - one TV Channel in a market or 75% reach of the national audience for commercial television or two radio licenses in a market.

5.25.3 In Canada a person cannot own more than one conventional television station in one language in a given market. Also there are restrictions on number of radio stations that a person can own/control.

5.25.4 In US there are restrictions on ownership/control of television and radio stations in designated market areas. No one person may own TV stations that in aggregate reach more than 39% of households. Also a person may not own more than one of the four main TV networks: ABC, CBS, FoX and NBC. For radio, the cap is up to eight stations per market depending on the market size.

5.25.5 In UK, the mergers in television remain subject to public interest test. For radio licenses the points test is applied on a licence by license basis. If the operator controls more than 55% of the total points then the points test is failed, and the operator may not hold the further license in question. In Austria one entity may not own more than one radio or TV license in any service area.

5.25.6 Currently in India there are no restrictions in this regard for print media and television media. Generally when we talk of Television media in other

countries, it is terrestrial television. As mentioned earlier, in India, terrestrial television is yet to be opened up for competition. So in India presently TV media consists of DTH, Cable TV, IPTV and Mobile TV.

5.25.7 The restrictions in India today for radio segment are that, an entity cannot own/control more than one radio FM channel in a service area or own more than 15% of the total radio FM channels in India.

5.25.8 The Authority in its recommendations on Phase-III of Private FM Radio licensing has recommended:

- (i) At least three channels excluding AIR in any district will be given to three different entities. Once this condition is met, then the existing operator/ permission holder can bid for the remaining channels and may be declared successful for any channel where his bid is highest subject to the condition that maximum number of channels to a permission holder in the district will not be more than 50% of total channels in the district.
- (ii) The existing ceiling limit of 15% of total FM Radio channels in the country permitted to a permission holder is no longer valid as the fear of monopoly is no longer real. This limit is also not practical, as the total number of channels will vary depending on availability. Hence such limit may be withdrawn.

Issue 4: (a) Are the current limits imposed on the number of media licenses in FM radio adequate? If not, what modifications/additions do you suggest?

(b) Should similar limits be imposed in the other broadcasting media segments ?

(c) What criteria should be used to determine these limits?

Please elaborate the comments with appropriate reasoning.

5.26 Concentration of Control/ Ownership across Media

5.26.1 Concentration of control/ownership refers to the level of market presence that an entity could have in terms of media outlets or market share (revenue or audience), combined across all media segments. It can be measured on a local or regional or national basis.

5.26.2 Internationally in many of the countries there are restrictions on control/ownership in more than two out of three media. So this is achieved in an indirect manner.

5.26.3 In UK there are restrictions on control/ownership across newspaper and TV, newspaper and radio and radio and TV.

5.26.4 In US, no one person may own TV stations that in aggregate reach more than 39% of households. Also a person may not own more than one of the four main TV networks:

5.26.5 Currently there are no restrictions in this regard in India.

Issue 5: 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?

Please elaborate your comments with appropriate reasoning.

5.27 Cross control/ ownership across Telecom and Media companies

5.27.1 This refers to same entity having control/ownership of telecom and media companies.

5.27.2 The US has gone through a series of deregulation initiatives particularly since the overhaul of the Telecommunications Act in 1996. The 1996 Telecommunication Act did not allow cross ownership between broadcast and newspaper companies.

5.27.3 The changes allowed for cross industry initiatives. For example, phone companies could now acquire and/or provide cable services. New mergers and acquisitions, consolidations, and integration of services across industry, which were previously barred, became legal. Ownership of cable systems by broadcasters also became legal.

5.27.4 Currently there are no restrictions in this regard in India. Also as on date the two industries/sectors are quite distinct and have little in common. However with convergence of telecom and media technologies like IPTV, Mobile TV, 3G encompassing, the services like video, voice and data. There is likely to be an overlap in the telecom and broadcasting services as lot of synergy between the two sectors exists.

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?

