

**TIMES NETWORK'S COMMENTS
ON
TRAI CONSULATION PAPER
ON
REGULATING CONVERGED DIGITAL
TECHNOLOGIES AND SERVICES – ENABLING
CONVERGENCE OF CARRIAGE OF
BROADCASTING AND TELECOMMUNICATION
SERVICES**



DATE OF ISSUE: 30.01.2023

DATE OF SUBMISSION OF COMMENTS: 03.04.2023

A. Overview

At the outset, we would like to state that broadcasters and their digital arms have serious existentialist issues of survival especially in an environment where telecommunication entities are, unlike broadcasters, allowed unlimited ownership of content as well as carriage. Hence, broadcasters are deeply concerned at any attempt – whether administrative, regulatory, legal, etc. to encourage or perpetuate unrestricted presence across different platforms and in both content and carriage by telecommunication entities under the garb of so-called “convergence” –and would hope that the CP is not an attempt in this direction.

This is especially because the basic precept underlying the CP is flawed. Mere convergence of devices, services or networks does not warrant drawing of the conclusion that there is “convergence” of telecom and broadcasting services. All bundled services --even if offered by one service provider-- are still separate services and cannot be construed to be “convergence”. In any case, broadcasting services are very different from telecommunication services and are hence regulated and administratively dealt with separately.

Hence, the already over-regulated broadcasting sector should not be subjected to further regulation merely because the broadcasting sector and its digital arms use telecommunication services such as internet bandwidth for making the content available on mobile phones, etc.

Instead of focusing on so-called convergence through a converged regulator, TRAI must be instead concerned about the monopolistic tendencies through vertical integration wherein large entities especially in the telecom and technology sectors are present in a big way in broadcasting as well as distribution of content, data, and information.

In sum, we join the vast majority of broadcasters in submitting that the only logical step required is to at least extend the 20% vertical integration limit currently in place for broadcasters/DTH/HITS –to telecommunication entities, given that they have been allowed unfettered ownership and control of not only all content, data and information as well as the carriage/pipes they ride on.

1. Media and Entertainment (M&E) services and telecommunication services are distinctly different sectors, with the former having grown by leaps and bounds from traditional media like print, movies, magazines, terrestrial television channels, etc, to private television channels and their OTT’s/digital hubs. Broadcasting has a wide and distinctly differentiated array of stakeholders such as content providers/producers/creators, broadcasting channels, distribution

platforms, rating agencies, self-regulatory bodies, etc. Likewise, there are various specialised Acts enacted for regulating the broadcasting sector such as Cable TV Act, TRAI Act, Copyright Act, Information Technology Act, and Trademarks Act apart from various regulations notified by TRAI, various self-regulatory guidelines/advisories issued by the sector regulator/self-regulatory bodies etc.

Hence, just because the M&E sector uses certain common services such as internet bandwidth and makes content available on mobile phones, it cannot be the only reason for combining the regulations of two vastly different business sectors such as Broadcasting and Telecommunication into one. because with this logic, all e-commerce businesses/services which are accessed through mobile phones would have to be merged into the telecommunication sector. To put it simply, would WhatsApp or Facebook or OTT platforms like Netflix and Amazon --which provide services outside the licensing framework of telecommunication licensing or broadcast permissions, be subject to similar rules/terms/regulations by assuming them to be aspects of convergence??

In any case, merging the frameworks of these two will very adversely impact broadcasting as an independent sector in terms of its recognition in the eyes of regulators, financial institutions, its audiences, etc and will have very serious adverse repercussions on its future and survival. Progressing on this line could have a black hole effect and any attempt to bring M&E stakeholders under a common licensing regime with telecom or make them pay license fee on adjusted gross revenue basis like the telecom business does or to make them bid for the spectrum, which is currently being administratively allocated, or to subject them to comply with any other similar licensing obligations by treating them like telecom operators in the guise of convergence -- would have a catastrophic impact. It would result in effectuating and administering regulatory euthanasia to the broadcast and cable sector, making it an unaffordable business to continue for most.

2. In this regard, the Information and Broadcasting ministry's (MIB) observations dated October 4, 2022 (which also find mention in the TRAI Consultation Paper) would become extremely relevant and pertinent wherein it has categorically stated that both carriage policy and regulation for broadcasting should continue with MIB, including the spectrum allocation (which would also be in line with ITU standardisation of various spectrum bands). There is no doubt that MIB has been effectively coordinating with all relevant government entities like the Ministry of Home Affairs, DoT, Department of Space, Ministry of External Affairs, Department for Promotion of Industry and Internal Trade, MEITY, Ministry of Corporate Affairs etc while granting licenses and permissions to all broadcasters and has already gone a long way by establishing the integrated Broadcast Seva Portal.

3. Further, there are sector specific reforms already underway at highly advanced stages of consultations between relevant stakeholders for addressing existing regulatory gaps and hence the Central Government's intentions towards continuing with sector-specific regulation continues. The Centre has been acting expeditiously to bring into the public domain principle-based frameworks to improve upon existing regulatory mechanisms to regulate certain technologies and/or effectively regulate previously unregulated technologies. These proactive measures undertaken by the Central Government, in our view, are likely to sufficiently address any challenges that may arise. Examples of such reforms being undertaken include:
- The draft of the Indian Telecommunications Bill, 2022 (“**Telecom Bill**”), which was placed in the public domain for stakeholder inputs, is designed to replace older legislations governing the telecommunications sector (such as the Indian Telegraph Act, 1885).
 - **MIB** has also written to TRAI on the reference made by “**DoT**” that it is – *inter alia* – proposing reforms for bringing together all broadcasting carriage platforms and their institutional, legal and regulatory aspects under a unified legislative framework.
 - The Central Government is also seeking to introduce a new Digital India Act (“**DIA**”) to replace the Information Technology Act, 2000 and which from publicly available information is likely to include within its regulatory purview different actors operating within the Information Technology and Information Technology enabled Services sector as well as new and emerging technologies (such as metaverse, artificial intelligence, augmented reality/virtual reality, etc.) through the principles of openness, user safety, consumer trust and accountability for the online ecosystem.

