

**MEDIA
OWNERSHIP
MONITOR
SRI LANKA**



Legal Assessment

Contextualization for the Media Ownership Monitor –

SRI LANKA 2018

Authored by Legal Team- MOM Sri Lanka

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Abbreviations

ANCL	-	Associated Newspapers of Ceylon Ltd
CAA	-	Consumer Affairs Authority
COPE	-	Committee on Public Enterprises
ISPs	-	Internet Service Providers
ITN	-	Independent Television Network
MCNS	-	Media Centre for National Security
PCCSL	-	Press Council Complaints of Sri Lanka
RTI	-	Right to Information
SLBC	-	Sri Lanka Broadcasting Corporation
SLPC	-	Sri Lanka Press Council
SLPI	-	Sri Lanka Press Institute
SLRC	-	Sri Lanka Rupavahini Corporation
SLT	-	Sri Lanka Telecommunications
TRC	-	Telecommunications Regulatory Commission

Description of the legislation on media concentration and ownership as well as its implementation, monitoring and transparency

1. Legal framework

(a) Which laws are supposed to **prevent media concentration and monopolies**? On what hierarchy level of law (e.g. constitution, civil code, special laws or decrees; national/regional) is media concentration being addressed?

The legal framework of Sri Lanka does not have overarching legislation specifically designed to regulate media concentration and monopolies. Instead, there are provisions contained within the relevant laws dealing with the various aspects, although these mainly refer to the need to manage competition and media concentration, without more detailed provisions on the manner in which these should be addressed. In this context, the available provisions, mechanisms and procedures that can relate to or be applied towards achieving such an end are assessed, as appropriate. The legal provisions in this regard can be divided into three categories:

- (i) Overarching objectives of relevant regulatory bodies - The Sri Lanka Press Council (SLPC) Law No. 05 of 1973 for print media and the Sri Lanka Telecommunications (SLT) Act No. 25 of 1991 for electronic broadcasting have overarching objectives to take steps to ensure competition and prevent monopolies in their objectives. These Acts do not, however, have explicit provisions detailing the steps to be taken to 'prevent media concentration and monopolies'.
- (ii) Provisions for terms and conditions to be included in licences granted under the SLT Act No. 25 of 1991 – The SLT Act has provisions for licences granted under the Act to contain provisions relating to maintaining and promoting effective competition. A review of licences granted by the Telecommunications Regulatory Commission (TRC) under the SLT Act to certain media sectors reveals that such conditions have been included in licences.¹
- (iii) General provisions dealing with anti-competitive practices - Apart from media-specific legislation, it may be possible to refer to general provisions dealing with anti-competitive practices provided in the Consumer Affairs Authority (CAA) No. 09 of 2003. However, the CAA Act is also inadequate, as it has no reference to monopolies and mergers and may not be applicable to deal with matters pertaining to media concentration.

Refer Box 1 for a detailed insight into these issues.

Box 1: Insight into legal provisions dealing with media concentration and monopolies

(i) Objectives of media regulatory bodies –

Print Media - In the case of print media, the SLPC Law No. 05 of 1973 regulates certain matters relating to the press in Sri Lanka. Section 8 of the SLPC Law lists out the objects of the Sri Lanka Press Council, which includes the duty to undertake research and review developments which are likely to restrict the supply of information of public interest and/or give rise to concentration or

¹ For example - Refer URL: <http://www.trc.gov.lk/internet-service-providers.html> for licences of internet service providers; and URL: <http://www.trc.gov.lk/cable-distribution-network-operators.html> for licences of cable distribution networks.

monopolies within the Sri Lankan press, and suggest appropriate remedial measures.² In order to give effect to this object, the Council is empowered to study developments relating to monopoly or concentration of ownership of newspapers, including a study of the ownership and the financial structure of newspapers, and suggest appropriate measures in this regard.³ However, apart from these provisions, there are no further references in the legislation, nor are there any regulations passed under the SLPC Law dealing with monopolies and concentration of ownership – in terms of defining monopolies or setting limits in concentration, limiting shares of shareholders, rules governing horizontal and vertical control of newspapers companies and other related matters.

The SLPC may have a means of ascertaining ownership and possible developments in terms of media concentration through the 'Press Council (General) Regulations 1973'.⁴ This regulation provides instructions to proprietors, printers, publishers, editors or journalists of newspapers to furnish returns and information as required by the Council. However, there is no specific reference to using this information for the purpose of ascertaining media ownership or monopolies, nor are there any provisions on actions to be taken by the SLPC to deal with such situations.

Electronic media, i.e. radio and television broadcasts - Licenses have to be obtained at two stages: (i) from the respective licensing bodies, namely the Sri Lanka Broadcasting Corporation (SLBC) and the Sri Lanka Rupavahini Corporation (SLRC) to operate a broadcasting station; and (ii) from the Sri Lanka Telecommunications Regulatory Commission (TRC) to operate frequencies and apparatus for broadcasting. Private broadcasters in radio and television have to obtain licences from the Media Minister, under Section 44 of the SLBC Act No. 05 of 1974 and Section 28 of the SLRC Act No. 06 of 1982, respectively. There are, however, no provisions on monopolies or concentration of ownership in the SLBC or SLRC Acts, nor are these issues covered in the overarching objectives of these institutions.

(ii) Terms and conditions on licences issued by under the Sri Lanka Telecommunications Act

No. 25 of 1991- Section 17(1) of the SLT Act provides that it is necessary to obtain a licence granted by the relevant Minister to operate a telecommunication system in Sri Lanka. Telecommunication systems, in this regard, are those which require the use of wire, radio waves or electromagnetic systems – which include broadcasts (radio, television and cable TV), cellular and land mobile services, and satellite services, among others, as per Section 73 of the SLT Act.

The licences issued under Section 17 of the SLT Act are to set out terms and conditions subject to which the licence shall be granted.⁵ These terms and conditions **may** include objectives set out in Section 4 of the SLT Act, which includes the object of maintaining and promoting effective competition between persons engaged in commercial activities connected with telecommunication.⁶ Thus, it is not a mandatory provision to incorporate measures relating to concentration or competition in the licences. Apart from these provisions, there are no further directions in the legislation dealing with monopolies and concentration of ownership among companies engaging in such telecommunication services.

Licences granted by the TRC for internet service providers, cable distribution and direct to home satellite broadcasting operators, among others,⁷ have included conditions on anti-competitive practices, notification of joint ventures, and mergers and acquisitions. Thus, even though inclusion of such provisions are not made mandatory in the law, nor are there detailed provisions in this regard, the TRC has taken measures to embody the spirit of the law into the licences. However, since there is no absolute legal obligation to include such provisions, nor is there any regulation listing out the specific measures to be included in licences, there is potential for licences to not have such conditions, or existing conditions to be revised or be different to other licences.

² Section 8(6) of the Sri Lanka Press Council Law No. 05 of 1973

³ Section 10(5) of the Sri Lanka Press Council (SLPC) Law No. 05 of 1973

⁴ Gazette Notification 63/5 of 12th June 1973 – published under the SLPC Law No. 05 of 1973

⁵ Section 17(6) and (7) of the Sri Lanka Telecommunications (SLT) Act No. 25 of 1991

⁶ Section 4(d) of the SLT Act No. 25 of 1991

⁷ Refer Licences published in the 'Licenced Operator List' on the website of the Telecommunications Regulatory Commission of Sri Lanka < <http://www.trc.gov.lk/2014-05-12-12-36-13/system-licence/licenced-operator-list.html>>

(Licences issued for frequencies for radio and television broadcasting are not published on the website, and therefore, it was not possible to ascertain whether these licences also have similar provisions.)

(iii) General legislation with provisions on anti-competitive practices - The Consumer Affairs Authority (CAA) Act No. 09 of 2003, which is legislation effected for the promotion of effective competition and protection of consumers, has no reference to monopolies, concentration or mergers. The CAA, established under the Act, is authorised to investigate anti-competitive practices in Sri Lanka.⁸ The definition of anti-competitive, as provided in Section 35 of the CAA Act, practices does not specifically refer to concentration within the market, but instead states that it covers course of conduct *'which has or is likely to have the effect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of goods in Sri Lanka or the supply or securing of services in Sri Lanka'*.

While there is no specific reference to media concentration in the CAA Act, it may possible to bring cases of media concentration to the CAA, as it can have an impact on supply of goods (newspapers) and services (broadcasting/digital media). It is arguable that forming monopolies or facilitating mergers in the media industry can distort, restrict or prevent competition and therefore, is covered by the provisions of the CAA Act. However, there are doubts as to the applicability of the provisions of the CAA Act in respect of monopolies and mergers, even were competition is unduly adversely affected. This is due to the fact that previous legislation, i.e. the Fair Trading Commission (FTC) Act No. 57 of 1993, which has now been repealed, explicitly referred to monopolies and mergers and defined these terms and their applicability (Refer Section 12, 13 and 15 of the FTC Act). The failure to include similar provisions in the CAA Act No. 09 of 2003 raises the question as to whether monopolies and mergers were intended to be covered in this legislation. Additionally, the reference to competition in this instance appears to relate to 'commercial' competition and cannot reasonably be taken to cover competition of a 'political' nature between media organisations.

There is also no reference in the present legislation to a relationship between the CAA and regulatory authorities such as TRC,⁹ which raises concerns on the applicability of the provisions of the CAA Act on such media aspects. Further, it is necessary to note that the CAA Act is only applicable to 'consumers', which is interpreted as people who have obtained goods and services for some consideration. While there is consideration involved in terms of newspapers, it may not necessarily be the case for radio and television broadcasts – and therefore, raises the question as to whether the anti-competitive provisions of the CAA are applicable in the case of radio and television broadcasting companies.

It is important to understand that the CAA Act focuses on quality in the sense of ensuring consumers have access to quality goods and services; rather than in terms of ensuring choice and variety of goods and services for consumers. The CAA being amended is, by itself, not sufficient to resolve this situation and therefore, there are calls for the CAA Act to be complemented with specific anti-monopoly legislation¹⁰ to enable action against undue anti-competitive action.

⁸ Section 34(1) of the Consumer Affairs Authority Act No. 09 of 2003

⁹ Prof. A.D. V de S Indraratna (2003) *Consumer Protection in Sri Lanka*, The Island < <http://www.island.lk/2003/06/09/featur01.html> >

¹⁰ Saman Kelegama (Ed.), (2004), *'Economic Policy in Sri Lanka: Issues and Debates'*, Institute of Policy Studies

(b) What **types of media** are included in or excluded from the regulation? Is there regulation for **digital media**?

Specific regulations are in place to govern print media, radio broadcasting and television broadcasting. Further, there are two stakeholders prevalent in each of these types of media – i.e. the state and private sector. These two stakeholders are governed by different regulation. (*Refer Table 1 below*).

As a result, regulation of the media sector is not uniform across the types of media and is dependent on the nature of ownership of the relevant media company. This status quo may effectively contribute to an unequal playing field for media operators in the country and can lead to gaps in the law.

The main issues in this regard are:

(i) Potential conflict of interest in the broadcasting sector - The official state broadcasting stations, i.e. the SLBC and SLRC, are empowered to function as broadcasting stations, while also licensing bodies over private broadcasting stations with certain regulatory powers. As a result, there is a potential conflict of interest in the functions of the SLBC and SLRC.

(ii) There is no specific legislation regulating digital media - The only relevant provision is that internet service providers (ISPs) are to obtain licences from the TRC – and this may have implications for the content displayed through the relevant ISPs.

There have been other measures calling for online news sites to register with the government, although these are not based on legal directives. In the past, notices and directives have been issued pertaining to digital content – although these are not necessarily legislation or regulations, nor are strictly lawful. In November 2011, notices were issued by the Government Information Department requiring all ‘websites carrying any content relating to Sri Lanka or people of Sri Lanka, uploaded from Sri Lanka or elsewhere’ to register for ‘accreditation’.¹¹ The Minister of Mass Media and Information was the designated authority, although the directive had no basis in any law or regulation.¹² The directive was proposed as an amendment to the SLPC Act, but even though the amendment was never passed, the Minister of Mass Media continued to exact fees for registration.¹³ While several news and current affairs websites registered themselves under this Scheme, others declined to do so, and were blocked from being accessed within the country. The Free Media Movement¹⁴ filed a fundamental rights petition challenging the Ministry’s grounds for blocking five unregistered sites in early 2012, however, this was dismissed by the Supreme Court.¹⁵ At present, there is no requirement to register websites. There have, however, been executive decisions effected to block websites and social media platforms over the past few years on various grounds, including publication of false information to prevent the spread of hate speech. Subsequently, in 2016, the Ministry of Mass Media issued a request for all news websites to register with the

¹¹ Secretariat for Media Reforms (2016), *Rebuilding Public Trust: An Assessment of the Media Industry Profession in Sri Lanka*, P.46

¹² Secretariat for Media Reforms (2016) P.46

¹³ Freedom House (2017) *Freedom on the Net*

¹⁴ The Free Media Movement evolved out of a Standing Committee of Journalists in 1991, and functions as a watchdog of media freedom in Sri Lanka. Refer URL <<https://freemediasrilanka.wordpress.com/>>

¹⁵ Dietz (2012). *Sri Lanka Supreme Court slams door on websites*, Committee to Protect Journalists <https://cpj.org/blog/2012/05/sri-lanka-supreme-court-slams-door-on-websites.php> (Accessed 30 Aug 2018)

Ministry before 31st March 2016 and declared that a failure to do so would result in the websites being deemed as unlawful.¹⁶

Table 1: Relevant legislation dealing with media in Sri Lanka

Media Source	Types	Relevant legislation	Applicability
Print	Newspapers/Printed publications	Sri Lanka Press Council Law No. 05 of 1973;	All print media – include state and private media.
		Associated Newspapers of Ceylon Ltd (Special Provisions) Act No. 35 of 1981	State-owned print media institution (commonly referred to as the 'LakeHouse Group'.
Electronic	Radio Broadcasts	Sri Lanka Broadcasting Corporation Act No. 05 of 1974;	Establishes the state-owned radio broadcasting service, the Sri Lanka Broadcasting Corporation (SLBC); and Licensing body for private radio broadcasting services.
		Sri Lanka Telecommunications Act No. 25 of 1991	State and private radio broadcasting services.
	Television Broadcasts	Sri Lanka Rupavahini Corporation Act No. 06 of 1982;	Establishes the state-owned television broadcasting services, the Sri Lanka Rupavahini Corporation (SLRC); and Licensing body for private television broadcasting services.
		Private Television Broadcasting Station Regulations 2010	Regulations to deal with licences issued for operation of private television broadcasting stations; including the technical, financial and professional requirements to be met by licences.
	Sri Lanka Telecommunications Act No. 25 of 1991	Applicable to all state and private television broadcasting services.	
Digital	Digitized content transmitted over computer and internet networks	There is no specific legislation dealing with digital media. Sri Lanka Telecommunications Act No. 25 of 1991	ISPs need to obtain licences from the TRC.

