



**INTERNET
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By Email

To,
Shri Anil Kumar Bhardwaj,
Advisor (Broadcasting and Cable Services),
Telecom Regulatory Authority of India,
Email id: advbcs-2@traigov.in
CC: jtadvbcs-2@traigov.in

Dated: June 06, 2022

IFF/2022/063

Dear sir,

Re: Comments on Consultation Paper on Issues relating to Media Ownership

The Internet Freedom Foundation (IFF) is a non-profit organisation created by members of the SaveTheInternet.in movement for net neutrality. Over one million of our fellow citizens wrote to the TRAI in April 2015 as part of the consultation paper on OTT services using the SaveTheInternet.in platform, and continued to engage the TRAI and the Department of Telecommunications on subsequent consultative exercises in this area.

IFF aims to promote the rights of Indian Internet users — freedom of speech, privacy, net neutrality and freedom to innovate - before policymakers, regulators, the courts, and the wider public sphere. We are grateful to submit our views on the Consultation Paper on Issues relating to Media Ownership.

Our public advocacy and work on informational privacy and protecting the rights of Indian citizens vis-a-vis their data includes:

1. **Advocates for a rights-based informational privacy law:** Public campaigns and legislative engagement to pass a comprehensive data protection bill to protect privacy of users coming shortly after the historic right to privacy judgement by the Hon'ble Supreme Court of India [\[link\]](#). IFF has aided Indian lawmakers in their efforts to advance proposals to create comprehensive laws to further provide for the protection of informational privacy and data.
2. **Accountability for the collection and transfer of data by platforms:** IFF was granted permission by the Hon'ble Supreme Court to be added as an intervening party in the Whatsapp-Facebook data sharing case where we have pleaded for further disclosure of corporate data collection and transfer practises as well as called for interim orders to



protect the interests of our fellow citizens [\[link\]](#). It has also filed an information request with the Competition Commission of India against Whatsapp.

3. Regulatory engagement to protect user privacy and net neutrality: Participation in past TRAI consultations where we have highlighted the urgent need to protect user privacy and net neutrality, including:

- a. Response to Privacy, Security and Ownership of the Data in the Telecom Sector Consultation [\[link\]](#)
- b. Response to Traffic Management Practices (TMPs) and Multistakeholder Body for Net Neutrality Consultation [\[link\]](#)
- c. Supplementary submission to Traffic Management Practices and a Multistakeholder Body for Net Neutrality Consultation [\[link\]](#)
- d. Response to Regulatory Framework for Promoting Data Economy Through Establishment of Data Centres, Content Delivery Networks, and Interconnect Exchanges in India [\[link\]](#)

Based on our past engagement with the authority on issues of net neutrality and informational privacy, we have made specific submissions with justifications for queries related to contours of media ownership/control. Before providing our detailed response to the queries raised in the consultation paper, we would like to state our broad concerns around lack of jurisdiction and legislative mandate. The issues raised in the consultation paper range from ownership, control, distribution, regulation, restriction, etc. in various media segments such as print, television, radio and internet. Section 11(1) (a) of TRAI Act 1997 states, “*measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;...*”¹ Through a notification dated January 9, 2004, the Central Government included broadcasting and cable services under TRAI’s ambit.² Considering that its legislative mandate is restricted to “telecommunication, broadcasting and cable services”, regulating or placing restrictions on print and digital media is beyond TRAI’s jurisdiction. Thus, any input provided by TRAI in relation to print and digital media falls outside the scope of its statutory mandate. Considering that the Ministry of Information and Broadcasting has referred this matter to TRAI, it is TRAI’s responsibility to restrict its suggestions and inputs to issues related to telecommunication services.

We would also like to add a net neutrality perspective in the issue of media ownership/control. Monitoring of cross-media ownership should be considered when ownership/ control by an entity across multiple segments leads to preferential or favourable treatment. Thus, such

¹ The Telecom Regulatory Authority Act of India, 1997 <https://traigov.in/sites/default/files/The_TRAI_Act_1997.pdf>

² Telecom Regulatory Authority Of India, ‘Consultation Note on Issues relating to Broadcasting and Cable Services’ (ANNEXURE - I) Notification no. 39 <<https://www.traigov.in/sites/default/files/Consultation%20note.pdf>>



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monitoring/ regulation must be considered in cases where the principles of net neutrality are violated.