Please elaborate the comments with appropriate reasoning.

Issue 7: Any other relevant issue you would like to suggest or comment upon.

CHAPTER 6

ISSUES FOR CONSULTATION

Issue 1: 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?

If not, provide your classification of the relevant markets with appropriate reasoning.

Issue 2: (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?

Please elaborate your comment with appropriate reasoning.

Issue 3: (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?

(c) What parameters should be used to measure vertical integration?

Please elaborate your comments with appropriate reasoning.

Issue 4: (a) Are the current limits imposed on the number of media licenses in FM radio adequate? If not, what modifications/additions do you suggest?

(b) Should similar limits be imposed in the other broadcasting media segments ?

(c) What criteria should be used to determine these limits?

Please elaborate the comments with appropriate reasoning.

Issue 5: Should restrictions be imposed on concentration of control/ ownership across media? If yes,

(a) What restrictions should be imposed?

(c) What criteria should be used for measuring concentration of control/ ownership across media?

Please elaborate your comments with appropriate reasoning.

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?

Please elaborate the comments with appropriate reasoning.

Issue 7: Any other relevant issue you would like to suggest or comment upon.

ANNEXURE I



ASHA SWARUP
Tel : 23382639

सत्यमेव जयते

सचिव
SECRETARY
सूचना एवं प्रसारण
INFORMATION & BROADCASTING
भारत सरकार
GOVERNMENT OF INDIA

D.O. No. 9(4)/2008-BP&L

नई दिल्ली-1, तारीख May 22, 2008⁰⁰
Dated New Delhi-1, the 200

Dear *Shri Mishra,*

Government has provided for restrictions in ownership of companies seeking licenses/permissions/registrations under various Policy Guidelines issued from time to time. As of now such restrictions are in place with respect to DTH services and Private FM radio. TRAI has also been recommending similar restrictions in its various recommendations including 'Private Terrestrial TV Broadcast Service' dated 29.8.05, 'Headend-In-The-Sky (HITS)' dated 17.10.07, and 'Issues Relating to Mobile Television Service' dated 23.1.08. However neither the existing nor the proposed restrictions as of now have a uniformity of approach as these have come at different times and stages of growth. There is therefore a need to lay down a clear cut approach towards cross-media and ownership restrictions for the future growth of the Broadcasting sector.

2. With the above objective in view, the Government of India has been considering this matter for some time and weighing the pros and cons of putting some restrictions on accumulation of interest in the media. These restrictions could cover areas like Cross media ownership among different segments of media such as print and television and radio; consolidation including 'vertical integration' within a media segment such as television or radio; Market share with respect to number of channels owned in the city/state/country within each media segment.

3. One of the main objectives for having such restrictions on accumulation of interests is to provide for competition, diversity and plurality of players, news and views in a democratic country like India and also to ensure that the delivery platforms owned by broadcasters do not block competition/content from others. It is also noted that Competition law basically addresses economic issues only and does not address the concerns mentioned above. Further it has been seen that most of the developed countries that follow democratic traditions have one or more of all the three types of restrictions mentioned above.

4. At present there are no cross media restrictions on any of the broadcasting services existing in the country under any guidelines. This has enabled several print media companies to own and operate television and radio channels. To prevent vertical integration, the DTH Guidelines of 15 March 2001 specify that broadcasting companies and/or cable network companies shall not be eligible to collectively own more than 20% of the total paid up equity of applicant company. Similarly, the DTH licensee can not have more than 20% equity share in a broadcasting and/or cable network company. However there is no restriction on

Broadcasting Companies to have control and ownership of Cable companies or vice versa. With more and more broadcasting companies entering into cable services it needs to be examined as to whether such a restriction is desirable and if so what should be the framework provided. Further with IPTV and Mobile TV policies on the anvil, the issue of cross holding between Telecom Sector companies and Broadcasting companies has also become relevant.