(c) If no – or not sufficient – legislation exists: is there **legislation in the making?**
What is the status quo of the political process?

Existing legislation governing media is considered to be inadequate for the following reasons:

- i. **Limitations in media legislation to deal with media concentration or monopolies** – There is no evidence of legislation being proposed to deal with the

¹⁶ Daily Mirror (2016) *Authority to regulate electronic media* <<http://www.dailymirror.lk/108317/Authority-to-regulate-electronic-media>>

issue of media concentration or monopolies, although there are calls by civil society to adopt laws to limit concentration on media ownership and cross-ownership of media, along with regulations to make disclosure of media ownership details mandatory.¹⁷

- ii. **Lack of specific legislation to deal with digital media** – There is no evidence of legislation being proposed to regulate issues pertaining to ownership and concentration of digital media. The main measures being proposed relate to regulating of social media and more specifically, online content.¹⁸
- iii. **The potential conflict of interest in functions of the SLBC and SLRC** – which are state broadcasting bodies for radio and television, while also licensing bodies for private broadcasting stations, with some regulatory functions.¹⁹ There have been proposals to establish independent regulatory bodies to take on the licensing/regulatory functions of the SLBC and SLRC over private broadcasting stations, although these have yet to be implemented. (Refer Box 2 for further details on the status quo with regard to independent regulatory bodies for the broadcasting sector)

Box 2: Background into establishing independent regulatory bodies for the broadcasting sector

The existing regulatory bodies, such as the SLBC, SLRC and SLPC were established in the 1970s, during which time Sri Lanka was in a different and political context, and electronic media was monopolised by the state. The legislation has not progressed to accommodate the changes that have taken place in the media landscape since then, with the proliferation of private media sources in the market.

The 'Sri Lanka Broadcasting Authority Bill' was proposed in 1997, but the Supreme Court ruled against the Bill. Advocacy groups submitted petitions against the Bill on grounds that it proposed different regulatory regimes in terms of expected standards of performance and accountability for state broadcasters and non-state broadcasters, and therefore was discriminatory treatment.²⁰ Further, the Colombo Declaration on Media Freedom and Social Responsibility²¹ published in 1998 also called for an independent broadcasting authority to be responsible for licensing of community radio, public and private broadcasting, including technical aspects.²² More recently, in 2016, it was reported that the government was considering an independent authority to regulate electronic media which would be empowered and required to investigate complaints made against electronic media.²³ In 2017, the proposed 'Independent Council for News Media Standards Bill' was introduced by the government to establish an independent council for news media standards, and was to be applicable to news media outlets, including news publications and their online versions, and broadcasts.²⁴ However, following concerns raised by media rights groups with regard to functioning and powers granted to the Council,²⁵ there has been no further progress in this regard.

¹⁷ Secretariat for Media Reforms (2016), P.96

¹⁸ Lionel Wijesiri (2018) *Will regulating Social Media stop hate speech?* Daily News <<http://www.dailynews.lk/2018/03/20/features/145993/will-regulating-social-media-stop-hate-speech>>

¹⁹ For instance the Media Minister can issue regulations under the SLBC Act to control and supervise programmes broadcast by private broadcasting stations; prohibit, regulate or control ownership of private broadcasting stations; and regulate or control transfer of shares of companies with licences for private broadcasting stations (Sec. 44 of SLBC Act).

²⁰ Secretariat for Media Reforms (2016); *The Political Economy of Electronic Media in Sri Lanka* (2005)

²¹ The Colombo Declaration was drafted at a symposium on Media Freedom and Social Responsibility jointly organised by the Sri Lanka Working Journalists Association, the Free Media Movement, the Editor's Guild of Sri Lanka and the Newspaper Association of Sri Lanka, together with the World Association of Newspapers and the Center for Policy Alternatives.

²² *The Political Economy of Electronic Media* (2005)

²³ Daily Mirror (2016). *Authority to regulate electronic media* <<http://www.dailymirror.lk/108317/Authority-to-regulate-electronic-media>>

²⁴ Sri Lanka Brief (2017). *Sri Lanka: Independent Council for News Media Standards Act – Full Text* (1st Discussion Draft) <<http://srilankabrief.org/2017/03/sri-lanka-independent-council-for-news-media-standards-act-full-text/>>

²⁵ Ashanthi Warunasuriya (2017). *Proposed Media Standards Act Raises Concerns*. The Sunday Leader <<http://www.thesundayleader.lk/2017/07/09/proposed-media-standards-act-raises-concerns/>>

- (d) Please, describe how the **law defines media concentration** (e.g. cross-ownership; audience share, circulation, turnover/revenue, the share capital or voting rights). Are **family members** included in the conflict of interest rules? How is their affiliation considered in the definition of ownership?

There is no definition for concentration or monopolies in the general legislation dealing with anti-competitive practices, i.e. Consumer Affairs Authority Act No. 09 of 2003. Further, there is no specific law governing media concentration, nor is there any definition provided for media concentration in the existing media legislation.²⁶

The only instance in which it is possible to ascertain some definition for media concentration is in the terms and conditions included in licences granted to internet service providers and cable/satellite television operators under the SLT Act (*Refer discussion in Section I.1(a) and Box 3 for information on the specific provisions*).

It is important to emphasise that the actual legislation itself, i.e. the SLT Act, does not spell out a definition or provide detailed measures in this regard. These are only included in the licences – and the gap in the legislation can create space for the specific provisions to be revised or differ from licence to licence.²⁷

Box 3: Terms and conditions relating to media concentration and ownership in licences granted by the TRC to ISPs

The Telecommunications Regulatory Commission is able to include terms and conditions relating to ensuring effective competition in licences granted under the SLT Act - although it is not mandatory to do so. A review of such licences published on the TRC website reveals specific provisions relating to regard to ownership and concentration issues.²⁸

According to these licences, the operator is to:

- inform the TRC of any change in ownership of any share or interest in licence which would result in the acquiring party with 20% of voting shares of licensee; and
- obtain prior approval of the Commission to change any ownership of shares which would result in a party owning more than 50% of the voting shares or a controlling interest in the operator.

In the case of mergers and acquisitions as well – the operator is to notify the TRC in the event of any agreement, arrangement or understanding to establish/control/enter into a partnership or joint venture to operate a telecommunications system if it has the potential to lessen, restrict or prevent effective competition in the market.

There is no reference to family members in these conditions included in licences for telecommunication operators.

- (e) Does legislation take into account **vertical integration** (i.e. control by a single person, company or group of some of the key elements of the value chain, i. e. production, aggregation, distribution and related industries such as advertisement or telecommunications)? How?

Media-related legislation with provisions referring to monopolies and concentration do not elaborate on or explain the manner in which media concentration is to be assessed, nor is there any reference to aspects of vertical integration.

²⁶ i.e. the SLPC No. 05 of 1973 and the SLT Act No. 25 of 1991

²⁷ However, it is important to note that from a review of licences for ISPs published on the TRC website as at 15th September 2018 – there were no differences in the provisions dealing with media concentration and ownership and mergers and acquisitions.

²⁸ For an example of a definition – Refer Section 15.3 of the Direct to Home Satellite Broadcasting Licence granted under the SLT Act to MTV Channel (Pvt) Ltd for the period from 15.10.2015 to 15.10.2020 < http://www.trc.gov.lk/images/pdf/MTV_DTHLicense_2015.10.15.pdf>

- (f) Have there been **changes in the legislation** on media concentration issues over the past 5 years? Have there been **any major new market entrants or mergers & acquisitions (M&As)**? How have these cases been handled? Have there been any important **conflicts**?

There is no relevant legislation dealing with media concentration issues, nor has there been any attempts towards drafting such legislation to deal with this issue.

In terms of any major new market entrants, Siyatha, a private television and radio broadcasting operator started a newspaper which was shut down in 2010, although, the decision to shut down the newspaper was not based on media concentration, but instead was politically motivated.²⁹

Apart from this, there are no recorded cases of major new market entrants or mergers and acquisitions and given that there is no relevant legislation in this regard, there has not been any instance of cases being taken up or investigated.

- (g) Is media concentration currently on the **agenda** of legislators and policy makers? What are the **blind spots** on media concentration legislation?

As noted above, Sri Lanka does not have any laws dealing with limitations on concentration of media ownership. There is also no evidence of state policies or measures to deal with media concentration.

One of the first attempts to reform media laws was the Report of the Committee to Advise on the Reform of Laws Affecting Media Freedom and Freedom of Expression 1996 (more commonly known as the R.K.W.Goonesekere Committee Report). The Committee recommended measures to establish an independent broadcasting authority and establish a freedom of information law, among others.³⁰ Following this Report, there have been several other attempts to propose recommendations for the media sector in Sri Lanka.³¹ The Colombo Declaration on Media Freedom and Social Responsibility of 1998,³² which was subsequently reaffirmed in 2008, provided several recommendations for media reform which included repealing restrictive legislation and strengthening constitutional guarantees of freedom of expression.³³ Further, the National Media Policy was published in 2015.

However, these Committees did not specifically refer to legislative reforms in terms of media concentration. Measures taken to reform media tends to focus on media freedom, rather than the need for policies dealing with media concentration and limiting ownership.

- (h) Is there specific legislation on **foreign investment/ownership** within the media business?

Foreign companies seeking to set up a media business in Sri Lanka will be bound by the provisions of the Companies Act No. 07 of 2017, and the Foreign Exchange Act No. 12 of 2017 (replaced the Exchange Control Act No. 24 of 1953) and related regulations.

²⁹ Freedom House (2011). *Freedom in the World 2011: The Annual Survey of Political Rights and Civil Liberties*. P.630

³⁰ Sri Lanka Brief (2014). R.K.W.Goonesekera Report: The Genesis of Media Reform Initiatives in Sri Lanka <<http://srilankabrief.org/2014/11/r-k-w-goonesekera-report-genesis-media-reform-initiatives-sri-lanka/>>

³¹ Refer the Colombo Declaration of 1998 and 2008, the Tholangamuwa Declaration of 2005, the Weligama Declaration on the Role of Media for National Unity in 2006; and the Report of the Committee to Advise on the Laws Affecting Media Freedom and Freedom of Expression of 1995 (commonly known as the R.K.W. Goonesekera Report)

³² The Colombo Declaration on Media Freedom and Social Responsibility of 1998 was the result of a symposium jointly organised by the Sri Lanka Working Journalists' Association, the Free Media Movement, the Editor's Guild of Sri Lanka and the Newspaper Association of Sri Lanka, together with the World Association of Newspapers and Centre for Policy Alternatives. This document is referred to as the 'Media Charter' on which the media profession based its advocacy campaigns for greater media freedom (Secretariat for Media Reforms, 2016).

³³ The Colombo Declaration on Media Freedom and Social Responsibility (1998),

<<http://www.pccsl.lk/sites/default/files/Colombo%20Declaration%20of%201998%20%28English%29.pdf>>

More specifically, foreign media companies seeking to carry out mass communication activities also need to obtain the prior permission of the Government of Sri Lanka or any authority to set up foreign investments in Sri Lanka.³⁴

³⁴ Section 3(e), Heading B, Schedule II of Gazette No. 2045/56 of 17th November 2017 – Foreign Exchange (Classes of Capital Transactions by Authorized Dealers) Regulations No. 01 of 2017 (Refer to URL:<http://www.dfe.lk/web/images/rdevelopment/746c5bfe09dabd6139f57ff854f0f549-2045-56-E.pdf>)

2. Implementation – control and monitoring of media concentration

- (a) Is there an institutional **system to address media concentration in place**? What **sectors** – e.g. press, broadcasting or new media – are included? What are the **responsible bodies** governing media concentration? What are the **tasks, duties and responsibilities** of the authority/ies defined in detail in the law (e.g. grant licenses, compliance monitoring, sanctioning, other)?

