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FOR FREEDOM OF INFORMATION

Legal Assesment

Contextualization for the Media Ownership Monitor – Pakistan 2019

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Freedom Network (FN) is Pakistan's first media watchdog organization and the organization's core value is to protect freedom of expression, including freedom of the press and Internet, and access to information and promote an informed society that sees media as a key partner in a democratic and pluralist Pakistan.

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Abbreviations

All Pakistan Newspaper Society	APNS
Anti Terrorism Act	ATA
Audit Bureau of Circulation	ABC
Cable Television	CTV
Class Value Added Licenced Services	CVALS
Competition Commission of Pakistan	CCP
Competition Consultative Group	CCG
Direct-to-Home	DTH
Evacuee Trust Property Board	ETPB
Federal Board of Revenue	FBR
Federal Investigation Agency	FIA
Frequency Allocation Board	FAB
Internet Exchange Points	IXPs
G News Network	GNN
Higher Education Commission	HEC
Internet Service Providers	ISPs
Net Neutrality	NN
Pakistan Electronic Media Regulatory Authority	PEMRA
Pakistan Educational Network	PERN
Pakistan Peoples Party	PPP
Pakistan Telecom Authority	PTA
Pakistan Penal Code	PPC
Pakistan Telecom Company Limited	PTCL
Pakistan Tehreek-e-Insaaf	PTI
Prevention of Electronic Crimes Act of 2016	PECA
Press Council of Pakistan	PCP
Press Information Department	PID
Security and Exchange Commission of Pakistan	SECP
Significant Market Power	SMP

Legislation

The Competition Act, 2010

The Defamation Ordinance, 2002

The Federal Right of Access to Information Act 2017

The Khyber Pakhtunkhwa Right to Information Act 2013

The Pakistan Electronic Media Regulatory Authority Ordinance 2002

The Press Council of Pakistan Ordinance 2002

The Pakistan Telecommunication (Re-organization) Act 1996

The Prevention of Electronic Crimes Act 2002

The Press, Newspapers, News Agencies and Books Registration Ordinance, 2002

The Punjab Transparency and Right to Information Act 2013

The Sindh Transparency and Right to Information Act 2016

Introduction

Toby Mendel et al (2017) in 'Modernizing Media Law in Pakistan: Review of Legal Framework Governing Media' stated that the "rules [governing market competition in media sector] fail to provide adequate protection against possible abuses of dominant positions of media owners in broadcasting.[1] Existing media regulatory framework predates the market developments including emergence of online media. Therefore, it lags behind in dealing with the issues emerging due to convergence of technology and growing market ownership concentration. The regulators are often seen as overtly pushy on regulating the content rather than being facilitators of the industry, setters of professional standards or protectors of media consumer rights. As a result, the market is facing a massive concentration of media ownership.

The existing legal framework governing media in Pakistan includes the Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance, 2002, along with the Press Council of Pakistan (PCP) Ordinance, 2002, the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002, the Defamation Ordinance, 2002, and the Right to information laws. The Pakistan Telecommunication (Re-organization) Act of 1996 empowers the Pakistan Telecom Authority (PTA) to oversees telecom sector. The PTA also regulates provision of Internet through licensing of Internet Service Providers (ISPs). Furthermore, the Prevention of Electronic Crimes Act (PECA) 2016 gives the PTA authority to block or ban online content. The Competition Commission of Pakistan (CCP) is responsible, as an umbrella regulatory body, for market competition and level playing field for all small and big market players.

[1] Mendel et al. (2017). Private Sector Broadcasting in Modernizing Media Law in Pakistan: review of legal framework governing media. Islamabad: IRADA. 125-155.

1. Legal framework

1.1 Laws to prevent media concentration and monopolies

Pakistan's legal framework provides three-tier safeguards against media ownership concentration and monopolies in the sector. At *constitutional level*, Article 18 recognizes the right of every citizen to enter upon any lawful profession or occupation, and to conduct any lawful trade or business. It discourages anti-competitive practices through mandating the government to bring "regulation of trade, commerce or industry in the interest of free competition."[2]

At *institutional level*, the Competition Commission of Pakistan (CCP), which was formed as a result of an act of the Parliament (Act No XIX of 2010), hereinafter referred to as the Competition Act 2010, has a fundamental duty "to provide free competition in all spheres of commercial and economic activity" and "protect consumers from anti-competitive behaviour".[3] The Commission can be considered as a 'supra-regulator' as all other regulatory agencies in Pakistan are required to contribute a certain percentage of the fee and charges levied by them on their respective licensees.[4] The Commission, in addition to undertaking various functions including inquiring into anti-competitive market practices, is responsible to oversee mergers and acquisitions of big market enterprises. The merger of Warid Telecom with Mobilink in 2016 is one such example, which could happen only after the approval of the Commission.[5]

At *sector level*, following three statutory regulators oversee the market relating to information and communication/telecommunication:

1) The Pakistan Telecom Authority (PTA) was formed in 1996 as a result of the enactment of the Pakistan Telecommunication (Re-Organization) Act of 1996, hereinafter referred to as the Telecom Act 1996. PTA is mandated to "regulate the establishment, operation and maintenance of telecommunication systems and the provision of telecommunication services in Pakistan" and "promote the availability of a wide range of high quality, efficient, cost effective and competitive telecommunication

[2] Article 18 (b) of the Constitution of Pakistan 1973
[3] Preamble of the Competition Act, 2010
[4] Section 20 (2) (f) of the Competition Act, 2010 – Commission Fund
[5] CCP gives conditional approval to mobilink-warid merger: http://www.cc.gov.pk/index.php?option=com_content&view=article&id=449&Itemid=137&lang=en, published on March 21, 2016. Last accessed on January 29, 2019.

services throughout Pakistan".[6] PTA issues licences to telecom services to all landline and cell phone operators including 3G and 4G cell phone services. It is also registration authority for Internet service providers (ISPs) in the country. Recently, the Prevention of Electronic Crimes Act of 2016, hereinafter referred to as the PECA 2016, has authorized the PTA to block or remove certain online content.[7] Since the PTA is responsible to ensure 'competitive telecom services,' its subordinate legislation i.e. the Pakistan Telecommunication Rules, 2000 speaks about significant market power (SMP). According to the Rule 17, "an operator shall be presumed to have significant market power (SMP) when it has a share of more than twenty-five per cent of a particular telecommunication market." However, the rules are silent on how to prevent concentration of ownership in the sector.

