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Protecting pluralism in India’s media market

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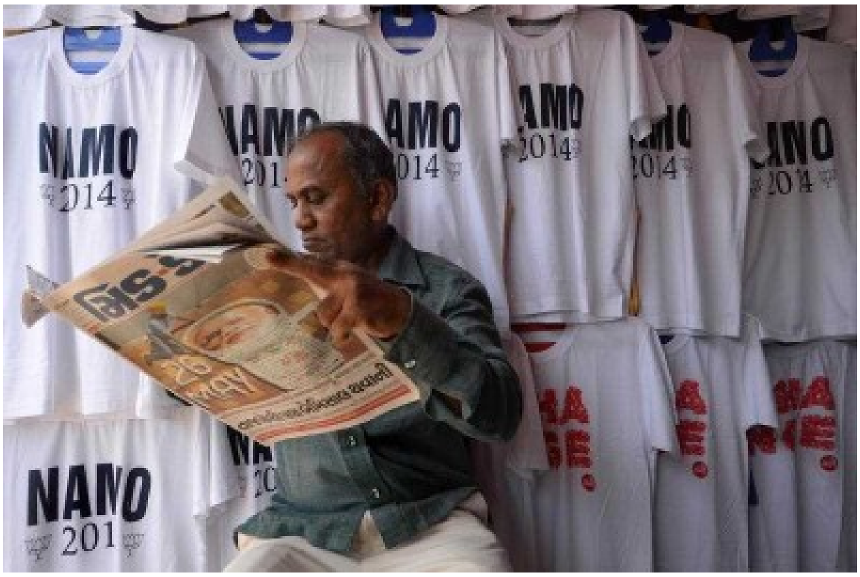
Competition and diversity in media and communications are fundamental to a healthy economy and democracy. This has been clear in India in recent years. In May 2014 the Indian Law Commission — seeking to tighten media ownership regulation — issued a consultation [1] paper to resurrect controversial reform proposals of the Telecom Regulatory Authority of India (TRAI). In India and internationally there is no consensus on the exact manner and scope of interventions that are appropriate to protect competition and pluralism in media markets.

Regulation of media ownership is often justified on two main grounds. The first is to ensure that economic power does not become concentrated in the hands of a particular entity, which may raise prices above their market-competitive level or reduce quality or innovation. The second argument is to safeguard media pluralism (varying viewpoints and opinions), creating an environment which is conducive to freedom of expression.



Most agree media pluralism is a ‘good thing’. But India, or indeed any other democracy that seeks to regulate this area, has not decided how many viewpoints make a sufficient plurality.

On 15 February 2013 the TRAI released a consultation paper [2] on issues relating to ownership — particularly cross-ownership — of the media. In its statement on the launch of the consultation, the TRAI observed that media markets in India are undergoing changes that it believed may have significant implications for competition and consumer choice in the sector.

The TRAI posed a number of detailed questions largely covering possible methods to regulate media ownership. Among the more controversial consultation issues were: first, whether it would be appropriate to have a ‘one out of three rule’ where companies can only run one media outlet, such as radio or TV, in a single area; second, whether it would be appropriate to restrict an entity's ownership of a media outlet to a certain level (say 20 per cent); and third, whether any entity should be allowed to have an interest in both broadcasting and distribution.

But the TRAI has not, as yet, set out a discussion of identified problems in media markets in India today or made explicit the policy objectives that need to be fulfilled: there is an absence of a problem statement beyond data and market analysis which predated the consultation by almost four years. Moreover, the TRAI did not appear to have considered the costs and benefits of the various interventions it was considering.

These are serious omissions.

It was also concerning that while the TRAI acknowledged convergence, it did not discuss its implications for technology, networks, services and, fundamentally, regulation. A similarly ill-considered approach was also taken by the TRAI in the narrower 2013 consultation on monopoly and market dominance [3] in cable TV. The UK media ownership regime was presented as a 'poster child' for regulation. In some instances, measures that the UK has now rejected in favour of a more liberal approach were promoted.

India certainly has plenty of international inspiration and examples from which to borrow — or reject. The challenge is how to cut through the morass of rules and create something that works for India and that addresses its specific challenges. If one of the biggest concerns is political control of the press [4], then a remedy that targets that may well be warranted. However, it is questioned whether a wholesale importation of plurality regulation, which has not necessarily been workable elsewhere, is a proportionate solution, at least in the absence of an assessment of the alternatives.

Competition law can go a long way in ensuring that one voice does not use its economic and political power to crowd out other viewpoints. However, a level of consensus is emerging that media pluralism and competition are distinct and that there is, in principle, a regulatory 'gap' where competition law alone cannot address some of the challenges presented by individuals or groups using their influence to distort the media.

The question, then, is how to plug that gap? This may call for tighter restrictions on the types of entities that can control the media such as political parties or government agencies. However, it will be important to ensure that any additional controls do not result in replacing one form of objectionable control with another.

It is difficult to be too enthusiastic about a total rewrite of India's media regulation [5] to ban any form of market expansion across the media supply chain or a blanket threshold on the level of ownership interest — at least without more detailed inquiry as to what economic or other considerations dictate that approach.

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Suzanne and Alison are co-authors of the book, '[Media Ownership and Control: Law, Economics and Policy in an Indian and International Context'](http://www.hartpub.co.uk/BookDetails.aspx?ISBN=9781849466356) [6]*, published by Hart Studies in Competition Law in July 2014.*

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[1] issued a consultation: **http://www.lawcommissionofindia.nic.in/views/Consultationper cent20paperper cent20onper cent20mediaper cent20law.doc**

[2] consultation paper: **http://www.trai.gov.in/Content/ConDis/675_0.aspx**

[3] monopoly and market dominance: **http://www.trai.gov.in/Content/ConDis/686_0.aspx**

[4] political control of the press:
http://www.eastasiaforum.org/2012/03/02/resisting-censorship-in-india/

[5] India's media
regulation: **http://www.eastasiaforum.org/2012/08/25/contradictory-trends-in-television/**

[6] Media Ownership and Control: Law, Economics and Policy in an Indian and International Context': **http://www.hartpub.co.uk/BookDetails.aspx?ISBN=9781849466356**