As noted in Section I.1, there is no overarching legislation specifically dealing with media concentration. There is also no single institution with an overarching mandate to address media concentration in Sri Lanka. Instead, regulation of media concentration is fragmented with different institutional bodies granted tasks, duties and responsibilities of differing scope. Relevant institutions in this regard are as follows:

- (a) **Consumer Affairs Authority (CAA)** – The CAA is the general institutional body mandated to deal with anti-competitive practices in the market and is authorised to investigate complaints in this context. The CAA does not, however, have any obligations specific to media concentration, nor are there any directions on its relationship with other media institutions such as the TRC which regulates frequencies for electronic broadcasts. The CAA is also wholly unequipped to deal with monopolies, and mergers and acquisitions given the lack of provisions on these aspects in the legislation.³⁵ There are calls to implement a legislation to specifically deal with anti-competitive practices for Sri Lanka.

Refer Box 4 for further explanation of the duties and functions of the CAA and its role in media concentration and ownership.

- (b) **Sri Lanka Press Council** – The SLPC is responsible for registration of newspapers and monitoring content of the newspapers. The purpose for registration of newspapers, along with details of editors, publishers and journalists is, however, not clear. The SLPC is also mandated to study developments tending towards concentration or monopolies in newspaper ownership – although there are no specific tasks and activities outlined to effect this function, nor is there any information on measures taken in this regard.

The state-owned newspaper house, i.e. the Associated Newspapers Corporation Limited (ANCL), more commonly known as ‘Lakehouse’ publications, also seems to have a system outlined to prevent media concentration. There are specific restrictions noted in the legislation³⁶ providing for the manner in which shares of the company is to be distributed between the Public Trustee and the public, and limitations on ownership and transfer of shares by members of the public.

Refer Box 5 for further explanation of the duties and functions of the SLPC in regulating print media, and the mechanisms adopted to deal with the state-owned newspaper company, ANCL.

- (c) **Sri Lanka Broadcasting Corporation and Sri Lanka Rupavahini Corporation** – Electronic media companies have to acquire licences from (i) the SLBC or the SLRC, for radio and television broadcasts, respectively; and from (ii) the TRC, to obtain frequencies and operate apparatus.

³⁵ i.e. the Consumer Affairs Authority Act No. 09 of 2003

³⁶ i.e. the Associated Newspapers of Ceylon Limited Act No. 28 of 1973

The SLBC and SLRC function as state broadcasting operators, and also the body through which the Media Minister grants licences to private radio and television broadcasting operators, respectively.

Private radio broadcasting operators may also be subject to regulations controlling and supervising the programmes broadcast; prohibiting, regulating and controlling ownership of private broadcasting stations; and regulating or controlling transfer of shares of private companies (Sec 44 of SLBC).

Private television broadcasting operators may be subject to the authority of a Consultative Committee established by the Media Minister under the SLRC Act to advise on matters pertaining to television broadcasting.

While in the case of radio broadcasting, there seems to be provisions to take measures which grants some level of oversight in terms of ownership and concentration, such provisions are not available for television broadcasting. Further, while provisions do exist for radio broadcasting, the extent to which these issues are monitored and assessed is not clear.

Refer Box 6 for further explanation on the duties and functions of the SLBC and SLRC in terms of private broadcasting stations.

- (d) **Telecommunications Regulatory Commission (TRC)** – Radio and television broadcasting operators are also required to obtain licences from the TRC to obtain frequencies. These licences may be subject to terms and conditions outlined in Section 17 of the SLT Act, and the TRC will monitor the broadcasting operators to ensure compliance. Further, the TRC also grants licences for ISPs, cable providers and direct-to-home satellite operators, and these licences may also be subject to terms and conditions as outlined in Section 17 of the SLT Act.

The terms and conditions applied to licences can include measures to maintain competition and prevent concentration of ownership (Sec 17(7) and Section 4(d) of the SLT Act). However, the actual measures that can be taken in this regard are not outlined in the legislation, nor is it mandatory to include such provisions. Licences granted to ISPs, cable providers and direct-to-home satellite operators reveal detailed terms and conditions pertaining to regulation of ownership, and mergers and acquisitions. Failure to comply with these measures can result in revocation of the licence. Thus, presumably, the TRC monitors companies with licences to ensure compliance with measures relating to concentration and ownership and can take action in this regard.

Refer Box 7 for further explanation of the role of the TRC in regulating electronic media operators.

Media concentration may further be limited by structural limitations due to the limited frequencies available on the telecommunication network. The TRC designates frequencies among various telecommunication activities including amateur services, broadcasting services, cellular services, data/telemetry services, fixed/land mobile services, maritime and satellite services. Limitations in frequencies available can restrict the number of players in the market (especially in the case the state takes up a significant proportion of frequencies for radio and television broadcasting). Frequencies are reserved for each of these services according to a frequency allocation plan – although there is no specific mechanism/process for assignment of frequencies and is handed over to individuals and companies without due process.³⁷ Thus, the

³⁷ Secretariat for Media Reforms (2016)

arbitrariness in the process of allocation of frequencies, and failure to document mechanisms/processes for ascertaining connections and linkages of those holding frequencies, can be a limitation in ensuring there is no concentration among the few players in the industry.

Box 4: Consumer Affairs Authority – general institutional body dealing with anti-competitive conduct

The CAA established under the Consumer Affairs Authority Act No. 09 of 2003, is the general body assigned with the task of dealing with anti-competitive practices in the market (Sec 34 of CAA Act). The CAA is authorised to investigate complaints by persons, organisation of consumers or an association of traders, or on the CAA's own initiative, following the procedures set out in Sec. 36 and 37 of the CAA Act; and take action necessary to (a) maintain and promote effective competition between persons supplying goods and providing services; (b) promote interests of consumers and purchases and other users of goods and services and variety of goods supplied and services provided in Sri Lanka; and (c) facilitate entry of new competitors into the existing market. In this context, the Council is able to issue orders to terminate the practice or such other action as deemed necessary to remedy or prevent adverse effects of any anti-competitive practice (Sec. 41(1)(b) of CAA Act).

There is, however, no reference to media concentration or anti-competitive practices within the media sector in the legislation, nor have any regulations or guidelines been issued for the CAA in this regard. There are also no guidelines or documents detailing the relationship between the CAA and the Telecommunications Regulatory Commission (TRC), which issues licences for broadcasting frequencies, thus failing to establish how the body established to deal with anti-competitive practices is to function with media-specific regulatory bodies. Further, the CAA is not equipped to deal with concentration, monopolies or mergers, and there is a need to enact legislation, and presumably an institutional framework specifically dedicated to anti-competition law.

Box 5: Institutional mechanisms to regulate the print media sector

The state and private sector have a stake in print media in Sri Lanka. The SLPC, which regulates print media, has the mandate to research into developments which may tend towards concentration or monopoly (Sec 8(6) of the SLPC Law) – however, there is no evidence of any activities conducted by the SLPC to assess concentration or monopolies, nor is there any information on such issues being brought to the attention of the SLPC in the past. There are no further provisions in the SLPC Law with regard to actions that can be taken by the SLPC to deal with concentration or prevent monopolies within the print media sector.

The main function of the SLPC is to register newspapers and monitor content of newspapers. In this respect, every newspaper, within 30 days of coming into operation, and thereafter, on an annual basis, has to furnish the Council with details of the names of proprietors of the newspapers, the printer, publisher, editor and working journalists.³⁸ Further, every person who becomes a proprietor or editor of a newspaper is to register with the Council within fourteen days.³⁹ It is not clear as to the purpose of registering newspapers/printed publications with the Sri Lanka Press Council, apart from tracking and monitoring.

The SLPC Law also does not have any specific provisions to deal with the state-owned newspaper house, the Associated Newspapers of Ceylon Limited (ANCL), more commonly known as 'The LakeHouse Group'. The ANCL was a privately held entity nationalized by the left-wing government in 1974 through the ANCL Act No. 35 of 1981. It is currently one of the largest newspaper houses in the country with daily and weekly publications in all three mediums (i.e. Sinhala, Tamil and English).

³⁸ Regulation 6 of Gazette Notification No. 63/5 of 12th June 1973 (Press Council Regulations 1973)

³⁹ Regulation 9 of the Gazette Notification No. 63/5 of 12th June 1973 (Press Council Regulations 1973)

Under the Section 2 of the ANCL Act, 75 per centum of the total number of shares are vested in the company in the Public Trustee on behalf of the Government; while the remaining 25 per centum of the shares are allocated to shareholders who held shares when ANCL was a private entity.

The Act has provisions which seek to limit ownership of shares of the company by providing that from the 25 per centum of shares allocated to existing shareholders, no individual shareholder is able to hold more than two per centum of the total number of shares of the company (Sec 3(1) of the ANCL Act). The limitation of two per centum of shares on an individual shareholder is applicable whether shares are held by himself or jointly or in aggregate with any individual who is his or her spouse or minor child (Sec 3(1) of the ANCL Act). However, the assignment of 75 per centum of shares to the Public Trustee concentrates a majority stake of the newspaper to an institution which is directly under the purview of the Government. The ANCL Act does provide for the Public Trustee to issue these shares to members of the public, based on instructions of the relevant Minister in charge (Sec 5(1) of the ANCL Act). Members of the public include societies registered under Cooperative Societies Law, societies registered under the Societies Ordinance, trade unions registered under the Trade Unions Ordinance, public corporations as in Article 170(2) of the Constitution, working journalists and other persons employed in the company, but excludes other companies engaged in the business of printing or publishing a newspaper. In the event of share transfers, the ANCL Act has restrictions on the transfer of shares to any other person except after giving prior notice in writing of such proposed transfer to the Public Trustee (Sec 10(1)); and such shares issued to the public are subject to the two percentum rule provided in Section 3 of the ANCL Act, thereby ensuring that ownership is not concentrated to one individual.

However, transfers from the Public Trustee to the public have yet to take place, despite pressure from the media sector, as well as cases filed in the Supreme Court to broadbase ownership as per the legislation. The legislation effectively concentrates ownership of a large newspaper establishment under the control of a government directed institution. Apart from the provisions stating that shares have to be transferred to members of the public, the ANCL Act does provide for any further duties to effect this, nor does it stipulate any time limits in which such shares are to be transferred to the public or impose any sanctions for failure to do so. The SLPC Law is also silent in this regard.

Box 6: Institutional bodies for granting of licences to electronic media operators

The Minister in charge of Media, is empowered through the relevant Acts, i.e. the SLBC Act No. 05 of 1974 and the SLRC Act No. 06 of 1982, to issue licences for private radio and television broadcasting operators, respectively:

- Section 44 of the SLBC Act authorises the Media Minister, in consultation with the Corporation, to issue licences for establishment and maintenance of broadcasting stations following an inquiry into the application.
- Section 28 of the SLRC Act authorises the Media Minister, in consultation with the Corporation, to issue licences for television broadcasting stations, including cable television subject to satisfaction that the person applying for the licence has the technical, financial and professional qualifications to do so.

There are no further provisions with regard to the matters to be taken into consideration in issuing licences.

Further, the relevant Acts also do not have any provisions for the SLBC and SLRC to assess and take action in terms of media concentration and limit ownership of private broadcasting companies granted licences under the Act. The SLBC Act does authorise the Minister to issue regulations on control and supervision of private radio stations in terms of ownership and transfer of shares (Sec 44(4) of the SLBC Act). However, no regulations have been passed in this regard. It is also understood these licences have been issued in an ad hoc manner with no specific plan, with different conditions being attached to different licencees.

Box 7: Telecommunications Regulatory Commission and its role in regulating electronic media operators

Private television and radio broadcasting stations are also required to obtain licenses from the relevant Minister, through the SLT Act. The licence is to set out the terms and conditions (Sec 17(6)(c)); and these terms and conditions may include 'such conditions as appear to the Minister to be requisite or expedient having regard to provisions of Section 4 of the Act (Sec 17(7) of the TRC Act), which includes the need to 'maintain and promote effective competition between persons engaged in commercial activities connected with telecommunication ...'(Sec 4(d) of SLT Act). Thus, through these provisions it is possible for the TRC to regulate media concentration and ownership of private broadcasters granted licences under the TRC. The SLT Act does not, however, have any further provisions to elaborate on 'effective competition' or what it entails, or provide for any limits on ownership and concentration, nor are there any regulations in this regard.

In the event the licence granted by the TRC has terms and conditions for promoting 'effective competition' – the Authority is able to make orders to secure compliance as per Sec 11 and 12 of the SLT Act (Sec 14 of the SLT Act). However, in this context, the action that can be taken by the Authority to deal with concentration or limit ownership is subject to such conditions actually being included in the licence. There are no other provisions detailing actions to be taken by the Authority to give effect to its objects of 'promoting effective competition' under Sect 4(d) of the SLT Act.

Further, it is necessary to note that the licences granted to ISPs and cable/satellite operators are published online and have specific provisions to address anti-competitive conduct and regulate monopoly situations/mergers and acquisitions.⁴⁰ There are no details of the frequency licences issued for radio and television broadcasting, and therefore, it is not clear if such provisions are included.

- (e) If there is **more than one authority assigned** (e.g. media authority, competition authority, etc.): how is the differentiation of competencies of the diverse authorities defined? Does it work or are there overlaps or blind spots?

The relevant authorities in this regard are:

- (i) **Media specific authorities** - Media in Sri Lanka is not governed by a single media authority, but instead each type of media is governed by different institutional bodies. Each of these institutional bodies have different mandates and there is no insight into interactions and links among these various institutions.