5. At present there are no restrictions on the *market share* by individual companies in the television media segment. In television segment, the percentage of total satellite TV channels owned by some of the major companies/groups is much more than 10% out of roughly 350 foreign and Indian channels available to Indian public. Their numbers are on the increase in the recent years. There are two important restrictions on market share in the case of private FM Radio channels. The phase II policy of FM Radio lays down that no company or a group of companies can operate more than one channel in each city. Further, the total number of channels that a company or a group of companies can operate shall not exceed 15% of the total number of channels allocated in the country. This stipulation has been imposed to ensure that a few companies do not corner the scarce spectrum available for radio channels and to provide adequate competition in the market and diversity of content in each city.

6. The debate in electronic and print media on the subject, however, indicates that industry is opposed to such a policy for imposing restrictions on accumulation of interest in the media. Their contention is that accumulation of interest and Cross Media Restrictions are unnecessary as there is no evidence of abuse of market power. It has also been said that Companies Act, Competition Act are already in place to address concerns with respect to monopolization and that it will restrict indiscriminately the expansion of all media companies. In view of these contentions, the issues therefore need to be deliberated more widely and deeply.

7. The following issues therefore need to be deliberated further:-

- (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 a 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?

8. Since Broadcasting has been notified as a telecommunication service under Section 2(1)(k) of the TRAI Act, recommendations of the Authority are sought on the above and related issues under section 11(1)(a)(ii) and (iv) of the Act. It is requested that the recommendations of the Authority may kindly be sent at an early date.

with regards,

Yours sincerely,

Asha Swarup
(Asha Swarup)

Shri Nripendra Mishra
Chairman,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg, Old Minto Road,
New Delhi.

ANNEXURE II

LIST OF MAJOR BROADCASTERS AND PAY CHANNELS

Broadcaster	Pay channel
M/s Zee Turner Limited	Zee TV, Zee Cinema, Cartoon Network, Zee Marathi, Zee News, CNN, Zee Café, Zee Studios, Zee Bangla, Zee Gujrathi, Zee Punjabi, Zee Trendz, Reality TV, HBO, POGO, Zee Business, Zee Classic, Zee Action, Zee Premier, Zee Sports, Zee Telugu, Zee Kannada, Play TV, ETC Punjabi, ETC, Zee Music, Zee Jagran, Zee Smile, 24 Ghante, 24 Taas, Zee Talkies, Zee Next
M/s MSM Discovery India Private Limited	SET, MAX, Discovery, Animal Planet, AXN, Animax, Discovery Travel and Living, SAB TV, SET PIX, MTV, NICK, VH1, NDTV 24X7, NDTV Profit, Ten Sports, Aaj Tak, Headlines Today, Tez
M/s Channel Plus	K TV, Sun Music, Sun News, Gemini TV, Udaya TV, Teja TV, Ushe, Udaya News, Adithya, Teja News, Udaya Movies, Udaya Varthegalu, Gemini Music, Gemini Cable Vision, Gemini News, SUN TV
M/s Star DEN Media Services Private Limited	Star Plus, Star Gold, Star Movies, Star World, Vijay TV, NGC, The History Channel, Channel (V), Star One, The Disney Channel, Toon Disney, Hungama, Times Now, Zoom, CNBC TV 18, CNN-IBN, CNBC Awaaz
M/s Ushodaya Enterprises Private Ltd.	ETV, ETV 2, ETV Bangla, ETV Marathi, ETV Kannada, ETV Gujrathi, ETV Oriya
M/s BBC World India Private Limited	BBC World, BBC Entertainment, Cbeebies
M/s ESPN Software India Private Limited	ESPN, Star Sports, Star Cricket
M/s Raj Television Limited	Raj TV, Raj Digital Plus, Vissa TV
M/s Neo Sports Broadcast Private Limited	NEO Sports Plus, NEO Sports
M/s UTV Global Broadcasting Limited	Bindass, Bindass Movies, World Movies, UTV Movies, UTVi
M/s INX Media Private Limited	9XM, 9X, NewsX
M/s New Delhi Television Limited	NDTV 'Imagine', NDTV Good Times
M/s Sahara India TV Network	Firangi