Hence, the above-mentioned sector-specific reforms will adequately address what appears to be the primary concern expressed by TRAI in the CP – of certain technologies and technology innovations not being subject to regulatory oversight. Furthermore, these sectoral reforms (as opposed to a converged regulatory framework) will be important steps for promoting innovation at scale and enabling technology-driven businesses (both domestic and global) to navigate the Indian regulatory ecosystem with ease and efficiency.

- 1 “Convergence” is a technological construct and merely bundling services does not in any manner convey that the underlying functions have also got merged. In fact, it is obvious that there is a dramatic difference in the types of services offered and that does not call for any form of convergence of laws, regulations and so on. The e-commerce, e-finance or e-health has got nothing to do with telecommunications, and it does not mean convergence of health, banking and finance into telecom. Similarly, broadcast is communication to public and the world at large --whereas telecommunication is private communication between two or more individuals. The mere possibility of offering

telecommunications using broadcast infrastructure or vice versa, cannot be the cause and reason to converge the frameworks except to remove monopolies and dominance.

- 2 Interestingly, some of the 'Open Internet' principles as proposed to be enshrined in the Digital India Act may also be contrary to the ideas of convergence. Convergence --as envisaged in the CP-- would result in creation/concentration of market power by wiping out most of the competing smaller broadcasters or distribution platforms and may facilitate and promote gatekeeping practices --whereas the 'Open Internet ideas' attempts to prevent them. If convergence of "telecommunication" and "broadcasting" frameworks is to take place in one, with a mandate that broadcasters need telecom licence to operate or need to pay for the spectrum or buy it in auction directly or indirectly, it would mean most of the 900 broadcasters would not be in a position to either buy spectrum in auction or even afford to make licence fee / spectrum charges payments. **This would mean broadcasting would become an exclusive privilege in the hands of a chosen few with deep pockets to afford provision of broadcast services (now proposed to be converged under telecommunication services). In effect, all that this would mean, there would be the concentration of ownership and control of all forms of content and carriage in the hands of a few telecommunication entities in the name of convergence and eliminating other forms of distribution and technologies after forcing broadcasting entities to fight in a non-level playing field. Is that the intention of the regulator?**
- 3 Further, this may also lead to a situation whereby communication or content OTT platforms may only be able to survive on the internet if they are able to fulfil the demands of the Internet Service Providers (ISPs) who would act as gatekeepers and prevent any innovation or technological advancement which can be a potential threat of becoming substitutable to the services which they offer/are permitted to offer by availing telecommunication licences. The same could even have drastic market consequences and may make the communication and content services unaffordable to consumers and would result in most M&E stakeholders exiting the market. It may be recalled that even during discussions on the Telecommunication Bill, the broadcasters have strongly advocated to avoid "*one size fits all*" approach policy while dealing with broadcast spectrum. Even in the past, while the 5G auction discussions and consultation were going on, the broadcasters had raised the concern of interference.
4. The principle of Net Neutrality has enabled technologies to flourish and evolve and whereby ISPs are bound to facilitate access and all content and applications in a non-discriminatory manner regardless of the source and without selectively favoring/blocking any particular product/website. The proposal to bring everything under one head of telecommunications merely because these OTT services/broadcasting

services are wrongly seen to have become substitutable or for that matter are using administratively allocated spectrum, would be a perfect recipe for disaster.

5. It is thus critical to ensure that there should not be any self-triggered regulatory changes which act as a catalyst in wiping out certain products and services as currently being offered by traditional TV Broadcasters who have already suffered heavily on account of side effects of drastic regulatory changes. In fact, the Digital vs Traditional Linear mode of watching content battle is well known. Digital modes -- which require a telecom infrastructure to ride-- have used content monetisation methods through the data consumption route as against engaging in the battle of content pricing. The linear broadcasters who do not have the benefit of “*monetizing through data consumption*” have their backs to the wall. Herein, the economics may differ and models are also in the course of evolving and being tested in the market and there can be arguments both for and against. One of them could be that content and carriage are two independent aspects and they cannot be permitted to be offered as a bundled pack of services as this may discourage the creative and content industry since the ultimate measure in such case would become the carriage cost (which remains uniform) and the content value perishes or is subsumed into the carriage cost. In such a scenario, a content creator would have no motivation left to bring in novelty --since at the end of the day the price (carriage cost) would remain the same.
6. Hence, as of now, *status quo* is the best option and the only requirement is to address and keep a check on any anticompetitive or abuse of dominance practices and not to bring any change or proposal which can let the control go to any one or few hands or which could create regulatory roadblocks or disallow any stakeholder to compete freely. **In this regard, the only regulation required is the neat solution to monopoly –to atleast extend the broadcasting 20% vertical integration cap to telecommunication entities so that they are not allowed to own and control more than 20% stake directly or indirectly in broadcasting content like TV channels or carriage like MSOs.**
7. The Sec 4 Telegraph Act license has always been the exclusive privilege of licensing enjoyed by the Government and which is auctioned for a consideration. Broadcasting, on the other hand, can be equated to be the exercise of freedom of speech and expression and thus is it a very important question to be examined on whether bringing “broadcast” under the ambit of “telecommunications” would result in Government control and influence on media and would result in redefining the very philosophy of “free speech” and be subject to licensing terms. Broadcast of free speech cannot be construed as an act which requires licensing from government which is in exercise of exclusive sovereign powers.

