

Comments to TRAI on the consultation paper on Issues Relating to Media Ownership

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Abstract

TRAI published a Consultation Paper on Issues Relating to Media Ownership on April 12, 2022.

In our response, we argue that it is important to avoid excessive government interference in the media space. Rather than focus on regulation that limits market development, the legal regime should focus on reducing barriers to market entry and thereby promoting competition. We point to how any proposed interventions should be based on clear evidence of harm. This would require proper information collection and building regulatory capacity in existing institutions, rather than merely creating a new cross-sectoral media regulator. We therefore suggest various ways in which regulatory capacity could be enhanced, for instance, by utilizing the expertise of the non-governmental sector.

JEL Codes: H80, H11, O38, K21, K23, K20

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Comments on the Consultation Paper on Issues Relating to Media Ownership (CP No. 04/2022)

- *Rishab Bailey and Ajay Shah*¹

TRAI's [Consultation Paper on Issues Relating to Media Ownership](#) dated 12th April 2022 (the "CP") seeks comments on a range of issues connected to media ownership and the need to revise the current regulatory framework, in particular, concerning horizontal and vertical combinations in the media sector.

Introduction

The State must balance its obligations to promote diversity and plurality in media with the need to limit interference in the sector. Literature and international precedent recognize that media may not be treated the same as any other consumer good, justifying the imposition of (additional) rules to avoid concentration of ownership and control in this sector.² Greater competition enables multiplicity of opinions. At the same time, limiting State intervention over the fourth estate is also vital to protect democratic interests. Intrusive or disproportionate interventions can cause a range of unintended consequences, including by limiting the emergence of independent and diverse viewpoints.

There is a need to ensure regulatory interventions are proportionate and evidence based. Thus,

- a. The focus of regulators must be on ensuring market failures, whether stemming from lack of competition or otherwise, are ameliorated;
- b. Interventions must be based on evidence of harm. This implies the need to create an appropriate evidence base as a first step towards any intended regulation;
- c. Interventions must take the least intrusive/restrictive form, and must consider methods to minimize risks of unintended consequences. For instance, regulators should carry out regulatory impact assessments before implementing interventions;
- d. Awareness of capacity constraints must inform regulatory choices, as well as processes. Where required, regulators could seek to enhance capacity through collaborations with independent institutions/non-governmental organisations;
- e. One must be cautious while seeking to import regulatory frameworks from foreign jurisdictions. Interventions must be designed keeping in mind the Indian context – in terms of the capacity to regulate, the heterogeneity of the population, the developing nature of the digital media ecosystem, the less-than-ideal rule of law frameworks in India, etc.

Regulating the Digital Media Ecosystem

The media landscape in India is undergoing significant changes driven by the growth of the digital ecosystem. Nonetheless, traditional media continues to play a critical role in how people

¹ Ajay Shah is an economist and engineer. Rishab Bailey is an advocate and technology policy researcher. The authors are associated with the xKDR Forum, Mumbai. All comments are the authors' personal views. The authors would like to thank Devendra Damle for his comments and inputs.

² Habermas (1962), p. 164; Sunstein (2000), p. 506, 518; Thorgeirsdóttir (2004), *cf.* Jan Oster, *Media Freedom as a Fundamental Right*, Cambridge University Press, 2015, p. 260.

access news and information.³ Given the importance of the media in promoting democratic discourse, regulatory interventions in this space must be backed by careful analysis and demonstration of harm. However, *the CP does not adequately explain the need for any significant changes to the current media ownership regulation regime such as in the form of creating a new cross-sectoral media market regulator (which would, in addition to traditional media, also regulate the digital ecosystem).*

The CP points to two basic reasons for adopting such a step: (a) to deal with dominance in the digital ecosystem, and (b) problems with content regulation, such as that arising from fake news and the absence of adequate oversight over digital media. However, neither of these suggest the need for an all-encompassing new institutional mechanism to be created.

