



Telecom Regulatory Authority of India

Recommendations on MEDIA OWNERSHIP

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Preface

Media has a central role in the democratic process of a country, more so in today's technologically fast moving environment. The importance of media diversity for democratic political culture is well recognised in all countries. India has one of the largest and most rapidly growing entertainment and media industry in the world. The country has seen a phenomenal growth in media both in terms of quality and quantity over the last few years. As historian Dr. K.N. Panikkar wrote, "Among the institutions that contribute to the make up of a public sphere in a society, the media perhaps perform the most crucial function."

The primary objective of media regulation in a democracy is to preserve and protect fundamental rights to information and freedom of expression. In this context, media ownership is a source of debate and government review in most developed countries around the world. When we talk of media ownership, the words that come together with it are concentration, consolidation, plurality and diversity. The Media Ownership rules are designed to strike a balance between ensuring a degree of plurality on the one hand and providing freedom to companies to expand, innovate and invest on the other hand. Also there are tangible benefits of consolidation for the organisations to grow and expand.

The Ministry of Information and Broadcasting has sought recommendations of the Telecom Regulatory Authority of India on the approach towards cross media and ownership restrictions for the future growth of the broadcasting sector. The reference cuts across the broadcasting sector and the issues of cross media restrictions covering broadcasting services, print media and other miscellaneous ownership within the fold of telecom, information and broadcasting. Further it has been clarified by the Ministry of Information & Broadcasting, that looking at the increasing trend of Print Media entering into Broadcasting sector, to examine the issue in its entirety, the Authority in the present context should also include print

media while examining the need for any cross media restrictions vis-à-vis broadcast media.

Internationally media ownership issues have a long history. Federal Communications Commission (FCC), the US regulator began adopting these rules way back in 1941 and has been regularly reviewing it. In 2008, USA reviewed the 32 year-old absolute ban on newspaper/broadcast cross-ownership which prohibits common ownership of a broadcast station and a newspaper in the same market and were finally left unaltered. France reviewed its cross-media ownership provisions and have taken a decision in January 2009 to continue with the restrictions. In UK, the ownership rules are slated for review by Ofcom in 2009. In Canada there are restrictions on cross-media ownership

The current global financial crisis has its impact on the Indian media industry, particularly the print media. There are reports on diminishing advertisement revenues and employee lay offs. In such a scenario while all the steps are being taken to help the media industry get through the situation and reduce the impact of slowdown, it is essential that none of the safeguards should have an adverse impact on the sector. The safeguards are to be framed in such a way that would provide clear approach to the existing media owners and the potential investors, thereby helping the long term growth of the sector. The rationale for these safeguards is to guarantee a multiplicity of voices and prevent concentrations of power, which are vital for matured democracy. TRAI is committed towards positive growth of this very important sector.

Keeping in line with its consultative approach, the Authority considered various points of view it received during the process of consultation. Considering the international scenario, stakeholders' comments, present economic scenario, the distinct features of Indian scenario and other relevant factors, the Authority has come to the conclusion that appropriate safeguards need to be put in place to ensure that plurality and diversity of views are maintained. It is better to put

timely safeguards rather than looking for corrective measures which become difficult for the industry to align in future. A supportive regulatory environment and well defined safeguards put in place at this stage of development will facilitate the orderly growth of the industry. A detailed market study and analysis is required to be carried out for identifying/determining the safeguards. Also there is need to rationalize the existing safeguards on vertical integration to bring about uniformity in the separation of broadcaster and distributor.

The issues raised by the Ministry of Information & Broadcasting have been broadly addressed at two levels; one is about maintaining plurality & diversity whereby recommendations on the issue of cross media ownership across different segments of media such as print/ television/radio (horizontal integration) have been given. The second is about ensuring adequate competition under which the issues of vertical integration, limits on number of licenses and concentration in a geographical area are covered

It is hoped that these recommendations with a forward looking approach by the Authority would receive due consideration from the Ministry of Information and Broadcasting.

(Nripendra Misra)
Chairman, TRAI

Chapter 1

BACKGROUND

1.1 Broadcasting has been notified as a telecommunication service under section 2(1)(k) of the Telecom Regulatory Authority of India (TRAI) Act, in November 2004. The Ministry of Information and Broadcasting (MI&B) has sought recommendations of the Telecom Regulatory Authority of India (hereinafter called the Authority), under section 11(1)(a)(ii) and (iv) of the Act, on the approach towards cross media and ownership restrictions for the future growth of the broadcasting sector. Copy of the letter received from Ministry of Information & Broadcasting is at Annex I. The specific issues on which recommendations have been sought are:

- i) Whether there is any need for cross media and ownership restrictions? Whether the existing laws are adequate to address the concerns or should a separate legislation cover this important parameter of broadcasting sector?
- ii) With more and more broadcasting/ telecom companies entering into cable service/DTH/IPTV/Mobile TV platforms, whether restrictions on ownership need to be provided for such Broadcasting/telecom companies having control/shareholding in cable/DTH/IPTV/Mobile TV companies or vice-versa and if so what should be the framework provided?
- iii) What is the comparative policy structure with respect to similar restrictions in other parts of the world and what lessons can be drawn for India, based on their experience?

- 1.2 As per the present policy guidelines there are certain restrictions on ownership with respect to DTH and private FM Radio services. Also Authority has made recommendations on similar restrictions for Headend-in-the-sky (HITS), Mobile TV, Cable TV restructuring etc. Government feels that the existing or the proposed restrictions need to have a uniformity of approach as these have come at different times and stages of growth. So there is a need to lay down a clear cut approach towards cross-media and appropriate ownership safeguards for the future growth of the Broadcasting sector.
- 1.3 These acceptable safeguards would include cross media ownership among different segments of media such as print, television and radio; consolidation including vertical integration within television and radio; market share in the city/state/country within each media segment.
- 1.4 The advocacy in favour of restrictions on accumulation of interests to prevent media monopoly in terms of ownership is not in dispute. In the Indian setting it has to be examined if the very soul of democracy is at stake. The ideal solution is to enhance informed public participation in media policy making. It is not denied that several media houses have stakes in print, radio, television and the Internet. There are no indications of a market failure pointing towards any compromise in the autonomy of this sector.
- 1.5 In a democratic country like India, the main purpose of having such safeguards on accumulation of interests is to provide for competition, diversity and plurality of players, news and views. It is also to ensure that the delivery platforms owned by broadcasters do not block competition/content from others. The competition law basically addresses economic issues only. Most of the leading democratic countries have media ownership safeguards in one form or the other.

- 1.6 As the reference under consideration received from MI&B included the issues of cross media restrictions covering broadcasting services and print media, Authority sought specific clarifications from MI&B, whether print media is also to be included for the present reference. In a subsequent communication, annexed at Annexure II, it has been clarified by the MI&B, that looking at the increasing trend of print media entering into broadcasting sector, to examine the issue in its entirety, TRAI in the present context should also include print media while examining the need for any cross media restrictions vis-à-vis broadcast media.
- 1.7 The recommendations have been framed in accordance with the TRAI Act 1997. According to section 11 (1) (d) of the TRAI Act, the Authority shall “perform such other functions including such administrative and financial functions as may be entrusted to it by the Central Government”.
- 1.8 In line with its consultative approach before giving recommendations to the Government, the Authority issued a Consultation Paper on “Media Ownership” on September 23, 2008. The consultation paper covered the various issues relating to the media ownership rules and controls, snapshot of the Indian Media market, the extant policies and recommendations of TRAI relating to media ownership issues and the International Scenario on media ownership/control. The issues on Media ownership rules and control in the Indian context were discussed in detail. The specific issues that were to be addressed had been spelt out in the consultation paper and the stakeholders were requested to send their views and comments to the Authority. Open House Discussion was held at New Delhi on December 2, 2008 wherein the stakeholders participated to further express their views on the various issues.
- 1.9 Thirty five stakeholders have offered their written comments on the Consultation Paper. The breakup of the stakeholders is: 16 Broadcasters/MSOs/DTH/Cable operators, 2 newspapers, 7 Associations

of Newspapers/ broadcasters and Industry, 5 Consumer Organizations and 5 individuals. All the comments are available in the Authority website, www.trai.gov.in

- 1.10 Some of the stakeholders particularly those associated with the print media, have pointed out that TRAI does not have jurisdiction under the TRAI Act, to make recommendations on any matter with respect to any service except telecommunication service. Hence according to these stakeholders, the inclusion of Print Medium within the scope of this Consultation process is beyond the jurisdiction of TRAI. The Authority, fully conscious of its functions and jurisdiction under the TRAI Act, 1997, requested the Ministry of Information and Broadcasting to clarify whether Print media is to be included in the consultation/recommendation on Media ownership. In response, it has been reiterated by the Ministry that though Print media per se is not within the direct scope of TRAI, but the issue be examined in entirety. Further the jurisdiction issue has been examined in detail in the chapter on jurisdiction and constitutional provisions.
- 1.11 Chapter 2 gives the existing policies and Authority recommendations on Media ownership. The jurisdiction and other legal issues like constitutional provisions have been examined in chapter 3. The core issues on Media ownership safeguards are deliberated in detail in chapter 4. This chapter also gives the Authority's recommendations on various issues. The list of recommendations have been compiled at Chapter 5. The annexures have besides the copies of references from the Ministry of Information and Broadcasting has a summary of the International scenario and the Issues consulted.

Chapter 2

EXISTING POLICIES AND RECOMMENDATIONS ON MEDIA OWNERSHIP

- 2.1 Before discussing the issue of restrictions on accumulation of interest in the media, it is necessary to look at the existing media ownership policies and safeguards.
- 2.2 The issues relating to ownership restrictions and cross holding restrictions within the broadcasting sector have been dealt with in different recommendations of the Authority. However, these recommendations have been made at different points of time and in respect of different segments of broadcasting sector. This chapter summarizes the recommendations made so far by the Authority and the existing Policy on the subject.
- 2.3 The accumulation of interest in the media can be regulated through different types of restrictions on ownership. There can be restrictions on:
(a) Cross media ownership across different segments of media such as print/ television/ radio. (b) Cross holding restrictions to prevent consolidation including 'vertical integration' within a media segment such as television or radio. (c) Restrictions based on Market share in a given geography within each media segment.
- 2.4 Cross media restrictions of type mentioned at (a) in para above have not been imposed in any of the segments of broadcasting industry in the country so far.
- 2.5 Restrictions on consolidation including 'vertical integration' within a media segment have been placed only in the Guidelines for obtaining license for

providing Direct-To-Home (DTH) Broadcasting Service in India, vis-à-vis broadcasters and cable operators.

- 2.6 The restrictions in the DTH Guidelines place a ceiling of 20% on the holding of total paid up equity in the DTH Licensee by Broadcasting Companies and/or Cable Network Companies and vice versa. However, there are no ownership restrictions between Broadcasting Companies and Cable Network Companies. The extracts of the relevant clause of the License Agreement annexed to the DTH Guidelines are given in **Text Box 1**.

Text Box 1: Extracts from the License Agreement for providing Direct-To-Home (DTH) broadcasting service in India

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

- 2.7 In case of DTH, the restricting condition on companies, i.e. “not to hold or own more than 20% equity share in a broadcasting and/or Cable Network Company”. There has been instances, where an entity or a person has acquired DTH licence in the name of another company (by the same entity) and thus effectively controls both. Legally this does not violate the DTH licence condition, but defeats the basic intent of this restriction.
- 2.8 Restrictions on market share in the city/ state /country within a media segment have been placed only in the case of private FM radio. The FM radio policy permitted the applicants to bid for only one channel per city. Further, a restriction on total number of channels that could be held by an applicant and its related entities was also put at 15% of the total number of channels allocated in the country. For the purposes of calculating the total number of licenses held by an applicant and its related entities, the licenses issued in Phase – I of private FM radio licensing were also included. The extracts of the relevant clause of the Tender Document for FM Radio Broadcasting Phase II through Private Agencies are given in **Text Box 2**.

Text Box 2: Extracts from the Tender Document For FM Radio Broadcasting Phase II Through Private Agencies

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

the financial bid(s) amount paid to the Ministry of I&B, Government of India.

Private FM Radio (Phase-III)

2.9 As per the recommendations on Phase-III of Private FM Radio, issued by the Authority on February 22, 2008:

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

Private FM Radio (Phase-II)

2.10 The Authority had sent its recommendations to the Government on Phase-II of Private FM Radio broadcasting on August 11, 2004. The Government referred back the recommendations to the Authority along with its reservations on some of the issues. The Authority responded to these observations on November 19, 2004. The reference from the Government also referred to the recommendations of the Authority on Ownership issues.