2) The Press Council of Pakistan, hereinafter referred to as the PCP, is a statutory body, which is established under the Press Council Ordinance, 2002. The PCP is aimed to be an autonomous, independent body established to ensure and monitor ethical standards of practice for Pakistan's print media, news agencies and their websites.[8] The PCP is perhaps the only regulatory institution, which has representation of all key stakeholders in its body. The nineteen members Council consists of the followings: (a) Four members by the All Pakistan Newspapers Society; (b) Four members by the Council of Pakistan Newspaper Editors; (c) Four members by the professional bodies of journalists; (d) Vice Chairman of Pakistan Bar Council; (e) Chairperson or nominee of the Higher Education Commission; (f) One member by the Leader of the House of the National Assembly; (g) One member by the Leader of the Opposition in the National Assembly; (h) One mass media educationist to be nominated by the Council; and (i) One women member to be nominated by the National Commission on the Status of Women in Pakistan. Though, the law allows the PCP to levy fee from the registered newspapers and news agencies,[9] the Council has no role in the process of registration of newspapers and news agencies. The process of registration of a newspaper is given separately in the Press, Newspaper, News Agencies and Books Registration Ordinance, 2002. This Ordinance devolves the power of registration of newspaper (submission and authentication of declaration for a newspaper) to the district level – a sub-provincial administrative unit. The district level administrations receive and authenticate / register the

[6]Section 04 (1) (d) of the Telecom Act 1996 - Functions of the Authority
[7] Section 37 of the PECA 2016
[8]http://presscouncil.org.pk/. Last accessed on January 30, 2019
[9] Section 4 (5) of the Press Council Ordinance, 2002

declaration for newspapers. Except restrictions on foreign ownership of newspapers, there is no conditionality or restriction in the law on holding ownership of multiple newspapers by one person.[10]

3) The Pakistan Electronic Media Regulatory Authority (PEMRA) was formed under the Pakistan Electronic Media Regulatory Authority Ordinance of 2002, hereinafter referred to as the PEMRA Ordinance, 2002. The primary objective of the Authority is "improve the standards of information, education and entertainment" as well as "enlarge the choices available to the people of Pakistan in the media for news, current affairs …".[11] The Authority is responsible for regulation of all Pakistani "broadcast media and distribution services" which are established for the purpose of international, national, provincial, district, local or special target audiences. The PEMRA also regulates "the distribution of foreign and local TV and radio channels in Pakistan".[12] However, PEMRA does not have jurisdiction over the state-run broadcast media and distribution services in the country.[13] The PEMRA Ordinance prohibits issuance of licences to: (a) foreigners or non-residents of Pakistan; (b) a registered foreign company; (c) a locally registered company but owned and controlled by foreign nationals; and (d) any person funded or sponsored by a foreign government or organization.[14]

   Prior to the amendment is the PEMRA Ordinance in 2007, cross-media ownership was discouraged in following manner:

   > *"In granting a licence, the Authority shall ensure that, as far as possible, open and fair competition is facilitated in the operation of more than one channel in any given unit of area or subject and that undue concentration of media ownership is not created in any city, town or area and the country as a whole by virtue of the applicant for a broadcast or CTV operation licence already owning or operating, as sole or joint shareholder of any other broadcast or CTV station, printed newspaper or magazine."*[15]

   However, the law was amended in 2007 which removed last three lines of the provision starting from "*by virtue of the applicant for a broadcast or Cable Television (CTV) operation licence already owning or operating, as sole or*

[10] Section 12 of the Press, Newspaper, News Agencies and Books Registration Ordinance, 2002
[11] Preamble of the PEMRA Ordinance, 2002
[12] Section 4 of the PEMRA Ordinance 2002
[13] Section 37 of the PEMRA Ordinance 2002
[14] Section 25 of the PEMRA Ordinance 2002
[15] Section 23 (2) of the PEMRA Ordinance 2002 before amendment in 2007

joint shareholder of any other broadcast or CTV station, printed newspaper or magazine." The amendment also added a proviso that "*if a licensee owns, controls or operates more than one media enterprise, he shall not indulge in any practice which may impede fare competition and provision of level playing field."*

Similar provision on "media ownership concentration and exclusion of monopolies" is given in the PEMRA Rules of 2009. However, it does not provide any scientific methods to restrict media ownership concentration and exclusion of monopolies except putting a cap on the number of licences to one operator. According to the Rules, a total of four satellite TV licences, four FM Radio licences and two landing rights permissions can be granted to one company or firm. The Rules also prohibit issuance of a landing rights permission or broadcast media licence to the– direct or indirect – owners, controllers or operators of any other distribution service licence and vice versa.[16]

The overview of the legal framework shows that vagueness and inadequacy exist in the law on regulating cross media ownership and undue concentration of media ownership in the country. Moreover, the scholars and researchers have also questioned the justification of the allowing cross media ownership. The Media Commission appointed by the Supreme Court of Pakistan declared that the cross-media ownership deprives citizens from access to independent evaluation of the content of various media.[17] Several researcher including Mendel et al (2017) and Rasul and McDowell (2012) stated that the [PEMRA] rules fail to provide adequate protection against possible abuses of dominant positions of media owners in broadcasting.[18]