We hope the TRAI takes forward the specific suggestions made by us against some of its queries.

Sincerely,

Prateek Waghre,
Policy Director,
Internet Freedom Foundation



Comments on Consultation Paper on Issues relating to Media Ownership

Response to changing trends in the Indian Media and Entertainment (M&E) Landscape

Question 1: Media industry has expanded in an unprecedented manner. In addition to conventional television & print medium, the industry now comprises news & media-based portals, IP based website/ video portals (including You-tube/ Facebook/ Twitter/ Instagram/ Apps other OTT portals etc.). Considering overall scenario, do you think there is a need for monitoring cross media ownership and Control? Please provide detailed reasoning to support your answer.

Answer:

1. The reach and penetration of the internet has been increasing since 2013, when TRAI released its consultation paper on issues relating to media ownership. Advancements in technology since then has led to innovations in the media space, significantly expanding the realm of media and entertainment. With the increase in presence and influence of digital media, the viewership preference of the audience has also changed, resulting in higher consumption of digital media.
2. The growth in the forms or types of media consumption doesn't necessarily indicate media plurality. As correctly stated by TRAI in the consultation paper, dominance by a limited number of players, both across and within the media industry will reduce media pluralism. Not only can dominance by some market players undermine diversity in the media landscape, it can also reduce the quality of public debate. As print, broadcast and digital media combine, the need for safeguarding the independence of media from political and commercial interests becomes urgent.
3. Here, clarity over what constitutes "cross media ownership" is of significance. The consultation paper defines it as, "*the ownership of multiple media businesses by a person or entity.*" However, an entity owning a newspaper is likely to have a website or e-newspaper, sharing similar views and/or content on two different segments of media. Clarity on whether this sort of an arrangement would also be treated as cross media ownership and control is required.
4. It might be important to note here that while monitoring/restricting cross-media ownership might reduce market dominance by larger players, it may not necessarily achieve the goal of viewpoint plurality. In spite of having representation of multiple voices on and across media segments, there could still be limited diversity in viewpoints. However, we do recognise the challenges created by media concentration in various



segments of media. Thus, cross-media ownership and control must also be viewed from a perspective of controlling market dominance and concentration as well as ensuring healthy and fair market competition.

5. Lastly, it must be ensured that any mechanism to monitor or regulate cross media ownership doesn't encroach upon the media's freedom of speech and expression promised by Article 19(1)(a) of the Indian Constitution. Thus, media pluralism must not be at the cost of media freedom and greater state control over the industry.

Question 2: Media has the capacity to influence opinion of masses, more so the news media. Should there be a common mechanism to monitor ownership of print, television, radio, or other internet-based news media?

a. If yes, elaborate on the Authority, structure and mechanism of such monitoring mechanism/ regime?

b. If no, should there be a self-regulatory mechanism by the industry? What should be the mechanism for defining and implementing such industry based self-regulatory regime? In case some players do not follow the self-regulation, what should be the procedure for enforcing such regulations?

Answer:

1. The digital space has been a boon for journalists, whistleblowers and activists who now have more avenues to share their work with a wider audience. It also gave Indian audiences the ability to access a greater number of news sources. Further, it provided opportunities to many more small-scale, local news reporters who were previously unable to find space on traditional television, print and radio media.
2. We would once again like to reiterate here that creating a mechanism for monitoring ownership might not necessarily lead to diversity and plurality of views. There is broad agreement that news media hold the capability to influence the consumers. They also must follow certain ethical standards so as to avoid circulation of fake news or misinformation. However, any mechanism to monitor digital new media ownership must not neglect other rights, especially the freedom of expression and consumers' right to information.
3. Any mechanism to monitor cross-media ownership must ensure that an additional compliance burden is not imposed on the entities. It must also be narrow in scope such that it does not hinder economic activity among small and medium-sized entities. Lastly, such a mechanism must not extend to cover measures such as content policing and removal, censorship, etc..



Response to contours of Media Ownership/Control and its consequences

Question 3: There are regulatory agencies like CCI and SEBI among others that monitor and regulate mergers, acquisitions, and takeovers. Is there a need for any additional regulatory/ monitoring mechanism? Do you think there's a need to monitor takeovers, acquisitions of media companies, especially the news media companies?