2.11 In these recommendations, the Authority had discussed the issue of multiple licenses and monopoly control and observed that the objective of securing variety in programmes could be achieved both by dispersing ownership and by allowing multiple licenses. It was accordingly recommended that *“The existing ban on multiple licenses in one centre should be given up –the maximum number of licenses that one entity can hold should not be more than 3 or one third of the licenses in one city whichever is less. Such multiple licenses should be given only in cities with at least 6 licenses. There should be no restriction on the number of licenses that can do news and current affairs. There should also be a restriction on the number of licenses that can be owned nationally – at 25%.”*

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

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

“...The judgment seeks to prevent monopoly of broadcasting media by Government or by an individual, body or organization. Towards this

objective, restrictions on multiple licenses and monopoly control were recommended...

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

- 2.14 FM radio has gained popularity in India, especially with the entry of private players. The number of radio listeners as well as the frequency of listening to the radio has increased tremendously over the past years. Radio, which is already proving to be a more cost effective medium for local/ retail advertisers, is poised for a higher growth rate than other local media. The current restrictions in FM Radio are adequate to maintain this growth in the future.

‘Must Provide’ Rule

- 2.15 Every Broadcaster shall provide on request signals of its TV channels on non-discriminatory terms to all distributors of TV channels, which may include, but not limited to a cable operator, DTH operator, Multi system operator (MSO), Head end in the sky operator. MSO shall also on request re-transmit signals received from a broadcaster, on a non discriminatory basis to cable operators. The extract of the Telecommunication (Broadcasting and Cable services) Interconnection Regulations 2004 are given in **Text box 3**

Text Box 3

3. General Provisions relating to Non-Discrimination in Interconnect Agreements

3.1 No broadcaster of TV channels shall engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts with any distributor of TV channels that prevents other distributor of TV channels from obtaining such TV channels distribution.

3.2 Every broadcaster shall provide on request signals of its TV channels on non-discriminatory terms to all distributors of TV channels, which may include, but be not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator; Multi system operators shall also on request re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators.....

2.16 As per the TDSAT judgment in petition no. 189(c) of 2006 dated 31st March 2007,

“this regulation casts a duty on every broadcaster to provide on request signals of its TV channels on non-discriminatory terms to distributors of TV channels. This means that a broadcaster is required to provide all the TV channels which it has, to distributors on non-discriminatory terms... The use of the words ‘on request’ may suggest that a seeker of channels may be in a position to make a choice about what he wants from a particular broadcaster and he will get whatever he requests for”.

‘Must Carry’ Rule

2.17 The provisions of must carry of Public Broadcaster’s channels and compliance of stipulated public broadcasting obligations are in place to ensure plurality and diversity.

- 2.18 As per section 8(1) of the Cable Television Network (Regulation) Act, 1995, Cable operators must carry two Doordarshan terrestrial channels and one regional channel of a state in the prime band. The extracts of the relevant clause of the THE CABLE TELEVISION NETWORKS (REGULATION) ACT, 1995 [1] are given in **Text Box 4**.

Text Box 4

8.(l) Every cable operator shall, from the commencement of the Cable Television Networks (Regulation) Amendment Act, 2000, re-transmit at least two Doordarshan terrestrial channels and one regional language channel of a State in the prime band, in satellite mode on frequencies other than those carrying terrestrial frequencies.

(2) The Doordarshan channels referred to in sub-section (1) shall be re-transmitted without any deletion or alteration of any programme transmitted on such channels.

(3) The Prasar Bharati (Broadcasting Corporation of India) established under sub-section (1) of section 3 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 may, by notification in the Official Gazette, specify the number and name of every Doordarshan channel to be re-transmitted by cable operators in their cable service and the manner of reception and re-transmission of such channels.

- 2.19 So far as DTH is concerned clause 7.6 of the DTH license says that the “The Licensee shall provide access to various content providers/channels on a non-discriminatory basis”. According to Clause 7.8 of the DTH license condition “The licensee shall carry the channel of Prasar Bharti on the most favourable financial terms offered to any other channel”.
- 2.20 The Hon’ble TDSAT, in its judgment dated 31st March 2007 in petition No.189(C) of 2006, expressed its inability to read a ‘must carry’ provision in clause 7.6 of the DTH licence and further observed that it will choke the

DTH operator if it has to carry all the channels of every broadcaster. The Hon'ble Tribunal in the said judgment has observed as under:

“It is not disputed that there is no specific provision in the Regulations for ‘must carry’ concept. We are unable to read a ‘must carry’ provision in clause 7.6. A plain reading of clause 7.6 suggests that the obligation is cast on a Licensee to provide access to various content providers/channels on a non-discriminatory basis. As per this clause, therefore, the Licensee is not the seeker of channels. The broadcasters or the content providers have to approach the Licensee for providing access on its platform for their channels and then the Licensee is required to do so on a non-discriminatory basis. This clause also does not say that a Licensee must carry all the channels of a particular content provider. Therefore, we are unable to see how an argument that a Licensee must carry all the channels of a broadcaster can be, advanced on the basis of the provision contained in clause 7.6 of the Licence. Further, it must be noted that the interpretation suggested by the learned counsel for the respondent in clause 7.6 of the Licence is totally irrational because it overlooks the fact that it will choke the DTH operator if it has to carry all the channels of every broadcaster. A DTH operator naturally will provide access to every broadcaster because every broadcaster is supposed to have some popular channels which a DTH operator is likely to include on its platform. If a DTH operator has to take all the channels of every broadcaster, it may not be physically possible to do so.”

Mobile Television

- 2.21 In its recommendations dated January 23, 2008 on issues relating to Mobile Television Services, the Authority made recommendations on consolidation and vertical integration. The Authority held that the purpose of imposing cross holding restrictions is to ensure that content providers and different distribution platforms do not become vertically or horizontally integrated as such a situation would be against the interests of subscribers anti-competitive. Mobile television will also be a distribution platform for television channels. Accordingly, it would be appropriate for cross holding restrictions to be placed on the mobile television licensees vis-à-vis broadcasters to prevent monopolization of content and to foster healthy competition.
- 2.22 The Authority referred to the existing cross holding restrictions for DTH and recommended that any mobile television licensee should not allow any broadcasting company or group of broadcasting companies to collectively hold or own more than 20% of the total paid up equity in its company and vice versa, at any time during the License period. Further, any entity or person (other than a financial institution) holding more than 20% equity in a mobile television license should not hold more than 20% equity in any other broadcasting company or broadcasting companies and vice-versa. However, there would not be any restriction on equity holdings between a mobile television licensee and a DTH licensee or a HITS licensee or a MSO/cable operator company.

Internet Protocol TV (IPTV)

- 2.23 Under the existing licensing conditions Unified Access Services license (UASL) and Cellular Mobile Telephony Service (CMTS) License are permitted to provide triple play service and IPTV is permitted under this provision. ISPs having net worth of more than 100 crores have also been

permitted to provide IPTV services, after obtaining permission from the licensor.

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

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

Headend-In-The-Sky (HITS)

2.26 In its recommendations to the Government on Headend In The Sky (HITS) on October 17, 2007, the Authority recommended that a HITS operator shall not allow Broadcasting Company(s) and/or DTH licensee company(s) to collectively hold or own more than 20% of the total paid up equity in its company at any time during the License period. Simultaneously, the HITS Licensee should not hold or own more than 20% equity share in a broadcasting company and/or DTH licensee company. Further, any entity or person holding more than 20% equity in a HITS license shall not hold more than 20% equity in any other Broadcasting Company(s) and/or DTH licensee and vice-versa. This restriction, however, will not apply to financial institutional investors. However, there would not be any restriction on equity holdings between a HITS licensee and a MSO/cable operator company.

Digitalization of Cable Television

2.27 The issue of cross holding restrictions was also covered in the recommendations of the Authority on Digitalization of Cable Television, which were sent to the Government on September 14, 2005. The Authority recommended amendments in The Cable Television Networks (Regulation) Act 1995 to, inter alia, specify terms and conditions containing restrictions on cross media holdings, accumulation of interest, License fee, and other conditions like the roll out obligations.

Chapter 3

Jurisdictional and Constitutional Issues

- 3.1 As already indicated in Chapter 1 of these recommendations, in line with its general consultative approach to various issues before making recommendations to the Government, the TRAI has sought the responses of the public on its consultation paper on “Media Ownership” covering various issues relating to media ownership rules and controls, the extant policies of the Government and the recommendations made by TRAI from time to time on ownership issues relating to the telecom and broadcasting sector, the International scenario on media ownership and control, etc. It was also mentioned in the Consultation Paper that “Presently there is no general policy on ownership and cross media restrictions in the country as far as restrictions between print and electronic media are concerned. However, the restrictions for different segments within the broadcasting sector have been put in place by the policy framework for each individual segment, such as DTH Guidelines or FM Radio Policy (Phase-II).”
- 3.2 Some of the stakeholders, particularly those associated with the print media, have expressed the view that section 11(1)(a) (ii) and (iv) of the TRAI Act, 1997, under which the recommendations of the TRAI have been sought by the Government of India, does not cover the print media and that the jurisdiction of the TRAI under the said Act does not extend to making recommendations as regards the print media because the print media is under the jurisdiction of another body, namely the Press Council. Some of them have also raised the question of Constitutional validity of prescribing cross media restrictions on the ground that Cross media restrictions would be ultra vires the provisions of Art 19(1)(a) and 19(1)(g)

and 19(2) of the Constitution of India. Thus, the responses from these stake-holders have raised two important questions of law, namely:-

(a) Whether the TRAI can make recommendations on the issue of cross media ownership involving the print media, in view of the fact that under the TRAI Act, 1997, the TRAI has jurisdiction only as regards telecommunication services (including broadcasting and cable services which have been notified as telecommunication services) and that the Press Council has jurisdiction over the Print Media?

(b) Whether cross-media restrictions, if put in place, would be violative of the provisions of Article 19(1)(a) read with Article 19(2) and/or Article 19(1)(g) of the Constitution and would thus fail the test of Constitutionality?

These questions, being questions of considerable relevance to the consideration of the various issues raised in the Consultation Paper, are being discussed in the succeeding paragraphs of this Chapter.

(a) As regards TRAI's jurisdiction to make recommendations on cross media ownership:

3.3 The reference from the Government of India (Ministry of Information & Broadcasting) has sought the recommendations of the Authority under section 11(1)(a) (ii) and (iv) of the TRAI Act, 1997. The letter of the Ministry of Information and Broadcasting dated the 22nd May, 2008 clearly states that the recommendations of the Authority are sought under section 11(1)(a)(ii) and (iv) of the Act. Under clause (a) of sub-section (1) of section 11 of the TRAI Act, 1997, one of the functions of the Authority is to make recommendations, inter alia, on the following matters, namely:-

“.....

(ii) terms and conditions of license to a service provider;

.....

(iv) measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

.....”

3.4 Upon close scrutiny of the relevant provisions of sub-clauses (ii) and (iv) of clause (a) of sub-section (1) of section 11, as referred to in the preceding paragraph and the scope of the reference made by the Government of India (Ministry of Information & Broadcasting), it was seen that in so far as matters relating to terms and conditions of licenses to various service providers in the telecom and broadcasting sectors and to the measures required to facilitate competition and promote efficiency in the operation of these sectors so as to facilitate growth (both horizontal and vertical), the Authority has been expressly conferred the powers to make recommendations to the Government of India (which may include recommendations on terms and conditions for entry into the sector as well as measures aimed at promotion of competition and prevention of monopoly (both vertical and horizontal) in these sectors. Such recommendations may also include, in the interest of competition, plurality of views and news and the orderly growth of these sectors, reasonable safeguards as regards ownership by different entities, e.g., safeguards as to foreign investments (direct investments and institutional investments), promoters equity limits and restrictions on dilution of such promoters

equity, investment limits for entities already in one or the other segment, either in the vertical stream of broadcasting/telecommunication or horizontal across these mediums. These recommendations may, within the four corners of the Act, include restrictions on ownership which can be imposed, on any entity which already has substantial presence in one of the sectors or in one area of a sector (such as DTH distribution) and desires to enter into the other sector or into another area of the same sector (e.g. DTH operator desiring to launch broadcasting channels). To this extent, there can be absolutely no doubt about the jurisdiction of the TRAI under the Act to make recommendations on cross media ownership. It is also to be borne in mind in this context that as the sector regulator for the broadcasting sector (and its distribution platforms such as cable, DTH, etc.), the TRAI would be within its powers in recommending to the Government such measures as may be necessary to ensure plurality of views and news in all parts of the country, to promote competition and to prevent monopoly, market dominance and such measures may also include safeguards as to ownership and cross ownership of various media segments to be complied with by different entities desiring to enter into the broadcasting sector.