For instance, the print media has two regulatory bodies, the SLPC and SLPI, with similar functions to investigate complaints against newspapers, with no clear direction on addressing these overlapping functions. The SLPC, however, also has the objective of monitoring ownership structures to maintain competition in the print media, unlike the SLPI is mainly centered around investigation of complaints on content in newspapers. (Although, it is not clear as to the extent to which the SLPC fulfils this role of maintaining competition). Further, the SLPC is a state body and therefore entails mandatory registration of newspapers, whereas the SLPI is a voluntary body, and so certain newspapers may not be under the purview of the SLPI.

On a different note, in electronic media, SLBC and SLRC have conflicting roles being state broadcasters and the bodies through which licences are granted for private broadcasting operations, and there is no direction on how these roles are to be separated. While the Media Minister is responsible for issuing licences to the private broadcasters, these are effected in consultation with the Corporations (Sec 44(1) of the SLBC Act; and Sec 28(2) of the SLRC Act).

⁴⁰ Refer 'Licensed Operator List' – Telecommunications Regulatory Commission < <http://www.trc.gov.lk/2014-05-12-12-36-13/system-licence/licenced-operator-list.htm>>

Further broadcasting operators also need to obtain a licence from the TRC to obtain frequencies and operate apparatus for broadcasting. This is in addition to the licences to be acquired from the SLBC/SLRC to operate a broadcasting station. There is no direction in the relevant legislation on the connection between the functions between the TRC and the SLBC/SLRC in respect of these licensing functions, nor is there any instruction on how these institutions can work together to deal with ownership and concentration issues of such companies.

- (ii) **Consumer Affairs Authority** – The CAA is authorised to investigate anti-competitive conduct – although it is not necessarily a competition authority, as it has limited responsibilities in dealing with such conduct (i.e. it does not cover monopolies or mergers and acquisitions). There is also no direction on the manner in which the Consumer Affairs Authority is to function with other institutional bodies such as the SLPC and TRC. In any case, the CAA in itself, is not equipped to deal with specific issues relating to concentration and monopolies, and therefore will not overlap with other regulatory authorities in this regard.
- (f) Are there any explicit constitutional or other **legal guarantees of independence** of the authorities (media, competition, telecommunication...) from political and/or commercial interference?

There are no explicit constitutional or other legal guarantees of independence of authorities regulating print, electronic and digital media in Sri Lanka, nor is there such a guarantee in respect of the CAA.

There have, however, been Supreme Court decisions which have emphasized the need for independence of state authorities regulating the media. For instance, in 1997, the government introduced 'The Broadcasting Authority Bill' as an attempt to introduce an 'independent' regulator for the broadcasting sector. The Supreme Court ruled that this Bill was unconstitutional and reiterated the need to ensure that regulation and control of frequencies should be considered a public good, with the government functioning as a trustee for the public.⁴¹

- (g) How are the **appointment procedures** for the authorities defined (e.g. transparent, democratic and objective and designed to minimize the risk of political or commercial interference, for instance by including rules on incompatibility and eligibility)? Are they **respected** in practice?

While the legislation does have grounds for disqualification if the relevant persons are or become Members of Parliament, the legislation also effectively authorises political interference in appointment procedures to the relevant media authorities.

Appointments to the boards/central committees of the abovementioned authorities regulating media are under the purview of the executive (i.e. either the President or relevant Minister), and the Chairman of these authorities are from these appointments. There are no provisions for an independent commission or council to make any of the appointments. Additionally, the chairpersons to relevant boards/committees are also effected by the executive. Refer Table 2 below for details of appointments, qualifying criteria and grounds for disqualification for each media authority.

⁴¹ The Determination of the Supreme Court of Sri Lanka in the Broadcasting Authority Bill (1997) SD No. 1/97 – 15/97; K.P. Jayawardena (2008) *Obnoxious regulation of private telecasting* The Sunday Times <<http://www.sundaytimes.lk/081102/Columns/focus.html>>

This is further exacerbated by the fact that for institutions such as the SLPC and SLBC, there are no qualifying criteria for appointments to the authority by the President and Media Minister, respectively, nor is it necessary to provide justifications for appointments made in this regard.

The SLRC is the only authority which seems to have detailed procedures outlining the members to be appointed to the Corporation.

In all these cases, however, there is no requirement for the relevant Minister to possess the necessary qualifications or capacity to make such appointments or oversee these functions.

Table 2: Criteria for appointment to media authorities

Institution	Appointment	Qualifying Criteria	Disqualification
Sri Lanka Press Council (Sec 3 of the SLPC Law)	Six members of the Council are appointed by the President.	<ul style="list-style-type: none"> ▪ One member is to be selected from nominations submitted by the journalists association; ▪ One member is from nominations submitted by employees of newspapers businesses; ▪ No qualifying criteria for the other four members – entirely based on the President. <p>The President will appoint one of these members to be Chairman of the Council.</p>	If the member is or becomes a Member of Parliament.
SLRC (Sec 3 of the SLRC Act)	Appointments made by the Media Minister – subject to criteria outlined in the SLRC Act.	<ul style="list-style-type: none"> ▪ Four members with experience, capacity and recognition in engineering or legal/financial/labour/broadcasting matters; and ▪ Three members who are a representative of: <ul style="list-style-type: none"> ▪ SLBC ▪ National Film Corporation; ▪ Ministry of Education <p>The Minister will appoint one of these members to be Chairman of the Corporation.</p> <p><i>There is, however, no requirement for the Media Minister to possess any qualifying criteria in this regard.</i></p>	If the Member: <ul style="list-style-type: none"> ▪ Is a Member of Parliament; ▪ Has any rights or benefits, directly or indirectly, from: <ul style="list-style-type: none"> - any contract made by or on behalf of the SLRC; - any work done for the Corporation (except as a stakeholder); - is engaged in television broadcasting or production, marketing or distribution of television programmes.
SLBC (Sec 6 of the SLBC Act)	Appointments by the Media Minister	<p>Five members to be appointed by the Media Minister.</p> <p>One of the appointed members will be designated Chairman of the Corporation.</p> <p><i>There is no qualifying criteria to be appointed to the Corporation, nor is the Media Minister</i></p>	<ul style="list-style-type: none"> ▪ If the person is or becomes a Member of Parliament; or ▪ Is or becomes the owner, partner, director, major shareholder or employee in any

		<i>required to provide justifications for these appointments.</i>	business transacting with the Corporation.
Telecommunications Regulatory Commission (Sec 3 of the SLT Act)	Appointments specified in the SLT Act and by the relevant Minister	<ul style="list-style-type: none"> ▪ Three members (appointed by Minister in charge) to possess recognized qualifications and distinguished themselves in the fields of law, finance and management; ▪ The other two members are by virtue of holding positions of : ▪ Secretary to Minister in charge; and ▪ Director General <p>The Secretary to the Minister in charge will be Chairman of the Commission.</p> <p><i>There are no further instructions on the nature of the qualifications or distinction, nor is there any provision for the Minister to justify the appointments.</i></p> <p><i>There is also no requirement for the Minister or the other two members appointed by virtue of their positions to even possess similar or relevant qualifications.</i></p>	No provisions on disqualifications from the Commission.

(h) Is the **budget adequate** and consistent for the authority to safeguard its independence and/or protect it from coercive budgetary pressures and to perform its functions?

The budget for the media authorities listed in Table 2 above are drawn from two main sources:

- Self-funding - Raising funds themselves through licenses, fines and registration fees;
- Public Funds - These authorities can receive funds voted in by the Parliament, which is made upon a budgetary submission made by the relevant department/ministry to the Ministry of Finance upon preparation of the Annual budget; and in the case of the SLBC and SLRC, can also receive funds through sums advanced by the Ministry of Finance.

It is not possible to discern if the budget is adequate for performance of relevant functions. Funding from the Parliament is based on submissions made by the relevant institution to the Minister in charge, detailing the proposed activities and expenditures proposed for the following year of operations. Therefore, it is presumable that the relevant institution requests for the funding required to cover its operations. It is not possible to assess from the information publicly available, as to the extent to which the authorities are dependent upon funds voted by Parliament and/or advanced by the Ministry of Finance; and upon the income generated from performance of their functions.

The position of the SLBC and SLRC needs to be highlighted in this instance, given that there is no distinction made between their conflicting role as (a) state broadcasters and (b) licensing bodies of private radio and television broadcasting operators. Thus, the funds voted in by Parliament for these two institutions, along with the funds raised through grant of licences to private broadcasting services can effectively be used to effect both roles. There is no indication of the manner in which the finances are to be managed for the conflicting roles held by these two institutions.

- (i) What **sanctioning power** do the authorities have to accomplish its role (e.g. power to refuse license requests and to divest existing media operations where plurality is threatened or where unacceptable levels of ownership concentration are reached)? Are there **effective appeal mechanisms**?

Legislation governing media authorities do not explicitly have provisions detailing the sanctioning powers of authorities to deal with media concentration or ensure media pluralism. For instance, even though the SLPC Law has an overarching objective to study developments in relation to monopolies and concentration, there are no further instructions on measures to be taken to address this issue.

There are also no mechanisms for a third party to flag such issues and call for a public hearing or appeal in terms of concentration or plurality issues – unless there are regulations effected in this regard, or specific licences issued have terms and conditions in this regard.

In this context, in the case of radio broadcasting, the Media Minister is able to pass regulations under the SLBC Act on aspects relating to prohibition, regulation or control of the ownership of private broadcasting stations; as well as the regulation or control of the transfer of shares in companies holding licences for private broadcasting stations and transfer of interests on such stations (Sec 44(4) of the SLBC Act). Thus, any measures in terms of refusal to issue licence requests and dealings with shares may only be found in regulations. There are no such measures or provisions in respect of licences for television broadcasting operators under the SLRC Act.

There is, however, more instruction in respect of the TRC to grant licences for telecommunication operations, which includes frequency licences for radio and television broadcasting. If the licences issued by the TRC to operate frequencies have conditions relating to monopolies and mergers and acquisitions, the TRC can take action to ensure compliance (Sec 11(1) of SLT Act). In the case of ISPs and cable providers which also require licences from the TRC, licences can be revoked if there is a failure to comply with the relevant terms and conditions. The SLT Act also specifies the forum for the licensee to appeal by making representations or objections to the proposed order being made by the Authority (Sec 11(2) of SLT Act); and where it deems necessary in public interest, hold a public hearing in relation to the matter and a committee of inquiry is set up for this hearing (Sec 12 of SLT Act). There is also potential for the aggrieved party to appeal to the Court of Appeal based on question of law drawn from the order of the TRC (Sec 14 of SLT Act).

- (j) Please describe the **method** and the criteria for assessing the level of **media concentration**. (e.g. thresholds based on objective criteria, such as audience share, circulation, turnover/revenue, distribution of share capital or voting rights; taking into account 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).

References to monopolies and competitive structures are only made briefly in the legislation governing the print and electronic media sources, without further clarifications or elaboration of these terms. There are no provisions specifically describing the method and criteria for assessing levels of media concentration.

The CAA Act No. 09 of 2003 which has general provisions relating to regulation of anti-competitive conduct also has no guidelines dealing with the method and criteria for assessing concentration within the market. Further, as noted above, the CAA is not equipped with the provisions to effect investigations into media concentration of the scope required to regulate such issues. The previous legislation governing this aspect was the Fair Trading Commission Act No. 57 of 1993 had more provisions in this regard with specific definitions and criteria for assessing monopolies and mergers, and manner in which to take actions in this regard (Sec 11 to 13 of the Fair Trading Commission Act). However, the Fair Trading Commission Act has been repealed and therefore, is no longer applicable.

- (k) Is the authority **accountable to the public** for its activities, (e.g. is it required to publish regular or ad hoc reports relevant to their work or the exercise of their missions)?

Accountability of the media authorities, as state-funded bodies, are effected through three mechanisms:

- (i) **Reporting on finances to the Auditor General and Parliament** – The abovementioned media authorities are state bodies and therefore, bound by obligations to report finances to the Auditor General and Parliament.

Refer Table 3 below for details of financial reporting obligations of the relevant state authorities.

Public corporations are to maintain proper books and records of income, expenditure, assets and liabilities; and submit annual financial statements to the Auditor General.⁴² The Auditor General publishes audit reports of the relevant authorities on its websites, and these reports are also subject to oversight by the Parliament.

Additionally, the Auditor General, through the National Audit Act No. 19 of 2018, has the power to call for and access any written or electronic records or information relating to activities of the public corporation (Sec 7(1) of No. 19 of 2018).

While this indicates that there is an element of reporting of the financial status of authorities made available to the public, it does not necessarily mean that there is complete disclosure. The information in the reports may not be in the most accessible form for the general public, given the technical nature of the information.

Further, even though media authorities are to submit accounts to the Auditor General on an annual basis, the reports published on the Auditor General's website are not up to date.

- (ii) **Oversight by the Committee on Public Enterprises (COPE)** – COPE is a financial committee which investigates and reports to Parliament on accounts examined, budgets and estimates, financial procedures, performance and

⁴² Section 16 of National Audit Act No. 19 of 2008

management of corporations and other government business undertakings.⁴³ The accounts audited by the Auditor General form the basis of investigations by COPE.