1.2 Media included / excluded from the regulation? Is there regulation for digital media?

Electronic Media (Radio, TV and Cable Distribution Service)

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[16]Rule 13 of the PEMRA Rules 2009
[17]Media Commission Report, page 236: http://fes-pakistan.org/media/pdf/Report_by_Media_Commission_on_Recommendations_for_media_sector_reforms.pdf, last accessed on January 30, 2019
[18]Mendel et al. (2017). Private Sector Broadcasting in Modernizing Media Law in Pakistan: review of legal framework governing media. Islamabad: IRADA. 125-155. And
Rasul, A and McDowell, D. Stephen. (2012). Consolidation in the Name of Regulation: The Pakistan Electronic Media Regulatory Authority (PEMRA) and the Concentration of Media Ownership in Pakistan. Global Media Journal. Volume 12 (1), p10

The current regulatory regime - introduced in 2002 and amended in 2007 – for electronic media permits the PEMRA to grant licences to [private sector] for following types and categories:

1. International and national scale station;
2. Provincial scale broadcast;
3. Local area or community based radio and TV broadcast;
4. Specific and specialized subjects;
5. Distribution services; and
6. Up linking facilities including teleporting and DSNG.[19]

In simple words, private satellite television channels, private FM radio stations and private cable distribution services are covered under the current regulations. Moreover, the PEMRA also gives 'landing rights' to international / foreign satellite television channels such as BBC, CNN, Nat Geo, etc., to distribute their transmission via cable distribution system. The PEMRA has also issued Direct-to-Home (DTH or Dish TV) licences for digital distribution of content through dish TV.

State-run Television Channels and Radio Broadcasting

However, the PEMRA law is not applicable to the state-run PTV or Pakistan Television, SRBC or Shalimar Recording and Broadcasting Company (a semi-government broadcasting company running a terrestrial TV channel in the country alongside the PTV), and PBC or Pakistan Broadcasting Corporation (umbrella organization to operate nation-wide network of Radio Pakistan and its FM stations across the country.[20]

Print Media (Newspapers)

Publishing the newspapers is essentially a private sector venture in Pakistan. The government is no more in the business of newspapers publication. However, registration of newspaper (commonly known as submission and authentication of the Declaration for a newspaper) is mandatory under the law. The Press, Newspaper, News Agencies and Books Registration Ordinance 2002, which repealed all press registration law of the past, is still in operation at the federal level. However, the Eighteenth Constitutional Amendment has devolved the

[19]Section 18 of the PEMRA Ordinance 2002
[20]Section 37 of the PEMRA Ordinance, 2002

subject of information to the provinces. Therefore, the provincial governments can now introduce their own press registration laws. One such law has been enacted in the province of Khyber Pakhtunkhwa in 2013.[21]

Beside the press registration laws, there exists the Press Council of Pakistan (PCP). The Council is mandated to, amongst other functions, receive complaints about the violation of Ethical Code of Practice relating to newspapers, news agencies editors and journalists.[22]

Digital / online media

Regulation of digital or online media appears to be different from the conventional print and electronic media in the country. Buying or registration of a website domain is purely a commercial activity and anyone can purchase any website domain, if it is not bought by someone else. The government or the regulators have no role in sale / purchase of the website, except taxation of the companies engaged in the business of sale of the domains. However, provision of Internet is a regulated activity. All Internet Service Providers (ISPs) including broadband Internet providers and 3G / 4G services providers, in the country are required to be licenced by the PTA. The PTA also issues licences for Class Value Added Licenced Services (CVALS), which essentially mean the 'data' and 'voice' services over the Internet.[23] Moreover, all ISPs are essentially connected through the Internet Exchange Points (IXPs) – an initiative lead by PTA and hosted at the Pakistan Educational Network (PERN) of Higher Education Commission (HEC). The Board of IXPs includes officials from PTA, HEC, Pakistan Telecom Company Limited (PTCL) and various market related stakeholders.[24]

Beside the regulation of provision of Internet-based data and voice services, the PTA has got the authority to monitor and censor online content through the PECA 2016. Section 37 of the PECA empowers the PTA to "remove or block or issue direction for removal or blocking of access to an information through any information system if it [PTA] considers it necessary in the interest of glory of Islam or the integrity, security or defence of Pakistan, or any part thereof, public order, decency or morality, or in relation to contempt of court or commission of or incitement to an offence under the [PECA]." The PECA is a criminal law and

[21]Government of Khyber Pakhtunkhwa . (2013). The Khyber Pakhtunkhwa Press, Newspapers, News Agencies and Books Registration Act, 2013. Available: http://kp.gov.pk/uploads/2016/02/2._Press,_Newspapers,_News_Agencies_and_Books_Registration_Act,_2013_.pdf. Last accessed 09th of July 2019.

[22]Section 08 of the Press Council of Pakistan Ordinance, 2002

[23]www.pta.gov.pk, last accessed on January 30, 2019

[24]http://www.pkix.pk/members.html, last accessed on January 30, 2019

authorizes the Federal Investigation Agency (FIA) to investigate the crimes defined in this law. Moreover, special courts have been formed across the country to adjudicate cases under the PECA.

1.3 Is the legislation sufficient?

While regulatory bodies to regulate the electronic, print and telecom / online media exist, it has been realized that the legal framework governing media in Pakistan is outdated and carries many weaknesses and lacunas. Both, the Media Commission Report[25] and Review of Legal Framework Governing Media[26] have recommended overhauling of the existing legal framework and upgrading it to the needs of the market dynamics. The authors of the reports, being cognizant to technological advancement and issues of convergence between the telecom and broadcast media, have proposed to reduce multiplicity and overlapping of the regulations. The reports have also suggested self-regulatory mechanisms for print and online media.