- 3.5 The Authority, being fully aware of its functions and the frontiers of its jurisdiction as defined under the TRAI Act, 1997, had, upon receipt of the reference from the Government of India (Ministry of Information & Broadcasting), requested the Ministry of Information & Broadcasting to clarify the scope of the Ministry's reference on cross media and ownership restrictions. The Authority pointed out in the said request that the reference under consideration cuts across the broadcasting sector and the letter of the Ministry (at Annexure I) conveys that the issue of cross media restrictions should be addressed in an inclusive manner covering broadcasting services, print media and other miscellaneous ownership within the fold of telecom, information and broadcasting and the Authority accordingly requested the Ministry to confirm this understanding of the

Authority. In response to this, the Ministry of Information & Broadcasting clarified that the need to consider cross media ownership restrictions stems from the concern that in a healthy democracy (any) regulatory framework should be such as to ensure multiplicity of independent players which have the capacity to influence public opinion, that the public should have access to differing and diverging views on various subjects and that in the above context it becomes pertinent to include print media also while examining the need whether any cross ownership restrictions vis-à-vis broadcast media are required or not and, thus, though the print media per se is not within the direct scope of TRAI, but looking at the increasing trend of Print media entering into Broadcasting sector and the context as explained above, the TRAI is requested to examine the issue in its entirety (copy at Annexure II).

- 3.6 From the clarifications received from the Ministry of Information & Broadcasting as referred to in the preceding paragraph, it is clear that the Government of India has, while clearly acknowledging that the print media per se is not within the purview of the TRAI, but looking into the increasing trend of print media entering into broadcasting sector and the context as explained in the said communication as outlined above, requested the TRAI to examine the issue of cross media ownership in its entirety, i.e., including the print media. In view of this clarification given by the Ministry of Information and Broadcasting, Government of India and also considering the fact that giving recommendations/suggestions as regards cross ownership issues cannot be said to be in the exclusive domain of one or the other of the sectoral regulators, where there are many, particularly, when the different media, television, radio and print media, are becoming more and more interlinked to each other due to technological developments, the Authority has included within the scope of the present recommendations its conclusions and suggestions on issues relating to cross media ownership in their entirety for the sake of comprehensiveness. However, having regard to the limits of its

jurisdiction under the TRAI Act, 1997, the Authority would like to clarify that all suggestions made by it in the present recommendations, as regards ownership safeguards which may be placed on entry of the print media into the broadcasting sector, and vice versa, are merely suggestions based on its comprehensive examination of the issues and are not formal recommendations under section 11(1)(a) of the TRAI Act, 1997. The core examination of the issue is with regard to the broadcasting sector, notwithstanding the incidental consideration of certain questions relating to entry of entities in the print media into the broadcasting sector.

- 3.7 It is further to be noted in this context that while the Authority may make available to the Government of India its suggestions on matters which cut across different media segments, cutting across both the broadcasting sector and the print media as requested by the Government of India, there is nothing which prevents the Government of India from engaging itself into further consultations with the Press Council of India or with other sectoral regulators as it may consider appropriate, before taking any final decisions upon a holistic view of the entire matter.

(b) On Constitutional validity of cross-media restrictions:

- 3.8 As already noted in paragraph 3.2 supra, some of the stake-holders have raised the question of Constitutional validity of prescribing cross media restrictions. According to them, cross media restrictions would be ultra vires the provisions of Art 19(1)(a) and 19(1)(g) and 19(2) of the Constitution of India. Such stake-holders have argued that the freedom of speech cannot be restricted for the purpose of regulating the commercial aspect of the activities of the media and that Cross-Media holding restrictions curtail the right of publication, directly affecting the right of Freedom of Speech and expression. In their view, "Cross-Media restriction as sought to be imposed between Press and Broadcasting

would therefore amount to imposition of an unreasonable restriction on the rights of Press and media to choose or seek an alternative medium and therefore is infringing the fundamental right guaranteed under Article 19 (1) (a) and is not sustainable under Article 19 (2) of the Constitution of India.” Reliance has been placed on a few judicial pronouncements to buttress this point of view.

3.9 The relevant provisions of Article 19 of the Constitution of India are 19(1), 19(2) and 19(6) and the provisions of these clauses of Article 19 are reproduced hereunder:

“19. (1) All citizens shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; [and]

* * * * *

(g) to practise any profession, or to carry on any occupation, trade or business.

[(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.]

.....

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, [nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].”.

It may be seen from these provisions that the provisions of Article 19(2) qualify the guarantee contained in Article 19(1)(a) (i.e. freedom of speech and expression) and those of Article 19(6) qualify the guarantee contained in Article 19(1)(g). Thus, none of these rights is absolute and each one of them is subject to some or other kinds of reasonable restrictions.

3.10 As regards the right conferred by article 19(1)(g) of the Constitution, i.e., the right to practice any profession, or to carry on any occupation, trade or business, the said right is circumscribed by the provisions of clause (6) of Article 19 which, inter alia, provides as follows:-

“(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public (emphasis

supplied), reasonable restrictions on the exercise of the right conferred by the said sub-clause,

Therefore, the right under sub-clause (g) of clause (1) of Article 19 can be fettered by reasonable restrictions “in the interests of the general public” as may be imposed by law. The scope of clause (6) being so wide, the restrictions sought to be imposed on the right have to pass only the test of general public interest.

3.11 It has been held by the Supreme Court in a large number of cases that any restriction that is directly imposed upon the right to publish information, to disseminate information or to circulate information constitutes a restriction upon the freedom of the Press. The Apex Court has also held that the right to circulate refers to the matter to be circulated as well as to the volume of circulation. (Sakal Papers Vs. Union of India AIR 1962 SC 305 and other judgments). It has also been held by the Apex Court that it would not be legitimate for the State to subject the Press to laws which take away or abridge the freedom of expression or which would curtail circulation and thereby narrow the scope of dissemination of information or fetter its freedom to choose its means of exercising the right. (Express Newspapers Vs. UOI AIR 1958 SC 578, Bennett Coleman Vs. UOI AIR 1973 SC 106, and other judgments)..

3.12 Some of the observations made by the Hon’ble Supreme Court in its judgment in the case of Cricket Association of Bengal (1995 AIR(SC) 1236 :: 1995 (2) SCC 161) are also found to be very relevant to the issue to be considered and are, therefore, worth reference for guidance. The Hon’ble Supreme Court has in the said judgment observed as under:-

“78. There is no doubt that since the airwaves/frequencies are a public property and are also limited, they have to be used in the best interest of the society and this can be done either by a central authority by

establishing its own broadcasting network or regulating the grant of licences to other agencies, including the private agencies. What is further, the electronic media is the most powerful media both because of its audio-visual impact and its widest reach covering the section of the society where the print media does not reach. **The right to use the airwaves and the content of the programmes, therefore, needs regulation for balancing it and as well as to prevent monopoly of information and views relayed, which is a potential danger flowing from the concentration of the right to broadcast/telecast in the hands either of a central agency or of few private affluent broadcasters** (emphasis supplied). That is why the need to have a central agency representative of all sections of the society free from control both of the Government and the dominant influential sections of the society.”

82. True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. **The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolised either by a partisan central authority or by private individuals or oligarchic organisations. This is particularly so in a country like ours where about 65 per cent of the population is illiterate and hardly 1-1/2 per cent of the population has an access to the print media which is not subject to pre-censorship.”**

194. **From the standpoint of Article 19(1) (a), what is paramount is the right of the listeners and viewers and not the right of the broadcaster- whether the broadcaster is the State, corporation or a private individual or body. A monopoly over broadcasting, whether**

by Government or by anybody else, is inconsistent with the free speech right of the citizens (emphasis supplied). State control really means governmental control, which in turn means, control of the political party or parties in power for the time being. Such control is bound to colour the views, information and opinions conveyed by the media.

.....

199. I have also mentioned hereinbefore that for ensuring plurality of views, opinions and also to ensure a fair and balanced presentation of news and public issues, the broadcast media should be placed under the control of public, i.e., in the hands of statutory corporation or corporations, as the case may be. This is the implicit command of Article 19(1) (a). I have also stressed the importance of constituting and composing these corporations in such a manner that they ensure impartiality in political, economic and social and other matters touching the public and to ensure plurality of views, opinions and ideas. This again is the implicit command of Article 19(1) (a). **This medium should promote the public interest by providing information, knowledge and entertainment of good quality in a balanced way (emphasis supplied).** Radio and television should serve the role of public educators as well. Indeed, more than one corporation for each media can be provided with a view to provide competition among them (as has been done in France) or for convenience, as the case may be.

201.**The right of free speech and expression includes the right to receive and impart information. For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an 'aware' citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them. This cannot be provided by a medium controlled by a**

monopoly - whether the monopoly is of the State or any other individual, group or organisation. The broadcasting media should be under the control of the public as distinct from Government. This is the command implicit in Article 19(1)(a).(emphasis supplied)”.

- 3.13 Thus, it can be seen that the right to free speech, which right has been construed by our Supreme Court as encompassing the freedom of press, cannot be curtailed in any manner other than what has been permitted under clause (2) of Article 19(2), i.e., except as in the interests of [the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. The Hon’ble Supreme Court has also held that the right guaranteed under 19(1)(a) has more to do with the right of the listeners and viewers and not the right of the broadcaster and that for ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. Further, having regard to the observation of the Hon’ble Apex Court that a successful democracy posits an 'aware' citizenry and that diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them, Government can impose such checks and balances in the matter of cross-media ownership so as to ensure such diversity of opinions. In the light of the foregoing, the Authority is unable to accept the view that cross-media restrictions, if imposed by the Government, would not pass the test of Constitutional validity. It is only when a particular restriction is demonstrably restrictive of the right to freedom of speech and expression either as to the extent of circulation or mode of circulation of information and are thus found to be unreasonable that the Courts may hold them to be restrictive of the right under Article 19(1)(a). Any safeguards which may be imposed only on the ownership or concentration of ownership aimed at curbing or preventing

monopoly or domination in a defined geographic market by a few players and aimed at providing competition in the market and plurality of views and news to the general public, would only be a reasonable restriction on the right to carry on any trade or business as contemplated in Article 19(6) of the Constitution. Thus, in the considered view of the Authority, although there cannot be any law which totally prohibits entities in one media segment to enter into another, there is nothing which prevents the Government from imposing, by law, reasonable safeguards to ensure that there is diversity and plurality in the sector (which is essential for a true democracy) and that there is market competition, without abuse of dominant position by any player, leading to consumer benefit.

Chapter 4

MEDIA OWNERSHIP SAFEGUARDS

- 4.1 India has one of the largest and most rapidly growing entertainment and media industry in the world. It has immense opportunities for the broadcasters and distributors alike. The Authority's policy has always been to encourage competition, ensure level playing field for the broadcasters and distributors. There is a large scope for growth in this sector in view of new technologies available today. This has resulted in increased investment opportunities in the sector multifold. A supportive regulatory environment and well defined safeguards put in place at this stage of development will facilitate the orderly growth of the industry.
- 4.2 Media plays an important role in the democratic process of a country, more so in today's technologically fast moving environment. Media identifies the problems of our society, reveals vital information to the citizens which subsequently guide them to make important decisions related to the various activities of the country. Thus, the media plays an important role in the construction of the economic, political, social and cultural characteristics of a country.
- 4.3 Media pluralism is a corner stone of democracy. According to Gillian Doyle¹, media pluralism means diversity of media owners, reflected both by the plurality of independent and autonomous media and the diversity of media contents offering different and independent voices, diverse political opinions and representations of citizens within the media.

¹ *Media Ownership: The Economics and Politics of Convergence and Concentration in the UK and European Media*, Gillian Doyle, (2002) Sage Publications, London.