The media authorities are public corporations and therefore, subject to investigation by COPE. The issues highlighted in the COPE reports are more accessible by the public, as in addition to being published online, the reports highlight the main concerns identified from investigation of accounts and activities of the relevant commission and explain the problems.

The only issue is that all media authorities are not necessarily subject to investigation by the COPE on an annual basis. Instead, these investigations are conducted on an ad hoc basis.

(iii) Right to Information (RTI) Act No. 12 of 2016 – All public corporations are subject to the provisions of the RTI Act which came into effect in 2016. Therefore, the media authorities are required to:

- *Proactively disclose information* - Publish bi-annual reports with details of (a) functions, activities and duties; (b) powers, duties and functions of officers and employees and procedures in decision making processes; (c) norms, rules, regulations, instructions and manuals for discharge of functions of officers and employees in relevant authorities; (d) budget allocated along with particulars of plans, proposed expenditures and reports on disbursements made; and (e) details of facilities available to citizens to obtain information (Sec 8 of the RTI Act). However, a review of official websites of these authorities as at 15th October 2018 reveals that information relating to budgets has not been made available online.
- *Respond to RTI requests by the public* - the public can submit requests for information on any aspects pertaining to the public authority, according to the provisions of Section 24 of the RTI Act.

It is, however, necessary to note that there is a level of reluctance by certain public corporations to proactively disclose information and respond to RTI requests. This is a systemic change that needs to take place in Sri Lanka, as public corporations have operated in a culture of secrecy in the past, and such reforms would require time and adjustments.

Table 3: Financial reporting obligations of media authorities

Media Authorities	Relevant Provisions and details of reporting	Frequency
Sri Lanka Press Council	<p>The SLPC is bound by the provisions of the Public Corporations (Financial Control) Act No. 38 of 1971 and therefore is required to:</p> <ul style="list-style-type: none"> ▪ Prepare draft annual report on exercise, discharge and performance by the corporation of its powers, functions and duties during that year and of its policy and programme. This report is submitted to the Minister in charge of the Corporation, the Minister of Finance, Minister in charge of Planning and Auditor General (Sec 11(1)) ▪ Submit audited accounts and annual reports to the Parliament (Sec 11(3)). 	Annually

⁴³ Refer Committee on Public Enterprises, Parliament of Sri Lanka <
<http://www.parliament.lk/en/component/committees/committee/showCommittee?id=162>>

	<ul style="list-style-type: none"> ▪ Make available the documents for purchase by the public (Sec 11(4)). <p><i>Audited financial reports of the SLPC are published on the website – although the latest available report is for 2015.*</i></p>	
Sri Lanka Broadcasting Corporation (SLBC)	<p>Maintain accounts and have it audited by the Auditor General for each financial year (Sec 26 and 27 of the SLBC Act).</p> <p>Auditor General's report on accounts of the Corporation are to be submitted to the Minister, who tables it in Parliament (Sec 29 SLBC Act).</p> <p>No further obligation to make it available to the public in the SLBC Act.</p> <p><i>Audited financial reports of the SLBC are published on the Auditor General's website – although the latest available report is for 2014.*</i></p>	Annually
Sri Lanka Rupavahini Corporation (SLRC)	<p>The SLRC is bound by the provisions of Article 154 of the Constitution and therefore is required to grant access to all books, records, documents and related information to the Auditor General to audit accounts as per Article 154 of the Constitution (Article 16(3) of the SLRC Act).</p> <p>Even though Article 154 of the Constitution does not specify a timeline or manner of publication - as per the National Audit Act, the auditor general is to present a detailed management audit report to the governing body of each auditee entity (public corporation) with copy to the Minister in charge of entity and Minister of Finance (Sec 11(2)) on an annual basis.</p> <p><i>Audited financial reports of the SLRC are published on the website – although the latest available report is 2015.*</i></p>	Annually
Telecommunications Regulatory Commission (TRC)	<p>Each operator has to provide a report giving a true and fair account of its activities, income and expenditure together with an audited statement of accounts for that financial year to the Authority (Sec 8 of the SLT Act). However, there are no provisions for these reports to be made available to the public.</p> <p>The TRC itself is required to maintain proper books of accounts with details of income and expenditure, assets and liabilities and all other transactions, which is subject to an audit by the Auditor General as per Article 154 of the Constitution (Sec 22J of the SLT Act).</p> <p><i>Audited financial reports of the TRC are published on the website, although the latest available report is from 2016.*</i></p>	Annually

**The audited financial reports referred to in Table 3 have not been assessed for accuracy or completeness of content.*

(I) Can the Government arbitrarily overrule the decision of the authority? In what cases? Are there cases of **illegal state interference?**

Decisions pertaining to appointment of members and licensing for the relevant media authorities, are under the purview of the relevant Minister/President. In certain instances, such as for the SLBC and SLPC, the Minister/President is not even required to provide justifications for the relevant appointments made – thus indicating that such decisions are entirely up to executive powers. Therefore, the legislation itself has mandated the Government to control certain decision-making processes.

Even in the case of regulations effected under the relevant Act, it is usually the Minister responsible for the subject making the regulations - although there are check in certain instances, where regulations have to be approved by the Parliament as well.⁴⁴

The government regulates the media through these media authorities. Some examples in this regard include:

- In 2008, the Media Ministry passed regulations under the SLRC Act providing that a television broadcasting licence could be cancelled if the programmes aired by the licensee were detrimental to the interests of national security.⁴⁵ This appeared to establish a mechanism through which the government could actually control content of programmes. These regulations have now been repealed.
- More recently, the current President Sirisena reconstituted the SLPC by appointing members to the Council in contravention of the relevant law. As noted in Table 2 above, two of the members of the Council are to be selected from nominations made by the journalists' association and employees of newspapers companies.⁴⁶ However, the appointments made by President Sirisena in June 2015 did not take into account nominations and therefore, the constitution of the Council is deemed to be illegal.
- The TRC is considered to be significantly under control of the executive.⁴⁷ In 2013, there were allegations of a news platform, the Colombo Telegraph, being blocked by the TRC, although the TRC denied these claims. Telecommunication intermediaries, i.e. the ISPs and mobile telecom operators were also required to conform to government requests to block websites with content critical of the government.⁴⁸

These are only a limited examples of government interference in the media. State interference was a regular feature under the previous President Rajapakse. While the level of state interference into the media has reduced under the new government which came into power in 2015, the executive still exerts some level of influence in this regard. It is necessary to amend legislation which grants powers to the executive for appointments and licensing decisions and move towards independent regulatory bodies which work together to effectively regulate the media.

(m) Have there been **cases of mergers and acquisitions** over the past five years? How proactive and how detailed has the authority **implemented the regulation** on media ownership? Have there been cases in which **regulators refused license requests, mergers** or forced divestment of existing media operations in order to avoid excessive concentrations of media ownership? What are the main **challenges** for the authority on the implementation?

As noted above, there is no overarching regulation on media ownership. There are documented cases of licences being refused or revoked by the broadcasting regulator, however, these were not based on avoiding excessive concentration of media ownership, but rather for other politically motivated reasons.

⁴⁴ Section 30 of the SLPC Law; Sec 46 of the SLBC Act; Sec 31 of the SLRC Act; and Sec 71 of the SLT Act.

⁴⁵ Private Television Broadcasting Station Regulations 2008 - Gazette No. 1570/35 of 10th October 2008

⁴⁶ Sri Lanka Press Institute (2015) *SLPI strongly oppose reactivation of the Press Council; a threat on Media Freedom* <<http://www.sipi.lk/sipi-strongly-oppose-reactivation-of-the-press-council-a-threat-on-media-freedom/>>

⁴⁷ Gehan Gunetilleke and Kishali P. Jayawardena (2005) *Legal, industry and educational reforms pertaining to the print media*

⁴⁸ Daily FT (2013) *Colombo Telegraph blockade: TRC clueless* <<http://www.ft.lk/article/181608/Colombo-Telegraph-blockade--TRC-clueless>>

For instance, in October 2007, the government suspended the ABC Radio Network, which ran five radio channels (Sun FM, Gold FM, Sha FM, Hiru FM and Suriyan FM), for carrying an inaccurate news item on a particular terrorist incident, despite the same news item being carried by other radio channels and national newspapers.⁴⁹ The network had also issued an apology and corrected the news story as soon as it discovered the error.⁵⁰ The licences and frequencies were subsequently re-issued in April 2008.⁵¹

The lack of regulation on media ownership in itself is the main challenge for regulators in taking actions to prevent excessive concentrations of media ownership or force divestment of existing media operations.

In the case of electronic media and other telecommunication operators such as ISPs, cable television operators and direct-to-home satellite operators, the TRC can incorporate conditions on ownership and mergers and acquisitions into licences. The TRC has done so for ISPs and cable operators and can revoke licences for failure to comply with such licences. It is not clear, however, whether any such actions have been taken in this regard in the past.

(n) Does decisional practice of the authorities indicate that they **use their powers** in practice in **the interest of the public**? Have there been cases of the **abuse** of regulatory power? What, when? Are the authorities considered a political or technical body?

The legislation establishing the relevant media authorities explicitly authorise the President/Minister to effect decisions such as on appointments and granting of licences. Thus, there is always an element of political interference with the potential for the relevant Minister to act on their own interests, rather than in the interests of the public. Abuses of regulatory powers in this context are evident in terms of appointments, revocation of licences, and shutting down of media operators.

For instance, the TRC has been highlighted as an institution which lacks transparency with regard to licence conditions, employs bad regulatory practices and engages in preferential treatment.⁵² There are various examples of the TRC being used to further political agenda, rather than act in the interest of the public. Given below are certain examples:

- *Appointments to regulatory authorities* – Appointments to the TRC, which grants licences for broadcasting operators, is to be effected by the Minister of Telecommunications. The SLT Act provides that the Chairman of the TRC is to be held by the Secretary to the Minister of Telecommunications. However, currently, these appointments are heavily influenced by the President of Sri Lanka, with his permanent secretary holding the position of the Chairman of the TRC.⁵³
- *Revocation of licences* – In June 2018, the TRC revoked the licence of a private television operator, Telshan Network (TNL), which is linked to the Prime Minister Ranil Wickremesinghe. The revocation occurred a few days after the station had criticised the President. The TRC initially alleged that the revocation was based on

⁴⁹ Amnesty International (2008) *Sri Lanka: Silencing Dissent* P. 36

⁵⁰ The Sunday Times (2007) *Appeal in ABC Suspension case tomorrow* <<http://www.sundaytimes.lk/071028/News/news0009.html>>

⁵¹ LBO (2008) *Sri Lanka's ABC radio to get back on air: official* <<http://ftp.lankabusinessonline.com/news/sri-lankas-abc-radio-to-get-back-on-air-official/1993069412>>

⁵² Malathy Knight-John (2008) *Telecom Regulatory and Policy Environment in Sri Lanka: Results and Analysis of the 2008 TRE Survey*. Institute of Policy Studies <http://limeasia.net/wp-content/uploads/2009/07/TRE_SriLanka_Final_2008Nov28.pdf>

⁵³ Freedom House (2017) *Freedom on the Net* <https://www.justice.gov/eoir/page/file/1026456/download>

the TNL failing to pay its licence fees, and then modified the statement stating that the TV station had been illegally operating two frequencies 'from time to time'.⁵⁴

- *Shutting down of media operators* – There have also been instances of broadcasting stations been shut down, as was the case of ABC Network, discussed above. Further, there are also allegations of the TRC blocking news websites across Internet Service Providers (ISPs) in Sri Lanka, as had happened with the website titled 'LankaENews' in 2017.⁵⁵

Further, the SLBC and SLRC, which are also regulatory authorities for radio and television broadcasting, while functioning as state-owned broadcasters, casts doubts on the functioning of these authorities in the interests of the public. The licencing process is deemed to be dependent on the goodwill of the Minister concerned, and therefore, private broadcasting stations are under pressure to maintain good relations with the government.⁵⁶

The fact that there is a lack of transparency with regard to the issue and functioning of licences issued by SLBC, SLRC and TRC creates the potential for arbitrary and politically-motivated decision making, thus resulting in these authorities being considered as political, rather than technical bodies.

⁵⁴ EconomyNext (2018) *Sri Lanka TRC says no 'undue ambition' shutting TNL*

<https://economynext.com/Sri_Lanka_TRC_says_no_%E2%80%98undue_ambition%E2%80%99_shutting_TNL-3-10835-10.html>

⁵⁵ Raisa Wickrematune (2017) *Blocked: RTI requests reveal process behind blocking of websites in Sri Lanka*. GroundViews

<https://groundviews.org/2017/12/08/blocked-rti-requests-reveal-process-behind-blocking-of-websites-in-sri-lanka/>>

⁵⁶ T. Jayaratne and S. Kellopotha (2005) *The Political Economy of the Electronic Media in Sri Lanka*, Media Reform Lanka, P.37

3. Transparency of media ownership

(a) Please describe binding (legal) and non-binding (voluntary) **transparency and disclosure practices of media companies with regard to ownership, investment and revenue sources?**

The structure for transparency and disclosure practices of media companies is disjointed with (i) measures differing between state and private media companies; and (ii) additional mechanisms depending on the type of media and the relevant authority which has purview over the media institution.

(i) In terms of the state and private media companies:

- State media – State media institutions are bound by the measures established through the laws that set up the media institution,⁵⁷ and reporting measures discussed in Section 1.2(k).