One of the issues highlighted in the CP is that of ensuring equity in distribution of ad-revenue in the digital news ecosystem. As recognized in the CP, while traditional media may indeed be facing limited growth, market participants are responding to these changes in different ways – for instance, with most traditional news publications also publishing e-versions. The limited costs of and barriers to online publication are key to ensuring a continued growth of plurality in media sources. Changing viewership models and preferences must also be considered – for instance, a significant number of young people primarily access news through digital mediums. The intent of any regulation must not derive purely from a need to preserve legacy sectors, but to ensure that market failures in the value chain are dealt with, whether arising from reasons of a lack of transparency in revenue flows, discriminatory action of dominant entities, barriers to market entry, etc.

In addition, there may be little need for TRAI or MIB to intervene on this issue at this point of time as this issue is already under consideration by the Competition Commission of India (CCI) and an inquiry has recently been initiated into alleged abuse of dominance by Google in this respect.⁴

We recognize that a number of countries have implemented or are considering implementing laws to ensure equity in distribution of digital revenues.⁵ It may therefore be useful to analyse the effects of legislation in these countries, before seeking to enact similar laws in India. For example, the Australian Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act of 2021 has so far not been enforced by the ACCC. Following introduction of the code into statute books, Google and Facebook have reached voluntary

³ Christopher Terry, Elizier Silberberg and Stephen Schmit, *We Didn't Stop the Fire: Media Ownership Policy After FCC v. Prometheus Radio Project*, 44 Hastings Comm. & Ent. L.J. 93 (2021), https://repository.uchastings.edu/hastings_comm_ent_law_journal/vol44/iss1/4; Adam Marcus, *Media Diversity and Substitutability: Problems with the FCC's Diversity Index*, <http://www.oocities.org/mcsquared88/fcc.pdf>.

⁴ The inquiry was initiated subsequent to a complaint from the Digital News Publishers Association alleging inadequate sharing of ad revenue by Google. Javed Farooqui, *Google shares only 10-15% of digital ad revenue with news websites: Publishers tell CCI*, E4M, January 20, 2022, <https://www.exchange4media.com/digital-news/google-shares-only-10-15-of-digital-ad-revenue-with-news-websites-publishers-tell-cci-117953.html>

⁵ Government of Canada, *Stakeholder engagement on fair revenue sharing between digital platforms and news media*, February 9, 2022, <https://www.canada.ca/en/canadian-heritage/campaigns/fair-revenue-sharing/stakeholder-engagement.html>; Abhishek Chakraborty, *Canada proposes law on revenue sharing between Google, Facebook and news outlets as India's wait continues*, India Today, May 13, 2022, <https://www.indiatoday.in/india/story/canada-passes-act-on-revenue-sharing-between-google-facebook-news-outlets-india-wait-continues-1947638-2022-05-10>

agreements with “a significant number of news organisations”.⁶ The CP also recognises that entities such as Google have already entered into agreements with Indian news publishers for sharing of revenues. The OECD notes in this context that not only is further empirical evidence required of the need for regulation, but regulatory interventions may lead to the development of “rent sharing alliances” between large publishers and digital platforms.⁷ *Thus, implementing any intrusive regulations may therefore not be required at this point of time – the market should be studied and appropriate steps taken only if equilibrium cannot be reached through market mechanisms or less intrusive options such as adoption of self-regulatory mechanisms.* If possible, options such as putting in place voluntary codes of conduct, etc. should be preferred. In any event, public consultations should be carried out on this specific issue prior to any rule making, given the multiplicity of opinions.⁸ It must also be kept in mind that while fair revenue sharing and transparency in the advertisement value chain may be a laudable goal, there are also other concerns in this respect that may be more difficult to regulate – for example, the dependence of traditional media on government advertisements, and therefore political interference undermining media independence.⁹

As far as fake news and similar harms are concerned, it should be noted that the concept of what constitutes fake news remains unclear, as are the design of regulatory interventions to tackle any problems.¹⁰ This is an issue that many jurisdictions are attempting to find solutions too, and jumping the gun in this respect may be unwise. The problems arising from fake news may need broader social interventions that are suitable to the digital age, rather than relying purely on 20th century mechanisms of control.¹¹ In any event, current criminal laws (such as under Section 505, IPC) already proscribe certain offences that are relevant to the issue.¹² In addition, the government already possesses the power to seek blocking of illegal content under relevant provisions of the IT Act, 2000.

