ASIA VIDEO INDUSTRY ASSOCIATION

Singapore, 7 June 2022

Telecom Regulatory Authority of India
For the attention of : Mr Anil Kumar Bhardwaj, (B&CS)

Via email: advbcs-2@trai.gov.in and jtadvbcs-1@trai.gov.in

Dear Sir

Consultation paper on issues relating to Media Ownership 12/04/2022

AVIA welcomes the opportunity to comment on the Consultation Paper issued by Telecom Regulatory Authority of India **(TRAI)** on market ownership and in particular, the effects of consolidation on media plurality. AVIA is the trade association for the video industry and ecosystem in Asia Pacific. It serves to make the video industry stronger and healthier through promoting the common interests of its members. Our membership consists of a combination of local, regional and multi-national companies, many of which are substantial cross-border investors; creating and purchasing video content to meet rapidly-expanding consumer demands and investing in India's communications and creative industries.

In much the same way as TRAI's previous inquiry into media ownership issues back in 2013, this 2022 media ownership consultation paper places the issues of media ownership and plurality squarely within the context of competition policy. It raises concerns about horizontal- and vertical integration within the broadcasting industry and proffers complex solutions including the utilisation of "diversity indexes" to assess market "concentration" within media industries. What the paper unfortunately fails to do is to identify (i) actual, concrete examples of how and where TRAI believes media plurality is being eroded within the market, (ii) whether changes in Indian policy are necessary, (iii) whether existing competition laws and enforcement are inadequate to deal with issues of concentration of media ownership, and (iv) which changes might be the most suitable and effective within the context of the Indian market. Instead, it jumps immediately to mechanisms which would, in our view, unnecessarily clutter the already overburdened regulatory media landscape.

Across the globe, the media industry has been undergoing a rapid digital evolution which has, in turn, provided consumers with an abundant choice of product options, at different price-points and across a range of platforms. The COVID -19 pandemic has accelerated the consumer's willingness to embrace digitilisation with more and more consumers relying on both broadband networks and traditional modes of broadcasting, to obtain their entertainment products. In some ways, the growth of this new digital environment is augmenting the media plurality which TRAI is so keen to foster. TRAI, however is not convinced by the opportunities this new environment generates – in its paper, TRAI points to the fact that algorithms (i) tend to direct users to content which complements and amplifies their already-held views and (ii) do little to contribute to

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media plurality by failing to present consumers with different perspectives. While our members acknowledge and appreciate that algorithms tend to serve up content which a consumer is more likely to want to view, with the evolution of the industry, consumption of content is no longer the lean-back experience of a push action initiated by a broadcaster; more often than not, it is now also an experience generated by a pull action initiated by the consumer to access the content of his/her choice anytime and anywhere. The consumer is also empowered to control, hide and change the content they do not wish to watch. This view that algorithms do nothing to contribute to media plurality also fails to recognize their intrinsic value as a discoverability tool offered to consumers to help them find content that may appeal to them based on previous consumption patterns. Further, algorithms deliver benefits to consumers by saving time, providing personalized recommendations, increasing efficiency and enhancing overall product quality and user experience. If the consumer does not wish to view the recommendations, there is always the option to access the content of his/her choice. It is incorrect to assume that the content offered by these algorithms will necessarily reflect the consumer's existing views; in fact these algorithms may indeed offer content which presents a completely different perspective on a subject that is likely to be of interest to that consumer.

The danger with some of the measures which are being proposed by TRAI in this consultation paper is that these could stifle development and dis-incentivise investment. With new players entering the market and current players extending their reach to consumers via other platforms, business models are still evolving as players experiment with multiple monetization options. Now is not the best time to be introducing legislation. It would be far more prudent to wait until the market has settled down and the dynamics of the market conditions have become more easily assessable.

