The Malayala Manorama Co. Ltd.

P B No. 26, K.K. Road
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April 4, 2013

Mr. Wasi Ahmad
Advisor (B&CS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi - 110 002.

Dear Sir,

We are enclosing our reply to the Consultation Paper on "Issues relating to Media Ownership", circulated by TRAI on 15th February, 2013.

Regards,

Yours sincerely,
For The Malayala Manorama Co. Ltd.

George Verghese
Secretary & Chief General Manager,
Company Affairs

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Consultation Issues

General Disqualifications

Q1: In your opinion, are there other entities, apart from entities such as political parties, religious bodies, Government or government aided bodies which have already been recommended by TRAI to be disqualified from entry into the broadcasting and distribution sectors, which should also be disqualified from entry into the media sector? Please elaborate your response with justifications.

Response of Malayala Manorama:

In our opinion, the recommendations made by TRAI with respect to disqualification of political parties, religious bodies, Government or government aided bodies from entry into media sector are rightly founded. Further, all long-arm companies and investment vehicles of politicians, political parties and individuals who are in any manner affiliated to regulatory authorities like TRAI, CCI should also be disqualified from entry into the media sector.

This view however is not based on the principle of cross media regulations. This is on the principle of potential conflict of interest and in view of the possibility of potential abuse of the state machinery and regulatory bodies against competing media organizations. It would be against the interest of the broadcasting sector and the interest of the public at large to permit the State, instrumentality of State, political parties or the holder of any constitutional post, elected posts or persons holding an office-of-profit, i.e., a post under central\state government which gives its occupant the opportunity to gain a financial advantage or benefit, to enter into broadcasting, distribution and media sector.

Q2: Should the licensor, either suo motu or based on the recommendations of the regulator, be empowered to disqualify any entity from entering the media sector in public interest? For instance, should the licensor or the regulator be empowered to disqualify (or recommend for disqualification) a person who is subject to undue influence by a disqualified person.

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Response of Malayala Manorama:

Yes, the licensor, either suo motu or based on the recommendations of the regulator, should be empowered to disqualify any entity from entering the media sector in public interest, potential conflict of interest and to avoid possibility of potential abuse of the state machinery and regulatory bodies against independent media organizations. We reiterate that this view is however not based on the principle of cross media regulations.

Today, the ownership of mobile phones in India is over 400 million –far, far, more than the circulation of newspapers (30 million) or cable TV (71 million households) or FM radio. The power of cellular operators and last mile distributors of content are far more pernicious and violative of viewpoint plurality than the existing media houses.

Media Ownership/ Control

Q3: Should ownership/ control of an entity over a media outlet be measured in terms of equity holding? If so, would a restriction on equity holding of 20% (as recommended by TRAI in its recommendations on Media Ownership dated 25th Feb 2009) be an appropriate threshold? Else, please suggest any other threshold value, with justification?

Response of Malayala Manorama:

It is submitted that capping restriction of equity in any quantum is not justifiable to ensure competitiveness of the media industry. India already has a vertical integration rule in TV where broadcasters cannot own more than 20% of cable/carriage (or the last mile pipe), and vice versa. But despite this, cable and DTH companies that also own TV channels often give their channels favorable treatment - prime channel positions or more payment compared to similar competitors. This is why often, the only TV channels that are significantly profitable, are also those who own distribution whereby they can alter competition in their favor - while globally, cable companies like Time Warner are legally restricted from lending favoritism to its own channels.

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Hence, per se restricting equity ownership would not lead to a competitive media industry. There should be provisions to prevent possibility of monopolistic tendencies in the case of news and current affairs flows in the country, newspapers enterprises should not be deprived of operating within the territory and in other than news and current affair programme even if they have a circulation of more than 50 percent. It is to be noted that in many jurisdictions, content owners and media houses are suffering huge losses, more often than not being at the mercy of a few "last mile owners" who are in fact far more powerful than the media houses. In this context, capping of equity ownership would not achieve the objectives it may be intended to achieve. It is more important to ensure that the market should be free and unfettered and "last mile owners" do not subvert fair competition and plurality.