8. These are, therefore, times for extreme caution and care and the consultation process should first examine whether a level-playing field exists for the M&E sector in itself—given that the unregulated Prasar Bharti has unfair benefits of mandatory carriage of channels/ signals on distribution platforms vis a vis private broadcasters, mandatory sharing of signals of events of national importance, auction of slots with the newly discovered intent of revenue maximisation (which is outside the scope and ambit of the objectives of the Prasar Bharti Act), DD Free Dish competing with pay distribution platforms and whether they actually cater to the needy alone. The next step is to examine the lack of a level playing field between broadcasting and telecommunication entities, the latter being allowed to own and control every aspect of broadcasting apart from mobile and broadband and hence well on the way to eliminating all other forms of TV distribution platforms. Hence, these aspects need to be examined before getting into the highly controversial and deeply problematic issues raised in the CP.

B. Major broadcasting sector concerns:

1. Telecommunication entities own and control broadcasting content and carriage and have created monopolies across the media value chain:

- Vertical integration often manifests in the form of ills of monopolies. Vertically integrated entities negotiate mutually beneficial deals amongst the integrated entities, and at the same time, put up offers for the same deals which may be detrimental to the business interests of entities which are not vertically integrated. Hence, MIB has a 20% vertical integration regulation in place which bars broadcasters from owning more than a 20% stake in broadcasting distribution entities and vice versa. Moreover, MIB's DTH license order dated December 30 2020 specifies that "*A vertically integrated entity will not reserve more than 15 per cent of the operational channel capacity for its vertically integrated operator. The rest of the capacity is to be offered to the other broadcasters on a non-discriminatory basis.*" Strangely neither of these two rules have been extended to telecommunication entities, who own and control all content and carriage not only in the communications space, but also in broadcast media ie both TV channels and carriage (MSOs, for instance). Telecommunication entities are also not subject to regulations such as the Interconnect Regulations, Tariff Orders, etc., that broadcast media is currently subject to.
- However, beyond plain vanilla vertical integration, the biggest challenge today is the telecom sector's ownership of all parts of the broadband and mobile value chain from content to carriage --and the same owners' similar and growing ownership in media content and carriage as well. A few Indian telecommunication entities also own television broadcasting/content production companies, including news channels. Despite the telecom sector directly competing with media in

terms of controlling the distribution of such content, unlike broadcasting, there are no restrictions or regulations imposed on telecommunication entities which own media content on multiple platforms like TV and Online. Telecommunication entities have also acquired cable and satellite service providers and have thus entered the media distribution space in addition to their ownership of content pumped out in different formats and platforms. **Hence, telecommunication entities are today one of the biggest distributors of content, data and information in every form which has become a major activity and source of revenue. Their ownership of content for different platforms as well as all parts of the broadcast media value chain from content to carriage, raises hard questions on both dominance as well as possible abuse of dominance.**

- Hence, certain pertinent and critical decisions need to be taken. The need of the hour is to bring in strictly and strongly enforceable fair practices, transparency and non-discrimination between entities in a vertically integrated media segment, the absence of which will give rise to malpractices and discrimination by dominant entities viz-a-viz other constituents within the segment. In fact, it is the threat of monopolies by one or two telecommunication entities that the above scenario flags and hence we recommend that the only regulatory intervention which is required today is to at least extend the current 20% vertical integration rule for broadcasters to telecommunication entities, so that telecommunication entities cannot misuse the above. Hence, telecommunication entities should not be allowed to own and control more than 20% stake in broadcasting entities whether content or carriage, and vice versa.

*The I&B Ministry (MIB) had already imposed certain restrictions on vertical integration in broadcasting: The DTH Guidelines restrict broadcasters and/or cable network companies from owning more than 20% of the total equity of the DTH company and vice versa. Likewise, the HITS Guidelines restrict broadcasting companies and/or DTH companies from owning more than 20% of the total equity of the HITS company and vice versa. However, there are no such restrictions on telecom companies and in order to ensure a level playing field and prevent monopolies, TRAI must recommend that no telecom company can directly/indirectly hold/own more than 20% in any broadcasting (and OTT) companies whether content or carriage, and vice versa.

- With the advent of OTT, telecom companies have been aggressive in pushing OTT content through their distribution chains, something which the TV sector has not been able to do due to regulations. Today,

there are over 40 OTT platforms with 400 million customers; According to FICCI-EY Report 2021, digital subscriptions rose by 49% in 2020. The Digital and OTT sectors registered a growth of 26%, the highest amongst other M&E segments. According to the PwC Report of Global Entertainment and Media Outlook 2020-2024, with a CAGR of 28.6%, India will be the fastest growing OTT market. It predicts 16% year-on-year decline in TV ad revenue and 59% year-on-year decline in box office revenue while predicting a 16.1% growth in digital newspaper and circulation revenue. The OTT players have been successful in controlling and influencing the entire media distribution chain, primarily due to (1) Lower service costs as compared to cable and satellite services; (2) Leveraging the distribution pipe provided by telecom players more effectively; (3) direct delivery of services to the consumers. On the other hand, broadcast companies incur high costs for distribution of their content through cable operators and DPOs.