The laws in this regard usually have details on the constitution of the boards, sources and reporting of finances. Further, investments are mainly effected through budgetary allocations made by the Parliament which is reported in publications titled 'Budget Estimates' released by the Ministry of Finance on an annual basis.

- Private media – Private media companies are relatively less transparent with regard to details on ownership, investment and revenue sources.

All private companies are required to register with the Registrar of Companies and therefore, are regulated by provisions of the Companies Act No. 07 of 2007. Private media companies have to share details of directors and shareholders of the relevant media company, and these details are to be maintained in a share register at the Registrar of Companies which is available for public perusal. This share registry may now, however, be easily accessible for the public, given that it is necessary to request for permission to view these details, and a person has to physically visit the Registrar to review these details. Further, there is no requirement for private media companies to disclose investment and revenue sources of private media companies.

Refer Table 4 below for a detailed overview of the transparency and disclosure requirements of state and private media companies.

It is also necessary to note that it is difficult to clearly ascertain specific interests of private sector, as owners may have links or be sympathetic to different political groups or parties, who can ultimately influence content. There has been no systematic review of the relationship between media ownership and political interest groups in Sri Lanka, which is a factor to be taken into consideration as well.⁵⁸

(ii) There are also further transparency and disclosure requirements for specific types of media:

- *Print Media:* There is a small window for transparency in the case of print media companies – as there is an additional reporting function to the SLPC. All newspapers have to disclose details of the proprietor, published, editor and working journalists of the newspapers on an annual basis (as per the Press Council (General) Regulations 1973).⁵⁹ Any changes during the year to the proprietor and editor of a *newspaper* also has to be recorded within 14 days of taking on the position has to register their

⁵⁷ i.e. the SLBC Act for SLBC; the SLRC Act for SLRC and ITN; and ANCL Act for Lakehouse publications (Refer URL: <http://www.lakehouse.lk/publications/main-papers>)

⁵⁸ Kishali, Pinto Jayawardena and Gehan Gunatilleke (2012) *Legal, Industry and Educational Reforms pertaining to the Print Media*, Institute of Commonwealth Studies

⁵⁹ Regulation 6 of Gazette No. 63/5 of 12th June 1973

names as proprietor or editor with the Council.⁶⁰ This information may provide a means of understanding ownership of the relevant newspaper publications.

- *Radio and television broadcasting operators, ISPs, cable operators and satellite television providers related broadcasters* - Companies which require licences from the TRC are required to prepare a report giving a true and fair account of its activities, and of its income and expenditure during the year together with an audited statement of accounts for the financial year to the TRC (Sec 8 of the SLT Act). However, this reporting is restricted to the Authority of the TRC and does not necessitate disclosure to the public.

Table 4: Transparency and disclosure requirements of media companies on ownership, investment and revenue

Name of Media Institution	Description of transparency and disclosure practices for ownership, investment and revenue
State Media	
Associated Newspapers of Ceylon Limited (LakeHouse publications)	<p><u>Ownership:</u> Ownership of ANCL is laid out in the ANCL Act.⁶¹ The ANCL was initially a private media institution and taken over by the Government in 1973. Following the takeover:</p> <ul style="list-style-type: none"> - 75 percent of the shares are to be held by Public Trustee on behalf of the Government; - Remaining 25 percent to be held by shareholders of company prior to takeover of the company. No individual shareholder can hold more than 2 percent of the total number of shares. <p>The takeover was subject to a specific undertaking to broad-base ownership of the ANCL and gradually divest majority of shares held by the Public Trustee to the public (Sec 5 of ANCL Law). However, this has yet to take place. According to submissions filed with the Supreme Court, the Public Trustee actually hold around 87 percent of the total shares, and fundamental rights petitions have been filed by the employees union in 2008 and 2009 to broad-base shares as called for the by the ANCL Law.⁶² However, these petitions were dismissed.</p> <p><u>Investment and Revenue Sources</u> As a state body, the ANCL is subject to the Public Corporations (Financial Control) Act No. 38 of 1971,⁶³ and therefore would have to submit audited accounts, along with details of its transactions to the Parliament at the end of every financial year. This would be a means through which to require disclosure and transparency of the ANCL of the funds received and revenue sources. Any funds received by way of sales of shares by Public Trustee may also presumably be reported in these accounts, as it is a source of revenue. <i>While audit reports of the ANCL are published on the Auditor General Department website, the reports are outdated as the latest report available is from 2016.⁶⁴ This raises questions as to whether the ANCL is up to date on its financial reporting requirements – and whether the Auditor General is current with its assessments of the institution.</i></p>
Sri Lanka Broadcasting Corporation	<p><u>Ownership</u> The SLBC is a state-owned radio broadcasting institution, with appointments to the Corporation being effected by the Media Minister (Sec 6 of SLBC Act).</p>

⁶⁰ Gazette No. 63/5 of 12th June 1973 was amended by Gazette No. 806/16 of 15th February 1994. Regulation 11 which provide rates for registration and renewal of registration of proprietor or editor' was amended in the 1994 Gazette Notification.

⁶¹ Associated Newspapers of Ceylon Limited Act No. 28 of 1973

⁶² SC FR 109/2008; and SC. FR Appeal No. 637/2009

⁶³ Sec 16 of ANCL Law No. 28 of 1973

⁶⁴ As at 15th September 2018

	<p>There is an understand that the general practice is for the composition of these corporations to change as government changes.</p> <p><u>Investment and Revenue Sources</u></p> <p>The SLBC collects revenue through licencing fees collected from private radio broadcasters, fines and other sums outlined in the legislation; and receives investment in the form of funds allocated by the Parliament on an annual basis (Sec. 23 of the SLBC Act).</p> <p>The financial reports to be submitted by the SLRBC to the Auditor General, could have details of revenue sources of the Corporation. <i>(Although the latest available audited report of the SLBC is from 2014).</i>⁶⁵</p> <p>The funds disseminated to the SLBC through Parliament can be discerned through the Budget Estimates published by the Ministry of Finance at the end of the year.</p>
Sri Lanka Rupavahini Corporation	<p><u>Ownership</u></p> <p>The SLRC is a state-owned television broadcasting institution, with appointments to the Corporation effected by the Media Minister subject to qualifying criteria outlined in the law (Sec 3 of the SLRC Act).</p> <p>Similar to the SLBC, there is an understanding that the general practice is for composition of the Corporation to change with changes in government.</p> <p><u>Investment and Revenue Sources:</u></p> <p>The SLRC collects revenue through licencing fees collected from private radio broadcasters, fines and other sums outlined in the legislation; and receives investment in the form of funds allocated by the Parliament on an annual basis (Sec. 13 of the SLRC Act).</p> <p>Similar to the SLBC – Financial reports to be submitted by the SLRC to the Auditor General, may have details of revenue sources of the Corporation (although the latest available audited report of the SLRC is from 2015).⁶⁶ Funds disseminated to the SLRC through Parliament can be discerned through the Budget Estimates published by the Ministry of Finance at the end of the year.</p>
Independent Television Network (ITN)	<p>ITN is another state-owned television station. ITN was initially launched as a private station but taken over by the government in 1979. It operates under the Sri Lanka Rupavahini Corporation Act No. 06 of 1982, and the same provisions applicable to SLRC will be applied to ITN.⁶⁷</p>
Private Media	
Private Media Companies (all private companies are bound by the same obligations)	<p><u>Ownership:</u></p> <p>Private companies are required to disclose ownership details at the point of incorporation of the company – by submitting the names of director(s) and shareholders of the company to the Registrar of Companies (Sec 4 of Companies Act).⁶⁸</p> <p>Subsequent transfer of shares are to be disclosed to the Registrar of Companies (Sec 75 of Companies Act); and companies (apart from companies limited by guarantee) are to submit annual returns which also provides details of shareholders and related information (Sec 131 of Companies Act).</p> <p><i>While the share register can be viewed by the public, it may not be easily accessible, as it is located within the Registrar of Companies, and interested parties have to request for approval to view the register.</i></p> <p><u>Investment and Revenue:</u></p> <p>There are no obligations on private companies to disclose revenue sources or investments into the company to the public.</p>

(o) **Which media organizations** are covered by the reporting requirements? **To whom** must disclosure be made? How often/ in what cases has the data to be updated?

⁶⁵ As at 15th September 2018

⁶⁶ As per a check of the Auditor General's website on 15th September 2018

⁶⁷ JICA(2014) *Political Economy of Media*

⁶⁸ Companies Act No. 07 of 2007

All state and private media companies are covered by reporting requirements, although the nature of the requirements itself may differ.

Refer Table 5 for details of standard reporting requirements on state and private media companies.

Table 5: Overview of reporting by media organisations

Media Organisations	Reporting requirements	Responsible authority for reporting	Frequency
General Provisions			
State media companies (i.e. ANCL/SLBC/SLRC/ITN)	Budget Statements – All public corporations are to submit projections of revenue and expenditure, financial resources, investment of funds, cash resources and other relevant information. ⁶⁹	Minister of Media; Minister of Finance; and Minister in charge of Planning	Annually
	Annual Financial Statements – All public corporations are to maintain proper books and records of income, expenditure, assets and liabilities. ⁷⁰	Auditor General; and Parliament of Sri Lanka	Annually
	Respond to requests for information on any paper, book, record or documents of the Corporation – in order to assist with examination of accounts of the Corporation.	Committee of Public Enterprises (COPE) of the Parliament of Sri Lanka	As required by COPE
	Information pertaining to functions, activities and duties; norms, rules, regulations, instructions and manuals; budgets allocated along with particulars of plans, proposed expenditures and reports on disbursements made; and details of facilities available to citizens to obtain information. ⁷¹	To be made available to the public.	Bi-Annually
	Requests for information which is in the possession, custody or control of public authority. ⁷²	Public citizens.	As requested by the citizen.
Private Media Companies	Names of directors and shareholders	Registrar of Companies	At point of incorporation
	Transfer of shares – with details of transfer (i.e. the names and number of shares)	Registrar of Companies	Within 14 days of transfer of shares
	Annual Returns - including details of share register; breakdown of shares; directors; secretary; auditors; and existing shareholders.	Registrar of Companies	Annually
Sector specific requirements			
Operators of telecommunication networks (i.e. radio and	Account of activities, along with income and expenditure, and audited	Telecommunications Regulatory Commission	Annually

⁶⁹ Section 6 of Public Corporations (Financial Control) Act No. 38 of 1971

⁷⁰ Section 16 of the National Audit Act No. 19 of 2018

⁷¹ Section 8 of the RTI Act No. 12 of 2016

⁷² Section 3 of the RTI Act No. 12 of 2016

television broadcasters; and ISPs, cable providers and satellite broadcasters)	accounts for the financial year. ⁷³		
Newspaper publications	Names of proprietors, editors, publishers and working journalists	Sri Lanka Press Council	Annually (by 31 st Jan of each year). Any change in proprietors or editors are to be notified within 14 days of appointment.

(p) What **information** is required to be **disclosed**? (e.g. key persons/bodies and their functions in the media; details of shareholders and size of their holding, beneficial owners; interests of the people/body in other media / economic sectors; people influential to the programming/editorial policy; political or other affiliations of the owners and its family members; public advertising revenues, funding form other external sources)

Table 5 above provides an overview of the information which is to be disclosed by state and private media companies. The obligations on state media companies are more stringent than those placed on private media companies.

State Media Companies - Since state media companies are public corporations, there are several financial reporting requirements – in order to request for funds during the budget cycle, and audit accounts at the end of every year. Thus, details pertaining to revenue and funding can be discerned from the accounts submitted by these companies. Additionally, state media companies are required to disclose information for investigations into its accounts by the Parliamentary Committee on Public Enterprises (COPE) and through the Right to Information (RTI) Act.

The main concern that arises in terms of state media is that the persons appointed to run these media companies which is effectively under the purview of the government. There is no requirement in any of the state media companies (i.e. the SLBC, SLRC, ITN and ANCL) to disclose details of political or other affiliations by owners and family members or disclose any such interests in this regard. In the case of the SLBC, SLRC and ITN, if the members are or become a Member of Parliament, it serves as grounds for disqualification – but this does not extend to political affiliations, connections or interests in this regard. The SLRC does have some scope for disclosure of any other economic interests held by members to the Corporation,⁷⁴ but these similar provisions do not extend to the SLBC and ANCL. As is evident from the discussion above, state media bodies are heavily influenced by the government and often used as tools to further the agenda and interests of the government. The limited requirements for disclosure of such interests is a blindspot in the legislation and creates space for misuse by political powers.

The Right to Information Act No. 12 of 2016 may provide an avenue for the public to obtain such information pertaining to political affiliations; corresponding interests in other sectors and editorial policies – if it affects the functioning of the public corporation and is in the public interest. However, it is important to note that given that this is a relatively new Act, and public corporations are still adapting to the more open

⁷³ Section 8 of the SLT Act No. 25 of 1991

⁷⁴ Section 3(4) of the SLRC Act No. 06 of 1982

framework required by the legislation – there may be some initial reluctance to disclose such information.

Private Media Companies – Private media companies are required to report on details of directors, shareholders and any transfer of shares to the Registrar of Companies under the Companies Act No. 07 of 2007. However, this is not necessarily an effective means of disclosure as the information is not easily accessible nor does it clearly indicate details of ownership at the outset. Details of shareholdings are maintained in a share registry at the Registrar of Companies, and if a member of public is to gain access to this information, it is necessary to submit a request and physically be at the premises to review the registry.