Our members agree with TRAI that media plurality is imperative in a democracy to encourage healthy debate and tolerance. However, as Suzanne Rab and Alison Sprague ask in their 2014 paper entitled "Protecting Pluralism in India's media market", "how many viewpoints make a sufficient plurality" and who should be tasked with making that decision? TRAI has not, in its consultation paper, identified particular plurality problems within India's media market, nor has TRAI identified which policy objectives it is seeking to fulfill. The mere fact of increased vertical- or horizontal integration within the media industry, should not of itself dictate a change of policy or an introduction of legislation. Furthermore, it has always been our understanding that the major concerns of a telecoms regulator are control-oriented matters such as licensing, spectrum allocation, rate regulation and standards for equipment, all of which are fundamentally different from the structures needed to support a diverse and competitive media industry especially in a democratic society such as India, where it is not believed appropriate for the government to try to determine what people choose to read, view, and think.

CUTS International, in its 2010 background paper for the OECD, entitled "Regulatory Management and Reform in India", stated that regulation is only really justified under specific conditions: (i) prevention of market failure (ii) restriction or removal of anti-competitive practices and (iii) promotion of public interest. There is no allegation or clear demonstration by TRAI of market failure or imminent market failure. If companies have been found to be engaging in price-fixing, or abuse of dominant power, then regulators should absolutely step in to deter such practices but no claim has been made to this effect. However, even if this were to be the case, we would anticipate that a regulator like TRAI would be examining issues of technology, cost and process whereas it would be incumbent upon the Competition Commission to act as the adjudicator against anti-competitive practices. Finally, on the issue of public interest, a regulator is required to defend and promote consumer choice and quality of service yet neither of these is raised as a concern within the consultation paper. In fact, it is unclear if and to what extent, consumer consultation has been conducted prior to the preparation and publication of this consultation paper.

On the basis that regulation should only be adopted under certain prescribed conditions, we note TRAI's own acknowledgement within the consultation paper that some safeguards against the erosion of media plurality are already in place via: (i) the Competition Commission of India, (ii) art 19(1) and (2) of the Constitution in terms of both the scope and limitations of the right of freedom of expression, and (iii) the new IT rules which to a large degree, complement the provisions within the Cable Television Networks Act and Code to cover both curated and UGC content . TRAI however suggests that these safeguards may not be sufficient. As an example, it points to the current media industry self-regulation system, questioning whether specific enforcement tools are required to enforce compliance by media companies. This runs completely contrary to the sentiments we have heard very recently expressed by the Secretary of the Ministry of Information and Broadcasting when he applauded the fact that 90% of customer complaints are addressed by the platforms themselves without these complaints having to be escalated up the three-tier redressal system process.

Turning to the safeguard presented by the Competition Commission – we know that this body has been established to regulate anti-competitive agreements or an abuse of dominant position/monopoly if either have an appreciable effect on healthy market competition. While TRAI is correct that the current definition of "market" does not tend to take into account the new reality of sector overlap – previously radio, tv, print, broadband access, were all in separate markets. TRAI poses the question as to which entity, in the future, should be tasked with determining what a "market" is for the purposes of an inquiry. In our humble opinion, this would be the Competition Commission. If these assessments are not left to an expert body such as the Competition Commission, which is in fact tasked to do exactly that in accordance with section 2(r) of the Competition Act, 2002, there is a distinct danger of duplication of regulation and the blurring of boundaries in terms of scope of authority. This would run counter to the move we are witnessing in India towards what the OECD refers to as "a progressive liberalization of deregulation of the economy" as India seeks to promote innovation and encourage investment. A move in the opposite direction will only create greater business uncertainty for companies in terms of identifying both the regulations which apply to their organizations as well as the specific regulatory body to which they are to be held accountable, an ambiguity which will add complexity to doing business in India. In our view, any inquiries as to market, ownership and concentration within the media sector are best left to the Competition Commission to determine according to the relevant laws which are already in place. No specific evidence is offered by TRAI to justify the need for sector-specific regulation and control and so there appears to be no need for the media industry to be regulated by two separate bodies.