3.1 If yes, which agency/ ministry should be entrusted with the task of such data collection, regulation & monitoring?

a. Whether such monitoring/ control be ex-ante as is the case with combinations in the Competition Act 2002?

b. What should be the procedure of reporting and monitoring? What should be the periodicity of such reporting?

c. What should be the powers of the concerned authority for enforcing regulatory provisions, inter-alia including imposition of financial disincentives, cancellation of license/ registration etc.?

Q3.2 If no, please provide an elaborate justification as to why there is no need for such a mechanism? Provide market data to substantiate your opinion.

Answer:

1. We believe that creating new and separate agencies for performing tasks which are already undertaken by existing, well-functioning agencies might be an unnecessary duplication of efforts. A more efficient alternative could be to increase capacity within these existing agencies.

Question 4. Please suggest the most suitable criteria to define and measure Ownership/Control along with suitable reasoning. Define Control and prescribe the statutory/ regulatory/ legal powers to enforce such criteria of Control.

Answer: No comments.

Question 5: Should the licensor, based on recommendations of the concerned monitoring agency/ regulator, restrain any entity from entering the media sector in public interest? Please elaborate your answer.

Answer:



1. Such a move may end up giving the state excessive power and control over the media which is undesirable. Moreover, restricting ownership may reduce market dominance but might not necessarily increase viewpoint plurality. Furthermore, making the regulator the sole authority capable of restraining entities from entering the media sector may create a substantial risk of abuse of power. There should therefore be multiple checks and balances in place along with sufficient grievance redressal mechanisms to help safeguard media freedom. Such a step may only be considered after the designated regulator has clear and defined standards/ tests to determine the impact on public interest arising from the entry of an entity in the media sector.

Question 6: Which of the following methods should be used for measuring market concentration?

(i) Concentration Ratios

(ii) Lerner's Index

(iii) Hirschman-Herfindahl Index (HHI)

(iv) Any other

Please comment on the suitability of HHI for measuring concentration in a media segment in a relevant market.

In case you support "Any other" method, please substantiate your view with a well-developed methodology for measuring concentration in a media segment in a relevant market.

Answer: No comments.

Response to need, purpose, extent and impact of Cross Media Ownership

Question 7: What all genres shall be considered for the purpose of overseeing of media ownership to ensure viewpoint plurality? Please elaborate your response with justifications.

Answer:

1. As correctly pointed out by TRAI in the consultation paper, the news and current affairs genre holds a great responsibility of delivering authentic and evidence-based news to the audience. While we believe that formulating cross-media ownership rules for the news and current affairs genre is not of direct relevance to the plurality and diversity of



viewpoints, we suggest that it shall still be considered as a relevant genre for formulating said rules, especially from a market dominance and concentration perspective.

2. TRAI, in the consultation paper, made an acute observation when it stated that entertainment and infotainment channels have the potential to influence mass perception, value systems and belief. However, these genres mostly produce fictional content, unlike news channels, which are expected to deliver facts based on extensive research. Thus, the entertainment and infotainment genres must not be considered for the purpose of overseeing media ownership.

Question 8: Q8. Which media segment amongst the following would be relevant for encouraging viewpoint plurality?

8.1 Print media viz. Newspaper & magazine

8.2. Television

8.3. Radio

8.4. Online media/Digital media/OTT

8.5. All or some of the above

Please substantiate your answer with appropriate reasons.

Answer:

1. Fueled by the COVID-19 pandemic, the world is rapidly shifting towards adopting technology in our daily lives. This inevitable ubiquity of technology has also exposed a stark digital divide in India.³ The Indian Telecom Services Performance Indicator Reports published by TRAI for October 2021- December 2021 show that the total number of internet subscribers decreased to 829.30 million by the end of December 2021 (compared to 834.29 million by the end of September 2021).⁴ This decrease was witnessed in both rural and urban areas, with internet subscribers decreasing marginally in both rural and urban areas.⁵ In such a scenario, it is likely that many citizens of India may not be able to adequately navigate the digital ecosystem and thus might end up being excluded.