There is no requirement for private media companies to publicly disclose any political interests or affiliations – which is also a concern in the media framework in Sri Lanka, as there is potential for political influence in private media companies as well. Given that broadcasting operators, ISPs, cable operators and satellite broadcasters are dependent on licences from the TRC to receive frequencies to operate stations, and the TRC itself is heavily politicised, it does leave room for political interference in private media companies.

Apart from the basic ownership details, there are no further requirements for private media companies to disclose programming/editorial policies, political or other affiliations, revenue and funding sources. Annual reports of private companies are only required to be disclosed to the shareholders,⁷⁵ which may not necessarily be the broader public.

It is possible that private media companies may voluntarily disclose information pertaining to other media/economic interests and some companies do publish their annual reports online which provides an insight to programming policies and other related interests. For instance, the Capital Maharaja Group which owns and operates three free-to-air terrestrial television channels and five radio channels, has details of its other business activities on its website. The absence of a legal requirement in this regard, however, does not place any burden or requirements on such entities to disclose such information.

(q) How **accessible** is the information **to the public**? In what manner is the information to be made available? Is it comprehensible for the general public?

Information to be disclosed by state and private media companies are available to the public (*as listed out in Table 5 above*), although it may not necessarily be the most accessible format for the public.

In the case of the state media companies – budgetary and financial information is made available online, although the information is highly technical and may not be easily grasped by the general public. Budgetary information is published in Budget Estimates released by the Ministry of Finance prior to the Budget Speech; and audited financial reports are published on the Auditor General’s website (albeit not up-to-date). The information to be proactively disclosed under the RTI Act is to be made available in electronic form,⁷⁶ although these provisions are yet to be complied with by the abovementioned state media companies.⁷⁷

⁷⁵ Section 119(1)(b) of the Companies Act.

⁷⁶ Section 8(2) of the RTI Act

⁷⁷ As per web-checks conducted on 15th September 2018

In the case of private media companies – details of shareholdings of private companies are maintained in a share registry at the Registrar of Companies and this information is available for public inspection.⁷⁸ However, as noted above, this is not necessarily effectively accessible to the public, given that it is necessary to submit a request to the Registrar of Companies and be physically present at the Registrar to review the information.

(r) How is this **monitored** and **regulated**? Are there any **sanctions for the failure to report**?

Financial reporting by state media bodies is monitored by the Auditor General and COPE. A failure on the part of the entity to furnish information requested by the Auditor General or resists or obstructs functions and duties of the Auditor-General, will be held to have committed an offence and subject to a fine.⁷⁹ The extent to which this is stringently applied on state media bodies is, however, not clear.

In the case of private media companies, the only reporting is in terms of names of directors and shareholders at the point of incorporation, and subsequent transfer of shares. Failure to register the names and subsequent transfers, which is the basis for reporting such information, will effectively result in such transactions being deemed unlawful. This is particularly problematic for private companies, as, if the transactions are unlawful, the owners/shareholders will not have any legal rights, thus effectively denying them of any legal remedies if there is any issue.

Print media institutions are further bound by provisions of the SLPC Law and Regulation 12 of the Press Council (General) Regulations 1973⁸⁰ which provides that if a breach of any of the provisions of the Press Council Law comes to the notice of the Minister and no action has been taken to remedy the breach, the Minister can direct the Council to take action necessary. In this context, all newspapers are required to register names of proprietors, editors, publishers and working journalists on an annual basis, and inform the SLPC of any change in proprietor or editors within fourteen days.⁸¹ Thus, it is arguable that a failure to submit the required information in this regard may be viewed as a breach of the SLPC Law, and can attract sanctions.

⁷⁸ Section 120(1) of the Companies Act

⁷⁹ Section 42 of the National Audit Act No. 19 of 2018

⁸⁰ Gazette Notification 63/5 of 12th June 1973 < <http://slpc.lk/images/doc/1973-06-12-english.pdf>>

⁸¹ Regulation 6 and 9 of Gazette Notification 63/5 of 12th June 1973(Press Council (General) Regulations 1973)

4. Other state influence on media organizations

- (a) Does the state impose prohibitive **taxes** or levies on media organizations? Does the state **tax policy and practice** discriminate against or favor specific private media outlets over others?

Private media companies are subject to the general taxes/levies applied for corporate entities. This entails - corporate income tax; withholding taxes in terms of interest on bank deposits; economic service charges; and value added taxes and nation building taxes in relation to services provided. There are reduced rates available for private companies, although this is not a discriminatory feature, but for manufacturers and service providers with turnover less than specified amounts for the year of assessment. Further, private media companies are also subject to import taxes/customs duty if required to import apparatus or equipment for its functions.

The more prohibitive tax on media organisations are those levied on telecasting films, tele-dramas and TV commercials produced in a foreign country. This tax was initially introduced in 2013, and subsequently increased in 2017,⁸² with coverage extended to foreign commercials on cable and satellite television networks.⁸³

While there is no evidence of discrimination or favouritism in terms of tax policy and practice among private media outlets, there is an unequal platform in this context between state and private media outlets. State-owned media corporations are actually exempt from certain taxes. Public corporations are exempt from taxes on income and profits to the extent of services provide on behalf of the Government of Sri Lanka, and free of charges on funds received by the Parliament from the Consolidated Fund or through any loan from the government. Further, the SLBC (the state-owned radio broadcaster) is exempted from income tax and customs duty on articles imported by the Corporation for any of its purposes.⁸⁴

- (b) What **entry barriers** does the regulatory and institutional system create for new entrants to the media market (e.g. start-up fees or other restrictions)?

The barriers for entrants into the media market are two-fold: (i) Limited resources for electronic broadcasting; and (ii) the lack of transparency in the system making it harder for new entrants to figure out the landscape of the system.

i. *Limited resources are available for electronic broadcasting –*

Various sectors are competing for frequencies within a finite spectrum and therefore, a natural frequency allocation plan is used by the Telecommunications Regulatory Commission to allocate frequencies to different services. The finite spectrum may be a limitation for new entrants seeking to enter broadcasting services. This is further constrained by the fact that Sri Lanka's private broadcasters have limited transmission capabilities, as they can only broadcast on the FM band, while SLBC is able to broadcast island wide on medium wave, short wave and FM bands.⁸⁵

⁸² Finance (Teledrama, Film and Commercials Levy) Regulations No. 1 of 2017 - Gazette Notification 2044/21 of 07th November 2017

⁸³ Sri Lanka Country Commercial Guide (2017) *Sri Lanka – Import Tariffs* <<https://www.export.gov/article?id=Sri-Lanka-Import-Tariffs>>

⁸⁴ Section 32 of the SLBC Act No. 05 of 1974

⁸⁵ K.P.Jayawardena and G. Gunetilleke (2012) *Legal, Industry and Educational Reforms pertaining to the Print Media*, Media Reform Lanka; Amnesty International (2008) *Sri Lanka: Silencing Dissent*

ii. *Lack of transparency in the system* –

The process of licensing and frequency allocations are not based on clear criteria or rules, thus resulting in a level of discretion in the process. The composition of the TRC itself is heavily politicised,⁸⁶ which can have implications for those applying for licences to the TRC.

The lack of transparency in the licensing system is also evident in the system for granting broadcasting licences for radio and television. These licences are issued by the Media Minister in consultation with the relevant Corporations (through Sec 44 of the SLBC Act; and Sec 28 of the SLRC Act). The political involvement in this process, coupled with the fact that there are no published guidelines or criteria to assess applications results in a process which lacks transparency and may be discretionary – which in itself is a barrier for new entrants seeking to enter the media market.

(c) Does media concentration play a role in the process of **spectrum allocation**?

Section 10(1) of the SLT Act provides that the Authority is the sole lawful body authorised to manage and control the use of the radio frequency spectrum. The TRC website provides details of the spectrum policies of the TRC and explains that the radio spectrum policy is guided by principles and best practices consistent with international spectrum policies. This includes the need to 'create a conducive environment to promote competition among industry players in order to ensure innovative spectrum and promote economic and social benefits for all spectrum users'.⁸⁷

However, it is necessary to note that there is no official documentation on the spectrum policy uploaded on the TRC website, and there is a lack of clarity as to whether measures are taken to incorporate media concentration into the process of spectrum allocation. The process for frequency allocation is not based on open criteria or rules, and therefore, it is not possible to definitively ascertain whether media concentration does play a role.⁸⁸

(d) Is the **decision-making process** about the allocation of frequencies between public, private and community broadcasters **transparent, open, participatory** and overseen by an **independent regulatory authority**, which meets international standards and is free from political or commercial interference or control by any vested interest?

There are no open guidelines on allocation of frequencies by the TRC. A report titled 'Rebuilding Public Trust' published by the Secretariat for Media Reforms in May 2016 noted the need for clear criteria and rules in terms of frequency allocations.⁸⁹ According to the TRC website, the national frequency allocation table (NFAT) is derived from the international frequency allocation of Article 5 of the International Telecommunication (ITU) Radio Regulations.⁹⁰

⁸⁶ Freedom House (2017) *Freedom of the Net* <https://www.justice.gov/eoir/page/file/1026456/download>

⁸⁷ Telecommunications Regulatory Commission of Sri Lanka, *Spectrum Policy* <<http://www.trc.gov.lk/spectrum-policy.html#home4>> Accessed 15 Sept 2018

⁸⁸ Secretariat for Media Reforms (2016) P.77

⁸⁹ Secretariat for Media Reforms (2016) P. 78

⁹⁰ Telecommunications Regulatory Commission of Sri Lanka, *International Framework* <<http://www.trc.gov.lk/international-framework.html>> Accessed 15 Sept 2018

Even though the SLBC and SLRC are responsible for granting licences to operate media companies for radio and tv broadcasts, these institutions do not have purview over allocations of frequencies. Even in the case of granting licenses by the SLBC – the licensing process is described as undefined, opaque and discretionary on the part of the Minister and officials in charge of media, and there are no published guidelines or criteria.⁹¹ The Media Minister, in consultation with the Corporation, has authority to issue broadcast licenses; and the criteria for consideration and decision-making processes are not explained; and licenses can be suspended or revoked at any time, nor is there a right of appeal.⁹²

Further, the TRC is reported to be strongly under the control of the government and there is no mechanism/process for assignment of frequencies.⁹³ Therefore, there is demand for an independent broadcast regulator to closely coordinate with the government on broadcasting frequencies allocations to ensure an equitable allocation of frequencies between public service, commercial and community broadcasters.⁹⁴

(e) Is the **state advertising** distributed to media fairly, for example proportionately to their **audience share**? How would you describe the **rules of distribution** of state advertising? Is it being monitored?

There are no rules or guidelines to ensure that state advertising is fairly distributed based on circulation figures, nor are there any mechanisms in place to monitor distribution of state advertising. According to a report published by the Secretariat for Media Reforms, state advertising accounts for almost 30 percent of the total advertising within the media industry, although the figure can vary from year to year.⁹⁵ According to this report, the state discriminates in terms of its advertising patronage, with state-owned print and broadcasting houses receiving an assured volume of state advertising, irrespective of circulation or audience ratings.⁹⁶ Further, there were also concerns about successive governments using state advertising as a means of influencing private owned media, by threatening to cut off state advertising.⁹⁷

(f) Is there **a monitoring of advertising** allocation?

There is no official monitoring of advertising allocations, apart from market research conducted by firms such as Nielsen into total advertising spending across print, radio and television. There is also no legislative structure to implement a system of monitoring for advertising allocations.

(g) Are there **other laws** or **policies** by which the state/ government interferes in the media business (e.g. blocking of websites, censorship)? Which? Is **freedom of press and editorial independence** guaranteed in law and respected in practice? (please elaborate only shortly)

The freedom of press and editorial independence is constitutionally protected through Article 14(1)(a) of the Constitution of Sri Lanka which provides that 'every citizen is entitled to freedom of speech and expression, including publication'. This protection is subject to upholding the the interests of racial and religious harmony in relation to

⁹¹ Secretariat for Media Reforms (2016) P.68

⁹² Secretariat For Media Reforms (2016) P. 32

⁹³ K.P. Jayawardena and G. Gunatilleke (2012) *Legal, Industry and Educational Reforms pertaining to the Print Media*, Institute of Commonwealth Studies P.48

⁹⁴ Secretariat for Media Reforms (2016) P.117

⁹⁵ Secretariat for Media Reforms (2016) P. 88

⁹⁶ Secretariat for Media Reforms (2016) P. 88

⁹⁷ Secretariat for Media Reforms (2016) P. 89

parliamentary privilege, contempt of court, defamation or incitement to an offence, as well as in the interests of national security, public order and protection of public health or morality.⁹⁸ The Supreme Court has reiterated the significance of Article 14(1)(a) by stating that the Constitution needs to be interpreted broadly, to be invoked in combination with other express guarantees in the Constitution; as well as implied guarantees necessary to make such express guarantees meaningful such as the right to obtain and record information and not be compelled to disclose sources of information.⁹⁹

Nevertheless, the existing legislation fails to uphold the spirit of this Constitutional provision by (i) indirectly empowering political interference in the conduct and functioning of the media companies; and (ii) directly explicitly imposing restrictions on media institutions.

(i) Indirect measures refer to the provisions in place for the President/Minister to grant licences through state bodies employing processes which are based on limited criteria or guidelines,¹⁰⁰ thus leaving scope for manipulation of the process. Further, the Media Minister also exerts a level of control over content and activities of the state broadcasting stations, by requiring compliance with government policy¹⁰¹ or establishing consultative committees to advise on television broadcasting.