- **The need of the hour therefore is to ensure strict adherence to fair and reasonable restrictions and guidelines within the vertically integrated media value chain and to extend this to telecommunication entities as described above --while allowing free operation of media entities across horizontal media sectors. In the absence of such an approach, the media sector and specifically the broadcast media sector, is being unfairly singled out to bear the brunt of unreasonable cross media restrictions (on the basis of purported control and dominance concerns), if they are at all recommended. Exclusionary market power concentrated with telecom companies that dominate the reach and distribution of content would be detrimental to the aim of plurality and diversity of content and outlets in the media market --and especially when the same distribution companies own the same content.** It may also be not out of context here to mention that there are only a handful of players in the telecom sector --and the public sector presence has been reduced to a great extent, and hence, this aspect is all the more cause for concern.
- **It is clear that telecommunication entities unrestricted transgression into the media content and distribution space has encouraged complete vertically integrated ownership where the entire chain of content creation and delivery/distribution across multiple platforms is controlled by the same entities using their own infrastructure and platforms. This aspect needs specific attention from the sector regulators (TRAI/ MIB/ MEITY) as it clearly poses a threat to a fair and level playing market for all constituents. There are no regulations at present to put a check on such vertical integration by telecommunication entities and it is vital that TRAI look at this challenge that poses a serious threat to the media broadcasting segment.** In fact, by not including or considering the impact of the telecom sector on media distribution, the TRAI is pre-supposing that media distribution will not be affected by

the telecom companies, which is a totally wrong premise, as elaborated above.

2. Lack of level playing field hastening traditional media's demise

- Advancement in technology and convergence has made a big impact on the way news and information is delivered to the consumer. The world is witnessing the growth of alternative service providers in the form of mediums like blogs, social media platforms like Twitter and Facebook that also cater to news and information. News consumption is drifting away from Newspapers and other traditional forms of dissemination and more and more consumers are accessing their need for news and infotainment through such new mediums.
- New age tech companies like Youtube and Facebook including Instagram & Whatsapp control majority of market revenue share through their monopolistic power & strong hold in supply chain. They use traditional Media houses' trustworthy content to distribute on their platforms without sharing adequate revenue with publishers. Indirectly, they are controlling and directing traditional Media houses to dictate and follow their rules for content distribution & revenue. The dominance and control exercised by Tech Companies itself is an indicator of the potential abuse and which gets further corroborated and re-enforced because of their non-transparent behavior when it comes to revenue sharing of advertising revenue. There is already a CCI case pending on the said issue wherein DG has been asked to investigate the unfair and monopolistic trade practices followed by FB etc. and alleged abuse of dominance practiced by them.
- The Internet and new digital mediums are posing stiff competition to Print and television across the world. There is no denying the obvious advantage that Internet companies have over other media forms. An internet company can launch an exclusive platform for news without any permission from the Government. Chris Goodall^[1] aptly said - *"In ten years' time the threat is not going to be BSkyB, it's going to be the influence of Google over mass media"*. What Goodall said was in context of media plurality in the UK but keeping in view the emphatic rise of new media in the field of information, news and current affairs, the same holds true for the entire world.
- Online media has made it possible for consumers to read text, watch videos, listen to audio and also interact on one single platform completely dispensing with traditional forms of viewing.

^[1] Chris Goodall is an English businessman, author and climate change expert.

In order to ensure a level playing field for all participants in a given media sector, it is imperative that specific and strict measures are put into place, in the absence of which vertically integrated groups/entities could dominate the market and render it uncompetitive, thus leaving the industry in bad health.

3. Decreasing revenues of traditional media

- Media companies the world over are facing decreased revenues, as a result of several factors, majorly, pandemic induced economic hardships, competition from online/digital media players and user generated video programming providers and most significantly due to increased competition from new media players, especially Big Tech large global companies that have become the “go-to” destination for news and entertainment, unregulated new media players, etc have impacted the economic value of this industry.
- Globally, Print media is on the verge of a shut down and localized newspapers are facing stiff competition from global on-line businesses with global footprint, a domain that is not regulated. The American and other Western newspaper markets have suffered significant reversals in readership and revenue. In countries like the United States, Greece and the United Kingdom, the business of journalism is suffering from cost-cutting measures, reduced consumption, declining resources, consolidation and its accompanying challenges.
- The television sector is still grappling with the pandemic induced slow down and is yet to bounce back fully. With stagnant or slow growth TV companies are under tremendous pressure to deliver quality content at high costs.

As is evident from the Indian media landscape specified above, the revenues of traditional media (including television, Print and radio) are decreasing at a fast pace. Under the circumstances, any additional regulation will turn the Indian media sick.

Keeping in mind the above below are our responses:

Q. 1 Whether the present laws are adequate to deal with convergence of carriage of broadcasting Services and telecommunication services. If yes, please explain how?

OR

Whether the existing laws need to be amended to bring in synergies amongst different acts to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, please explain with reasons and what amendments are required?

OR

Whether there is a need for having a comprehensive/converged legal framework (separate Comprehensive Code) to deal with convergence of

carriage of broadcasting services and telecommunication services? If yes, provide details of the suggested comprehensive code.

Times Network Response:

1. In view of the submissions made above, there is no convergence of frameworks for carriage of broadcasting services and telecommunication services as mere bundling of services cannot be construed as convergent. Therefore, there is no requirement for a comprehensive/converged legal and/or licensing framework to deal with convergence of carriage of broadcasting services and telecommunication services.
2. It is reiterated that not only are the two industries/services entirely different, but they also perform different functions. Therefore, since broadcasting services and telecommunication services are not similarly placed, it would not be correct to compare the two industries/services, advocate for their convergence and/or to have a comprehensive/converged legal framework to deal with convergence of the two distinct services.
3. As stated herein above convergence of technologies which has already happened to a great extent in the last decade has been effectively handled by MoI&B and TRAI who have been able to address all legal, regulatory and policy requirements which emerged on account of such technological changes.
4. Since the absence of a converged legal and regulatory regime has not resulted in the stunted growth of the sectors or hindered the growth of technology in the sectors or resulted in higher cost to the consumers or caused any other difficulties to the other stakeholders, TRAI must answer what problem it seeks to address by proposing a converged legal framework.
5. It is reiterated that the broadcasting sector must be regulated by a separate regulator. The problem with establishing a converged regulator is (a) the risk of “false equivalence” being drawn between the sectors; and (b) the risk of regulation of certain sectors by people who are out of depth and lack specialised knowledge and understanding which is a pre requisite to deal with sector-specific issues. Therefore, the question of comprehensive/converged legal framework does not arise.
6. Instead of introducing a regulation that *converges* regulators and regulations, the departments and agencies tasked with various aspects of governing the areas that comprise telecom and broadcast sectors should be enabled to remove redundancies of filings, permissions and timelines for completion to give effect to EoDB.