M/s B4U Television Network (I) Private Limited	B4U Movies
M/s MAA Television Network Limited	MAA TV
M/s TV Today Network Limited	Dilli Aaj Tak
M/s Allied Infotainment Distribution Pvt. Ltd.	E-24
Doordarshan	30 Free to Air channels – seven All India channels (DD National, DD News, DD Sports, DD Gyandarshan, DD Bharti, DD Rajya Sabha and DD Urdu), eleven Regional Languages Satellite Channels (RLSC), eleven State Networks (SN) and an International channel.

- Note:** 1. All the channels of Doordarshan are Free-To-Air.
2. Free-To-Air channels of other broadcasters are not listed.

Source:

Based on the reports submitted by Broadcasters to TRAI. (Updated upto April 2008)

ANNEXURE III

LICENSEES AND THE SHARE HOLDINGS

1. Private FM Radio		
Operator	Major stakeholders	% Share
Adlabs Films Ltd.	Reliance Land Pvt. Ltd.	46.67
	Mr. Manmohan Shetty, CMD	23.03
Ananda Offset Pvt. Ltd.	Sarkar Properties Pvt. Ltd.	50
	Sarkar Consultants Pvt. Ltd.	50
Asianet Communications Ltd.	Dr Raji Menon, Director	39.03
	Anjali Technology Holdings (P) Ltd.	23.65
	Regal Commercial Services (P) Ltd.	11.99
	Other Indian Shareholders	16.00
B.A.G. Infotainment Pvt. Ltd.	B.A.G. Films Ltd.	99.7
Century Communication Ltd.	Third Eye Communication Pvt. Ltd.	25.9
	Mr. Anand Tewari	17.73
	Mr. Prabhod Kumar Tewari	17.73
Chinar Circuits Ltd.	Mr. Bhikam Chand Agarwal	74.53
	Ms. Renu Agarwal, Director	12.65
Clear Media (I) Pvt. Ltd.	FMAM Airtime Pvt. Ltd.	70.32
	Vertex Investcorp Pvt. Ltd.	19.90
Eastern Media Ltd. (Pub. Ltd.)	Sh. Soumya Ranjan Patnaik, CMD	47.98
Entertainment Network (I) Ltd. (Pub. Ltd.)	Times Infotainment Media Ltd.	90
	Bennett Coleman & Co. Ltd.	10
Gwalior Farms Pvt. Ltd.	Mr. Tarun Goyal, Director	97.5
HT Music & Entertainment Company Pvt. Ltd.	HT Media Ltd.	75
	The Hindustan Times Ltd.	25
Indigo Mass Communications Pvt. Ltd.	Jupiter Capital Advisers Pvt. Ltd.	99.99
Kal Radio Pvt. Ltd.	Sun TV Pvt. Ltd.	89
	Kalanithi Maran	10.5
Kushal Global Ltd.(Pub. Ltd.)	Sh. Kamal Mehta, Managing Director	10
	Smt. Sarita Mehta	10
Malar Publications Pvt. Ltd.	Rukmani Publications (P) Ltd.	47.43
	Subasri Reality (P) Ltd.	38.81
Music Broadcast Pvt. Ltd.	IVF Holdings Pvt. Ltd.	51
	India Value Fund Trustee Company Pvt. Ltd.	24
	Radiovani Holding Pvt. Ltd	25
Neutral Publishing House Ltd.	Umil Share & Stock Broking Services Ltd.	16.91