⁶ Australian Competition and Consumer Commission, *News Media Bargaining Code: Project Overview*, <https://www.accc.gov.au/focus-areas/digital-platforms/news-media-bargaining-code>

⁷ Matteo Giangaspero, et al., *Competition Issues Concerning News Media and Digital Platforms*, OECD, 2021, <https://www.oecd.org/daf/competition/competition-issues-concerning-news-media-and-digital-platforms-2021.pdf>

⁸ Government of Canada, *Stakeholder engagement on fair revenue sharing between digital platforms and news media*, February 9, 2022, <https://www.canada.ca/en/canadian-heritage/campaigns/fair-revenue-sharing/stakeholder-engagement.html>; Eero Korhonen, *Research: What really happened to newspaper revenue*, Google, June 3, 2021, <https://blog.google/around-the-globe/google-europe/research-what-really-happened-newspaper-revenue/>

⁹ Reporters Without Borders, *India: Two Kashmiri newspapers deprived of state ads in bid to apply pressure*, March 5, 2019, <https://rsf.org/en/india-two-kashmiri-newspapers-deprived-state-ads-bid-apply-pressure>

¹⁰ Notions of fake news are too political, fluid and unclear to implement regulations solely on this ground. It must also be kept in mind that fake news is not propagated only through the digital ecosystem, or indeed by malign actors with many public figures also being accused of the same.

¹¹ Chinmayi Arun, *On WhatsApp, Rumours and Lynchings*, *Economic and Political Weekly*, 54(6):30-35, January 2019, https://www.researchgate.net/publication/331768800_On_whatsapp_rumours_and_lynchings; Maria Molina, S Shyam Sunder, Thai Le et al., “Fake News” Is Not Simply False Information: A Concept Explication and Taxonomy of Online Content, *American Behavioural Scientist*, Vol 65 Issue 2, 2021, <https://journals.sagepub.com/doi/10.1177/0002764219878224>; Glenn Anderau, *Defining Fake News*, *Kriterion – Journal of Philosophy*, Vol 35 Issue 3, <https://www.degruyter.com/document/doi/10.1515/krt-2021-0019/html?lang=en>

¹² The report of the Parliamentary Standing Committee on ethical standards in media coverage recognizes that “There already exist laws and rules under the Indian Penal Code (IPC) 1860, the Information Technology Act, 2000 and the Information Technology (Intermediaries Guidelines) Rules 2011 to tackle and penalise persons spreading ‘Fake News’.” It therefore *inter alia* recommends that further study be carried out on fake news legislation in foreign countries and that the government focus on establishing fact checking units of the PIB at regional levels. Standing Committee on Communications and IT, *Ethical Standards in Media Coverage*, Lok Sabha Secretariat, December 2021, http://164.100.47.193/lssccommittee/Communications%20and%20Information%20Technology/17_Communications_and_Information_Technology_27.pdf

The CP also recognizes that the Information Technology (Intermediaries Guidelines and Digital Media Ethics Code) Rules, 2021, provides for a 3-tier mechanism of regulation of digital media and online curated content platforms consisting of internal grievance redress, regulation by a self-regulatory industry body, and ministerial oversight. Similarly, one could focus on ensuring appropriate in-house grievance redress mechanisms are established even in the traditional media space.¹³ To also be noted that the IT Rules of 2021 are under challenge in multiple proceedings (and certain High Courts have issued stay orders on implementation thereof).¹⁴

