CROSS OWNERSHIP IN MEDIA

Cross-*ownership* of media occurs when a person or company owns outlets in more than one medium (i.e., newspapers, radio, and television) in the same geographical market. According to the *Financial Times, Lexicon,* cross ownership of media is said to occur when an organization owns more than one type of media company, for example a newspaper and a television station.[1] This phenomenon results in surfacing of competition concerns owing to economic power getting concentrated in fewer hands and the limitation of diversity of news, information available to the common man.

This write-up tries to discuss the 'competition' dimension of cross media ownership by starting with the statement of requirement of information from diverse sources as also found in international conventions, followed by status of regulation of cross ownership in media in India and other countries, viz., UK, France, Germany, USA, Australia and South Africa.

The Universal Declaration of Human Rights, International Convention on Civil and Political Rights, American Convention on Human Rights & the European Convention on Human Rights recognize ***a right of individuals to receive information and opinions from a diversity of sources. Thus they impose an obligation on government to ensure media pluralism.***

Article 10 of the European Convention on Human Rights has been interpreted as requiring member states to take positive actions against press monopolies. In 1994, for example, the European Court of Human Rights held that ***the Austrian public broadcasting monopoly was incompatible with Article 10 because it violated the freedom of individuals to communicate their ideas on the audiovisual media*** (Lentia v. Austria, 17 E.H.R.R. 93 [1994]). A dozen years earlier, the Council of Europe's Committee of Ministers stated: "***States have the duty to guard against infringements of the freedom of expression and information and should adopt policies designed to foster as much as possible a variety of media and a plurality of information sources, thereby allowing a plurality of ideas and opinions"*** (Committee of Ministers, Declaration on the Freedom of Expression and Information, April 29, 1982; European Union: Communication Law).Diversity of media ownership is considered crucial to ensuring diversity of news information (Plurality). As a federal circuit court of the US noted in 2004, ***"diversification of media ownership serves the public interest by promoting diversity of program and service viewpoints as well as by preventing undue concentration of economic power"*** (Prometheus Radio Project v. FCC, 373 F.3d 372, 383 [3rd Cir.] 2004; Public Interest). ***Various media competition laws and regulations are widely accepted in connection with a society's***

[1] Financial Times, Lexicon http://lexicon.ft.com/Term?term=cross_media-ownership

significant interest in ensuring a wide range of information and opinion for citizens through pluralistic media.

INDIA

In India, there is no general policy on ownership and cross-media restrictions (there are restrictions however on different segments such as DTH guidelines or FM radio policy).

The issue of cross media ownership will be examined by the Telecom Regulatory Authority of India (TRAI) at the instance of the Information and Broadcasting Ministry which has sought an examination of the issue for the second time in 2012.
TRAI had earlier in 2009 examined the issue of cross media ownership and based on its recommendations, the government had also sponsored a study through the Administrative Staff College of India (ASCI).

The report recommending imposition of cross-media ownership restrictions recently entered the public domain nearly three years after it was submitted, following a rebuke to the government by a panel of lawmakers.

The report, running into nearly 200 pages, was prepared by the Administrative Staff College of India (ASCI) at the instance of the Ministry of Information & Broadcasting (I&B). Though this report was submitted in July 2009, it was placed on the Ministry's website only after Parliament's Standing Committee on Information Technology sharply criticized the government for not initiating any action on the ASCI report's recommendations.

The Hyderabad-based ASCI report pointed out that there is ***"ample evidence of market dominance" in specific media markets and argued in favour of an "appropriate" regulatory framework to enforce cross-media ownership restrictions, especially in regional media markets where there is "significant concentration" and market dominance in comparison to national markets*** (for the Hindi and English media).

The ASCI report found that ***both developed countries such as the United States, Australia, United Kingdom and Canada as well as developing countries like South Africa, had put in place a set of rules for cross-media ownership.***

The ASCI report concludes that while a sector regulator (in this case, TRAI) is required to look into issues relating to cross-media ownership and vertical integration (including issues relating to pricing, market shares and restrictions on ownership), it should work in tandem with the regulator responsible for enforcing competition law.