- 4.4 Media pluralism requires both diversity of media owners and media content. Even though, a multiplicity of suppliers is obviously desirable in many ways, it will not necessarily result in greater diversity. Pluralism also depends on the variety of media content and sources in order to avoid the uniformity of programmes and ensure diversity of views. In order to reflect the diversity within society and ensure social cohesion, pluralism in media must be represented by a large range of political opinions and viewpoints as well as a variety of cultural expressions.
- 4.5 From a political viewpoint, a pluralist and independent media system is also essential for democratic development and a fair electoral process. It is crucial to eliminate oligopolies in the media, and to ensure that the media are not used to gain political power. Owners of popular media have the power to make or break political reputations and careers. In fact, the media has social responsibility, not only for mass entertainment, but for social integration and as a supplier of quality, unbiased information.
- 4.6 In light of the advancing globalisation and digitalisation of the media, protecting media's plurality is becoming a necessity. Media plurality is an indisputable requirement for any media system. It is only through guaranteeing diversity in opinions, arguments and views, that the basis for opinion formation in democratically organised countries can be provided.
- 4.7 Gavin Davis expresses a similar concern relating to concentration of ownership owing to certain technological developments like digitization which is reproduced below:

'Digitization of information is increasing economies of scope in the broadcasting market. Exploitation of economies of scope and scale increases pressure towards concentration of ownership. Rather than promoting free competition, there is a risk that the digital era will foster high concentration in private broadcasting. There is a

*danger that if broadcasting were left entirely to the market the industry could become overly concentrated.*²

- 4.8 Media is a source of education, a support for national cultural industries, a promoter of regional identities and a voice for the diverse minority interests. Ownership of the media matters both to individual citizens or consumers and to society in general. Citizens and voters need to have access to diverse political viewpoints as well as a wide range of ideas and cultural expressions. Secondly, concentrated media ownership has to be regulated to protect society against the abuse of political power by media owners and to avoid that individual voices gain excessive control over the media. Moreover, in order to ensure social cohesion, the culture, views and values of all groups that actually constitute society have to be reflected within the media.
- 4.9 The Media Ownership safeguards are designed to strike a balance between ensuring a degree of plurality on the one hand and providing freedom to companies to expand, innovate and invest on the other hand. The first is vital for democracy since plurality of ownership helps to ensure that citizens have access to a variety of sources of news, information and opinion. The second can also benefit citizens and consumers by providing a basis for delivering higher quality programmes, greater creativity and more risk-taking.
- 4.10 Framing of media ownership safeguards will help to ensure that citizens have access to diverse view points enabling them to participate fully in the democratic process. One of the main objectives for having such safeguards on accumulation of interest is to provide for competition,

² Gavin Davies, 'Market Failure in the broadcasting Industry', in *The Future funding of BBC: Independent Review panel*, London, 1999.

diversity and plurality of players, news and views in a democratic country like India and also to ensure that the delivery platforms owned by broadcasters do not block competition/content from others.

- 4.11 As the diversity of services and choice of content from different owners in the market increase and as the consumer acquires increasing levels of choice over what sources of news they use and when, the features and need for specific ownership rules to guarantee plurality will undergo change.
- 4.12 The broadcast media deals with Entertainment (music, movies, serials etc.), information or general knowledge (National Geography, Discovery channels etc.) and News Channels. The aspect of plurality, diversity and information may be more significant in the case of news channels.

Benefits of consolidation

- 4.13 It is important to recognize that consolidation can offer benefits. For example, it can produce:
- (i) *Economies of scale and scope* in news gathering and dissemination which can reduce news costs as well as improve access to international news;
 - (ii) *Access to better news management* (e.g. from overseas and other media) and superior talent (e.g. journalists and presenters);
 - (iii) Improved access to *overseas capital* for investing in the news function;
 - (iv) Improved access to news gathering, editing and disseminating *technology*.

Consolidation can also enhance future investment in news gathering and programme production in general. However, it is important to keep in mind that plurality and diversity aspects are not compromised.

Impact of Economic Crisis

- 4.14 The current global financial crisis that has impacted almost every industry, has not spared the Indian media industry. Both the print and electronic media are facing the impact of the global financial crisis.
- 4.15 With advertisement revenues diminishing, there are reports that media companies are closing regional offices, laying off employees and searching for investor bailouts. Some media reports indicate that the fall in advertising revenue of print media has been as sharp as 20 to 45 percent during Oct – Nov 2008³. The rising cost of newsprint has added to the print media industry's woes. Representatives of the print media have approached the Government seeking an upward revision in rates of government advertisements, abolishing customs duty on newsprint and withdrawal of fringe benefit tax levied on the non-core salary components of their employees. The media industry, particularly the print sector, has been hit sharply by the fall in advertisement revenue and rising cost of newsprint because of the global financial crisis.

Distinct features of Indian Media Scenario:

- 4.16 The distinct features of the Indian Media Scenario are:
- (i) Terrestrial TV is not opened up for private participation in India whereas in many countries there are a number of private terrestrial TV operators.
 - (ii) There are a large number of pay TV channels in India.

³ Extract from an article on 'Newsroom blues' by Sevanti Ninan appeared in Hindu/ 31st Jan'08

- (iii) India has a fragmented cable service provider industry. The number of cable service providers is estimated to be around 60,000 in the country.
- (iv) A number of TV channels and FM radio operators already own leading newspapers (national and regional).
- (v) A number of broadcasters have ownership in distribution chain such as cable operations, DTH etc
- (vi) As per reports there are more than 62,000 registered newspapers across 24 languages in the country.

Media Segments

4.17 The segments that are relevant in the three different categories of media viz. Print, Radio and Television are as follows:

i) Print Media

- Newspapers (National and Regional)
- Magazines

ii) Radio

- FM Radio
- Satellite Radio.

iii) Television

- Broadcasters
- Distributors :-
 - o Multi-system Operator (MSO)
 - o Cable Operator
 - o DTH
 - o Headend-in-the-Sky (HITS)
 - o Mobile TV

Parameters for measuring plurality/ control/ ownership

- 4.18 The criteria to be used for measurement of control/ ownership was also raised during consultation. No clear view has been expressed by the stakeholders even though some of them have supported using equity holding as a parameter for control.
- 4.19 Authority feels that a more detailed study of the market would be required to identify separately the parameters for measuring dominance and control. Also specific numbers to these parameters can be assigned only with the help of reliable market data. The parameters should be such that the information easily available, quickly verifiable and any restriction based on the parameter is easily implementable.
- 4.20 Some of the parameters that can be used for measuring the plurality/ control/ ownership are discussed below. Internationally the broad parameters that have been used are geographical coverage, target audience, circulation, revenue and number of channels. The restrictions are generally based on the principle of ownership or control. They include placing restrictions on the number of different types of media (print, radio, TV) an entity can own/control (say two out of three), number of channels in TV or radio an entity can own/control, percentage of revenue or target audience the entities can control etc.

Geographical coverage:

- 4.21 Geographical coverage applicable to various media segments in India are as follows:
- FM Radio – City
 - Cable Operator – To register in the Head Post Office within the area of operation (almost concurrent with District)
 - DTH – All India

HITS – All India

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

Target Audience:

4.22 The target audience in the case of newspapers is their readership and information on readership of prominent newspapers is generally available. The target audience in the case of TV would be viewership or number of households viewing particular channels. It may be possible to have some indication of the viewership for a TV channel in an indirect manner. However, authentic or verifiable data is not available as on date.

Equity Holding:

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

Revenue

4.24 The revenues of public limited companies or limited companies are published information and as such, like equity participation, can be easily identified, monitored and enforced. Here again for entities which are not companies (example: individuals operating as cable service providers) the figures are not publicly available and getting authentic revenue figures is difficult as on date. Further there may be a need to segregate the revenue from identified media services.

Number of Channels:

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

Issues under consideration

4.26 The issues raised by the Ministry of Information & Broadcasting are broadly being addressed at two levels-

(I) Maintaining Plurality & Diversity

The issue of Cross media ownership across different segments of media such as print/ television/radio (horizontal integration) comes under this.

The key concern while placing safeguards is arising out of need to maintain plurality of ownership to ensure that citizens have access to variety of news, information and opinion.

(II) Ensuring adequate competition.

The following issues are encompassed in this :-

a) ***Media ownership safeguards within the media segment of Broadcasting & TV*** (Vertical Integration). These safeguards

would prevent concentration within the Broadcasting and TV media segment (also referred to as 'vertical integration'). As on date the issue of vertical integration are not relevant in radio.

- b) Limits on number of licenses held by a single entity.
- c) Concentration of control/ownership across media in a geographical area.
- d) Cross holding safeguards across telecom and media segments.

4.27 Thus it is observed that among the issues under consideration the issue of diversity and plurality are more relevant in cases of cross media ownership i.e. horizontal integration whereas competition issues become more relevant in 'vertical integration'.

4.28 The list of issues discussed in the consultation paper is at Annex IV.

Cross-media control/ ownership or Horizontal Integration

4.29 Cross media ownership or horizontal integration refers to the ownership/control by one entity, of different categories of media which are print, radio and TV, in a given market. Currently there are no restrictions in this regard in India.

4.30 By and large pluralism is defined to mean, ensuring fair, balanced and unbiased representation of a wide range of political opinions and views which is a critical requirement for functioning of modern democracies. Media industry today encompasses a diversified set of industries that include the press, television, radio broadcasting and electronic communications over the internet.

- 4.31 Keeping in line with its consultative approach, the Authority considered various points of view based on the comments it received during process of consultation.
- 4.32 Stakeholders' comments on the main issues are generally divided. The stakeholders associated with the print and television media i.e. broadcasters/ newspapers and their associations are of view that there is no requirement for any kind of restrictions. The arguments offered include: putting restrictions on cross media control will not ensure plurality but will stifle growth, the multiple mediums and distribution channels that are available prevents monopolisation, the Indian market is quite different from other world markets since we have so many dialects, the media industry in India is quite fragmented, cross media restrictions in other countries were enacted when the media was at nascent stage, the presence of Prasar Bharati ensures plurality, other existing regulations also ensure plurality etc. Some of the Cable Operators, Consumer Forums and Individuals, however, are of the view that there should be restrictions similar to developed countries abroad. The stakeholders from the print media have also raised the issue of jurisdiction and violation of constitutional provisions, which have been separately discussed in the chapter on Jurisdictional and Constitutional provisions.
- 4.33 The original rationale for media rules is to guarantee a multiplicity of voices and prevent concentrations of power. The argument against media restrictions is that many of these rules need to be examined in an environment where consumers have access to a multitude of information sources – newspapers, radio, TV, mobile TV and the Internet. Large media companies argue that the rules are prohibiting their ability to grow and serve their consumer base, and have thus damaged their capacity to compete in the free marketplace. The Internet poses a particular threat, they claim, as a new source of competition that has eaten into their advertising revenue and pulled away their customers.

- 4.34 Media ownership is a source of debate, comments and government review in most developed countries around the world. When we talk of media ownership, the words that come together with it are concentration, consolidation, plurality and diversity.
- 4.35 Media ownership issues have a long history. Federal Communications Commission (FCC), the US regulator began adopting strong rules to preserve diversity on the airwaves, way back in 1941. Through a series of actions that spanned from then until the 1970s, the FCC adopted rules that restricted the number of local radio stations one company could own, limited the national audience reach for one broadcaster, restricted companies from owning multiple TV stations in a local market and banned the ownership of both a newspaper and a television station in the same market.
- 4.36 Each of the FCC's early efforts to maintain some restrictions on media ownership was based on the widely-held belief that media concentrated in the hands of too few companies could threaten access, diverse viewpoints and local news and information. By the beginning of the 1980s, the Reagan Administration, the FCC and Congress embarked on a deregulatory approach toward communications policy and began chipping away the protections in place for ensuring media diversity. For example, the number of television stations any single entity could own grew from seven in 1981 to 12 in 1985. And the 1996 Telecommunications Act eliminated the 40-station ownership cap on radio stations. Since then, the radio industry has experienced unprecedented consolidation.
- 4.37 In 2003, the FCC attempted to lift ban on the cross-ownership of newspapers and broadcast stations in local markets and allowing one company to own three TV stations, eight radio stations, and the monopoly newspaper in a single market. These were rejected in 2004. Similar

exercise by FCC in 2007 was voted out by senate in 2008, **thus not amending the 32-year-old absolute ban on newspaper/broadcast cross-ownership which prohibits common ownership of a broadcast station and a daily newspaper in the same market.**

4.38 In France, cross-media ownership provisions have been laid down to prevent consolidation of multimedia holdings and are based on the so-called “two out of three rule”. According to this rule, a company may not meet more than two of the following situations: holding a licence for one or several terrestrial television services reaching more than four million viewers; holding a licence for one or more radio services reaching more than 30 million viewers; publishing or controlling one or several daily newspapers with a national market share over 20 per cent. (a equivalent rule applies at the regional level.) This rule was changed by the Law on Electronic Communications 2004, which removed a fourth situation; holding one or more authorizations to operate cable systems serving more than eight million viewers. Media reports last month show that detailed analysis of the press was done by the French President starting from October 2008. It was expected that in an effort to help newspapers through the depths of recession, cross media ownership regulations would be eased. But contrary to the expectations, in an attempt to save the industry, other ways including tax breaks, doubling the amount of advertising in press and online newspapers by the Government, have been promised. **It is important to note that even after the review in January 2009, the cross media ownership regulation which under the French law allows a corporation to own either a TV network or newspaper, but not both at the same time, is continuing to be in force unaltered.**

4.39 In United Kingdom, due to the fact that the local newspaper industry has historically founded monopolies, the Federal Constitutional Court has urged state legislators to introduce rules preventing the development

locale and regional multimedia monopolies. As a result there are explicit restrictions on cross-media ownership. The regulation is provided by both sector specific regulation and general competition rules. The specific approach deals exclusively with broadcasting, whilst the general competition law encompasses both the newspaper and the broadcasting industries. The system is designed to prevent the emergence of a single broadcaster obtaining a predominant influence over public opinion.