	Usha Martin Ventures Ltd.	11.46
	Basant Kumar Jhavar	11.58
	Rajeev Jhavar	15.52
	Prajeev Investments Ltd.	16.97
	Shauma Vanijya Pratisthan Ltd.	16.97
Noble Broadcasting Corp. Pvt. Ltd.	P. Varadarajan, CMD	60
	Mrs. A. Kothai	40
Positiv Radio Pvt. Ltd.	Positiv Television Pvt. Ltd.	100
Purvy Broadcasts Pvt. Ltd.	Next Technologies (I) Pvt. Ltd.	15
	Moondra Auto & Bearings (P) Ltd.	15
	Mangal Sago (P) Ltd.	15
	Kemint Trading (P) Ltd.	15
	Minu Text Processors (P) Ltd.	15
	Westline Trading (P) Ltd.	15
Radio Mid-Day West (I) Pvt. Ltd.	Mid-Day Multimedia Ltd.	82.98
	Ferrari Investments & Trading Company Pvt. Ltd.	17.02
Radio Today Broadcasting Pvt. Ltd.	Living Media India Ltd.	89.94
Rajasthan Patrika Pvt. Ltd.	Sh. Nihar Kothari	24.02
	Sh. Siddharth Kothari	24.01
	Patrika Finance Pvt. Ltd.	19.31
Raneka Fincom Pvt. Ltd.	Shashikant Jain (HUF)	13.9
	Swastik Fertilizers & Chemicals Ltd.	14.95
	Southern Shares & Stocks Ltd.	22.15
	Godhan Trust	12.18
	Sangita Jain	17.72
South Asia FM Pvt. Ltd.	Sun TV Pvt. Ltd.	94.91
Synergy Media Entertainment Ltd.	Multi tech energy Ltd.	99.37
The Muthoot Finance Pvt. Ltd.	George Alexander	28.8
	George Jacob	10.09
	M. G. George	29.97

Source: Data is based on pre-qualification bids for allocation of FM radio channels (Phase-II) submitted by the companies to Min. of I&B during 2005

2. MSO/ DTH Operators			
Operator	Major stakeholders	% Share	Type of service
Bharat Sanchar Nigam Ltd.	Government of India	100	
Bharti Airtel	Bharti Telecom	45	DTH & IPTV
	SingTel	16	
Digital Entertainment Networks (DEN) Pvt. Ltd.	Sameer Manchanda	80	Distributor
DishTV India Ltd.	ASC Enterprise (Essel Group)	100	DTH
Hathway Cable & Datakom	Rajan Raheja Group	63.2	MSO
	News Corp (STAR Group)	22.2	
	Chrys Capital	14.6	
InCable	Hinduja Group	91.1	MSO
Reliance Communications	Reliance ADAI Group	67	DTH & IPTV
Sun Direct TV (I) Ltd.	Sun TV	80	DTH
	Astro All Asia Networks	20	
Tata Sky Ltd.	Tata	70	DTH
	News Corp (STAR Group)	20	
	Temasek	10	
Wired & Wireless (I) Ltd.	Zee Telefilms	100	MSO
Mahanagar Telephone Nigam Ltd.	Government of India	56	IPTV