7. If a converged legal regime for broadcasting and telecommunication is brought into force, it is apprehended that it may CEMENT the already apparent concentration of power in the hands of a few existing telecommunication entities and increased dependence of users on few service providers, which is already resulting in opaque pricing and restrictions on fundamental right of speech and expression due to information being disseminated by a few entities, thereby creating a monopoly by certain stakeholders.
8. Infact, it is the threat of monopolies by one or two telecommunication entities that the above scenario by TRAI brings to the fore, and hence we recommend that the only regulatory intervention which is required today is to extend the current 20% vertical integration rule* for broadcasters to telecommunication entities, so that telecommunication entities cannot misuse the above. Hence, telecommunication entities should not be allowed to own and control more than 20% stake in broadcasting entities whether content or carriage, and vice versa.

*The I&B Ministry (MIB) had already imposed certain restrictions on vertical integration in broadcasting: The DTH Guidelines restrict broadcasters and/or cable network companies from owning more than 20% of the total equity of the DTH company and vice versa. Likewise, the HITS Guidelines restrict broadcasting companies and/or DTH companies from owning more than 20% of the total equity of the HITS company and vice versa. However, there are no such restrictions on telecom companies.

In fact, before we contemplate making changes in the present situation, we should ask ourselves questions that due to non-existence of the proposed changes:

- (i) Has there been a lack of growth in the broadcasting services?
- (ii) Has the cost of the broadcasting services been higher to the customers?
- (iii) Are there any impediments presently which have hindered the growth of the technology in the broadcasting sector?
- (iv) What difficulties are caused to the stakeholders and viewers?

The answer to the above questions will be in the negative.

Then, we can run it through another test whether the proposed changes will or likely to:

- (i) Result in higher concentration of power in the existing players?
- (ii) Increase the dependence of the users on few service providers?
- (iii) Put restriction on fundamental right of speech and expression?
- (iv) Result in opaque pricing?

The answer to these questions would be in the affirmative.

Hence, fundamentally we should first cross the hurdle --what is the need for convergence of frameworks of the two services which are not similar.

Further, consumer interest is fully protected by the broadcasting industry, which is not a monopolistic industry where any anti-competitive practices can be adopted by the players. Since there are about 900 TV channels belonging to about 350 broadcasting companies, the sector is highly fragmented and competitive and the customer is king for all the players in the broadcasting be it the broadcaster or the DTH company, MSO or LCO. No service provider in the entire value chain of broadcasting can take the consumer for granted as there are enough alternatives available with the consumer if required.

It may please be noted that frequent and numerous changes in the key regulatory provisions have far reaching consequences and not only disturbs the working of the industry but also results in consumer angst and ire towards the players in the industry and the consumer frustration also results in migration of consumers to alternative medium or technology. Hence, TRAI should move towards light touch regulations wherein it promotes healthy growth of the industry, and the consumers are benefitted by the state of the art technological offerings, innovations at affordable costs.

The Indian television industry not only caters to the viewers in India, but also reaches to the Indian diaspora in almost all the countries of the world. This is a shining example of globalization of the Indian business. Hence, the need is not to stem the growth but to give it an enabling environment where it can flourish and contribute in India's emerging position as a soft power in the changing world order.

The vague notion of convergence was first conceived in an era when homes were connected through fixed telephone lines. This notion was conceptualized for making the voice-data-video services to consumers at home in form of "triple play" when technologies were only limited to cable/fibre connected homes. The DTH services were not available in the country at that point of time. With the opening of the DTH broadcasting services, the broadcasting transmission got a shot in the arm and the last mile connectivity issues were taken care of especially in the far-flung areas and difficult terrains in the country. The DTH services also brought in digital addressability in the distribution. The triple play which was contemplated started taking a back seat due to the evolvement of alternate technology and the advancement in technology has taken away the sheen of "triple play". One of the key constituents of "triple play" was fixed line voice telephony service. There has been a massive de-growth in the fixed line services in the country due to phenomenal growth in the usage of the mobile telephony. Hence, one constituent of the "triple play" has already been highly compromised, leaving only the broadband and television services in the foray.

For TV services, the dependency of cable has reduced greatly as the cable service in homes has also taken a backseat. There are a greater number of households now connected with the DTH services than the cable services. Apart from four private pay DTH players, there is a Free Dish DTH Service of Prasar Bharti which reaches almost 43 million households free of cost. Now, cable connected homes are only about 40% of the total TV homes and about 60% are connected by Pay DTH and Freedish DTH. The DTH services are one way communication services and disseminate TV and Radio signals.

Hence, calling this the “convergence” of broadcasting service which is one-way and used for dissemination of information and telecommunication service --which is a two-way communication service-- will not be appropriate. The broadcasting service cannot just be seen as a technological service. It is much more than that and epitomizes the country’s freedoms of speech and expression. and is the mainstay of the broadcasting services. It requires soft skills and cannot be solely made dependent on technologies as is possible in the telecommunication services.