The question which TRAI raises and which we acknowledge might be a more challenging one, is what happens in instances where media plurality is affected by a market change which arises outside of a merger/acquisition and therefore is beyond the scope of the authority of the Competition Commission? Examples of these scenarios could be (i) the organic growth of a particular organisation's market share or (ii) the exit by several players at any one time from the market or (ii) circumstances in which a media owner garners far too much influence over public opinion and the political agenda. If this influence over public opinion is what TRAI is ultimately concerned about, then it is our view that restrictions around ownership by political parties or government agencies might be the appropriate way to address this concern as opposed to importing an entirely new raft of media industry-specific regulation. Of particular concern to our members are TRAI's questions as to which type of media should be regulated or which type of owner should be banned from acquiring an interest in media. Without a clear indication of what TRAI anticipates the actual or potential harm to media plurality may be and industry consultation on these specific views, implementing such regulatory restrictions and/or bans would be premature and could inadvertently have the reverse effect of stifling media plurality and limiting choice for consumers.

In its previous submission in 2013, AVIA (then known as CASBAA) also warned against an approach which does not consider a "no change " scenario. It appears the same omission has occurred in this consultation paper. TRAI presents additional regulation as the solution but does not examine what might happen if the status quo were to be retained. If TRAI, in this consultation paper, were to have (i) clearly identified the examples of instances where media plurality is being eroded (and shared the empirical data which substantiates these claims) and (ii) set out the impact of each likely solution as well as the scenario where no regulation is introduced, this approach would have been much more useful in offering industry both the data and transparency it requires to provide detailed and useful feedback.

The United Kingdom conducted a very similar inquiry into media plurality a few years ago. At the time, the then UK Secretary of State for Culture, Media and Sport, made a submission to the following effect:

"…it is essential that (plurality rules) be proportionate and do not unnecessarily restrict growth and innovation… The maintenance of plurality is still vital but, as more and more services become available on different platforms, concerns over ownership have diminished to some extent and greater liberalisation has been permitted."

We would urge TRAI to adopt a similar approach and not rush into introducing legislation as the growth of new platforms and the development of new business models within the media industry, continue to surge. India's 2047 Vision envisages "the elimination of unnecessary interference by the government in the lives of citizens'' (as stated on the mygov.in website operated by the Ministry of Electronics and Information Technology). Technology has democratised content access with Indian consumers more empowered than they have ever been in terms of their entertainment and information choices. In the absence of a proper regulatory assessment and comprehensive public consultation which clearly indicates that a review of the current regulatory landscape may be required, we would urge TRAI to refrain from introducing regulation that compromises one of the core principles of Prime Minister Modi's 2047 Vision.

Sincerely yours,

Louis Boswell
Chief Executive Officer
Asia Video Industry Association

About the Asia Video Industry Association (AVIA)

AVIA is the non-profit trade association for the video industry and ecosystem in Asia-Pacific. It serves to make the video industry stronger and healthier through promoting the common interests of its members. AVIA is the interlocutor for the industry with governments across the region, leads the fight against video piracy and provides insight into the video industry to support a vibrant industry ecosystem. AVIA evolved from CASBAA in 2018.

AVIA's leading members include: Amazon, AsiaSat, Astro, BBC Studios, Discovery Networks, The Walt Disney Company, WarnerMedia/HBO Asia, NBCUniversal, Netflix, now TV, Star India/Hotstar, TrueVisions, TV5MONDE, ViacomCBS Networks International, A&E Networks, Akamai, Baker McKenzie, BARC, beIN Asia Pacific, Bloomberg Television, Brightcove, Canal +, Cignal, Converge ICT, Dolby, Eutelsat, France 24, Globecast, Globe Telecom, Invidi, iQiYi, Irdeto, Intelsat, KC Global, La Liga, Limelight, Magnite, Mayer Brown, Measat, MediaKind, Motion Picture Association, NAGRA, NBA, NHK World, Nielsen, Planetcast, Premier League, Singtel, Skyperfect JSAT, Sony Pictures Television, SES, Synamedia, TMNet, TV18, TVBI, The Trade Desk, Vidio, Viaccess, Viacom18, White Bullet and Zee TV

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