Q4: In case your response to Q3 is in the negative, what other measure(s) of ownership/ control should be used? Please support your view with a detailed methodology to measure ownership/ control over a media outlet.

Response of Malayala Manorama:

In our opinion it is not feasible to measure the ownership/ control of an entity over a media outlet at all. Instead of capping of equity ownership of entities over a media outlet, it is necessary to have safeguards to ensure last mile neutrality as it is the distributors who can make it easier or harder for the public to get access to the information source or the media outlet of their choice. It is last mile ownership which has throttled the plurality of media and effective dissemination of information.

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The potential of cross media ownership restrictions among content providers in the 21st century, represents an unnecessary and counterproductive regression of the laws, to an era when consumers had far fewer choices for news and information than they have today. Today there are over 400 million mobile connections in this country. In an era of mobile communication and internet, the rationale that "if one Media Group owns various media assets then it would consequently capture the mind of the individual comprehensively across all formats" is misconceived and irrational. Therefore, the Government should refrain from imposing any sort of media restrictions which would effectively cap the companies having cross media holdings to such a low extent that it would eventually destroy various existing business models, apart from the same being unconstitutional.

Media Ownership rules

Q5: Should only news and current affairs genre or all genres be considered while devising ways and means to ensure viewpoint plurality? Please elaborate your response with justifications.

Response of Malayala Manorama:

In our view, there is no threat whatsoever to 'viewpoint plurality' on account of cross-media ownership and therefore no need to devise any way to ensure it. In fact, there should be no interference with the freedom of media as the same is unconstitutional under Article 19 (1)(a) and 19 (1)(g) of the Indian Constitution. Viewers should be allowed to ensure viewpoint plurality by choice.

India is in fact known for actually having too many ideas - with the government recently suspending the issuance of licenses for new TV channels for some time because it felt numbers were already too high. In fact, India today has more newspapers and TV news channels than any country globally, and if anything, economics will force a contraction of media outlets. So concerns about a lack of pluralism of ideas are not warranted. In any case, globally and locally, the facts show that a plurality of ideas thrive, irrespective of cross-media ownership.

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The media in Kerala is very vibrant and energetic, with no signs of any dominance by any player. There over 3948 newspapers and periodicals registered with the Registrar of Newspapers of India in the State of Kerala of which 3081 are registrations for newspaper and periodicals in Malayalam language. As per records of the Registrar of Newspapers of India there are approximately 268 malayalam newspapers and 2813 malayalam periodicals registered. The top 18 malayalam newspapers have a circulation of 37,44,159. In addition there are at least 56 registered malayalam TV channels and 14 malayalam centric FM radio stations.

Q6: Which media amongst the following would be relevant for devising ways and means of ensuring viewpoint plurality?

(i) Print media viz. Newspaper & magazine

(ii) Television

(iii) Radio

(iv) Online media

(v) All or some of the above

Response of Malayala Manorama:

In view of our response to Q5 above, we reiterate that there is no need to devise any way or means to ensure viewpoint plurality in the Indian market.

Q7: Should the relevant markets be distinguished on the basis of languages spoken in them for evaluating concentration in media ownership? If your response is in the affirmative, which languages should be included in the present exercise?

Response of Malayala Manorama:

In our opinion there is no requirement of distinguishing relevant markets to determine the extent of cross media ownership in the country at all. Predominance of vernacular languages in our country and geographic and cultural diversity preclude any fear of monopoly. India unlike USA, UK or Australia is not a land of one language and unlike other countries with Cross Media Ownership Restrictions –there are 15 official languages with as many 1500 dialects. Thus the same owner of a Tamil newspaper cannot in any way be seen to be influencing an English Channel viewer. There are 28 States with distinct cultural identity and different languages particularly in South India and in some States in the North.

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Regulators and adjudicating authorities in the enlightened jurisdictions and established markets have already accepted the elimination of the blanket ban on cross-ownership. They have acknowledged the fact that the diversity of services and choice of content from different owners in the market keeps on increasing and as the consumer acquires increasing levels of control over what sources of news they use then the need for specific ownership rules to guarantee plurality of opinions diminishes.