Source: Asia-Pacific Pay-TV & Broadband Markets-2008

3. Broadcasters share-holding details

Name of Company	Indian % Share Holding	Foreign % Share Holding	Public % Share Holding	Non-institution/ Any other % Share Holding
Angel Media Network Pvt. Ltd.		99.88		
Aries Telecasting Pvt. Ltd.	100			
Asianet Communications Ltd.	90.67	9.33		
Associated Broadcasting Co. Pvt. Ltd.	80.95			19.05
B4U Television Network (I) Pvt. Ltd.	14.09	85.91		
BBC World (I) Pvt. Ltd.		100		
Bharatheeya Manavik Vijnan Communications Ltd.	100			
Brindavan TV Network Ltd.	100			
Cabsat Channels Pvt. Ltd.	100			
Catvision Products Ltd.	94.92			
Daystar Television Network (I) Pvt. Ltd.	100			
Discovery Communications (I) Pvt. Ltd.		100		
ESPN Software (I) Pvt. Ltd.		99.99		
Global Broadcast News Ltd.	59.22		12.97	27.8
Gold Movies Pvt. Ltd.	100			
Independent News Service Pvt. Ltd.	100			
INX-Media Pvt. Ltd.	69.76			30.24
Jain Studios Ltd.	54.04	17.87		28.1
Mavis Sat com Ltd.	100			
MCN International Pvt. Ltd.		100		
MGM Programming Services (I) Pvt. Ltd.	100			
MM TV Ltd.	100			
NDTV Ltd.	70.78			
New Wave Visual Media Pvt. Ltd.	100			
NGC Network (I) Pvt. Ltd.		99.99		
Noida Software Technology Park Ltd.	100			
One Entertainment Network Pvt. Ltd.	100			
Pearl Media Pvt. Ltd.	100			
Sahara India Pvt. Ltd.	100			
SET India Pvt. Ltd.	31.63	68.37		
Setpro Holdings Pvt. Ltd.	100			
SST Media Pvt. Ltd.	100			
Star India Pvt. Ltd.		99.99		
Star International Networks Pvt. Ltd.	100			
Taj Television (I) Pvt. Ltd.	10	90		
Television 18 India Ltd.	51.93		30.25	17.82
Times Global Broadcasting Co. Ltd.	100			
Triveni Media Ltd.	100			

Ushodaya Enterprises Ltd.	100			
V Music & Interactive Channels (I) Pvt. Ltd.	100			
Vijay Television Pvt. Ltd.		100		
Walt Disney Company (I) Pvt. Ltd.		100		
Zee Entertainment Enterprises Ltd.	23.51	56.85	7.96	11.68
Zee News Ltd.	100			

Source: Data is based on shareholding pattern details submitted by the companies to Min. of I&B

(for the period 2005-07)

DEFINITIONS

(from the Draft Broadcasting Services Regulations Bill 2007, since lapsed)

1. “Broadcaster” means any person who provides a content broadcasting service and includes a broadcasting network service provider when he manages and operates his own television or radio channel service.
2. “Broadcasting” means assembling and programming any form of communication content like signs, signals, writing, pictures, images and sounds, and either placing it in electronic form on electro-magnetic waves on specified frequencies and transmitting it through space or cables to make it continuously available on the carrier waves so as to be accessible to single or multiple users through receiving devices either directly or indirectly; and all its grammatical variations and cognate expressions;
3. “Broadcasting Service” means assembling, programming and placing communication content in electronic form on the electro-magnetic waves on specified frequencies and transmitting it continuously through broadcasting network or networks so as to enable all or any of the multiple users to access it by connecting their receiver devices to their respective broadcasting networks, and includes all the content broadcasting services and the broadcasting network services;
4. “Broadcasting Network Service” means a service, which provides a network of infrastructure of cables or transmitting devices for carrying broadcasting content in electronic form on specified frequencies by means of guided or unguided electromagnetic waves to multiple users, and includes the management and operation of any of the following:
 - i. Teleport / Hub / Earth Station
 - ii. Direct-to-Home (DTH) Broadcasting Network
 - iii. Multi-System Cable Television Network.

- iv. Local Cable Television Network
 - v. Satellite Radio Broadcasting Network
 - vi. Such other Network Service as may be prescribed by the Central Government
5. "Cable Operator" means any person who manages and operates, or is otherwise responsible for, a multi-system or a local cable television network
 6. "Cable television channel service" means the assembly, programming and transmission by cables of any broadcast television content on a given set of frequencies to multiple subscribers.
 7. "Cable Television Network" means any system consisting of closed transmission paths and associated signal generation, control and distribution equipment, designed to receive and re-transmit television channels or programs for reception by multiple subscribers;
 8. "Carrier" means the electro-magnetic waves that can travel on air or cable and are capable of carrying communication content in electronic form on specified frequencies
 9. "Channel" means a set of frequencies used for transmission of a programme;
 10. "Content" means any sound, text, data, picture (still or moving), other audio-visual representation, signal or intelligence of any nature or any combination thereof which is capable of being created, processed, stored, retrieved or communicated electronically;
 11. "Content Broadcasting service" means the assembling, programming and placing content in electronic form and transmitting or re-transmitting the

same on electro-magnetic waves on specified frequencies, on a broadcasting network so as to make it available for access by multiple users by connecting their receiving devices to the network, and includes the management and operation of any of the following:

- i. Terrestrial television service;
- ii. Terrestrial radio service;
- iii. Satellite television service;
- iv. Satellite radio service;
- v. Cable television channel service;
- vi. Community radio service;
- vii. Such other content broadcasting services as may be prescribed by the Central Government.

12. “Decoder” means an equipment for decoding an encrypted channel to facilitate its intelligible reception;

13. “ Digital Addressable System” means a mechanism or electronic device or more than one electronic devices put in an integrated system through which digital broadcasting signals of a service provider can be sent in an encrypted or unencrypted form, which can be decoded by a mechanism or device or devices at the premises of the subscriber within the limits of authorisation made, on the choice and request of such subscriber, by the service provider to the subscriber;

14. “Direct-To-Home Broadcasting Service” means a service for multi channel distribution of programmes direct to subscriber’s premises by uplinking to a satellite system specified for the purpose by the Competent Authority;

15. “Downlinking” with reference to satellite broadcast or DTH Broadcasting service means reception of programmes transmitted from a satellite to an earth station or a receiving device;

16. "Encrypted" means treated electronically or otherwise for the purpose of preventing intelligible reception by unauthorized persons;
17. "Frequency" means frequency of electro-magnetic waves used for transmission of broadcasting service;
18. "Foreign satellite broadcasting service" means a broadcasting service provided by using a satellite, up linked from a foreign country and receivable in India;
19. "Free-to-air broadcasting service" means a non encrypted broadcasting service made available for reception by receiving apparatus commonly available to the public without requiring payment of a subscription fee;
20. "interconnected undertakings" shall have the same meaning as assigned to it in the Monopolies and Restrictive Trade Practices Act, 1969
21. "License" means a license issued for any of the broadcasting services by the relevant Licensing Authority prescribed by the Central Government under this Act;
22. "Licensing Authority" means an officer of the Central Government or the Authority or the State Government, so notified by the Central Government in respect of any of the broadcasting services and for such limits of jurisdiction as may be determined by the Central Government.
23. "Licensed service" means a broadcasting service licensed by the Licencing Authority;
24. "live" in relation to broadcasting of an event, or series of events, has the meaning generally accepted within the broadcasting industry.
25. "Local cable operator" means any person who manages and operates or is responsible for the management and operation of a cable television

network to provide a cable television service to multiple subscribers in a particular area

26. "Local Delivery service" means a service for multi-channel downlinking and distribution of television programmes by a land based transmission system using wired cable or wireless cable or a combination of both for simultaneous reception either by multiple subscribers directly or through one or more local cable operators
27. "Multi-System Cable Television Network" means a system for multi-channel downlinking and distribution of television programmes by a land based transmission system using wired cable or wireless cable or a combination of both for simultaneous reception either by multiple subscribers directly or through one or more local cable operators
28. "Multi System Operator (MSO)" means any person who manages and operates a multi-system cable television network to provide a cable television service to multiple subscribers, which may or may not include other value added services including telecommunications and Internet.
29. "Network operator" means any person who provides a broadcasting network service.
30. "News and Current Affairs Channel" means a channel that broadcasts programs containing reports and discussions on current events, ideas, individuals and institutions dealing with political, social, economic and such other subjects as are of general interest to the public at large, but does not include a channel that exclusively broadcasts scientific, cultural, educational or entertainment programs including news relating thereto.
31. " Person" as mentioned in the definitions of Cable operator, Local Cable Operator and Multi-System Operator means