Nevertheless, the government of Pakistan Tehreek-e-Insaaf (PTI), which came into power after the general elections in July 2018, has announced to merge all three regulators – PEMRA, PTA and PCP – into one body called Pakistan Media Regulatory Authority (PMRA). As per the proposed plan, the PMRA shall be responsible for regulating not only the establishment and operation of local, foreign electronic media but also the print and digital/social media in Pakistan. Civil society groups and experts demanded a broad-based consultation with the stakeholders before finalization of the draft regulations. However, on January 24, 2019, the federal cabinet approved formation of the PMRA without any consultation with the stakeholder. While the political parties in the parliament have not shown their reaction on the move, the civil society and media stakeholders have straightaway rejected the proposal.[27] Incidentally, the PTI government does not have the required number of parliamentarians to get this proposal passed. Until and unless one of the two leading opposition political parties – Pakistan Muslim League (N) and Pakistan Peoples Party (PPP) – agree with the proposal, the proposal cannot get through the Parliament and become a law.

[25] http://fes-pakistan.org/media/pdf/Report_by_Media_Commission_on_Recommendations_for_media_sector_ reforms.pdf, last accessed on January 30, 2019
[26] Mendel et al. (2017). Private Sector Broadcasting in Modernizing Media Law in Pakistan: review of legal framework governing media. Islamabad: IRADA.
[27] https://www.dawn.com/news/1459855, last accessed on January 30, 2019

1.4 Definition of media concentration in the legislations

Media Concentration Issue

The PEMRA Ordinance 2002 carries Section 23 which states, "no person shall be entitled to the benefit of any monopoly or exclusivity in the matter of broadcasting or the establishment and operation of broadcast media or distribution service..." This Section necessitates that the Authority, in granting a licence, shall ensure that open and fair competition is facilitated in the operation of more than one media enterprise in any given unit of area or subject and that undue concentration of media ownership is not created in any city, town or area and the country as a whole. The Section also stops licensees from indulging in the practices, which may impede fair competition and provision of level playing field.

The above principle is further expanded in Rule 13 of the PEMRA Rules 2009. The said Rule allows issuance of a total of four satellite TV, four FM Radio licences and two landing rights permissions to one company or firm. The Rules also prohibit issuance of a landing rights permission or broadcast media licence to the – direct or indirect – owners, controllers or operators of any other distribution service licence and vice versa. While deciding the famous DTH licensing case, the Supreme Court of Pakistan upheld the principle of non-provision of distribution licence to the content producer or broadcast media operator.[28]

Nevertheless, the Rule 13 requires the licensee, who holds direct or indirect interest in any other media enterprise, to: (a) appointment of separate editorial boards and monitoring facilities for each medium under its control; (b) establishment of separate management structures for each medium under its control; and (c) maintenance of separate accounting record for each medium under its control.

Other than the above provisions, the law is silent on cross-ownership, audience share, circulation, turnover/revenue, the share capital or voting rights. The PEMRA has not publicized any formula or standard to gauge the media ownership concentration. The law is also silent on the issue of conflict of interest.

1.5 Legislation on Vertical Integration

Rule 13 (3) and (4) deal with the issue of vertical integration but only to the extent of licensing of distribution and broadcasting. Sub Rule 03 prohibits issuance of licence for broadcast media to "a licensee who owns, controls or operates

[28]http://www.supremecourt.gov.pk/web/user_files/File/C.A._700_2017.pdf, last accessed on January 30, 2019

directly or indirectly any other distribution service licence", the same shall not be granted a landing rights permission or broadcast media licence. Similarly, Sub Rule 04 forbids grant of licence for distribution services to "a licensee who owns, controls or operates directly or indirectly broadcast media licence or landing rights permission". The Supreme Court of Pakistan, in PEMRA Vs. Independent Newspapers Corporation Pvt. Ltd (2018), reinforced this principle and distribution licence to the content producer and broadcast media operators.[29] Other than these provisions of the PEMRA Rules 2009, there is nothing in the law regarding elements of the value chain, i.e. production, aggregation, distribution and related industries such as advertisement or telecommunications.

During past five years, there has been no change in the legislation on media concentration issues.

1.6 Mergers and Acquisitions

In principle, the licences issued by the PEMRA are non-transferable. However, the law allows mergers of operators / licensees and transfer of licences to a new person with the approval of the PEMRA. Rule 16 of the PEMRA Rules of 2009 provides that a licensee shall not transfer, merge or amalgamate with any other person any rights conferred under the licence without prior approval of the Authority. Furthermore, the Rule 16 (2) also requires PEMRA's permission for transfer or disposal of shares or interest by the owner or holder of a company, which is PEMRA's licensee. Nevertheless, the broadcast media sector in the country has seen a few transfers of the licences from an old PEMRA licensee to a new one. The transfer of a satellite TV licence from Asia News Network (Jinnah TV) to Labbaik (Pvt) Limited (BOL TV) is one of the examples where the licence of one company was transferred to another through PEMRA's permission.[30] Similarly, licence for CNBC TV was reportedly transferred to Jaag TV first and then to Gourmet group. CNBC Pakistan was launched in 2005. The licence was then transferred to the Vision Network Television Limited, which renamed the channel as Jaag TV. Later in 2016, the Gourmet group acquired the licence and rebranded it as GNN (G News Network).[31]

Since the mergers and transfers are possible through the permission of the Authority, therefore, no instance of conflict over the ownership between the parties has emerged. However, a clash between Geo TV and BOL TV during past few years was a significant development. Geo TV accused BOL TV of airing "life-