- 4.40 In UK, there are explicit restrictions on cross-media ownership. The 2003 Act introduced a complicated points system to prevent local newspapers with a market share of 50% or more and ITV regional licensees from holding local analogue radio licences in the same area. A media owner may also not acquire a regional ITV licence if it runs one or more local newspapers with more than a 20% market share in the same area. The system is designed to prevent the emergence of a single broadcaster obtaining a predominant influence over public opinion. **UK Media regulator Ofcom is obliged under the 2003 Act to review the ownership rules at least every three years, with the next report due in 2009.** If Ofcom feels there should be any changes it then makes recommendations to the secretary of state for culture, media and sport. The last review in November 2006 did not alter the existing rules. In UK at present, regional newspapers have been particularly hard hit by the recession, with advertising revenues down and the readers have continued to move to the internet.
- 4.41 In Canada, the Canadian Radio-television and Telecommunication Commission (CRTC) restricts cross-media ownership in order to ensure that Canadians continue to benefit from a range of perspectives in their local news coverage. **Under the approach revised in January 2008, a person or entity may only control two of the following types of media that serve the same market: a local radio station, a local television station, or a local newspaper.**

Observations and Recommendations of the Authority:-

4.42 Considering the international scenario, stakeholders' comments, present economic scenario, the distinct features of Indian scenario and other relevant factors the Authority has the following observations:

- i) Ensuring plurality and diversity in media is essential for a mature democracy
- ii) There have been instances reported in some parts of India where one organisation is having significant influence across all media segments.
- iii) The safeguards should be seen as part of a clear and transparent regulatory framework which will enable the existing media owners and the potential investors to take appropriate decisions, thereby helping the long term growth of the sector.
- iv) It is better to put timely safeguards in advance rather than looking for corrective measures after distortions have set in, which become painful for the industry. These timely measures would alleviate the need for the future corrective action(s).
- v) Many of the leading democracies of the world, both developing and developed, which have cross media control/ownership restrictions for years, have recently reviewed and have taken a decision to continue with the restrictions.
- vi) While there are tangible benefits of consolidation, these should not be at the cost of plurality and diversity.
- vii) In the current scenario of economic slowdown, steps are being taken to help the media industry get through the situation and to reduce the impact of slowdown. Therefore, care has to be taken to ensure that none of the safeguards should have an adverse impact on the sector.
- viii) There is no emerging threat of market failure.

4.43 Further considering these observations and other issues discussed, the Authority makes the following recommendations:-

- i) **Necessary safeguards should be put in place to ensure that plurality and diversity are maintained across the three media segments of print, television and radio. It should remain positive in essence.**
- ii) **A detailed market study and analysis may be carried out by the Ministry of Information & Broadcasting (MI&B) for identifying/determining the safeguards. The results of such analysis may be put in public domain and discussed before finalizing the safeguards.**

Vertical Integration

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

4.45 There are certain restrictions between the broadcasters and distributors. Some of these are as per the existing policies and others as per the recommendations given by the Authority which are pending with the Government. The present position is summarized in the table below:

| | Broadcaster | MSO/Cable | DTH | HITS | Mobile TV |
|-------------|-------------|-----------|--------|--------|-----------|
| Broadcaster | -- | NR | R [C] | R [E]* | R [E]* |
| MSO/Cable | NR | -- | R [C] | NR | NR |
| DTH | R [C] | R [C] | -- | R [E]* | NR |
| HITS | R [E]* | NR | R [E]* | -- | NR |
| Mobile TV | R [E]* | NR | NR | NR | -- |

NR – No Restriction

R[C] – Restriction of cross holdings by companies.

R [E] – Restriction on any entity holding more than 20% across the media.

* - recommendations

- 4.46 The restriction between DTH on one hand and Broadcaster/ MSO/ Cable on the other is that cross-holding exceeding 20% equity by companies providing these services is not permitted. In other cases, the recommended restrictions are on cross-holding by entities having more than 20% equity holding.
- 4.47 Some of the stakeholders feel that the existing rules are not adequate to address the concerns of vertical integration in television segment. Also some have requested for must-carry clause to protect TV broadcasters with regard to DTH operators who misuse the distribution platform in order to favour the channels they have a stake in. Certain others feel that the current restrictions (existing or recommended) are limited only for DTH, HITS and mobile TV (as per TRAI recommendations). However, the Broadcaster and MSO cross media should be defined, which should also be at the same percentage as that of HITS and DTH (20%), meaning an Indian Broadcaster or Broadcasting Group cannot own more than 20% in a MSO business and vice-versa.
- 4.48 Some of the stakeholders associated with providing content / Distribution are of the view that the restrictions which have been placed on DTH,HITS and Mobile TV services are too severe and need a look towards relaxation or removal of existing restrictions to fuel growth. The consumers now have access to much larger number of channels as a result of cable digitization, multiple DTH operators and also Telecom IPTV providers, which provide alternatives to customers for the reception of TV channels or VoD content.
- 4.49 Some stakeholders opine that no corrective policy measures need to be implemented to effect cross media ownership restrictions as individual policy restrictions like the FM radio policy, the TV uplinking policy and the FDI policy, all ensure that airwaves do not fall in the wrong hands.

- 4.50 Overall, it emerges from the responses that generally there is a need to have certain acceptable safeguards against vertical integration between broadcasters and distributors in the television media. Presently, there are no restrictions for Broadcasters to own or share interests in Cable networks and vice versa. As a result of this, some of the broadcasters may have stakes in Cable Distribution networks/ MSOs. But it is important to maintain diversity and plurality have competitive environment and make choices available for the consumers. Further, it would be in the interest of the consumers if there is a clear distinction between content provider and delivery platforms. The rationale of the existing policy restrictions or recommendations on cross ownership restriction between Broadcasters and Distributors (DTH, HITS, Mobile TV etc.) is to ensure that the Broadcaster and Distributor do not have common ownership control.
- 4.51 The restrictions based on company holding can be easily subverted by creating another company by the same entities. In fact today even though there is a control/ownership restriction between DTH operators and the broadcasters the effectiveness of these restrictions in the present form is questionable.
- 4.52 With the present dispensation a company/entity can have controlling stake in a broadcasting company and a DTH licensee company, without violating the license conditions. This defeats the purpose of putting such restrictions and may lead to vertical integration between the broadcaster and the distributor. Such a broadcaster could then block the contents of a competitive broadcaster in the DTH distribution network by citing the reason of insufficient bandwidth. Similarly with around 400 channels that are being broadcast, a similar anti-competitive behaviour is possible from broadcasters who may have a stake in MSO/cable operators. So it would be in the interest of consumers and competition that a clear distinction is maintained between the broadcaster and the distributor.

4.53 There have been numerous disputes already brought before the Telecom Dispute Settlement and Appellate Tribunal (TDSAT) between broadcasters and MSO/ cable operators alleging denial of content/ carriage by one of the other service provider and new dispute cases are being added regularly, which is a clear indication that the current market situation requires corrective measures. There is, therefore, need to have acceptable safeguards that can be monitored and enforced effectively in the public interest.

4.54 In view of this the Authority recommends that :

- i) **The broadcaster should not have “control” in the distribution and vice-versa.**
- ii) **Definition of Control: 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.**
- iii) **The existing broadcasters who may have “control” in distribution (MSO/Cable/DTH) and entities in the distribution sector who may have similar “control” over broadcasting should be given sufficient time of three years for restructuring.**

4.55 With the above rationalization, the existing control/ownership restrictions between the broadcasters and distributors would get modified as follows:

- i) Presently there is no control or restriction between broadcaster and MSO/ Cable. As per the above proposal there will be restrictions.
- ii) The present restrictions between the DTH and broadcasters/MSO/ Cable operator will change from company based restrictions to entity based restrictions {i.e. R [C] to R [E]}.

| | Broadcaster | MSO/Cable | DTH | HITS | Mobile TV |
|-------------|-------------|-----------|--------|--------|-----------|
| Broadcaster | -- | R [E] | R [E] | R [E]* | R [E]* |
| MSO/Cable | R [E] | -- | R [E] | NR | NR |
| DTH | R [E] | R [E] | -- | R [E]* | NR |
| HITS | R [E]* | NR | R [E]* | -- | NR |
| Mobile TV | R [E]* | NR | NR | NR | -- |

NR – No restriction

R [E] – Restriction on any entity holding more than 20% across the media.

* – Recommendations

4.56 The above discussion on the need to put in effective safeguards as regards cross holdings in the broadcasting and the distribution platforms has focused on the need to move from “company-based” restrictions to a system of “entity-based” safeguards. This necessitates consideration of the question as to what should be the meaning and scope of the word “entity” for imposing such safeguards.

4.57 In common parlance an entity is something that has a distinct, separate existence, though such existence need not be a material existence. In particular, abstractions and legal fictions are usually regarded as entities.

The Merriam Webster’s On-line Dictionary defines an entity as follows:-

“1 **a: BEING , EXISTENCE** ; *especially* : independent, separate, or self-contained existence

b: the existence of a thing as contrasted with its attributes

2: something that has separate and distinct existence and objective or conceptual reality

3: an organization (as a business or governmental unit) that has an identity separate from those of its members”.

It can be seen that in commercial parlance, an entity generally denotes an organization (a business or governmental unit) that has an identity separate from those of its members. Thus, a sole proprietorship, an association of persons, a body of individuals, a partnership firm, a corporate body or company, a public sector business enterprise, etc. are all entities. In law, an entity is something capable of bearing legal rights and obligations. It generally means a "legal entity" (such as a business entity or a corporate entity) or "artificial person" but also includes a "natural person". It, therefore, follows that any shifting from "company-based" restrictions to a regime of "entity-based" safeguards aimed at preventing concentration of ownership and vertical intergration has to clearly address ownership issues cutting across all the categories of persons (including juristic persons) covering enterprises as individual units as well as interconnected enterprises or interconnected undertakings.

4.59 An interconnected undertaking denotes an undertaking which is connected to another undertaking - from the point of view of ownership, management, control, equity holding, etc. - of both undertakings. Section 2 (g) of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) defines "interconnected undertakings" as under:-

"(g) "inter-connected undertakings" means two or more undertakings which are inter-connected with each other in any of the following manner, namely :-

(i) if one owns or controls the other.

(ii) where the undertakings are owned by firms, if such firms have one or more common partners.

(iii) where the undertakings are owned by bodies corporate, -

(a) if one body corporate manages the other body corporate, or

(b) if one body corporate is a subsidiary of the other body corporate, or

(c) if the bodies corporate are under the same management, or

(d) if one body corporate exercises control over the other body corporate in any other manner;

(iv) where one undertaking is owned by a body corporate and the other is owned by a firm, if one or more partners of the firm, -

(a) hold, directly or indirectly, not less than fifty per cent of the shares, whether preference or equity, of the body corporate, or

(b) exercise control, directly or indirectly, whether as director or otherwise, over the body corporate,

(v) if one is owned by a body corporate and the other is owned by a firm having bodies corporate as its partners, if such bodies corporate are under the same management,

(vi) if the undertakings are owned or controlled by the same person or by the same group,

(vii) if one is connected with the other either directly or through any number of undertakings which are inter-connected undertakings within the meaning of one or more of the foregoing sub-clauses.