Q8: If your response to Q7 is in the negative, what should be the alternative basis for distinguishing between various relevant markets?

Response of Malayala Manorama:

For the reasons stated above we reiterate that there is no requirement of distinguishing relevant markets to determine the extent of cross media ownership in the country at all.

Q9: Which of the following metrics should be used to measure the level of consumption of media outlets in a relevant market?

(i) Volume of consumption

(ii) Reach

(iii) Revenue

(iv) Any other

Please elaborate your response with justifications.

Response of Malayala Manorama:

Internationally the broad parameters such as volume of consumption, geographical coverage, target audience, equity participation, reach, revenue and number of channels have been used. The restrictions are generally based on the principle of ownership or control and have no relevance in Indian context since the plurality which exist in India do not exist in any of the other international jurisdictions. Further no media house enjoys unlimited monopoly in India as TRAI's own report shows.

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Based on these parameters it should be stated that there is an impossibility of cross media ownership influencing the opinions of consumers in India because of multiplicity of languages and geographic diversity, diversity in the media, fragmented industry and fierce independence of the media industry. We further elaborate on these reasons -

a) *Multiple languages:*

Predominance of vernacular languages in our country precludes any fear of monopoly. India unlike USA, UK or Australia is not a land of one language and unlike other countries with Cross Media Ownership Restrictions –there are 15 official languages with as many 1500 dialects. Thus the same owner of a Tamil newspaper cannot in any way be seen to be influencing an English Channel viewer.

b) *Diversity in the media;*

It is also obvious that no Indian TV channel network commands 20 per cent of the market, let alone 45 per cent prescribed in US/UK. Of the 200 plus top readership newspaper list in India, as per IRS 2012 Q1, India's largest English newspaper, commands only 4.1 percent of the national English readership which itself is a mere 7.7 million. This is only about 2 percent of the total readership in the country and only 0.8 percentage of the total adult population (12 + years).

c) *Fragmented Industry:*

The peculiarity of the Indian media industry is such that there is no pan-India media company akin to the media chains or conglomerates of the West having a newspaper brand which while having one footprint over the country could also be called the "national paper". However, each city or State may have a newspaper of choice. The fragmentation of the newspaper space can only be understood when one sees that English/ Hindi newspapers which enjoy substantial circulation in some States have after several decades failed to make an impact in terms of circulation in another State. The fragmentation of the media industry can also be seen from the sheer number of media outlets which includes over 65,000 newspapers and periodicals, over 825 TV channels and about 350 radio stations.

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d) *Fierce Independence:*

India's legacy of having a nationalistic media, strong cultural values and individuality of media houses eminently guards against the dominance of one company and its control. Indian media industry is highly fragmented with over 70,000 registered newspapers and periodicals, over 800 TV channels and at least 250 radio stations in private hands. This is excluding the 60 odd Doordarshan TV channels and the All India Radio which enjoys 100 % coverage over the length and breadth of the country.

In view of the same, there is no need to measure the level of consumption of media outlets in a relevant market at all. The media sector in India has a healthy competition on account of its diversity and fierce independence. As we have pointed out time and again, cross media regulations are absolutely uncalled-for.

Q10: In case your response to Q9 is „Any other" metric, you may support your view with a fully developed methodology to measure the level of consumption of various media outlets using this metric.

Response of Malayala Manorama:

We reiterate that there is no need to measure the level of consumption of media outlets in a relevant market as cross media ownership is in fact a necessity for the following reasons –

(i) *The business rationales and global trends where technology over internet and mobile platform has forced media houses to diversify and have multiple media outlets to just survive;*

(ii) *Media businesses require huge capital investments and have long gestation periods ranging upto 10 years or more –clearly it would not be possible for a media house .*

(iii) *Media houses have structured their business leveraging their investments across multiple media platforms.*

(iv) *Cross Media Ownership restrictions are irrelevant. In fact the concerns over viewpoint plurality are ill founded since India already has too many TV channels and so the government recently suspended issuance of new licenses for the same. Economics will force contraction of the number of channels.*