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[29] http://www.supremecourt.gov.pk/web/user_files/File/C.A._700_2017.pdf, last accessed on January 30, 2019
[30] https://defence.pk/pdf/threads/controversial-bol-news-initially-owned-by-property-tycoon-malik-riaz.382745/, last accessed on January 30, 2019
[31] https://www.revolvy.com/page/GNN-%28news-channel%29,last accessed on January 30, 2019

threatening hate-speech and propaganda campaign directed towards Geo TV's management and their employees." The Geo TV also filed a complaint against BOL TV to the PEMRA in this regard in 2017.[32] While deciding the complaint, the Council of Complaints of PEMRA recommended imposition of a fine on the BOL TV.[33]

1.7 Lacunas in the legislations

Except discussions within academia and media development sector, the issue of media concentration has not been raised to the 'priority list' of legislators and policy makers of the country. However, there is a possibility that the issue may emerge as one of the top priorities once the government opens debate on the merger of media and telecom regulators.

1.8 Foreign Investments within the media business

Mendel et al (2017) argue that the PEMRA Ordinance 2002 discourages foreign investment in media sector through barring licences to the foreigners.[34] The argument is based on the prohibition issuance of licences to foreigners by PEMRA. Section 25 of the PEMRA Ordinance 2002 disallow grant of licence of any category to: a person who is not a citizen of Pakistan or resident in Pakistan; or a foreign company organized under the laws of any foreign government; or a company the majority of whose shares are owned or controlled by foreign nationals or companies whose management or control is vested in foreign nationals or companies; or any person funded or sponsored by a foreign government or organization. Similar barriers are created in the law relating to the registration of the newspapers. Section 12 of the Press, Newspaper, News Agencies and Books Registration Ordinance, 2002 bars the person who is not a citizen of Pakistan to own or hold more than 25% of interests in any newspaper printed or published in the country.

[32]https://www.brandsynario.com/geo-tv-director-files-complaint-bol-tv/,last accessed on January 30, 2019
[33]https://www.dawn.com/news/1375461,last accessed on January 30, 2019
[34]Mendel et al. (2017). Private Sector Broadcasting in Modernizing Media Law in Pakistan: review of legal framework governing media. Islamabad: IRADA. 125-155

2. Implementation – control and monitoring of media concentration

2.1 Bodies governing Media concentration

In principle, the sector regulator - PEMRA[35] or PTA[36] - are responsible to address the issue of concentration within their respective jurisdictions. However, the CCP, having duty "to provide free competition in all spheres of commercial and economic activity" and "protect consumers from anti-competitive behaviour"[37] exercised its authority over the media sector as well. One such case was the *Evacuee Trust Property Board (ETPB) versus APNS (2018)* wherein the petitioner alleged that Midas Private Limited (Midas), Press Information Department (PID) and APNS have colluded to block its advertisements in all of the newspapers and periodicals at a dispute over recovering payments. The CCP declared APNS rules, regulations and circulars annulled and imposed penalty of PKR 10,000,000 on APNS.[38] Similarly, the Commission also gave final approval for the merger of Warid Telecom with Mobilink in 2016.[39]

The above two cases are from the print media and telecom sector. So far, no broadcast media related case has been taken up and adjudicated by the CCP. However, being the 'supra-regulator' can be considered as a key institution to address the issue of media concentration as well. It is, however, clear that the sector regulators are primarily responsible for addressing the issue of media concentration.

PEMRA and PTA are authorized to issue licences in their respective areas. Both have the authority to monitor and enforce compliance of the laws, rules, regulations and terms and conditions of the licensees. These regulators have the power to impose sanctions on non-compliance and violations of the laws. However, the PCP has no role in registration / licencing of the newspapers. The law mandates the PCP to monitor the compliance of ethical code of practice by the newspaper. In terms of actions against the violations, the PCP can: required

[35]Section 23 of the PEMRA Ordinance 2002
[36]Section 04 (1) (d) of the Telecom Act 1996
[37] Preamble of the Competition Act, 2010
[38]Evacuee Trust Property Board (ETPB) versus APNS (2018) http://www.cc.gov.pk/images/Downloads/show_cause_notice_to_all_pakistan_newspaper_6_12_18.pdf, last accessed on January 31, 2019
[39] CCP gives conditional approval to mobilink-warid merger: http://www.cc.gov.pk/index.php?option=com_content&view=article&id=449&Itemid=137&lang=en, published on March 21, 2016. Last accessed on January 29, 2019.

the concerned person to publish apology; issue a warning; and ask other newspapers to publish its decision. The Council does not have any authority to impose any fine or other criminal penalties upon violation of the law. All three media sector regulators also receive and redress complaints against their respective licensees / services providers. CCP, on the other hand, has the authority to receive complaints, take suo moto actions, adjudicate the cases and impose sanctions on violations of the law. Nevertheless, the CCP is not a licensing authority.