Explanation 1 : For the purposes of this Act, two bodies corporate, shall be deemed to be under the same management, -

(i) if one such body corporate exercises control over the other or both are under the control of the same group or any of the constituents of the same group; or

(ii) if the managing director or manager of one such body corporate is the managing director or manager of the other; or

(iii) if one such body corporate holds not less than one-fourth of the equity shares in the other or controls the composition of not less than one-fourth of the total membership of the board of directors of the other; or

(iv) if one or more directors of one such body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management, constituted (whether independently or together with relatives of such directors or the employees of the first mentioned body corporate) one-fourth of the director of the other; or

(v) if the same individual or individuals belonging to a group, while holding (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in one such body corporate also hold (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in the other; or

(vi) if the same body corporate or bodies corporate belonging to a group, holding, whether independently or along with its or their subsidiary or subsidiaries, not less than one-fourth of the equity shares in one body corporate, also hold not less than one-fourth of the equity shares in the other; or

(vii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individual (whether independently or together with his relatives) or the same body corporate (whether independently or together with its subsidiaries); or

(viii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individuals belonging to a group or by the same bodies corporate belonging to a group, or jointly by such individual or individuals and one or more of such bodies corporate; or

(ix) if the directors of the one such body corporate are accustomed to act in accordance with the directions or instructions of one or more of the directors of the other, or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of an individual, whether belonging to a group or not.

Explanation II : If a group exercises control over a body corporate, that body corporate and every other body corporate, which is a constituent of or controlled by, the group shall be deemed to be under the same management.

Explanation III : If two or more bodies corporate under the same management hold, in the aggregate, not less than one-fourth equity share capital in any other body corporate, such other body corporate shall be deemed to be under the same management as the first mentioned bodies corporate.

Explanation IV : In determining whether or not two or more bodies corporate are under the same management, the shares held by financial institutions in such bodies corporate shall not be taken into account.

Illustration

Undertaking B is inter-connected with undertaking A and undertaking C is inter-connected with undertaking B.

Undertaking C is inter-connected with undertaking A; if undertaking D is inter-connected with undertaking C, undertaking D will be inter-connected with undertaking B and consequently with undertaking A; and so on.”.

This definition of “inter-connected undertakings” is wide enough to cover all kinds of ownership control from the points of view of management, exercise of control, voting power, equity participation, etc. Therefore, the Authority feels that the entity-based safeguards, to be introduced across the broadcasting and distribution platforms, may adopt the above definition of the expression “inter-connected undertakings”,

4.60 In view of the foregoing, the Authority recommends that for the purpose of putting in place effective safeguards to prevent vertical integration between the broadcasting sector and its distribution platforms as recommended in paragraph 4.54 above, the word “entity” be given a broad meaning so as to include any person including an individual, a group of persons, a public or private body corporate, a firm, a trust, or any other organization or body and also to include “inter-connected undertakings” as defined in the Monopolistic and Restrictive Trade Practices Act, 1969 (54 of 1969).

Limit on number of Licenses by a single entity

4.58 Limit on number of Licenses by a single entity or Common control/ ownership refers to the number of media licenses in a single media segment (television or radio), held or controlled by a single entity operating in one market. An example of this is restriction on number of Radio channels owned/controlled by an entity in a state/country. Such restrictions are one way of ensuring that no single company or entity acquires monopolistic presence in a media segment.

4.59 Currently such limits are imposed in FM Radio licensees and there are no restrictions in the case of television.

4.60 Many of the stakeholders who are FM Radio licensees are in favour of liberalising the restrictions for the following reasons-

- Limits on licenses would curb plurality –

When a broadcaster is allowed multiple frequencies, it will naturally offer diverse programming. A new format would attract new listeners and the channel would get compensated by advertisers for these new listeners.

- Sustenance of business for Radio industry –

These stakeholders also feel that FM radio is perhaps the most regulated media industry right now and that this is not only stalling the growth of the industry but is actually a threat to the very existence of the industry. The FM radio industry has sunk more than Rs 2000 crores in the last couple of years in setting up infrastructure in addition to the high costs of operations and high investments. The amortization of the one time entry fee paid to the government, Annual License fees, music royalty are other costs associated with the FM Radio Industry. Also FM radio, unlike TV, relies at present only on advertising, and does not have any subscription revenue.

4.61 Some other stakeholders, notably consumer organizations, have commented that the current limits are adequate. Generally, it has been felt that there is no need for change in the existing scenario. Also, there is consensus that there should be no limits on television.

4.62 TRAI has forwarded recommendations for phase III of Private FM Radio licensing according to which atleast three channels excluding AIR in any district will be given to three different entities. Once this condition is met, only then the existing operator/ permission holder can bid for the remaining channels. These measures are considered sufficient to ensure plurality and diversity.

- 4.63 In its recommendations on Mobile TV, TRAI has suggested that a licensee should get only one carrier channel in a service area, so as to ensure multiplicity of service providers in every service area, subject to spectrum availability.
- 4.64 As far as other media segments are concerned (i.e. broadcasters, MSOs/LCOs, HITS, DTH etc.), there are no restriction on the number of channels/ licenses/ permissions which a company or entity can have. This ensures that there are no artificial entry barriers and thus it lead to maximum competition. A facilitating factor in these media segments is that there are no externally imposed spectrum constraints at present, except of course in the case of FM radio and mobile TV for which TRAI has recommended appropriate restrictions as mentioned in the foregoing paras.
- 4.65 **The Authority recommends that the current restrictions on number of licenses held by a single entity (including policies and TRAI recommendations on FM Radio and Mobile TV) are adequate for the time being.**

Concentration of Control/ Ownership across Media

- 4.66 Concentration of control/ownership refers to the level of market presence that an entity could have in terms of media outlets or market share (in terms of revenue or audience), combined across all media segments. It can be measured on a local or regional or national basis. Currently there are no restrictions of Ownership across different Media segments in India.
- 4.67 Media concentration is the creation of significant market power of entities undertakings, or even monopoly that significantly impedes competition, ultimately to the detriment of consumer. Concentration poses a threat not only to media pluralism and freedom of expression, but also to democracy

and social cohesion. It affects the freedom of expression and information, which are vital both from a democratic and a cultural perspective.

4.68 The two indicators most commonly used to measure concentration are Hirschmann-Herfindahl Index (HHI) / Incremental HHI and Concentration Ratio. However, these indices are generic in nature and not specific.

1. **HHI (Hirschman Herfindahl Index)** is the sum of squares of market shares (%) of all firms in the identified market while Incremental HHI is the difference between the post merger and pre merger HHI.

2. **Concentration ratio (CR):** Sum of shares of largest n firms
(CR_n; where n represents the number of top 2,3 or 4 firms)

4.69 During the process of consultation, stakeholders have generally opined that there is no need to put any restrictions. They strongly feel that no one constituent of the media and no particular mode of media delivery can control or influence the consumers/public. More competition will result in better and cheaper technologies. This will help in spreading the information revolution.

4.70 The safeguards which the Government will evolve on horizontal integration and the existing or recommended safeguards for vertical integration along with the existing restrictions in the number of media licenses in FM Radio and mobile TV, coupled with the fact that there are no significant entry barriers, would normally ensure that there is no concentration of control/ownership across the media. However, it would be necessary to ensure that accumulation of media power through acquisition and mergers is also properly regulated.

4.71 **Therefore, the Authority recommends that after working out the required safeguards for horizontal & vertical integration, the merger and acquisition guidelines for the sector may also be issued to prevent media concentration and creation of significant market power.**

Cross control/ ownership across Telecom and Media companies

- 4.72 This refers to same entity having control/ownership in both telecom and media companies.
- 4.73 Currently there are no restrictions in this regard in India. Also as on date the two industries/sectors are quite distinct and do not have much in common. However, with convergence of telecom and media technologies like IPTV, Mobile TV and 3G encompassing the services like video, voice and data, there is likely to be an overlap in the telecom and broadcasting services as synergy between the two sectors exists.
- 4.74 The stakeholders are generally against any restrictions. Most of the stakeholders are of the view that the phenomenon of convergence through Internet and Mobile telephony brings the newspaper, TV and radio channel on a single screen, thus making the very concept of specific media markets/geographies irrelevant. The boundaries between telecommunications and broadcasting are blurring rapidly. It is necessary for the legal and regulatory framework to adapt to this convergence and actively promote such convergence. This will also help in facilitating competition.
- 4.75 By virtue of the telecom revolution in India, mobile telephony is the New Media and its ownership is more than ten times the circulation of all newspapers in the country and more than three times the reach of cable and satellite TV and is still increasing at a fast pace.
- 4.76 However some broadcasters feel that Telecom companies have an elaborate set of licensing process and rules in place which are entirely distinct from the media industry. Hence, they must limit themselves to their role as carriage providers and distribution platforms and not be allowed

- any role in content companies especially given the all-pervasive nature of telecom technology today.
- 4.77 On the other hand, some stakeholders, mostly telecom companies feel that there exists a natural synergy between telecom companies, which make available the technology and carriage platform on one hand, and media companies which provide the content on the other hand. Imposition of restrictions over cross-control/ownership as between telecom and media businesses will scuttle this natural synergy and thereby both types of businesses will suffer.
- 4.78 Further, the expensive infrastructure which telecom companies have set-up and which can be easily used for multiple purposes, must be exploited to the fullest; and no restrictions should be imposed that would compel media business to replicate such infrastructure at unnecessary and avoidable costs when such infrastructure already exists through the telecom companies. Restrictions on cross-control/ownership between telecom and media business would bring about exactly such an avoidable situation.
- 4.79 Technologically, a lot of convergence is happening between telecom and media technologies which should be encouraged. Putting any restrictions at the development stage of an industry could hamper the progress of convergence.
- 4.80 Therefore, **the Authority recommends that no restriction should be imposed on cross control/ ownership across telecom and media sectors, at this point of time. The issue could be reviewed after two years.**

Chapter 5

LIST OF RECOMMENDATIONS

1 Cross-media control/ ownership or Horizontal Integration

The Authority recommends that

- i) Necessary safeguards should be put in place to ensure that plurality and diversity are maintained across the three media segments of print, television and radio. It should remain positive in essence.
- ii) A detailed market study and analysis may be carried out by the Ministry of Information & Broadcasting (MI&B) for identifying/determining the safeguards. The results of such analysis may be put in public domain and discussed before finalizing the safeguards.

2. Vertical Integration

The Authority recommends that

- i) The broadcaster should not have “control” in the distribution and vice-versa.
- ii) Definition of Control: 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.
- iii) The existing broadcasters who may have “control” in distribution (MSO/Cable/DTH) and entities in the distribution sector who may have similar “control” over broadcasting should be given sufficient time of three years for restructuring.

- iv) For the purpose of putting in place effective safeguards to prevent vertical integration between the broadcasting sector and its distribution platforms as recommended above, the word “entity” be given a broad meaning so as to include any person including an individual, a group of persons, a public or private body corporate, a firm, a trust, or any other organization or body and also to include “inter-connected undertakings” as defined in the Monopolistic and Restrictive Trade Practices Act, 1969 (54 of 1969).

3. Limit on number of Licenses by a single entity

The Authority recommends that the current restrictions on number of licenses held by a single entity (including policies and TRAI recommendations on FM Radio and Mobile TV) are adequate for the time being.

4. Concentration of Control/ Ownership across Media

The Authority recommends that after working out the required safeguards for horizontal & vertical integration, the merger and acquisition guidelines for the sector may also be issued to prevent media concentration and creation of significant market power.

5. Cross control/ ownership across Telecom and Media companies

The Authority recommends that no restriction should be imposed on cross control/ ownership across telecom and media sectors, at this point of time. The issue could be reviewed after two years.

ANNEXURE I



ASHA SWARUP
Tel : 23382639

सत्यमेव जयते

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

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

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

Dear Shri Mishra,

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

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

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

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

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

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

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

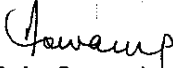
7. The following issues therefore need to be deliberated further:-

- (i) Whether there is any need for cross media and ownership restrictions? Whether the existing laws are adequate to address the concerns or should a separate legislation cover this important parameter of broadcasting sector?
- (ii) With more and more broadcasting/telecom companies entering into cable service/DTH/IPTV/Mobile TV platforms, whether restrictions on ownership need to be provided for such Broadcasting/telecom companies having a control/shareholding in cable/DTH/IPTV/Mobile TV companies or vice-versa and if so what should be the framework provided?
- (iii) What is the comparative policy structure with respect to similar restrictions in other parts of the world and what lessons can be drawn for India, based on their experience?