Thus, intervention in the development of and access to content is unwarranted. As a general rule, news and current affairs related media have been subject to self-regulation.¹⁵ While existing mechanisms that regulate the print and broadcasting sectors have been criticized (including for a lack of enforcement capacity), the broader concept of self-regulation must not be interfered with, particularly in the online context, without significant and overwhelming reasons for the same.¹⁶ Rather than implementing further mechanisms of digital censorship (particularly outside the purview of the IT Act), one may also consider adopting a system that incentivizes ethical reporting/journalism, etc., through a system of incentives. For instance, the draft Personal Data Protection Bill proposes to exempt journalistic activities from the law if the entity in question *inter alia* complies with a code of ethics issued by a media self-regulatory organization.

Growth of the digital ecosystem has indeed led to a variety of new harms, many of which may derive from the dominance of big tech companies. However, these will require interventions in a number of different sectors and spaces – ranging from intellectual property law to intermediary regulation, online content regulation, competition policy, etc.¹⁷ These are broader conversations that do not fall solely under the ambit of the Ministry of Information and Broadcasting (MIB) or TRAI. Indeed, policy and legislative changes are already being considered in a number of parallel fields ranging from amendment of the IT Act to enactment of data governance laws, implementation of e-commerce regulations, etc.¹⁸ As discussed later on, one may also have to focus on enhancing capacities of existing institutions such as the

¹³ The Standing Committee on Communications and IT recognizes that “all the TV Channels, News Papers, etc., should have an in-house Grievance Redressal Mechanism/ Cell/ Ombudsman, and information in this regard can be published in the newspapers or journals or can also be run on their channel’s scroll.” Standing Committee on Communications and IT, *Ethical Standards in Media Coverage*, Lok Sabha Secretariat, December 2021, http://164.100.47.193/lssccommittee/Communications%20and%20Information%20Technology/17_Communication_s_and_Information_Technology_27.pdf

¹⁴ Internet Freedom Foundation, *Factcheck! The IT Rules 2021 FAQ*, <https://internetfreedom.in/factcheck-of-the-it-rules-faq/>

¹⁵ However, the government does retain powers to proscribe content. For instance, the broadcast/television space is regulated through the Cable TV Networks (Regulation) Act, 1995, and uplinking/downlinking guidelines.

¹⁶ The Parliamentary Standing Committee on Communications and IT has suggested various measures to recalibrate the Press Council of India including by providing it greater enforcement powers. Standing Committee on Communications and IT, *Ethical Standards in Media Coverage*, Lok Sabha Secretariat, December 2021, http://164.100.47.193/lssccommittee/Communications%20and%20Information%20Technology/17_Communication_s_and_Information_Technology_27.pdf

¹⁷ Varun Bahl, Faiza Rahman and Rishab Bailey, *Internet Intermediaries and Online Harms: Regulatory Responses in India*, Working Paper 06, Data Governance Network, March 2020, https://datagovernance.org/files/research/BahlRahmanBailey_-_Paper_6-2.pdf

¹⁸ There is also no general consensus on the need to or mechanisms to regulate problems of algorithmic bias, the creation of echo chambers in online content access mechanisms, etc., In any event, such issues are outside the expertise and purview of the TRAI/MIB.

Competition Commission of India (CCI) to deal with issues arising in a dynamic, digital ecosystem.¹⁹

Concentration in Media Ownership

Issues of concentration and (lack of) plurality in traditional media markets in India have been a source of concern for more than a decade.²⁰ Publicly sourced information demonstrates that the number of media outlets in India is notable (India currently has close to 1 lakh newspapers, 400 news and current affairs TV channels which are owned by more than 15 entities²¹). However, studies also show that there is and has been significant concentration in traditional media markets for a number of years now.²² This has been ascribed to, amongst other factors, an absence of proper cross-media regulation, low ownership transparency, political control over media, emergence of paid-news, etc.²³