2.2 Jurisdiction of the Authorities

From the review of the literature, it appears that there are more than one authorities assigned to oversee the market competition. The PEMRA and PTA, being sector regulators, are responsible to monitor anti-competitive practices within their respective markets. The CCP has an overarching role to promote free competition in the market in general. In strict legal sense, the sector regulators and CCP are independent entities and the CCP does not have an overriding effect over the PEMRA and PTA. The statutes of all these regulators have "effect notwithstanding anything to the contrary contained in any other law for the time being in force".[40] However, it appears that the sector regulators – PTA and PEMRA – have acknowledged the all-encompassing role of the CCP in the filed of monitoring and ensuring competition. This is evident from the fact that right after the formation of the CCP in 2010, the PEMRA and CCP reach to the agreement "to join hands to promote healthy competition in the private electronic media and to take steps to curb deceptive marketing practices being propagated through media".[41] Similarly, it was CCP, which gave final node to the merger of Mobilink and Warid and not the PTA. The PTA remained part of the consultative process with the CCP to study potential competition concern due to the merger.[42] Moreover, all the sector regulators including PEMRA and PTA are part of the Competition Consultative Group (CCG) of the CCP. The CCG is a platform comprising of representatives of sector-specific regulatory agencies, relevant professional bodies, and the private sector for feedback and guidance with respect to the CCP's ongoing activities and proposed initiatives to promote

[40]Section 58 of the Telecom Act 1996, Section 37 of the PEMRA Ordinance 2002 and Section 59 of the CCP Act 2010

[41]https://www.thenews.com.pk/archive/print/263573-ccp-pemra-to-promote-healthy-competition-in-electronic-media, last accessed on January 31, 2019

[42]http://www.cc.gov.pk/index.php?option=com_content&view=article&id=449&Itemid=137&lang=en, last accessed on January 31, 2019

competition in the market.[43] So, the question of overlapping of the authorities seems to be addressed through administrative and informal arrangements.

2.3 Independence of the Authorities

Pakistan has three distinct regulatory models:

(i) The Press Council of Pakistan – a statutory body whose key membership comes from the sector such as nominees of the newspapers owners, editors and journalists. The President of the country appoints the chairman of the Council and government mere notifies the board of the Council. There is a little political, commercial or official interference in the appointments of the members of the Council.[44] However, the major portion of the financial support for the Council comes from annual federal budget, which seems to compromise its independent functioning.[45]

(ii) Pakistan Electronic Media Regulatory Authority – a 13-member statutory body whose membership is a mixture of, both, government officials and citizens. However, it is the President of Pakistan who appoints all members of the Authority. [46]Moreover, the federal government can issue directives of binding nature to the Authority on matters of policy.[47]

(iii) Pakistan Telecommunication Authority – another statutory body, which consists of three members who are supposed to be technical – telecom engineering and finance – experts. The federal government is the appointing authority for member of PTA.[48] Besides, the federal government has the power to issue policy directives to the Authority on the matters relating to telecommunication policy and the Authority is under obligation to comply with these directives.[49]

(iv) Competition Commission of Pakistan – like PTA, the federal government has the authority to appoint members of the Commission as well as its Chairman. [50]Moreover, federal government's financial allocations and grants constitute major part of the Commission's fund.[51]

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[43]http://www.cc.gov.pk/index.php?option=com_content&view=article&id=176&Itemid=171&lang=en, last accessed on January 31, 2019
[44]Section 06 of the Press Council of Pakistan Ordinance 2002
[45]Section 04 of the Press Council of Pakistan Ordinance 2002
[46]Section 06 of the PEMRA Ordinance 2002
[47]Section 05 of the PEMRA Ordinance 2002
[48]Section 03 of the Telecom Act 1996
[49]Section 08 of the Telecom Act 1996
[50]Section 14 of the Competition Act 2010
[51]Section 20 of the Competition Act 2010

In all these regulatory models, independence of the regulators is in question due to either their financial dependence on the federal government or appointments of their members by the federal government or their statutory obligations to comply with the directions of the federal government. Nevertheless, by virtue of their statutory status, these regulators are not supposedly be influenced by the commercial interests and market forces.

2.4 Appointment Procedures

Except in case of the Press Council of Pakistan, the appointment of the members of the PEMRA, PTA and CCP is a matter of discretion of the federal government. Though, certain qualifications and criteria for the members of these bodies are given in their respective statutes, there is no way to assess whether the criteria was complied with or not. The process of these appointments is non-transparent as there is no statutory requirement of public hearing or stakeholders' consultations for the selections of the members of these bodies. The Federal Cabinet has the exclusive authority to make these appointments.

2.5 Budget allocations to the Authorities

The revenue details of the PEMRA and PTA for past five years show that both of the regulators have substantial amount for their annual budgets. Both of the regulators earn handsome amounts from their licensees on annual basis along with the sale of new licences and permissions. For example, in FY 2016-17, the PTA has earned PKR 30,920,956,182 (USD 292,867,552.40). Similarly, the PEMRA has earned PKR 816,979,024 (USD 8,169,790.24) for the same period. On the other hand, the Press Council of Pakistan is facing financial crunch due to limited allocations by the Federal government. In 2016-17, the government allocated mere PKR 40,000,000 (USD 400,000) for total expenditures of the Council. Though the law allows the Council to impose fee on the newspapers; however, it seems to be difficult for the PCP to recover such fee due to lack of enforcement mechanism in the law.

2.6 Sanctioning Power of the Authorities

The PEMRA Ordinance 2002 and Sanctioning Powers - The PEMRA has power to prohibit broadcast media or distribution service operators from broadcasting or re-broadcasting or distributing certain programme or advertisement.[52] The authority can revoke or suspend the licence of a broadcast media or distribution service in certain situations.[53] The PEMRA law provides penalty of fine up to ten

[52] Section 27 of the PEMRA Ordinance 2002
[53] Section 30 of the PEMRA Ordinance 2002

million rupees for violation of the provisions of the PEMRA Ordinance 2002 by the licensees.[54] The law provides a right to appeal to the High Court against the decision or order of the Authority.[55]

The Telecom Act 1996 and Sanctioning Powers – The PTA has the authority to impose fine up to three hundred and fifty million rupees on a licensee in case of contravention of the provisions of the Telecom Act 1996. It can suspend or terminate the licence if the licensee persists in contravention of the provisions of the Act.[56] In the Telecom Act 1996, aggrieved party can file an appeal to the High Court or to any other Tribunal established by the Federal Government for the purpose of appeal against the decision of the PTA.[57]