Thus, it recommends that the Competition Commission of India (CCI) be involved in issues relating to market power, concentration of ownership, formation of cartels, mergers and acquisitions (M&A), bid rigging, tie-in arrangements, exclusive supply and distribution agreements and predatory pricing. “Consultations with CCI on all these matters by TRAI should be made mandatory by law,” the report recommends.

Sources said that I&B Secretary Uday Kumar Varma has written to new TRAI chairman Rahul Khullar on May 16 in this regard.
"Major players are looking for expanding their business interests in various segments of print and broadcasting sectors. In this scenario, issue of media ownership and the need for cross media restrictions assumes great significance," Varma wrote in his letter to Khullar.

<u>Status of Regulation of Cross-media Ownership Around the World</u>

European Union

The EC is embarked on a major review of media pluralism in Europe dealing with ownership and other measures which could help and enhance diversity and the democratic process. Most particularly, they are focused on finding an accepted method of concentration and diversity measurement.

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. In speech in 2004 the then Director General for Competition, European Commission, noted:

“The marked trend towards concentration in European communications and media sectors in recent years, in our view, 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 for a limited number of media companies to curtail media pluralism, diversity and freedom of information.”

The United Kingdom

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 UK is arguably the biggest media market outside of the US in the world and as such contributes a great deal to the media pluralism discussion and regulations in the EU.

Ownership Television: Secretary of State can intervene in media mergers that raise public interest considerations. OFCOM and/or the Competition Commission can be asked to investigate any merger that could have damaging effect on plurality, diversity, or standards. This prevents unacceptable levels of cross-media dominance and ensures a minimum level of plurality.

Print Ownership: Under the Communications Act of 2003, any cross media ownership activity will trigger a public interest test that aims to ensure plurality of ownership, economic benefits, and no detrimental effect to the market.

Cross Ownership Restrictions: In every local area, there must be three separate media companies supplying radio, TV, and newspaper services. Nobody controlling more than 20% of national newspaper circulation may own more than 20% of an Independent TV license. Nobody owning a regional ITV license may control more than 20% of the newspaper market in that region. Nobody owning a regional ITV license may own a local radio station with more than 45% coverage of the same area. Nobody 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. (These cross ownership rules were noted in the first of the mandated three-year review by OFCOM provided for by the 2003 Communications Act and they were deemed too complex and may be subject to further clarification and deregulation in the coming year).

France

A law, enacted in 1986 and the subsequent establishment of the Conseil Superieur de l'Audiovisuel (CSA) in 1989 regulates the governance of the communications industry in France. The CSA also manages issues of media ownership and concentration. While the Competition authorities are obliged to consult with the CSA on mergers and acquisitions in media matters it is the sole responsibility of the CSA to monitor mergers and cross media ownership. Shareholders have the obligation to report to the CSA when their holding exceeds 10% so the CSA can effectively monitor share capital ownership.

Ownership Television and Radio: There are three limits placed on television ownership; capital share, number of licenses and audience share, and participation in more companies in the same sector. This is regulated to apply as follows: an individual person may not own more than 49% of a national TV channel or 33% of a local channel if the average annual audience is greater than 2.5% of the total audience. If a person holds two licenses, they cannot own more than 15% of the second license and if they own three then they cannot own more than 5% of the third license. A person may not own more than one analogue license or seven digital licenses. No more than two Satellite licenses are permitted. The regulations focus on not concentrating ownership in an individual's hands but shared ownership of companies seems to be permitted.

There is a ban on owning two regional broadcast TV licenses (analogue and digital) or more than one license if the audience area is greater than 6 million.

For radio, an entity may not control one or more stations or network(s) if the aggregate audience exceeds 150 million.

Newspaper ownership: Companies are not allowed to acquire a new newspaper if the acquisition boosts their total daily circulation over 30%.