While cognizant of commentary on this issue as well as certain new developments such as the Sony-Zee merger, the CP does not provide any significant new information to suggest drastic regulatory changes. While various media markets in India such as the TV/broadcasting market do indeed demonstrate high concentration, it has been observed that this is the case in markets across a number of developed countries as well.²⁴ Some therefore point to how such levels of concentration may be a natural steady-state for certain markets, and may not

¹⁹ Jurisdictions such as the UK and the US are seeking to revise the powers and capacities of their competition regulators to deal with the digital ecosystem. See UK Competition and Markets Authority, *Online Platforms and Digital Advertising*, Government of UK, July 1, 2020, <https://bit.ly/3KcLJvn>; Jerrold Nadler, David N. Cicilline et al., *Investigation of Competition in Digital Markets*, Majority Staff Report and Recommendations, Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary, United States, 2020, https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519

²⁰ Vibodh Parthasarathi, Alam Srinivas et al., *Mapping Digital Media: India*, Open Society Foundation, December 15, 2012, <https://www.opensocietyfoundations.org/publications/mapping-digital-media-india>. Prasad notes that risks to pluralism in Indian media stem from increasing commercialization of the media, and issues such as gender bias. Peggy Valcke, Robert Picard and Miklos Sukosd, *A Global Perspective on Media Pluralism and Diversity: Introduction*, Palgrave Macmillan, 2015, https://www.macmillanlearning.co.uk/resources/sample-chapters/9781137304292_sample.pdf; Media ownership studies also point to increasing concentration of media at local levels, with the number of media outlets not necessarily translating into variety in supply. Reporters without Borders, *Media Ownership Monitor: Who owns the media in India?*, May 2019, <https://rsf.org/en/media-ownership-monitor-who-owns-media-india>; Pratul Bidwai, *The growing crisis of credibility in Indian media*, TNI, April 28, 2011, <https://www.tni.org/es/node/11017>

²¹ Anjana Krishnan, *Digital News Report 2021: India*, Reuters Institute and University of Oxford, June 23, 2021, <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2021/india>; List of News Media Ownership in India, https://en.wikipedia.org/wiki/List_of_news_media_ownership_in_India. The Media Ownership Monitor Report, 2019, points to how overall there are more than 39 companies and 45 individuals who own print, television, and online media outlets. <https://web.archive.org/web/20200421024011/https://dataleads.co.in/pdf/india.mom-rsf.org-en.pdf>. Shemin Roy, *World Press Freedom Index: India Slips to 150 rank*, Deccan Herald, May 3, 2022, <https://www.deccanherald.com/national/world-press-freedom-index-india-slips-to-150th-rank-becomes-one-of-most-dangerous-nations-for-media-1106185.html>

²² For example, it is reported that 4 Hindi media outlets capture 76.45 percent of Hindi readership; the top 2 Tamil newspapers have a 66.67 audience share, while the top 2 Telugu newspapers have a 71.12 audience share. Similar trends have been reported in other regional markets as well. Reporters without Borders, *Media Ownership Monitor: Who owns the media in India?*, May 2019, <https://rsf.org/en/media-ownership-monitor-who-owns-media-india>. Also see Data Leads, *Media Ownership Matters, Media Ownership Monitor: India*, <http://india.mom-gmr.org/en/>

²³ Data Leads, *Media Ownership Matters, Media Ownership Monitor: India*, <http://india.mom-gmr.org/en/>; Shashank Singh and Aishwarya Gupta, *Rationalising Architectural Censorship: Examining TRAI's Recommendations on Cross Ownership of Media*, 7 NUJS Law Rev. 173 (2014), <http://nujslawreview.org/wp-content/uploads/2016/12/Shashank-Singh.pdf>

²⁴ SPRL Wagner Hatfield, *Media Ownership and concentration in Europe: a comparative analysis with reflections on the situation in Slovenia*, AKOS, January 2016, https://www.akos-rs.si/fileadmin/user_upload/WH-20150126-ownership-concentration-report-final.pdf

actually be indicative of anticompetitive practices.²⁵ This points to the need for a deeper examination of the interactions in the relevant value chain, rather than a rush to impose new regulations. The CP however fails to examine these issues any great detail, including for instance, through providing detailed (concentration-related) information on specifically defined markets.