Hence, whatever so-called “convergence” of technologies was required in the distribution aspects of the broadcasting services, the same has already happened to a great extent in the last decade and MIB and TRAI has handled all the legal, regulatory and policy requirements due to such technological changes.

One of the key goals in moving to a so-called converged licensing framework is to achieve technology neutrality. This term is intended to convey the meaning that a licensee retains the ability to choose the technology and equipment he or she will use to provide the licensed service. The main objective of the unified licensing framework should be to promote ease of doing business and sustain competition. However, an integrated framework for the regulation of carriage of broadcasting services will lead to monopolies in the sector and the ability of vertically integrated enterprises to abuse their control of key gateways.

The regulation of content broadcasting should be separated, as the skill sets required for the two are significantly different. Regulation of carriage is more or less concerned with technical and economic aspects/ repercussions of policies. Content regulation has to take into account the impact of content on sensibilities, morals and value system of the society. Artistic and creative persons from the fields of fine arts, drama, films etc. may be more suited for content regulation than technocrats or economists.

This view is also supported by international experience. For example, Directive 2002/21/EC of 7 March 2002 of The European Parliament and of The Council recognizes the need to separate the regulation of transmission from the regulation of content. Even in the UK there is a Content Board within the Ofcom. A committee of the main Board, the Content Board is Ofcom's primary forum for the regulation of television and radio quality and standards. In Hong Kong regulation of carriage and content is done by separate bodies.

Presently, broadcasting services such as broadcasting of TV channels is governed by the Ministry of Information & Broadcasting's (MIB) regulations including the "Guidelines for Uplinking and Downlinking of Satellite Television Channels in India, 2022", the Cable Television Networks (Regulation) Act, 1995, The Cable Television Network Rules, 1994, etc., while FM Radio broadcasting is governed by the GOPA guidelines and AIR Broadcast Code issued by MIB. Digital publishers are governed by the provisions of the Ministry of Electronics and Information Technology's (MEITY), Information Technology Act, 2011 ("IT Act") and the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules 2021 ("Digital Media Rules") as administered by MIB.

This apart, to regulate news content alone, there is also over-regulation, with four-five layers of rules relating to content in each individual Media segment. We strongly believe that news Media in India, across platforms and technologies, must be governed by the principles of self-regulation. There already exists robust self-regulation mechanisms across the Media sector relating to content and the need of the hour is to strengthen and give more power to the self-regulatory bodies rather than to formulate additional layers of regulations on the Media sector. Keeping in mind the evolving self-regulatory approach in the Digital Media space and the already existing robust self-regulation system in Print and TV sectors, we are of the view that there is absolutely no need for any measures to converge carriage of broadcasting and telecommunication services which are a separate and distinct sector.

- The Telecom Service Providers have benefitted immensely from the Digital revolution that has changed the landscape of media and entertainment distribution.
- The Telecom players have the unique advantage of being: (i) the providers of mobile communications (ii) ISPs i.e., internet service providers, (iii) Creators and owners of entertainment content (iv) Distributors of the content via OTT/IPTV platforms and (v) Advertising platforms.
- As per EY FICCI 2022 report, India is the world's second largest smartphone market behind China with 954 million users. India has a user base of 1.18 billion telecom subscriptions and of this, approximately 68% subscribers use 4G technology, which is an indicator of how easy, access to digital content on mobile phones has become. These numbers show just how strong the telecom service providers are when it comes to distribution of news and general content. No traditional media platform reaches as many people. In fact, telecom companies are amongst the biggest media players today.
- If these telecom service providers are provided unfettered rights to own and also distribute content, then this could become a huge problem. It

is generally acknowledged that companies that own “pipelines” (distribution platforms) should not be allowed to own the content that is ploughed into these pipelines. Earlier experience in India itself in the Cable TV business has shown that this leads to abuse of power. This situation must be prevented on the Digital platforms as well.

- Further enhancing the risk of domination is the fact that there are only three telecom service providers nationally (compared to hundreds and thousands of media providers in traditional media). Each one has more than 250 million subscribers. Such user numbers are vastly higher than what most traditional media companies have.
- It is clear from the aforesaid facts, that telecom service providers need to be restricted. “Vertical” integration in the telecom sector (same company owning pipelines and content) can create a monopolistic situation with abuse a distinct possibility. Hence, in order to ensure a level playing field for all players, there is a clear need to have water-tight restrictions on vertical integration. To reiterate, companies which own the pipelines should not be allowed to own the content.
- There is a need to prevent abuse emerging from vertical integration (same company owning pipelines and content). It is imperative that specific and strict measures to control vertical integration are put into place, in the absence of which vertically integrated groups/entities could dominate the market and render it uncompetitive, thus leaving the industry in bad health. The broadcasting entity should be restricted from owning content distribution platforms (DPO/LCOs) to ensure a level playing field for all.
- It is the need of the hour to bring in transparency and non-discrimination between entities in a vertically integrated media segment, the absence of which will give rise to malpractices and discrimination by dominant entities viz-a-viz other constituents within the segment.
- The MIB and the TRAI, recognizing this issue, have already imposed certain restrictions on vertical integration. The DTH Guidelines restricts broadcasting companies and/or cable network companies to own more than 20% of the total equity of the DTH company and vice versa. Likewise, the HITS Guidelines restricts broadcasting companies and/or DTH companies to own more than 20% of the total equity of the HITS company and vice versa. However, there are no such restrictions on telecom companies and in order to ensure level playing field. Hence the new framework must ensure that the telecom companies are subjected to similar restrictions.