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(v) *Technology is forcing media companies across the world to diversify across mediums as digital revolution leads to convergence. TV, Print, Radio are all converging onto digital platforms of the computer and mobile phone and to be relevant, a media company must offer access to all forms of content (text, audio and video). Diversification across different media is necessary for survival and to remain viable in the digital and mobile environment.The effect of convergence and synergy is to be considered. There is considerable synergy between print media and TV and Radio in the matter of contents and its presentation. Therefore cross media ownership is essential and any restriction on it is totally unwarranted*

Q11: Which of the following methods should be used for measuring concentration in any media segment of a relevant market?
(i) C3
(ii) HHI
(iii) Any other

Response of Malayala Manorama:

We reiterate that cross media regulations are absolutely uncalled-for and methods like C3 or HHI or any other index for that matter have no applicability in the Indian context.

Measuring concentration in any media segment is totally irrelevant and unnecessary as the peculiarity of the Indian media industry is such that there is no pan-India media company akin to the media chains or conglomerates of the West having a newspaper brand which while having one footprint over the country could also be called the "national paper". However, each city or State may have a newspaper of choice. The fragmentation of the newspaper space can only be understood when one sees that English/ Hindi newspapers which enjoy substantial circulation in some States have after several decades failed to make an impact in terms of circulation in another State. The fragmentation of the media industry can also be seen from the sheer number of media outlets which includes over 65,000 newspapers and periodicals, over 825 TV channels and about 350 radio stations.

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Q12: If your response to Q11 is "Any other" method, you may support your view with a fully developed methodology for measuring concentration in any media segment of a relevant market using this method.

Response of Malayala Manorama:

N.A.

Q13: Would Diversity Index be an appropriate measure for overall concentration (including within media and cross media) in a relevant market?

Response of Malayala Manorama:

No. As there is no basis of cross media regulation, consequently there is no requirement of measuring the overall concentration in a relevant market.

Q14: In case your response to Q13 is in the affirmative, how should the weights be assigned to the different media segments in a relevant market in order to calculate the Diversity Index Score of the relevant market?

Response of Malayala Manorama:

N.A.

Q15: Would it be appropriate to have a "1 out of 3 rule" i.e. to restrict any entity having ownership/control in an outlet of a media segment of a relevant market from acquiring or retaining ownership/control over outlets belonging to any other media segment? Please elaborate your response with justifications.

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Response of Malayala Manorama:

No. We reiterate that there is no need of devising any cross media ownership rules since the sheer plurality of media options in India plus the internet resources available foreclose all possibility of media monopolies in India. The only way there can be a monopolistic situation in India — at least theoretically — is where one media group exercises control over 20 national and regional newspapers and 30-odd TV channels which is an improbable situation. In India's unique "mediascape", it is often contended that the proliferation of publications, radio stations, television channels, and internet websites is a sure-fire guarantor for plurality, diversity, and consumer choice. Thereby, it is unreasonable to impose cross media restriction on the basis of cross media ownership of various companies in the media sector.

Q16: Alternatively, would it be appropriate to have a "2 out of 3 rule" or a "1 out of 2 rule"? In case you support the "1 out of 2 rule", which media segments should be considered for imposition of restriction? Please elaborate your response with justifications.

Response of Malayala Manorama:

We repeat that in view of our answer to Q15, cross media regulations are absolutely uncalled-for

Q17: Would it be appropriate to restrict any entity having ownership/ control in a media segment of a relevant market with a market share of more than a threshold level (say 20%) in that media segment from acquiring or retaining ownership/ control in the other media segments of the relevant market? Please elaborate your response with justifications.

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Response of Malayala Manorama:

Restricting any entity having ownership/ control in a media segment of a relevant market with a market share of more than a threshold level (say 20%) in that media segment from acquiring or retaining ownership/ control in the other media segments of the relevant market is not justifiable. India already has a vertical integration rule in TV where broadcasters cannot own more than 20% of cable/carriage (or the last mile pipe), and vice versa. Restricting equity ownership would not lead to a competitive media industry. Media groups should not be deprived of operating within the territory, even if they have a circulation of more than 50 percent. If there is any abuse of monopolies, then the Competition Commission is capable and equipped to deal with the same.