In any case, while there may be a case to be made for restrictions on media ownership on diversity and plurality related grounds, there does not appear to be sufficient reasons to include online/digital media within the purview of media ownership restrictions. A number of countries do implement specific cross-media ownership rules, but these usually stem from specific legislative powers, and also require the expertise of relevant competition regulators to be taken into account. This points to the need for a broader debate on the issue of media plurality and diversity in India, which could lead to legislative changes in this respect – rule-making by TRAI or the MIB would not be an appropriate way forward.

As an alternative to limiting rules, the legal regime could focus on enabling development of the media ecosystem through methods of de-regulation, thereby enabling market entry by reducing compliance burdens. For example, uplinking rules create barriers to market entry in the form of high net-worth related eligibility conditions prescribed by the MIB. Uplinking of a ‘news and current affairs’ channel requires a net worth of INR 20 Cr.²⁶ This implies that market entry is restricted to those with deep pockets, who are likely to also seek to commercialise their investment (which also explains why a number of media channels are owned by large conglomerates and we see very few truly ‘local’ channels). The government must not seek to earn revenues through uplinking/downlinking policies, but instead use eligibility criteria solely as a mechanism to ensure that a channel can be run efficiently, to collect sufficient information on ownership, adherence to technical and security obligations, prevent ownership by certain prescribed entities (public authorities, religious or political organisations), etc.²⁷ Similarly, the limitations of the current regulatory system in encouraging and enabling development of community radio channels, etc., could also be an areas of development.

While there is much to be said for using measures of concentration that are specifically designed for the media ecosystem (due to the peculiarities as the industry, as well as the broader social reasons for regulation such as the need to ensure plurality of content), our institutions may lack the capacity to develop/implement merger control using indices similar to the FCCs diversity index or Europe’s Media Pluralism Monitor. Indeed, one may recommend using a system comprising multiple methods of measurement (for instance, taking averages of HHI, C4, Lerner’s Index, and the Media Ownership and Concentration Index). As noted by the Canadian Media Concentration Research Project, “using multiple methods is a form of triangulation, a well-known strategy for improving confidence when dealing with difficult to assess and hotly contested issues in the social sciences and humanities.”²⁸ Further,

²⁵ SPRL Wagner Hatfield, *Media Ownership and concentration in Europe: a comparative analysis with reflections on the situation in Slovenia*, AKOS, January 2016, https://www.akos-rs.si/fileadmin/user_upload/WH-20150126-ownership-concentration-report-final.pdf

²⁶ *Policy Guidelines for uplinking of television channels from India*, Ministry of Information and Broadcasting, December 5, 2011, <https://mib.gov.in/sites/default/files/FinalUplinkingGuidelines05.12.2011.pdf>

²⁷ Along with lowering entry barriers, existing mechanisms to exit the sector must also be streamlined, such as in the form of IBC regulations.

²⁸ Canadian Media Concentration Research Project, *Introduction and Methodology Primer*, <https://www.cmcrp.org/about/methodology/>

approvals/rejection of mergers, should not be based solely on calculation of HHI (or other indices) but could also include analysis of potential anti-competitive behaviour and media plurality related requirements which may result, including based on an analysis of comparable mergers which have already been consummated.