Recommendation:

The only regulatory change required is to extend the 20% vertical integration rule currently on broadcasters, to telecommunication entities so that telecommunication entities are not allowed to directly/indirectly own and control more than 20% equity of broadcast content and carriage like TV channels and MSOs, respectively and vice versa.

Q.2. Whether the present regime of separate licenses and distinct administrative establishments under different ministries for processing and taking decisions on licensing issues, are able to adequately handle convergence of carriage of broadcasting services and telecommunication services? If yes, please explain how?

If no, what should be the suggested alternative licensing and administrative framework/architecture/establishment that facilitates the orderly growth of telecom and broadcasting sectors while handling challenges being posed by convergence? Please provide details.

Times Network Response:

1. That the present regime of separate licenses and distinct administrative establishments under different Ministries for processing and taking decisions on licensing issues, is able to handle broadcasting services adequately. Therefore, there is no requirement for convergence of carriage of broadcasting services and telecommunication services or for a comprehensive/converged legal and/or licensing framework to deal with convergence of carriage of broadcasting services and telecommunication services.
2. That one of the key goals for advocating an ill-conceived converged licensing framework is to achieve technology neutrality. This term is intended to convey the meaning that a licensee retains the ability to choose the technology and equipment he or she will use to provide the licensed service. The main objective of the unified licensing framework should be to promote EoDB and sustain competition. However, an integrated licensing framework for the regulation of carriage of broadcasting services will lead to creation of monopolies in the sector, ongoing economies of scale and scope, and the ability of vertically integrated enterprises to abuse their control of key gateways.
3. That the Telecom players have the unique advantage of being: (i) the providers of mobile communications (ii) ISPs i.e., internet service providers, (iii) Creators and owners of news and entertainment content (iv) Distributors of content via OTT/IPTV platforms and (v) Advertising platforms. As per EY FICCI 2022 report, India is the world's second largest smartphone market behind China with 954 million users. India has a user base of 1.18 billion telecom subscriptions and of this, approximately 68% subscribers use 4G technology, which is an

indicator of how easy, access to digital content on mobile phones has become. No traditional media platform *put together* reaches as many people. In fact, telecom companies are the biggest media players today.

4. That if these telecom service providers are provided unfettered rights to own and also distribute content, then this could become a huge issue. The risk of domination is further enhanced by the fact that there are only three telecom service providers nationally (compared to hundreds and thousands of media providers in traditional media). Each one has more than 250 million subscribers. Such user numbers are vastly higher than what ANY traditional media companies have.
5. That therefore it must be kept in mind that no such conditions should be imposed, which makes the broadcasting/media & entertainment sector unviable or unsustainable or which amounts to an unreasonable restriction on freedom of speech and expression.
6. That it must also be borne in mind that broadcasting and publication of content whether on linear or on digital platforms is an exercise of the right to freedom of speech and expression and the imposition of any disproportionate and unreasonable licensing terms and conditions/ framework including the licensing regime sought to be imposed on broadcasters would therefore amount to unreasonable restriction on the exercise of such right. Therefore, any law which impinges upon the freedom of speech and expression of media under Article 19(1)(a), must pass muster in respect of the reasonable restrictions under Article 19(2).
7. That it is reiterated that in the broadcasting industry, while licenses are granted to teleport operators and DTH under Section 4 of the Act. All other services pertaining to broadcasting require permission/registration.
8. That in view of the above, the entire licensing system and the way they operate is different for telecom services and broadcasting services and both sectors require a separate skill set to function. It is reiterated that the present regime of separate licenses and distinct administrative establishments under different ministries for processing and taking decisions on licensing issues, is able to handle broadcasting services adequately. It must be kept in mind that no such conditions should be imposed, which makes the broadcasting/media & entertainment (M&E) sector unviable or unsustainable or which amounts to an unreasonable restriction on freedom of speech and expression. For instance, it is apprehended that if similar licensing regimes are imposed, then it is uncertain as to whether the license fee payment obligations or spectrum utilization charges would also be levied or passed on for uplinking of signals and broadcasting of channels and digital entities, which may

result in an unfair financial burden upon the broadcasters and make their business commercially unviable.

It must be borne in mind that broadcasting as well as publication of digital content is an exercise of the right to freedom of speech and expression and the imposition of any disproportionate and unreasonable licensing terms and conditions including the license fees sought to be imposed on satellite TV channel broadcasters would therefore amount to unreasonable restriction on the exercise of such right. In this regard, it may be relevant to note that the Hon'ble Supreme Court has in catena of judgments held that "freedom of press is the ark of the covenant of democracy"^{[2][1]}, therefore the press should not be "subject to laws, which take away or abridge freedom of speech and expression or which adopt measures calculated and intended to curtail circulation and thereby narrow the scope of dissemination of information"^[2]. Further, the Hon'ble Court held that "it is not open to the State to curtail or infringe the freedom of speech of one for promoting the general welfare of a section or a group of people unless its action could be justified under a law competent under Clause 2 of Article 19". Therefore, any law which impinges upon the freedom of speech and expression of media under Article 19(1)(a), must pass muster in respect of the reasonable restrictions under Article 19(2).