- i) An individual who is a citizen of India;

- ii) An association of individuals or body of individuals, whether incorporated or not, whose members are citizens of India;
- iii) A company as defined in section 3 of the Companies Act, 1956 (1 of 1956) with such eligibility conditions as may be specified by the Central Government or the Authority;

32. "Prasar Bharti" means the Corporation known as the Prasar Bharati (Broadcasting Corporation of India) established under subsection (1) of section 3 of the Prasar Bharti (Broadcasting Corporation of India) Act,1990;

33. "Prime Band" constitutes frequencies relating to channel falling in band 1 (Channels 2 to 4 ranging from 47 to 68 MHz) and Band III (Channels 5 to 12 ranging from 174 to 230 MHz)

34. "Private communication" means:

- (i) A communication between two or more persons that is of a private or domestic nature;
- (ii) An internal communication of a business, government agency or other organization for the purpose of the operation of the business, agency or organization; and
- (iii) Communication in such other circumstances as may be prescribed.

35. " Program" in relation to broadcasting service, means:

- (i) Any matter the purpose of which is related to entertain, educate or inform public or
- (ii) Any advertising or sponsorship matter, whether or not of a commercial kind;

But does not include any matter that is wholly related to or connected with any private communication.

36. "Public service broadcaster" means Prasar Bharati or any other entity which may be notified as public service broadcaster by Central Government
37. "Public Service Broadcasting" means the broadcasting of content that is socially , economically and culturally relevant and is in public interest and welfare
38. "Public Service Broadcasting Channel" means a radio or television channel of Public Service Broadcaster i.e Prasar Bharati or any other Channel so notified by the Central Government on the recommendations of the Public Service Broadcasting Council
39. "Registered channel" means a broadcasting channel registered under this Act
40. "Satellite television service" means a television broadcasting service provided by using a satellite, and received with or without the help of a local delivery system but does not include Direct-to-Home delivery service;
41. "Satellite radio service" means a radio broadcasting service provided by using a satellite and directly receivable through receiver sets by multiple subscribers in India;
42. "Service provider" means provider of a broadcasting service;
43. "Subscriber" of a service means a person who receives the service at a place indicated by him without further transmitting it to any other person;

44. "Subscription fee" means any form of consideration given by subscriber;
45. "Terrestrial television service" means a television broadcasting service provided over the air by using a land based transmitter and directly received through receiver sets by the public but does not include a local delivery service;
46. "Terrestrial radio service" means a radio broadcasting service provided over the air by using a land-based transmitter and directly received through receiver sets by the public;
47. "Wireless cable" means a land based wireless transmission system used for multi-point multi-channel distribution of programmes on frequencies designated for the purpose by the Competent Authority;
48. "Uplinking" with reference to satellite broadcast or Direct-to-Home service means uplinking of programme transmission from an earth station or a transmitting device to the satellite;

ANNEXURE V

GLOSSARY

Abbreviations	Full-form
ACMA	Australian Communications and Media Authority
AGR	Adjusted Gross Revenue
BKA	German Cartel Office
CAS	Conditional Access System
CMTS	Cellular-Mobile Telecom Service
CRTC	Canadian Radio-Television Commission
DMA	Designated Market Area
DTH	Direct To Home
FCC	Federation Communications Commission, USA
FDI	Foreign Direct Investment
FICCI	Federation of Indian Chambers of Commerce and Industry
FIPB	Foreign Investment Promotion Board
GOPA	Grant Of Permission Agreement
HITS	Headend In The Sky
IPTV	Internet Protocol Television
KEK	Commission on Concentration in the Media Industry
LCO	Local Cable Operator
MCA	Measured Coverage Area
MIB	Ministry of Information & Broadcasting
MRTPC	Monopolies and Restrictive Trade Practice Commission
MSO	Multi-System Operator
OFCOM	Office of Communications, United Kingdom
UASL	Unified Access Service Licence