Information Collection: Creating an Evidence Base for Regulation

Implementation of the mechanisms described above faces the significant barrier of a lack of reliable information. One of the primary problems in regulation of the media space appears to stem from a lack of reliable and adequate information on ownership patterns (particularly indirect holdings), audience shares/viewership numbers, revenue figures, etc.²⁹ Designing appropriate regulatory interventions, particularly in an area as complex as the media sector, requires significant investment in data gathering and analysis mechanisms. It is notable that data collection has also been said to be a problem in American attempts at regulation of this space, which some point to as leading to the development of inconsistent regulation that fails to meet its goals of promoting diversity in the media sector.³⁰ Collection of sufficient data must predate any regulatory exercise – the OFCOM for instance, has published calls for evidence in relation to its 2021 review on the Future of Media Plurality in the UK.³¹ Similarly, France initiated a process to examine concentration in the media sector in 2021, through a parliamentary inquiry process which, as a first step, aims to collect sufficient information on the area.³²

The aim must therefore be to develop methods that can evaluate diversity/plurality related problems in the media segment in a transparent and non-arbitrary manner. Putting in place systems to enable proper information to be gathered becomes essential. Such mechanisms must be designed to ensure (a) robustness and freedom from undue influence (for instance, in view of controversies over TRP measurements in India),³³ (b) that fundamental rights of individuals are respected (for instance, by ensuring that privacy rights are protected in any exercise, including through the collection/usage of aggregated data rather than personal data).

Enhancing Capacities

As stated previously, one cannot object to a broader discussion on the need for merger control on grounds of maintaining diversity/plurality in the media space. However, one must be cognizant of the capacities of institutions to undertake complex analysis of the nature that will be required to avoid any merger control exercise becoming an exercise in arbitrariness and

²⁹ See for example, Smarika Kumar, *Why media monopolies flourish in India*, Scroll.in, January 12, 2015, <https://scroll.in/article/694139/Five-reasons-why-media-monopolies-flourish-in-India>

³⁰ Michelle Forelle, *The FCC and the Problem of Diversity*, International Journal of Communication 9(2015), Feature 3432–3439, <https://ijoc.org/index.php/ijoc/article/viewFile/3326/1493>

³¹ OFCOM, *The Future of Media Plurality in the UK*, June 15, 2021, https://www.ofcom.org.uk/__data/assets/pdf_file/0012/220710/media-plurality-in-the-uk-condoc.pdf

³² Matheiru Pollet, *French Senate to look at country's concentration of media ownership*, Euractiv, November 19, 2021, <https://www.euractiv.com/section/media/news/french-senate-to-look-into-countrys-concentration-of-media-ownership/>

³³ It has been claimed for instance, that “TV ratings remain intransparent and owned by industry”. Reporters without Borders, *Media Ownership Monitor: Who owns the media in India?*, May 2019, <https://rsf.org/en/media-ownership-monitor-who-owns-media-india>. See also Standing Committee on Communications and IT, *Ethical Standards in Media Coverage*, Lok Sabha Secretariat, December 2021, http://164.100.47.193/lssccommittee/Communications%20and%20Information%20Technology/17_Communications_and_Information_Technology_27.pdf

political gamesmanship. Rather than seeking to expand the scope of institutions (such as TRAI or the MIB) into areas in which they lack expertise, it may be useful to focus on enhancing existing institutional strength and capacities. Merely implementing new regulation may itself be insufficient to deal with issues of concentration in relevant segments.³⁴ *Given the express mandate and expertise of the CCI to regulate mergers and acquisitions, it may be preferable for such issues to be left in its domain – with, if required, updates to its mandate/methodologies to specifically deal with the media sector.*³⁵ One may note for instance, that in the UK, newspaper mergers are subject to the consent of the Secretary of State for Trade and Industry after reference to the competition authority.³⁶

In any event, *the primary focus should be on enhancing regulatory capacities of existing institutions*, including to take into account the dynamic nature of the digital ecosystem and its effects on traditional markets; as well as laying down clear rules to promote consistency and reduce arbitrariness.