In fact, TRAI in its recommendation in 2006 stated that *"Regulation of carriage and content should be separated, as the skill sets required for the two are significantly different. Regulation of carriage is more or less concerned with technical and economic aspects/ repercussions of policies. Content regulation has to take into account the impact of content on sensibilities, morals and value system of the society. Artistic and creative persons from the fields of fine arts, drama, films etc. may be more suited for content regulation than technocrats or economists."*

It is important to note that TSPs enjoy a special and exclusive position in the telecommunication industry by virtue of having exclusive rights to commercialize a limited public resource, i.e., spectrum. TSPs are granted this privilege only by paying the appropriate charges and acquiring the appropriate rights from the Government. The licensing regime for TSPs is crucial to ensure that this limited public resource is distributed and used efficiently and in an appropriate manner. TSPs also own and control what is considered to be critical infrastructure and resources in the country. The Government's National Digital Communications Policy, 2018, which seeks to enable a competitive telecom market in India by the establishment of resilient and affordable digital communication infrastructure and services, recognizes telecommunication infrastructure / systems and services as essential connectivity infrastructure at par with roadways, railways, waterways, airlines, etc. for the development of India. Therefore, any adverse effect on

^[1] Bennett Coleman & Co. v. Union of India (1972) 2 SCC 788

^[2] Express Newspapers Pvt. Ltd & Ors. V Union of India & Ors. (1986) 1 SCC 133

the network that TSPs administer could cripple the communication network in the country.

Q3. How various institutional establishment dealing with - (a) Standardization, testing and certification. (b) Training and Skilling. (c) Research & Development; and (d) Promotion of industries under different ministries can be synergized effectively to serve in the converged era. Please provide institution wise details along with justification.

Times Network Response:

There are different skill sets required for the broadcasting services especially in content creation. Hence, the requirement of training and skilling is totally different. There are many specialized institutions for skill development in Films, Television, Radio. For eg.

Film and Television Institute of India(FTII), Pune.
 Satyajit Ray Film and Television Institute of India (Kolkata)
 Whistling Woods International (Mumbai)
 Annapurna International School of Film and Media (Hyderabad)
 M.G.R Government Film & Television Training Institute (Chennai)
 Asian Academy of Film & Television (AAFT) (NOIDA) etc.

Thus, there are several Government and private Television/media Institutes which help in the development of skills required in the film & television media.

By any stretch of imagination, these institutes cannot start providing training and skilling for the telecommunication sector which requires focus only on technological aspects. In fact, if the same is done, there is a possibility of dilution of focus such highly regarded institutes.

Standardization is also not feasible in the broadcast industry as we cannot be said to be making prototypes of the programs. The Constitution of India already has elaborate provisions regarding freedom of speech and expression and the reasonable restrictions which can be imposed on such exercise of freedom of speech and expression. The sector laws further stipulate restrictions on programs and advertisements which are considered necessary . Hence there is no need to make any standards for content creation as the same may stiff creativity, innovation, and original thinking. Further, with regard to the carriage of the broadcasting services, there are elaborate TRAI Regulations in terms of Interconnection Regulations and Standard of Quality-of-Service Regulations and no further standardization is required. In case there is a requirement due to dynamic nature of the industry, the same is handled by TRAI from amendments in the Regulations from time to time. Hence standardization will do more harm than good to the industry.

Research and development for the broadcast industry will also require specific focus in area of skill development and cannot be clubbed with the telecom industry in which the R&D is largely required to be focused on the technological aspects.

Broadcasting definitely requires a dedicated Ministry, and the Ministry/ Department of Telecommunication may not be fit to handle the broadcasting services in the country.

Q4. What steps are required to be taken for establishing a unified policy framework and spectrum management regime for the carriage of broadcasting services and telecommunication services? Kindly provide details with justification.

Times Network Response:

No unified policy framework for spectrum management is required to be made. The telecom services primarily use the terrestrial horizontal spectrum whereas the television services use the vertical space spectrum. The services are not similar and hence placing different services under a common policy will severely hamper and very adversely impact the broadcasting services in the country.

It will give an unfair advantage to the large telecom giants to also own and control the crucial broadcasting services in the country. There is a greater risk of actual shifting of control in foreign hands.

Q5. Beyond restructuring of legal, licensing, and regulatory frameworks of carriage of broadcasting services and telecommunication services, whether other issues also need to be addressed for reaping the benefits of convergence holistically? What other issues would need addressing? Please provide full details with suggested changes, if any.

Times Network Response:

The telecom services in the country are already moving towards an oligopolistic situation wherein only very few deep pocketed players are controlling the entire services. There has been successive hike in tariffs by the telecommunication entities in recent period. The bandwidth cost has started witnessing an upward trend. Even the public sector players have taken a great beating and not able to sustain the fierce competition offered to them by the private telecom giants. The quality of services of mobile telephony, especially for voice calls has greatly deteriorated over period. The unwanted and unsolicited calls are unabated even after repeated attempts of the regulator to control them. There is no QoS with regard to the internet speed a consumer gets. The ills of such an oligopolistic situation are already being felt by the hapless consumers. The consumers are forced to take data even if they only require voice services.

Presently there are over 350 different broadcasting companies, 4 private DTH players, 1500 MSOs and about 60000 Local Cable Operators and the sector is highly diversified, and the ownership is also highly fragmented. If broadcasting services are converged, the few players over a period will gain dominance in the market and will indulge in anti-competitive practices. The consumer interest will be further compromised as now he will be forced to depend on such entities for more of his requirements. The pricing of consumers will further become opaque through complicated plans offered by telecommunication entities. The consumer who may wish to just avail broadcasting service from the combined offering, may not be able to do so.

Conclusion:

Hence, we feel that the convergence issues raised in the consultation paper are not relevant.

We submit that there is no requirement for convergence of carriage of broadcasting services and telecommunication services. Therefore, there is no requirement for a comprehensive/converged legal and/or licensing framework to deal with convergence of carriage of broadcasting services and telecommunication services.

At this juncture, all that is required is for TRAI to recommend extension of the current 20% vertical integration rule for broadcasters to telecommunication entities. Hence, telecommunication entities should not be allowed to own and control more than 20% stake in broadcasting entities whether content or carriage, and vice versa.

Thanking you,

Times Network
03.04.2023