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

with regards,

Yours sincerely,


(Asha Swarup)

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

ANNEXURE II



सुषमा सिंह
सचिव
SUSHMA SINGH
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भारत सरकार
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MINISTRY OF INFORMATION & BROADCASTING
NEW DELHI - 110115

D.O.No.9/12/2008-BP&L

26th August, 2008

Dear Shri Misra,

Please refer to your D.O. letter No.CP/TRAI/2008 dated 21.07.2008 seeking clarification on the scope of the Ministry's reference on cross media and ownership restrictions.

2. It is to clarify that the need to consider cross media ownership restrictions stems from the concern that in a healthy democracy and regulatory framework should be such as to ensure multiplicity of independent players which have the capacity to influence public opinion. The public should have access to differing and diverging views on various subjects. In the above context it becomes pertinent to include print media also while examining the need whether any cross ownership restrictions vis-à-vis broadcast media are required or not. Thus though the Print media per se is not within the direct scope of TRAI, but looking at the increasing trend of Print media entering into Broadcasting sector and the context as explained above, TRAI is requested to examine the issue in its entirety.

3. This issues with the approval of MIB.

With regards,

Yours sincerely,

Sushma Singh
(Sushma Singh)

Shri Nripendra Misra
Chairman
Telecom Regulatory Authority of India
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INTERNATIONAL SCENARIO

1. European Union⁴

- 1..1 Since 1990s, the European Parliament (EP) has been leading a campaign to urge the Commission to propose regulatory measures in order to limit media mergers so as to safeguard pluralism. European Parliament's two resolutions in the mid-1980s called on the Commission to formulate a policy framework regarding competition rules for the mass media.
- 1..2 The European Commission has embarked on a major review of media pluralism in Europe dealing with ownership and other measures which could help and enhance diversity. More particularly, they are focusing on finding an accepted method of concentration and diversity measurement.
- 1..3 The EU views media pluralism as a cornerstone of democracy, yet at the same time is mindful of the need for pragmatic market decisions. At the European level, they have historically tended to focus on Competition factors and Competition Law leaving the specific content and media diversity protection to Member States.
- 1..4 According to European Commission, the marked trend towards concentration in European communications and media sectors entails two dangers. The first danger is the creation of significant market power of undertakings, or even monopoly that significantly impedes competition, ultimately to the detriment of consumer welfare. The second danger is the possibility of a limited number of media companies which curtail media pluralism, diversity and freedom of information.

⁴ CRTC: A report on Media Ownership: Rules Regulations and practices in selected countries (July 2007)

- 1..5 The European Commission responds to the market and economic conditions of the first danger and it is for the national regulator to manage the second concern. The European Commission provides the EU countries with wide principles reflecting market conditions that they would like to see and then national governments provide regulation specific to their national markets. Characteristically, there are creative, political and regulatory tensions between the EU and some of their member states on these issues.
- 1..6 Various media in the Union are increasingly coming under concentrated ownership. Media concentration is an issue in many EC member States. Television markets are generally concentrated.

2. United Kingdom⁵

- 2..1 The UK media are regulated by the Office of Communications (OFCOM). It was set up by a new Act in 2003, which also changed the ownership rules. The media ownership rules (“MO rules”) are special rules governing the ownership of television, radio and newspapers in the UK.
- 2..2 The Media Ownership rules are designed to:
- Prevent/ limit control of television and radio by certain owners whose influence might cause concern (e.g. political parties and religious bodies);
 - Prevent/ limit consolidation within a media market or between markets to decrease the likelihood that any one owner wields too much power, and to ensure that there are a sufficient number of media outlet owners to increase the likelihood of sufficient viewpoint plurality;

⁵ Ofcom: Review of Media Ownership Rules dated 14th Nov 2006

- Specify arrangements for the provision of national and international news to the main Television channels (other than BBC) to ensure that the news source for the largest commercial television channel is independent of the BBC, not under the control of political or religious bodies, and suitably well funded.

2.3 Television

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

(a) Public interest investigation for television

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

- plurality of the media;
- the need for a wide range of high quality broadcasting appealing to a wide range of tastes and interests; and

- the need to have a genuine commitment to the objectives of section 319 of the Communications Act which cover matters such as impartiality and the protection of viewers from offensive and harmful material

No such intervention notice has been issued to date and so there is no evidence as to whether use of the mechanism raises any problems. However, the rationale for such a provision is that television has a special influence which may require public interest considerations, including plurality, to be taken into account in deciding whether or not to allow mergers to go ahead.

(b) Appointed news provider

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

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

The MO rules provide that:

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

more national newspapers with an aggregate market share of 20% or more.

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

(d) Religious ownership

Religious bodies are prohibited from holding the following television licences:

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

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

Other television licences can be held by religious bodies at Ofcom's discretion and guidance has been issued on this, the main effect of which is to exclude bodies which practise or advocate illegal behaviour.

2.4 Radio

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

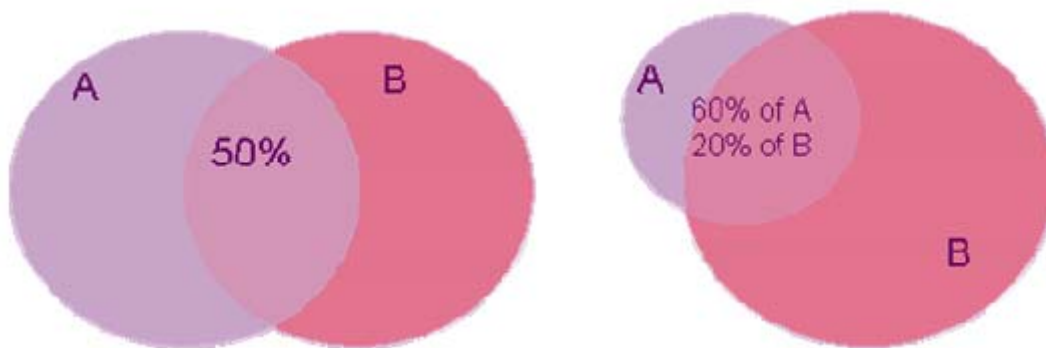
- (i) local analogue licences;
- (ii) national and local radio multiplex licences; and
- (iii) local digital sound programme service licences (the services that are carried on multiplexes).

2..5 Two sets of MO rules apply to local analogue radio licences and local digital radio licences. They are designed to ensure that wherever there is a well-developed choice of radio services, there will be at least two separate owners of local commercial radio services, both analogue and digital, in addition to the BBC.

2.6 Local analogue licence rules

2..6.1 These rules are concerned with licences which overlap. Two licences are considered to overlap, for the purpose of the rules, if the population shared between them is more than 50% of the total population of either licence⁶. For example licence A could overlap licence B by 60%, but B may overlap A by only 20%, depending on the total sizes of A and B. As long as one of these figures is over 50%, the two licences overlap for the purpose of the rules. Two examples are in Figure 1.

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



Source: Ofcom

⁶ The population coverage of a local licence (and hence any related overlap population) is defined by reference to its Measured Coverage Area or MCA. The MCA is the area within which a service is capable of being received at a level satisfying the technical standards set out in Ofcom in its "Coverage: Planning Policy, Definitions and Assessment" document. This area is combined with data from the latest census to produce population coverage, and population overlap, figures.

- 2..6.2 The analogue ownership rules apply only once an operator seeks to hold a third or subsequent licence such that the Measured coverage area (MCA) for this further licence shares a 50% overlap with the two or more licences already owned. Holding this third or subsequent licence would form a “cluster” of three or more overlapping licences. The points test is applied to each licence in the cluster, in order to see whether the points limit would be breached immediately after the operator became the holder of the further licence.
- 2..6.3 The points test is applied on a licence by licence basis. For each test, the licence in question is allocated four points; all other commercial licences which overlap with it by 5% or more are attributed points, as set out in Table 1. BBC local analogue stations are excluded from this calculation.

Table 1: Overlap and points attributable

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

Source: Ofcom

- 2..6.4 Once all overlapping licences have been considered then the points attributed to those licences plus the licence in question are summed. The points that are controlled by the operator in question are also added up. If the operator controls more than 55% of the total points

then the points test is failed, and the operator may not hold the further licence in question.

2..7 Local analogue licence rules – cross media ownership

2..7.1 In any area where there are three or more overlapping local licences, a person who is the dominant local newspaper provider, or the holder of the local commercial television licence, may become the holder of one or more of those radio licences only if the points attributed to the licences held by that person would not account for more than 45% of the total points available in the area.

2..7.2 There is also a “backstop” rule that no person may hold a local radio licence and the local commercial television licence and be the dominant local newspaper provider in the same area.

2..8 Digital multiplex licence rules

2..8.1 No person may hold more than one national radio multiplex licence at the same time. The rule on local radio multiplex ownership states that no person may hold any two local radio multiplex licences that share a 50% or more population overlap.

2..9 Local digital sound programme service rules

2..9.1 The rules on ownership of local digital sound programme services apply to commercial services carried on local radio multiplexes.

2..9.2 If a multiplex does not share a 50% overlap with another, this means an operator may put up to four services on this multiplex before the threshold is reached. If a multiplex does share a 50% overlap with another multiplex, then an operator may spread four services across the two.

2..10 Cross Ownership Restrictions:

2..10.1 In every local area, there must be three separate media companies supplying radio, TV, and newspaper services.

- No one person controlling more than 20% of national newspaper circulation may own more than 20% of an Independent TV license.
- No one person owning a regional ITV license may control more than 20% of the newspaper market in that region.
- No one person owning a regional ITV license may own a local radio station with more than 45% coverage of the same area.
- No one person owning a local newspaper may own a local radio station where the newspaper accounts for more than 50% of the circulation within the station's coverage area.

2..10.2 Ofcom is obliged under the 2003 Act to review the ownership rules at least every three years, with the next report due in 2009. If Ofcom feels there should be any changes it then makes recommendations to the secretary of state for culture, media and sport. The last review in November 2006 did not alter the existing rules.

2..10.3 In UK at present, regional newspapers have been particularly hard hit by the recession, with advertising revenues down and the readers have continued to move to the internet. The struggle to solve the newspaper funding crisis is being taken much more seriously than ever before. But there is little agreement about possible solutions. Three of the most talked-about proposals for solutions involve a relaxation of cross-ownership rules, a relaxation of merger controls and state funding.

2..10.4 Acknowledging the difficulties faced by traditional media in the face of digital revolution, it is expected that the review of 2009 would possibly

provide alternative funding mechanisms for newsgathering. Media reports indicate that the review of cross media rules is to be completed by April'09 by the Office of Fair Trading (OFT).

3. United States⁷

- 3.1 The US has gone through a series of deregulation initiatives particularly since the overhaul of the Telecommunications Act in 1996. The Act built on the original 1934 Communications Act and was the first substantial change to the industry in 62 years. Telecom (Cable and Telephone), Broadcasting (Radio and Television), and the Internet were all part of what has been described as enabling “radical changes” in the Industry.
- 3.2 The Telecom changes permitted cross industry initiatives. For example, phone companies could now acquire and/or provide cable services. New mergers and acquisitions, consolidations, and integration of services across industry, which were previously barred, became legal. Ownership of cable systems by broadcasters also became legal.
- 3.3 Changes in the rules for broadcast ownership of both radio and television were relaxed. Ownership limits on television and radio stations were lifted. Group owners could now purchase television stations with a maximum service area cap of 35% of the U. S. population, up from the previous limit of 25% established in 1985. (This figure rose again in a 2003 review by the FCC to 39 %.) For radio, the cap was set on up to eight stations per market depending on the market size.
- 3.4 The 1996 Telecommunication Act did not allow cross ownership between broadcast and newspaper companies. The newspaper ownership consolidated significantly in the last 20 years and currently less than 275 of America's 1500 daily newspapers are independently owned. The Act

⁷ <http://www.fcc.gov/ownership/rules.html>

was clearly designed to deregulate and create a new level playing field for both Telecom and broadcast industries.

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

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

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

3.8 National ownership rules

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

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

3.9 Local ownership rules

3.9.1 Local TV multiple ownership rule

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

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

3.9.2 Local radio ownership rule

The following limits apply to local radio ownership:

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

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

3.10 Radio/TV Cross-ownership rule

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

3.11 Dual TV network rule

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

3.12 Newspaper/Broadcast Cross-Ownership Rule

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

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

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

4. Canada⁸

4.1 Canada is one of the most competitive of media markets in the world. A balance between the economics of a small media market place and the needs of a geographically and culturally diverse population is a challenge

⁸ <http://www.crtc.gc.ca/eng/NEWS/RELEASES/2008>

for regulatory framework intent upon preserving and enhancing a diversity of voices and views.