One mechanism to enhance capacities may be through co-option/utilization of independent, technical expertise. For instance, the CCI frequently uses empaneled institutions to carry out market surveys (which can be used by the regulator to determine the state of specific sectors, and inform the need for interventions). The OECD also recognizes the value in carrying out such market surveys.³⁷ Given that the CP points to various capacity related issues (such as with measuring concentration of media markets using HHI) the MIB could consider implementing similar mechanisms to the CCI, whereby external entities are engaged to carry out relevant studies that can inform the need for new regulation, assess impacts of any proposed regulations, etc. We note that a similar exercise was indeed followed by the MIB by appointing the Administrative Staff College of India (ASCI) to conduct a study in this space in 2009. While noting that there was criticism of the ASCI report, this does not explain why no further such exercises have been carried out.

In addition, it is important to implement detailed coordination mechanisms between different regulatory entities. For instance, regulatory entities such as the MIB, CCI, TRAI, MEITY, etc., could enter into appropriate agreements pertaining to the need to exchange information, and coordinate activities where required. The issue of enhancing inter-regulatory coordination is also referenced by the Parliamentary Standing Committee's report on Ethical Standards in Media Coverage.³⁸

³⁴ It is noteworthy that despite putting in place cross-media ownership and other regulations, countries such as Australia, the US, France, Canada, etc., all demonstrate significant concentration in various media segments. This, amongst other things, demonstrates the difficulty in designing and enforcing regulation in this space. Nick Evershed, *Australia's newspaper ownership is among the most concentrated in the world*, The Guardian, November 13, 2020, <https://www.theguardian.com/news/datablog/2020/nov/13/australia-newspaper-ownership-is-among-the-most-concentrated-in-the-world>

³⁵ Some have pointed to how the use of restrictive notions of "relevant market" by the CCI have failed to adequately protect plurality in the media. Smarika Kumar, *Striving for Plurality in Media*, Kafila.org, September 8, 2014, <https://kafila.online/2014/09/08/striving-for-plurality-in-media-the-promises-and-shortcomings-of-trais-recommendations-on-media-ownership-smarika-kumar/#more-23550>; Dhawal M, *Media Ownership: Does Competition Law Suffice?*, April 3, 2021, <https://lawschoolpolicyreview.com/2021/04/03/media-cross-ownership-does-competition-law-suffice/>

³⁶ Ahsan ul Haq Chishti, *Big, ever bigger business*, Media Ownership Monitor: India, Data Leads, <http://india.mom-gmr.org/en/findings/corporateownership/>

³⁷ Matteo Giangaspero, et al., *Competition Issues Concerning News Media and Digital Platforms*, OECD, 2021, <https://www.oecd.org/daf/competition/competition-issues-concerning-news-media-and-digital-platforms-2021.pdf>

³⁸ Standing Committee on Communications and IT, *Ethical Standards in Media Coverage*, Lok Sabha Secretariat, December 2021,

The Way Forward

- There is a need to avoid excessive government interference in the media space, particularly when it comes to digital media. Self-regulation in the media space should be the preferred form of regulation, as this not only protects independence of the media but reduces barriers to entry thereby enabling media diversity and plurality.
- There is little evidence of the need for significant interferences in the digital ecosystem from a media plurality/diversity perspective. This space is still growing and has multiple competing players. The CP does not provide any significant evidence of harm other than vague references to fake news, filter bubbles, etc.
- While issues such as revenue sharing in the news value chain should be watched, interventions should not aim to preserve any legacy industries without clear evidence of harm, and then, must do so using the least intrusive tool available.
- Measures to promote media diversity/plurality should focus on enabling rules that reduce barriers to market entry, reduce compliance costs, and promote certainty in the sector.
- There must be periodic review of the need for regulation, and any new regulations must be backed data.
- The focus of the State should be on building regulatory capacities, and information collection. Existing institutional capacities, such as in the form of the CCI/TRAI etc., must also be used and enhanced.
- Technical and independent expertise of external organisations should be used where possible. Steps should also be adopted enhance inter-regulatory coordination.