On the contrary, ownership control will act as a disincentive to competition because of barring of entry to new entities. The real issue is the abuse of last mile distribution ownership and the need for neutral treatment of customers by distributors for a healthy democracy. The solution to this is not ownership restriction. What is required is to have safeguards – laws and checks and balances on the last mile of the customer – to ensure last mile neutrality which has become the global movement across mediums.

Q18: In case your response to Q17 is in the affirmative, what should be such threshold level of market share? Please elaborate your response with justifications.

Response of Malayala Manorama:

N.A. – For reasons stated above.

Q19: Would it be appropriate to lay down restrictions on cross media ownership only in those relevant markets where at least two media segments are highly concentrated using HHI as a tool to measure concentration? Please elaborate your response with justifications.

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(13)

Response of Malayala Manorama:

Laying down restrictions on cross media ownership is not justifiable at all. The medium of delivery of news, entertainment & data to individuals is rapidly transforming leading to convergence of all forms of media. In this era of convergence, newspapers, TV and radio stations are available on a mobile phone as well as the Internet. The ownership of mobile phones in India is over 400 million –far, far, more than the circulation of newspapers (30 million) or cable TV (71 million households) or FM radio. Moreover, DTH and IPTV allow one to access FM radio as well as TV.

When the average Indian is accessing media across multiple formats (Radio, Television, Newspapers, Internet, Billboards, etc.) already, the media companies in order to survive and be productive, are required to leverage existing investments, capacities and capabilities so that they could provide content in multiple formats. The Indian consumer today does not select his preference based on ownership the service provider. The choice of the consumer today in the age of the internet is often involuntary and is (i) based on efficiency of the service provider; (ii) the quality of news coverage appealing to the taste, interests and aesthetics of the consumer; and (iii) the news provider's capacity to deliver high quality broadcasts/ telecasts which are impartial.

Besides any attempt on restricting cross media ownership is ultra vires of the Constitution, as it violates Article 19(1)(a) and 19(1)(g) of the Constitution.

Cross media regulations is also violative of free trade and the right of the print media to prevent it from becoming obsolete. In this context, it should be pointed out that the print media industry is facing serious threat from the new media – T.V., Radio and internet. In order for print media to survive, it may be required for it to diversify into other mediums to capitalise on the enormous synergy between print and various mediums in terms of news gathering and content presentation and save cost.

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Q20: In case your response to Q19 is in the affirmative, please comment on the suitability of the following rules for cross media ownership:

(i) No restriction on cross media ownership is applied on any entity having ownership/ control in the media segments of such a relevant market in case its contribution to the HHI of not more than one concentrated media segment is above 1000. (For methodology of calculation please refer para 5.42)

(ii) In case an entity having ownership/ control in the media segments of such a relevant market contributes 1000 or more in the HHI of two or more concentrated media segments separately, the entity shall have to dilute its equity in its media outlet(s) in such a manner that its contribution in the HHI of not more than one concentrated media segment of that relevant market remains above 1000 within three years.

Response of Malayala Manorama:

N.A.

Q.21 Would it be appropriate to lay down the restrictions on cross media ownership only in highly concentrated relevant markets using Diversity Index Score as a tool to measure concentration? Please elaborate your response with justifications.

Response of Malayala Manorama:

No. Restrictions on cross media ownership in any manner, whatsoever are neither sound nor reasonable.

Q22: In case your response to Q21 is in the affirmative, please comment on the suitability of the following rules for cross media ownership in such relevant markets:

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(i) No restriction on cross media ownership is applied on the entities contributing less than 1000 in the Diversity Index Score in such a relevant market.

(ii) In case any entity contributes 1000 or more in the Diversity Index Score of such a relevant market, the entity shall have to dilute its equity in the media outlets in such a manner that the contribution of the entity in the Diversity Index Score of the relevant market reduces below 1000 within three years.

Response of Malayala Manorama:

N.A.

Q23: You may also suggest any other method for devising cross media ownership rules along with a detailed methodology.