³ Venugopal Mothkooor, Fatima Mumtaz, 'The digital dream: Upskilling India for the future' (*Ideas for India*, 23 March, 2021) <https://www.ideasforindia.in/topics/governance/the-digital-dream-upskilling-india-for-the-future.html>

⁴ Rohin Garg & Simrandeep Singh, 'State of Internet Access: January 2022 (#2)' (*Internet Freedom Foundation*, 14 January, 2022) <https://drive.google.com/file/d/1cRQOIAuU5ewsiK6h6Lpin2xFvLikttoI/view>

⁵ Telecom Regulatory Authority of India, *The Indian Telecom Services Performance Indicators October – December, 2021* <https://traf.gov.in/sites/default/files/QPIR_05052022.pdf>



2. As per data by Telecom Regulatory Authority of India ('TRAI'), the total number of internet subscribers is around 82.9 crore, which translates to an internet penetration of approximately 60%.⁶ The latter figure also masks further disparities: rural internet penetration is at 37.67%. Rural India, which possesses low levels of education and for whom digital literacy is a distant dream, is not tech savvy enough to intake content available on the digital media.⁷ Thus, the conventional forms of media, such as television, print and radio, continue to be an essential part of the daily lives of residents living in rural india. Radio has also witnessed a significant growth in its reach, with broadcast radio (AM) reaching 99% of the Indian population, while FM radio reaching 65%.⁸ Today, both AM and FM not only have a lot of channels, but also channels in almost every language in the country.
3. Considering the growing reach of the internet as well as the continuing relevance of radio in India, TRAI must re-evaluate its recommendation made in 2014 which didn't include the radio and the internet as a media segment contributing to viewpoint plurality. All media segments witness competition and diversity. Not only are there a plethora of newspapers, TV and radio channels, and online content, there is also language heterogeneity in all of these segments. We thus believe that all of the segments mentioned must be considered relevant for encouraging viewpoint plurality. However, any attempts to do so must be balanced against the freedom of speech and expression.

Question 9: Should the word 'media' include television, print media, digital/online media, and other media entities? Alternatively, whether 'television' as a media segment should include only DPOs (including LCOs) or only Broadcasters or both for ensuring viewpoint plurality in the television segment? Please justify your answer.

Answer: No comments.

Question 10. What should be the basis of classification of relevant geographic markets for evaluating concentration in media ownership? Should it be aligned with state or a region/Metro/Non-metro cities or the whole country? Please support your answer with reasons.

Answer: No comments.

Question 11. Should the relevant geographic market be defined on linguistic criteria? If yes, please list the languages which may be included in this exercise, along with justifications.

⁶ Ibid

⁷ Eirini Kalliamvakou, 'The 2021 State of the Octoverse' (Vol VI) (*Github*, 16 November, 2021)

<https://github.blog/2021-11-16-the-2021-state-of-the-octoverse/>

⁸ 'Radio continues to evolve in India, grew 7.5 pct in 2018' (*Financial Express*, 31 July 2019)

<<https://www.financialexpress.com/opinion/radio-continues-to-evolve-in-india-grew-7-5-pct-in-2018/1661133/>>



Answer: No comments.

Question 12. Should the relevant geographic market be defined uniformly for the whole country? Is there a need to adopt separate criteria for certain states and/or Union Territories in light of their peculiar circumstances such as difficult terrain, hilly region, huge distance from mainland, low media penetration etc.? In case you support the need of a separate criteria for certain states and/or union territories, please specify such states and/or union territories and the criteria suitable for them along with appropriate justifications.

Answer: No comments.

Question 13. Which of the following metrics should be used to measure the level of consumption of one type of media (media outlet) in a relevant market?

13.1 Volume of consumption

13.2 Reach

13.3 Revenue

13.4 Any other

Please elaborate your response with justifications. In case you find “Any other” metric to be suitable for the said purpose, you are requested to support your view with a detailed methodology.

Answer: No comments.

Question 14. Whether circulation details of newspapers should be used as a proxy for readership to measure the reach of media outlet in print segment in a relevant market? In case you disagree, kindly provide a detailed methodology to measure the level of consumption of print media segment.

Answer: No comments.

Question 15. According to you, what measures should be adopted to discount the impact of bouquet system of channel distribution on the viewership of television channels? Please support your suggestion with reasoning.