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

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

4.3.1 **Common ownership policies**

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

4.3.2 **Cross-media ownership**

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

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

- a local newspaper.

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

4.3.3 **Ownership of television services**

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

Additionally, the Commission will:

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

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

4.3.4 **Broadcasting distribution**

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

4.3.5 **Journalistic Independence Code**

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

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

5. Australia⁹

The *Broadcasting Services Amendment (Media Ownership) Act 2006* (MO Amendment Act) Schedule 2 commenced on 4 April 2007.

The Act removes certain restrictions in the *Broadcasting Services Act 1992* (BSA) on cross-media ownership and control of Australian media assets.

It also removes the foreign ownership and control restrictions in the BSA. However, foreign ownership of Australian media assets will continue to be regulated by the *Foreign Acquisitions and Takeovers Act 1975* and Australia's Foreign Investment Policy.

⁹ http://www.acma.gov.au/WEB/STANDARD/pc=IND_REG_MEDIA

Schedule 1 of the MO Amendment Act came into force on 1 February 2007. It introduces a number of key concepts relating to media ownership, including prohibitions relating to unacceptable media diversity situations and unacceptable three-way control situations.

Schedule 2 of the MO Amendment Act, which contains local content protections and the repeal of cross-media and foreign control rules, commenced on 4 April 2007. The amendments made in Schedule 3 commenced on 1 January 2009.

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

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

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

- “repeal of broadcasting-specific restrictions on foreign investment in the commercial television and subscription pay-television sectors;
- repeal of the cross-media rules in the Broadcast Services Act (BSA);
- and

- Rescission of the newspaper-specific foreign ownership rules under Australia's foreign investment policy (FIP)".

5.11.1 Disclosure of Cross-media relationships¹⁰

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

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

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

(i) Obligations for commercial radio broadcasting licensees

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

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

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

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

Business affairs disclosure method

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

Regular disclosure method

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

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

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

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

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

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

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

6. France¹¹

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

6.2 The commercial broadcasting system

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

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

about 1,000 independent radio stations, some of them affiliated to national networks.

6.3 **Commercial television ownership and cross-ownership**

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

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

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

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

Table: Ownership regulation

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

Source: Adapted from E.Derieux¹⁷

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

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

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

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

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

Media reports in January 2009¹⁸ showed that the French press, among the least profitable in Europe, is lurching from crisis to crisis. A detailed analysis of the press was done by the French President starting from October 2008. It was expected that in an effort to help newspapers through the depths of recession, in this time of global economic crisis, cross media ownership regulations would be eased. But contrary to the expectations, in an attempt to save the industry, other ways including tax breaks, doubling the amount of advertising in press and online newspapers by the Government, have been promised. It is important to note that the cross media ownership regulation which under the French law allows a corporation to own either a TV network or newspaper, but not both at the same time, is continuing to be in force unaltered.

7. South Africa

7.1 Limitations on foreign control of commercial broadcasting services¹⁹

A foreigner may not, whether directly or indirectly-

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

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

7.2 Limitations on control of commercial broadcasting services

No person may-

¹⁸ <http://www.guardian.co.uk/media/2009/jan/23/sarkozy-pledges-state-aid-to-newspapers>

¹⁹ Abstracts of Electronic Communications Act, 2005 at <http://www.info.gov.za/gazette/bills/2005/b9b-05.pdf>

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

(b) be in a position to exercise control over a commercial broadcasting service licence in the television broadcasting service and be a director of any company which is in a position to exercise control over any other commercial broadcasting service license in the television broadcasting service.

No person may-

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

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

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

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

No person may-

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

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

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

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

7.3 Limitations on cross-media control of commercial broadcasting services

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

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

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

8. Germany⁴

- 8.1 Media regulation rests with various state governments in Germany (Länder) as called for by their constitution. However, there has been a great deal of work done in harmonizing their ownership and diversity regulations to create a national policy. The latest update of their consensus and regulatory agreement (Rundfunkstaatsvertrag) was completed in 2005. The German Cartel Office (BKA) and The Commission on Concentration in the Media Industry (KEK) regulate competition in the media environment.
- 8.2 Ownership restrictions are laid down in the Länder broadcasting laws, but, as with many other regulatory areas, the most important legal document is the Inter-state Treaty on Broadcasting. Until 1995, the limits on ownership were based on the number of channels controlled by a company. This regulation proved to be inefficient with the advent of multi-channel systems using cable and satellite. The major broadcasting groups complained that they were not allowed to diversify their product, for example by launching additional channels that complement their existing offerings. In 1996, the Länder agreed on a reform of the ownership regulation. Since then, ownership restrictions are based on audience shares instead of a maximum number of channels.
- 8.3 Private broadcasters do not have to fulfil the same obligations on the range of programmes as public service broadcasters, but the inter-state treaty stipulates that private broadcasting generally has to provide a platform for the major political and social interests in society, and minorities also have to be given an opportunity to express their views. It is considered unacceptable for a single channel to dominate public opinion in an unbalanced way.

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

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

8.6 **Ownership of Television and Radio**

The rules provide for intervention if a company’s media holdings (including newspapers) comprise more than 30% of a viewer share in a year. This is considered a predominate impact on public opinion. For television, exclusively that share is set at 25% of viewers in a given year for a dominate position. There is a system of assessment that provides percentage allowances for regional programming, independently produced programming, and shares of a company’s ownership reducing the impact of the aforementioned percentage thresholds. It is a somewhat complicated system that critics have observed is not easy to use or operate in the public interest. For radio, there are no aggregate ownership levels for national or regional services.

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

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

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

8.9 **Foreign Ownership:** No restrictions.

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

9. Hong Kong

9.1 The "disqualified person" provision applies to a domestic free and a domestic pay television programme service licensee. In essence, no "disqualified person" shall exercise control of a domestic free and a domestic pay television programme service licensee except with the prior approval. This restriction is necessary to minimize conflict of interest, build-up of monopoly of the media and editorial uniformity.²⁰

9.2 A "disqualified person" is defined as:

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

²⁰ http://www.hkba.hk/en/policy/ownership_control.html

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

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

10. Austria⁴

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

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

- 10.3 **Ownership of Television and Radio:** One entity may not own more than one radio or TV license in any service area. Media conglomerates who own more than 25% of shares in one another may not hold more than one analogue or digital TV license. The commercial TV and radio industry is not yet a decade old and is considered nascent at this stage of its development. ORF after decades of monopoly still dominates the electronic market and is separately regulated.
- 10.4 Radio has similar licensing as TV but with one difference, another media company may own 100% of a radio license if their service areas don't overlap.
- 10.5 **Newspaper Ownership:** No media regulatory restrictions except for the Cartel Act.
- 10.6 **Foreign Ownership:** 49% maximum investment from non European Economic Area members (mostly EU countries)
- 10.7 **Restrictions on Political Parties and Organizations:** They are not allowed to hold a Radio or TV license.

11. Luxembourg⁵

- 11.1 No individual or organisation may own more than 25% of the voting rights in any low power²¹ radio station
- 11.2 There are no other restrictions, and no restrictions on foreign ownership, although media ownership is monitored because licenses (called "concessions" and "permissions") are personal and not transferable.

²¹ There are no ownership restrictions on high power radio stations but they have obligations with regard to neutrality/pluralism

12. Finland

- 12.1 There are no specific restrictions on media concentration, cross-ownership or foreign ownership.
- 12.2 The Finnish Competition Authority enforces competition regulations that encompass media markets.

13. Netherlands²²

- 13.1 In Through the Media Act, the diversity of the Dutch population, in terms of religion, political preferences and cultural differentiation, is more or less mirrored in the public broadcasting system. Next to the public broadcasting system, a commercial broadcasting system is active in the Netherlands. During the last years the public broadcasting system came under pressure due to a decrease in audience levels. A parliamentary debate has started on how to strike a balance between the different functions of public and commercial broadcasters.
- 13.2 The *Media Law 1987* sets out rules for radio and television, and for the press. The law was revised once in 2000 and again in 2008, to better guarantee connection of the public broadcasting system to the digital era. The revised law has been operative by the end of 2008. Now, all forms of electronic supply will be part of the core tasks of the public broadcasters. The same applies for digital services like theme channels, websites and mobile supply which, in the current *Media Law*, are of secondary importance.
- 13.3 To prevent the monopolisation on the supply of information, the Media Act places limits on cross media ownership. In fact, permission to run a national commercial station is refused if the company has 25% or more of the Dutch newspaper market.

²² <http://www.culturalpolicies.net/web/netherlands.php?aid=538>

- 13.4 Editorial statutes of newspapers⁵ guarantee journalists' independence. For commercial broadcasters these statutes are obligatory when programmes are sponsored.
- 13.5 When a newspaper owner, or a group where he is part of, reaches a share of more than 25% of the Dutch newspaper market, he/the group is not allowed to fully own a commercial broadcaster. In that case the newspaper owner has to limit his control of a commercial broadcaster to a maximum of 1/3.
- 13.6 Newspaper owners (or the group where they are part of) with more than 50% share in a certain regional or local newspaper market may not own a regional or local commercial broadcaster in that region unless there is also a regional or local public broadcaster. This is always the case so this provision has never been used.

14. Sweden

- 14.1 No restrictions exist beyond normal competition law (there is, however, a legal uncertainty whether the regulations laid down in the Competition Act can penetrate the right of establishment, protected by the Freedom of the Press Act and the Fundamental Law on Freedom of Expression). Owners of periodical publications must be from the European Economic Area.
- 14.2 In 2001, following the recommendation of the Media Concentration Committee (1999), the Swedish Government was about to send a proposed bill on Media Concentration to the Legal Council for approval. The proposal was to introduce a special law that would be complementary to the Competition Act. This special law would have resulted in provisions that were better adapted to the special conditions that apply in the media sector. Because of constitutional uncertainties (as mentioned above) the

proposal required some changes in the Constitution (the Freedom of the Press act and the Fundamental Law on Freedom of Expression). However, since there was not enough support for these constitutional changes among the other political parties, the Government did not present the proposed bill.

15. Denmark

- 15.1 There are no restrictions beyond normal competition law on press ownership.
- 15.2 Licenses for broadcasting are only granted if: the majority of board members reside in the local area; the sole objective of the company is to provide local radio/TV; commercial companies do not have a dominant influence in the company
- 15.3 A person may not be a member of the board, or be responsible for programming, in more than one local broadcasting station

ISSUES CONSULTED

Issue 1: Should the Authority adopt the relevant markets identified as above in paras 5.22.8 and 5.22.9 and assess these markets in the context of this consultation?

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

Issue 2: (a) What restrictions should be imposed on cross-media control/ ownership across print, radio and television media to ensure plurality?

(b) What should be criteria for measuring cross-media control/ ownership?

Please elaborate your comment with appropriate reasoning.

Issue 3: (a) Are the current restrictions adequate to address the concerns regarding vertical integration in the television segment? If not what modifications/additions do you suggest?

(b) Should similar restrictions be imposed to address the concerns regarding vertical integration in other segments of the media?

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

Please elaborate your comments with appropriate reasoning.

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

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

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

Please elaborate the comments with appropriate reasoning.

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

(a) What restrictions should be imposed?

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

Please elaborate your comments with appropriate reasoning.

Issue 6: Should restrictions be imposed on Cross control/ ownership across Telecom and Media segments? If yes,

(a) What restriction should be imposed?

(b) What should be the criteria for measuring control/ownership across the telecom and media segments?

Please elaborate the comments with appropriate reasoning.

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

ANNEXURE V

GLOSSARY

| Abbreviations | Full-form |
|----------------------|--|
| ACMA | Australian Communications and Media Authority |
| BKA | German Cartel Office |
| CMTS | Cellular-Mobile Telecom Service |
| CRTC | Canadian Radio-Television Commission |
| DMA | Designated Market Area |
| DTH | Direct To Home |
| FCC | Federation Communications Commission, USA |
| FDI | Foreign Direct Investment |
| HITS | Headend In The Sky |
| IPTV | Internet Protocol Television |
| KEK | Commission on Concentration in the Media Industry |
| LCO | Local Cable Operator |
| MCA | Measured Coverage Area |
| MI&B | Ministry of Information & Broadcasting |
| MRTPC | Monopolies and Restrictive Trade Practice Commission |
| MSO | Multi-System Operator |
| OFCOM | Office of Communications, United Kingdom |
| UASL | Unified Access Service Licence |