Response of Malayala Manorama:

Cross Media regulations are unconstitutional, uncalled for and consequently there should not be any need for cross media regulations. Any attempt on restricting cross media ownership is ultra vires of the Constitution, as it violates Article 19(1)(a) and 19(1)(g) of the Constitution.

Q24: In case cross media ownership rules are laid down in the country, what should be the periodicity of review of such rules?

Response of Malayala Manorama:

Laying down of cross media ownership rules is per se unconstitutional and uncalled for. We strongly advocate against the same.

Q25: In case media ownership rules are laid down in the country, how much time should be given for complying with the prescribed rules to existing entities in the media sector, which are in breach of the rules? Please elaborate your response with justifications.

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Response of Malayala Manorama:

Laying down of cross media ownership rules is per se unconstitutional and uncalled for. We strongly advocate against the same.

Mergers and Acquisitions

Q26: In your opinion, should additional restrictions be applied for M&A in media sector? Please elaborate your response with justifications.

Response of Malayala Manorama:

If M & A agreements between companies significantly prevent, limit or distort competition, then the Competition Commission is well empowered to deal with this issue. In India, the Competition Act 2002 has the jurisdiction to curb all anti competitive practice in the media sector. Already the recent acquisition of UTV by Disney and some other media acquisitions were all vetted by the Competition Commission of India.

Recently, countries like Netherlands, Sweden and Poland have repealed or modified their cross media ownership rules, and have left the same to be regulated by general competition law. Therefore cross-ownership of media companies is now assessed under the competition law rules only in these countries. In this context vesting either the Broadcasting Regulatory Authority of India (BRAI) and/or the Telecom Regulatory Authority of India (TRAI) with regulatory powers over print media will be counter productive and would only reduce the effectiveness of the Competition Act, 2002.

Q27: In case your response to Q26 is in the affirmative, should such restrictions be in terms of minimum number of independent entities in the relevant market or maximum Diversity Index Score or any other method. Please elaborate your response with justifications.

Response of Malayala Manorama:

NA.

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Vertical Integration

Q28: Should any entity be allowed to have interest in both broadcasting and distribution companies/entities?

If "Yes", how would the issues that arise out of vertical integration be addressed?

If "No", whether a restriction on equity holding of 20% would be an adequate measure to determine „control" of an entity i.e. any entity which has been permitted/ licensed for television broadcasting or has more than 20% equity in a broadcasting company shall not have more than 20% equity in any Distributor (MSO/Cable operator, DTH operator, HITS operator, Mobile TV service provider) and vice-versa? You are welcome to suggest any other measures to determine "control" and the limits thereof between the broadcasting and distribution entities

Response of Malayala Manorama:

Yes, any entity should be entitled to have interest in both broadcasting and distribution companies/entities. Today, vertical integration is necessary for companies to improve the quality of news coverage as well as improve their capacity to deliver high quality broadcasts/ telecasts appealing to a wide range of tastes and interests. Convergence of media happens because of synergy factors also. Further, in an era of convergence, media companies are required to leverage existing capacities and capabilities just in order to survive. However, the entity with broadcasting and distribution facilities should allow all broadcasting entities on the distribution platform. There should not be any favoritism towards broadcasting entity/channel owned by parent entity.

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Mandatory Disclosures

Q29: What additional parameters, other than those listed in para 7.10 (i), could be relevant with respect to mandatory disclosures for effective monitoring and compliance of media ownership rules?

Response of Malayala Manorama:

The current regulators, viz. - Ministry of Information and Broadcasting, the Registrar of Companies and the Competition Commission of India have adequate information and powers for mandatory disclosures. Any further mandatory disclosures contemplated would restrict the right to trade and profession provided by the Constitution and would be violative of the freedom of expression of the media. For reasons stated above restrictions on cross media ownership are undemocratic, unconstitutional and uncalled for.

Q30: What should be the periodicity of such disclosures?

Response of Malayala Manorama:

N.A.

Q31: Should the disclosures made by the media entities be made available in the public domain?

Response of Malayala Manorama:

N.A.

For The Malayala Manorama Co. Ltd.

George Varghese
Secretary & Chief Genl. Manager Company Affairs