The Competition Act 2010 and Sanctioning Powers – The Competition Commission of Pakistan can prohibit or annul the agreements in contravention of Section 04 of the Act. It can authorize or un-authorize the mergers of the enterprises.[58] The Commission can impose penalty of fine up to seventy five million rupees or an amount not exceeding ten percent of annual turnover of the undertaking in case of violation of Chapter II (Prohibition of Abuse of Dominant Position, etc.) of the Act.[59] A party, aggrieved by the decision of any member or officer of the Commission, can lodge an appeal to the Appellate Bench of the Commission.[60] Furthermore, a person aggrieved by the decision of the Commission – comprising two or more members or the Appellate Bench – can file appeal to the Competition Appellate Tribunal, constituted by the Federal Government in this regard.[61]

The Press Council of Pakistan Ordinance 2002 and Sanctioning Powers – The Press Council of Pakistan, though a statutory body, does not have any sanctioning powers. The Inquiry Commission, constituted under the Ordinance can direct the editor or publisher to publish a contradiction or clarification, if any newspaper report has proved to be against the ethical code of practice. It can also direct the editor or publisher to publish apology for the matter complained against.[62] Nevertheless, the Council has no sanctioning authority if any media concentration happens in the newspapers' market. Any aggrieved party can file an appeal to the Council against the decision of the Inquiry Commission. There is

[54]Section 33 of the PEMRA Ordinance 2002
[55]Section 30-A of the PEMRA Ordinance 2002
[56]Section 23 of the Telecom Act 1996
[57]Section 7 of the Telecom Act 1996
[58]Section 31 of the Competition Act 2010
[59]Section 38 of the Competition Act 2010
[60]Section 41 of the Competition Act 2010
[61]Section 43 of the Competition Act 2010
[62]Section 10 of the Press Council Ordinance 2002

no other right of appeal or judicial review of the decision of the Council provided in the law.[63]

2.7 Methods to assess media concentration

There seems to be no method or criteria for assessing the level of media concentration. For example, there is nothing in the regulations on the thresholds of audience share, circulation, turnover/revenue, distribution of share capital or voting rights, and only loose checks on both horizontal integration (mergers within the same branch of activity) and vertical integration (control by a single person, company or group of key elements of the production and distribution processes, and related activities such as advertising.

2.8 Public Accountability

Publication of annual report is mandatory under all these laws relating to the regulators. For example, Section 20 of the Press Council Ordinance 2002 requires the Press Council to prepare its annual report giving a summary of its activities during the previous year, an account of the standards of newspapers and news agencies and factors affecting them, and statement of audited accounts. The law requires the Council to submit the report to the Federal Government, publish it and make it available to the public. PEMRA is also under statutory obligation to publish their annual reports and make the same available to the public.[64] The PTA is supposed to prepare its annual report including copy of its annual audit report and submit the same to the National Assembly for its scrutiny by the Public Accounts Committee of the Parliament.[65] The law also requires the Authority to make its audited accounts available for public inspection.[66] The Competition Commission is required to prepare annual report of its activities including its annual audit report and submit the same to the Federal Government. As per the law, the Federal Government publishes the report in official Gazette and presents it before the Parliament for scrutiny.[67]

2.9 Government interference

In the case of the PEMRA and PTA, the federal government has the authority to issue directives of binding nature to the Authority on matters of policy.[68] This would simply mean that the Authority is under the administrative control of the

[63] Section 11 of the Press Council Ordinance 2002
[64] Section 17 of the PEMRA Ordinance 2002
[65] Section 18 of the Telecom Act 1996
[66] Section 15 (3) of the Telecom Act 1996
[67] Section 22 of the Competition Act 2010
[68] Section 05 of the PEMRA Ordinance 2002

government. On papers, the government may not have the power to overrule decision of the Authority. However, in reality, the government holds decisive authority over the decision making process of the PEMRA. It is also true for the PTA.[69] The Press Council of Pakistan is not under any direct supervision of the government. However, the government can interfere in the business or create hurdles in the functioning of the Council through curtailing its financial support in the shape of reduced budgetary allocations.

2.10 Mergers. Acquisitions and Implementation

There is no public information on mergers of the licensees in media. In the telecom sector, merger of Warid Telecom with Mobilink has been reported (discussed in detail above). Whereas, no such activity has been reported in the broadcast sector. Reports of transfer of ownership of the a few satellite television licences have emerged in recent past (details are given above). However, not much is publicly available on the process of transfer of the licences. Therefore, it is difficult to state how detailed has the authority implemented the regulation on media ownership? Similarly, due to non-availability of information in public domain, it is hard to confirm whether PEMRA has refused any merger requests, or forced divestment of existing media operations in order to avoid excessive concentrations of media ownership.

2.11 Public Interest

Since the information about the decisional practices is not available publicly, therefore, it is difficult to give any value judgment thereon. However, given the arbitrary power of the government over the authorities, the decisions are more likely to be in the interest of the government rather than the public.

A few years back, the decision of suspension of the licences of two leading satellite television channels was more of an abuse of the authority then the fair judicial process. The decisions were reported taken under the influence of the directions from the government.

While the PEMRA is considered as political-cum technical body, the PTA and CCP are treated as technical bodies. The Press Council is considered as a political body.

[69]Section 08 of the Telecom Act 1996

3. Transparency of media ownership

3.1/2 Disclosures by media companies

Under Pakistani laws, electronic media companies need to be a registered business practice requiring registration with the Security and Exchange Commission of Pakistan (SECP). This is a pre-requisite for eligibility of an electronic media license. The company at this stage is required to disclose ownership status, investment and revenue sources.