Cross Ownership: An owner may not be involved in more than two of the following at the national level:

- TV audience area of 4 million people
- Radio audience area of 30 million people
- Cable audience area of 6 million people
- Exceeds 20% share of the national circulation of daily newspapers
- Further restrictions are noted at the local level:
  - Owning a national or local TV license for the area
  - Owning one or more radio licenses with cumulative audiences of more than 10% for that area
  - Owning a cable network for the area
  - Editorial or other control of daily newspapers in the area

Germany

In Germany, ***constitutional law provided the basis for the enactment of appropriate competition rules to ensure pluralism in the media industry. In 1966, the German Constitutional Court indicated that Pressefreiheit ("press freedom") obligates the government to take affirmative actions to the deleterious impact of media monopolies.***

USA

In 1975 the Federal Communications Commission (FCC) initiated the newspaper-broadcast cross-ownership rule, which bars a single company from owning a newspaper and a broadcast station in the same market. The purpose of the rule is to prevent any single corporate entity from becoming too powerful a single voice within a community, and thus the rule seeks to maximize diversity under the conditions dictated by the marketplace.

Media organizations have largely opposed the rule since its inception. In this context, The Telecommunications Act of 1996 was an influential act for media cross-ownership. One of the requirements of the act was that the FCC must conduct a biennial review of its media ownership rules "and shall determine whether any of such rules are necessary in the public interest as the result of competition." The Commission was ordered to "repeal or modify any regulation it determines to be no longer in the public interest."

In 2003 the FCC set out to re-evaluate its media ownership rules specified in the Telecommunications Act of 1996. On June 2, 2003, FCC, in a 3-2 vote under Chairman Michael Powell, approved new media ownership laws that removed many of the restrictions previously imposed to limit ownership of media within a local area.

The FCC in 2007 voted to modestly relax its existing ban on newspaper/broadcast cross-ownership.The FCC voted December 18, 2007 to eliminate some media ownership rules, including a statute that forbids a single company to own both a newspaper and a television or radio station in the same city.

Nonetheless in June 2012, the US Supreme Court upheld media cross-ownership rules, even though groups including Tribune Co. had sought looser limits.(Chicago Tribune, June 29, 2012; http://articles.chicagotribune.com/2012-06-29/business/chi-supreme-court-upholds-media-crossownership-rules-20120629_1_ownership-rules-broadcast-and-newspaper-groups-fcc)

Australia

The small size of the media market led to it being dominated by a few major owners, creating resistance to dropping a prohibition on cross-ownership without allowing more foreign ownership in order to prevent increased concentration. The ban on cross-ownership of print and electronic media had been introduced by the Labour government in 1987, forcing the country's multimedia owners to choose between their television and newspaper holdings. Nonetheless, the Australian government under liberal Prime Minister John Howard enacted a broad package of reforms in July of 2006. It abolished restrictions on foreign ownership and permitted cross-ownership starting in 2007, subject to a "diversity test" to ensure a minimum of five owners in metropolitan markets and four in regional markets.

South Africa

In South Africa, cross media ownership has been subject to limitations by means of section 66, Electronic Communications Act, 2005.

Section 66 reads as follows:

1) Cross –media control of broadcasting services must be subject to such limitations as may from time to time be determined by the National Assembly acting on the recommendation of the authority, after consultation with the minister, in accordance with the provisions of the constitution.
2) No person who controls a newspaper may acquire or retain financial control of a commercial broadcasting service license in both the television broadcasting service and sound broadcasting service.
3) No person who is in a position to control a commercial broadcasting service or sound broadcasting service, in an area where the newspaper has an average ABC circulation of 20% of the total newspaper readership in the area, if the license overlaps substantially with the said circulation area of the newspaper.
4) In this section 'substantial overlap' means an overlap by 50% or more

5) A 20 percent shareholding in a commercial broadcasting service, is considered as constituting control.
6) The Authority may, on good cause shown and without departing from the objects and principles enunciated in Sec.2, exempt affected persons from any of the limitations provided for in this section.

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