Answer: No comments.

Q16. Would it be appropriate to put restrictions on cross media ownership in one or more type of media segment based on mere presence of an entity in any segment in a relevant market?

Answer:

1. Restricting ownership based on merely presence in another segment is not well placed in reality as there will inevitably be entities who have ownership/ presence in multiple media. For instance, a media group which has ownership in the print media will mostly have a news website as well, extending their presence in the digital media as well. Similarly, an entity in the entertainment sector which has a presence in television broadcasting may also have presence in the digital media/ Over-The-Top (OTT) media platform. Furthermore, there are also instances wherein an entity owns multiple entities, both within and across media segments. In many cases, companies owned by the same larger entity provide opposing or conflicting views on the same matter, thus promoting media plurality and diversity. Thus, mere presence of an entity or company in one media segment, shouldn't be a reason for restricting their entry or ownership in another segment.
2. The proposal for such a blanket ban is more prohibitive than regulatory in nature. Such a ban will also restrict the work created by small media units as well as entities undertaking investigative journalism or accountability reporting to a single segment. This will thus go against the very intent of increasing media plurality and diversity. Restricting cross-media ownership will also impact their revenue, rendering many entities economically unviable. Imposing a ban on horizontal integration is unrealistic and detrimental to the interests of consumers as well as content producers. Restricting entry or ownership above a certain threshold, without assessing the presence of anti-competitive behaviour, is not a welcome move.

Question 17. In case you support the restriction based on mere presence in the relevant market, what all segments should be included for imposition of restrictions? Further, in how many segments, presence of an entity should be allowed i.e. should it be “2 out of x” or “1 out of x”, x being the total number of segments?

Answer: No comments.

Question 18. Would it be suitable 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 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. In



case you support such restriction, please suggest the threshold level of market share for the purpose of imposing cross-media ownership restrictions.

Answer: No comments.

Question 19. Whether in your opinion, the restrictions on cross media ownership should be imposed 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.

Answer: No comments.

Question 20. In case your response to the above question 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.

(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.

Answer: No comments.

Question 21. Please provide your inputs on the suitability of imposing restrictions on cross media ownership only in highly concentrated relevant markets using Diversity Index Score as a tool to measure concentration.

In case you find the above mentioned criteria of restricting cross- media ownership appropriate, please comment on the suitability of the following rules for cross media ownership in such relevant markets:

(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.

Answer: No comments.

Question 22. In case you consider any other criteria for devising cross media ownership rules to be more appropriate, please suggest the same with sufficient justifications.

Answer: No comments.

Question 23. Considering the fact that sectoral regulators have played important role in bringing necessary regulations to facilitate growth and competition and to promote efficiency in operations of Telecom Services (Telecommunications and Broadcasting), in your opinion, should Merger & Acquisitions in media sector be subjected to sector specific regulations? Please justify your response.

Question 23a. If yes, which among the following should be taken as the criteria for the same-

- (i) minimum number of independent entities in the relevant market
- (ii) maximum Diversity Index Score
- (iii) any other measure

Question 23b. If no, what mechanism would you suggest for regulator to use for ensuring smooth and equitable growth of the sector?

Answer: No comment.

Q24. In your opinion, should any entity be allowed to have an interest in both broadcasting and distribution companies/entities?

Q24a. If “Yes”, how would the issues of vertical integration be addressed?

Q24b. If “No”, whether a ceiling of 20% equity holding 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?

Answer: No comments.



Q25. Please suggest any other measures to determine “Control” and the limits thereof between the broadcasting and distribution entities.

Answer: No comments.

Q26. Do you think that the disclosures/ compliance reports for different type of licensees as described in Part II of Chapter VI are sufficient to ascertain the media Ownership/ Control by certain entity(ies)? If no, please specify, what additional details should be sought by the licensor or the regulator for effective monitoring.

Answer: No comments.

Q27. What additional parameters, other than those listed in this consultation paper, could be relevant with respect to mandatory disclosures for effective monitoring and compliance of media ownership rules? Further, what should be the periodicity of such disclosures? Please justify your answer.

Answer: No comments.

Q28. Stakeholders may also provide their comments on any other issue relevant to the present consultation.

Answer: No comments.