Each electronic media company needs to file an annual corporate statement with SECP detailing any changes in ownership structures and an annual statement of accounts. Simultaneously, the media company needs to file an annual statement of accounts plus tax returns to Federal Board of Revenue (FBR). The company also needs to file a statement of accounts with PEMRA to determine the percentage of dues on net revenue and its payment to PEMRA. Since, there is no requirement of registration of a company for a newspaper, there is no such requirement of submission of annual statement / accounts details to the Deputy Commissioner office that responsible for authentication of newspaper declarations.

3.3 Information that is required to be disclosed

Media company needs to file an annual corporate statement with SECP detailing any changes in ownership structures and an annual statement of accounts. Simultaneously, the media company needs to file an annual statement of accounts plus tax returns to FBR. The company also needs to file a statement of accounts with PEMRA to determine the percentage of dues on net revenue and its payment to PEMRA.

3.4 Accessibility of Information

While the media companies are not mandated to proactively share the above information to the public, this information is guaranteed public access through the federal and provincial RTI laws.

3.5 Monitoring and Regulation

The SECP, PEMRA and FBR are authorized to take action against electronic media licensees and companies for not filing mandatory information with the authorities. This may include fines and revocation of licenses. This is also true for

PTA which is authorized to enforce reporting and fiduciary regulations on provision of information and data services online.

3.6 Transparency

The media regulators are required to generate annual reports on their performance including actions taken against any media licensee. However, all media-related regulators, including PEMRA and PCP have often missed deadlines for years on occasion while PTA has been more regular in this context. Whether the media fulfils its reporting requirements or not is almost never reported publicly although such information can be accessed through the use of RTI.

4. Other state influence on media organizations

4.1 State taxes and impact

The taxation and levies, applicable to a business enterprise, are also applicable to media companies. There is no additional / discriminatory / prohibitory tax or levy for media companies so far. So, the taxation is standardized and a duty for all companies.

4.2 Entry Barriers

For electronic media, it is prequalification for the application that the business is registered with the SECP. Rule 07 of the PEMRA Rules 2009 requires to assess applicants' – company's – financial strength before grant of the licences. Furthermore, the Electronic media (TV and radio) is licensed through open bidding process, thereby encouraging richer parties to get licenses. Moreover, those who are seeking TV and radio licenses, are required to deposit a non-refundable prequalification fee.

4.3 Media concentration and Spectrum Allocation

The Frequency Allocation Board (FAB) is responsible to allocate the spectrum. The spectrum allocation, being considered as a technical matter, is a closed-door process. Not much information is available in the public domain in this regard.

4.4 Transparency in Spectrum Allocation

PTA allocates the spectrum through FAB. As mentioned above, the process is closed and dictated by security clearance of applicant. However, theoretically, information about this can be accessed through RTI law.

4.5 Distribution of State Advertising

For print media, theoretically, Audit Bureau of Circulation (ABC) should determine proportion of the state advertising. Similarly, for electronic media, it is system of audiences rating. However, the general practice is that political governments' pick and chooses among their favorite media operators and do not proactively disclose details of advertising. Part of the practiced 'non transparency' is due to the media houses not wanting this information disclosed because they are primary beneficiaries.

4.6. Monitoring of State Advertising

There is documentation of advertising done by the relevant government departments, including the information and broadcasting ministries at the federal and provincial levels but this information is difficult to obtain by the public.

4.7 Laws interfering with media business

Pakistan is among the countries, which recognize freedom of press as a constitutional freedom. Article 19 of the Constitution of Pakistan uniquely state, “and there shall be freedom of the press.” However, this freedom is subject to various ‘legal’ restrictions. Incidentally, the law of the land does not provide any mechanism to enforce the “freedom of the press” as enshrined in the constitutional provision. The legal framework, instead, provide several laws / statutes to enforce restrictions on the freedom. The Pakistan Penal Code (PPC), the Anti Terrorism Act (ATA), the Prevention of Electronic Crimes Act, the PEMRA Ordinance, the Telecom Act, all these laws contain provisions which allow government authorities to interfere in the media business and influence press and editorial freedom.

4.8 Modifications in Law

None, except PTI’s decision to drastically revise government advertisement rates, for electronic and print media, downwards.

5. Net Neutrality (NN)

Net neutrality is the principle that Internet service providers treat all data on the Internet equally, and not discriminate or charge differently by user, content, website, platform, application, type of attached equipment, or method of communication.

5.1 Laws relating to NN

There is no specific law / regulation on net neutrality in Pakistan. Generally speaking, PTA regulates access and use of Internet in the country. Net neutrality is not defined by any laws and net neutrality is not discussed by lawmakers in the country.

5.4 Implementation of NN

Since there is no law to regulate net neutrality, there is no question of regulation.

5.6 Exceptions to the application of net neutrality norms

The Broadband Quality of Service Regulations, 2014 allows PTA to keep checks on ISPs to maintain network availability and link speed.[70] The PECA, which is a criminal law, empowers the PTA to [negatively] regulate, block and ban online content including websites.

[70] http://tns.thenews.com.pk/keep-net-neutral/#.XFmojs8zbOQ, last accessed on February 05, 2019

Conclusion

The current laws governing market competition in the media sector are insufficient in ensuring fair market practices. There is an absence of a modern regulatory framework that adequately covers all aspects such as audience share, circulation, turnover/revenue, distribution of share capital or voting rights, or any effective checks on both horizontal integration (mergers within the same branch of activity) and vertical integration (control by a single person, company or group of key elements of the production and distribution processes, and related activities such as advertising. Similarly, due to absence of a comprehensive framework to ensure network neutrality, the state is blocking 'undesired' content online, banning 'inappropriate' websites and shutting down the network arbitrarily in the guise of security.

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