State owned media are regularly influenced by politicians of the ruling party to determine news coverage.¹⁰² Further, private media organisations also regularly face interference from owners and managers to interfere with news coverage and commentary to suit political/commercial interests.¹⁰³ As a result, there are calls for editorial independence to be protected by law with independent regulators in place to guarantee such independence.¹⁰⁴

Additionally, in the case of print media, the Sri Lanka Press Council Law is considered to be restrictive as it allows for imprisonment of persons for certain publications.¹⁰⁵

(ii) Direct measures are in the form of specific restrictions found in legislation. The Prevention of Terrorism Act No. 48 of 197 and Public Security Ordinance No. 25 of 1947 have been used in the past to control and ban publications and imprison journalists.

Refer Box 8 below for examples of use of legislation to interfere with and restrict media.

In addition to actions through the abovementioned legislative provisions, the government has also intervened in the past to restrict media. An example of such an activity is the revocation of licences of five FM radio channels of ABC Radio Network (Sun FM, Gold FM, Hiru FM, Shaa FM, and Sooriyan FM) in October 2007. The license was suspended after one channel broadcast an erroneous report about Tamil tigers arriving in a Southern village. The company apologized and corrected itself, but the government considered it a 'gross violation of the freedom of expression'. The company sought Supreme Court intervention but was unsuccessful. The license was restored six months later – however, the entire decision-making process lacked transparency and

⁹⁸ Article 15(2) and 15(7) of the Constitution of Sri Lanka.

⁹⁹ Fernando vs. The S.L.B.C. and Others (1996)

¹⁰⁰ Secretariat for Media Reform (2016)

¹⁰¹ The SLBC is required to comply with the general policy of the government, as well as general or special directions given by the Media Minister (Sec 5 of SLBC Act); and the Media Minister can pass regulations to establish one or more consultative committees to advise the Corporation on matters relating to television broadcasting (Sec 29 of SLRC Act)

¹⁰² Secretariat for Media Reforms (2016) P. 110; 132

¹⁰³ Secretariat for Media Reforms (2016) P. 25

¹⁰⁴ Secretariat for Media Reforms (2016).

¹⁰⁵ Refer Section 15 and 16 of the SLPC Law No. 05 of 1973

seemed to have been significantly influenced by political rather than public interest considerations.¹⁰⁶

The government has also, in the past, taken measures to control the flow of information. In 2006, the Media Centre for National Security (MCNS) which was set up in 2006 to assume authority for dissemination of all information related issues on national security and defence, including unofficial pre-publication censorship on issues of 'national security and defence'. This Centre was dissolved in December 2013.¹⁰⁷ Additionally, all local and foreign journalists practicing in print, television and radio broadcasts, are also required to obtain media identity cards from the Department of Government Information.¹⁰⁸

More recently, steps were taken to block certain online websites and access to social media platforms across Internet Service Providers (ISPs) in Sri Lanka. In March 2018, the TRC temporarily blocked social media websites including Facebook, Twitter, Whatsapp, Viber, Youtube and Instagram as a means of containing false information spread through these platforms.¹⁰⁹

There have been efforts to strengthen freedom of expression in the past. The Report of the Committee to Advise on the Reforms of Laws Affecting Media Freedom and Freedom of Expression (more commonly known as the R.K.W.Goonsekera Committee Report) published in 1995 acknowledged that existing laws do not contain adequate provisions to ensure freedom of expression, as political authorities exercise supervision and control over broadcasting.¹¹⁰ Further a Constitutional Bill presented in 2000 sought to strengthen this freedom through *Article 16(1) - Every person is entitled to the freedom of speech and expression including publication and this right shall include the freedom to express opinions and to seek, receive and impart information and ideas either orally, in writing, in print, in the form of art or through any other medium.* However, the Bill was never enacted into law due to the lack of political consensus.¹¹¹

Box 8: Legislative provisions restricting media freedom

Prevention of Terrorism Act (PTA) No. 48 of 1979 – has provisions relating to publications and requires approval by a competent authority to print or publish a newspaper for specified types of content. The media and civil society have called for the repeal of the PTA altogether. An example of the use of the PTA was in the case of the arrest and imprisonment of journalist J.S.Tissainayagam in March 2008. The journalist was charged with inciting the commission of acts or violence or racial or communal disharmony by publishing certain articles in the North-Eastern Monthly Magazine in 2006 and 2007 and sentenced to 20 years rigorous imprisonment.¹¹² The Court decision was criticised on several levels relating to the Judge's acceptance of the confession, despite a host of evidentiary discrepancies put forward by the defence; the fact that there were no prosecution witnesses

¹⁰⁶ Secretariat for Media Reforms (2016) P.32

¹⁰⁷ Secretariat for Media Reforms (2016) P. 43

¹⁰⁸ Refer – Media Accreditation Unit, Department of Government Information < <https://www.dgi.gov.lk/divisions/1/accreditation-unit>> (Accessed 20 Sept 2018)

¹⁰⁹ Natasha de Alwis, 'Facebook and other Social Media Networks are temporarily blocked', NewsFirst.lk, 07th March 2018 <https://www.newsfirst.lk/2018/03/07/measures-taken-monitor-social-media-websites-trc/> (Accessed 20 Sept 2018)

¹¹⁰ T.Jayarathne, K.Pinto Jayawardena, J. de Almeida Guneratne P.C and S.Silva (2005) *Sri Lanka Enabling Environment Study* World Bank P.15

¹¹¹ T.Jayarathne, K.Pinto Jayawardena, J. de Almeida Guneratne P.C and S.Silva (2005) *Sri Lanka Enabling Environment Study* World Bank P. 18

¹¹² Gehan Gunetilleke and Kishali P. Jayawardena (2005) *Legal, industry and educational reforms pertaining to the print media*, Institute of Commonwealth Studies. P.77/78

summoned to prove the articles could cause ethnic disharmony; and effectively failing to adhere to the fundamental principles of a fair trial.¹¹³

Public Security Ordinance (PSO) No. 25 of 1947 - permits the President to issue emergency regulations as deemed necessary or expedient in the interests of public security and preservation of public order (Sec 5(1) of the Public Security Ordinance); and these regulations are to prevail over any other law (Sec 7 of the Public Security Ordinance). Emergency Regulations under the PSO have been used in the past to ban newspapers, seal printing presses, censor publications and broadcasts.¹¹⁴ An example of the use of these regulations is the case of *Leader Publications (Pvt) Ltd. V. Ariya Rubasinghe, Director of Information and Competent Authority and Others*.¹¹⁵ The Director of Information was appointed as the Competent Authority and acted under Regulation 14(2) of the Emergency (Miscellaneous Provisions and Powers) Regulations No. 1 of 2000 to prohibit the petitioner from printing, publishing and distributing its newspaper 'Sunday Leader' or any newspaper for a period of 6 months; and directed the Inspector General of Policy to take possession of the petitioner's printing press and its premises. The Supreme court held that the Director of Information had no power or authority to act under Regulation 14 of the Emergency Regulations and that the orders addressed to the petitioner were a nullity. Subsequently, the government promulgated a set of emergency regulations under which it became mandatory for all media – both domestic and foreign – to submit their reports to the 'Competent Authority' prior to publication or broadcast, although this was lifted following protests. The Competent Authority still, however, possessed broad powers to ban material on a wide range of grounds, including in the interests of national security and preservation of public order.¹¹⁶ While the Emergency Regulations have been lifted, and the threats and intimidation that existed prior to 2015 have declined, the environment is such that the media routinely practices self-censorship.

Official Secrets Act No. 32 of 1955 restricts communication of any official secrets to the media. The definition of official secrets itself is vague and leaves significant room for interpretation.

Public Performance Ordinance No. 7 of 1912 regulates public performances and requires approval from a Public Performance Board under the Ministry of Defence prior to any public performance or public display.

Section 120 of the Penal Code deals with sedition – the interpretation of which is considered to be wide in scope and is believed to be interpreted widely to suppress expression of views against the government or bureaucratic power.

(h) Have there been any major **changes** in these topics (state advertising, process of spectrum allocation, taxes for media outlets) over the past five years? Have there been conflictive **cases or law suits** on these topics?

State advertising is not subject to any legislation nor have there been any guidelines in this regard. As discussed in Section 1.4(e), state advertising is titled towards state media companies, and used as a tool by political parties over private media companies.

Spectrum allocations have not undergone any documented major reforms or changes in the past five years. The method of allocation is not open to the public, nor are any reforms/changes in this regard.

¹¹³ Gehan Gunetilleke and Kishali P. Jayawardena (2005) *Legal, industry and educational reforms pertaining to the print media*, Institute of Commonwealth Studies. P.78

¹¹⁴ Gehan Gunetilleke and Kishali P. Jayawardena (2005) *Legal, industry and educational reforms pertaining to the print media*, Institute of Commonwealth Studies. P.75

¹¹⁵ *Leader Publications (Pvt.) Ltd. v. Ariya Rubasinghe, Director of Information and Competent Authority and Others* [2000] 1 Sri. L. R. 265.

¹¹⁶ Refer discussion in Gehan Gunetilleke and Kishali P. Jayawardena (2005) *Legal, industry and educational reforms pertaining to the print media*, Institute of Commonwealth Studies. P.71/72)

Taxes on media outlets are mainly in line with revisions to the corporate income tax levied on companies; increase in tax rates on foreign programmes telecast on local channels; and any customs duty imposed on imports of media companies.

5 Network Neutrality and Media Diversity

Legal framework

(a) What laws or other rules are used to regulate net neutrality, if any?

There are no laws or rules specifically referring to net neutrality in Sri Lanka.

Article 14 of the Constitution embodies the concept of 'freedom of speech and expression including publication'. The constitutional provision embodies the essence of freedom to access and operate on the internet as well, although its practical implementation within the context of net neutrality is an issue which has not been explored in Sri Lanka.

The TRC, as the main regulatory body for ISPs in Sri Lanka, includes conditions in licences to ISPs¹¹⁷ to prohibit an operator from showing preference to, or from exercising discrimination against a particular person, or persons of any class or description as respects any service provided, connection made or permission given.¹¹⁸ This may be interpreted as a means of ensuring that ISPs treat all online content equally and without discrimination.

(b) What is the legal status of the pertinent norms? (constitutional law, statutes, regulatory decisions, local ordinances, etc.)

The provisions enabling licences to include conditions prohibiting discrimination against or demonstrating preference towards particular person(s) are drawn from the Sri Lanka Telecommunications Act No. 25 of 1991, which is a statute.

The actual conditions in this regard are effected through licences granted under the abovementioned statute, by the TRC to ISPs, which is effectively a binding agreement between the ISP and telecommunications regulator.

(c) How does the law define net neutrality?

While there is no explicit reference to 'net neutrality' in existing legislation, the provision in the SLT Act which can be interpreted as relating to this aspect states that terms and conditions for licences granted under the SLT Act may include –

'conditions prohibiting an operator from showing preference to, or from exercising discrimination against a particular person or persons of any class or description as respects any service provided, connection made or permission given...'

(d) If laws addressing net neutrality are not in place, are laws to do so being proposed?

In a speech by Prime Minister Ranil Wickremesinghe at the Global Conference on Cyber Space held in November 2017 in India, the issue of net neutrality was identified as an important exercise in levelling the playing field on the Internet.¹¹⁹ The Prime Minister referred to the efforts made by the government from 2015 onwards to remove state-orchestrated website blocks and other restrictions on cyber space.¹²⁰ However, apart from these references, there are no further references to developing laws or regulations pertaining to net neutrality.

¹¹⁷ Refer licences of ISPs published on the TRC website < <http://www.trc.gov.lk/internet-service-providers.html> >

¹¹⁸ Section 17(6)(c) and Section 17(7)(d) of the SLT Act No. 25 of 1991

¹¹⁹ 'Net Neutrality gives voice to people, says Sri Lankan PM', The New Indian Express, 23rd November 2017 <http://www.newindianexpress.com/pti-news/2017/nov/23/net-neutrality-gives-voice-to-people-says-sri-lankan-pm-1709206.html>

¹²⁰ PM bats for open and free internet for all amidst raging global debate: Holds fruitful meeting with Modi', Sunday Observer, 26th November 2017, <http://www.sundayobserver.lk/2017/11/26/features/pm-bats-open-and-free-internet-all-amidst-raging-global-debate-holds-fruitful>

(e) Have laws to address net neutrality been proposed previously?

There is no reference to laws specifically deal with neutrality being proposed in the past.

(f) Are lawmakers discussing net neutrality?

There is no information as to whether steps are being taken by law makers to address net neutrality.

Implementation**(a) How is net neutrality being regulated?**

While there is no explicit reference to 'net neutrality', the existing provisions preventing discrimination or preference towards particular persons are included in licences granted by the TRC to ISPs. Thus, the TRC can take action to revoke licences if there is a failure on the part of ISPs to comply with such conditions included in their licences.

There is, however, limited information in the public domain to assess as to whether actions have been taken in this regard.

(b) What regulatory agencies or authorities are charged with enforcing net neutrality norms?

The TRC is the state body authorised to regulate ISPs and impose terms and conditions on licences issued for the operation of these ISPs. Technically, it may be possible to enforce net neutrality norms on ISPs through these norms – although there is no documented evidence of such norms being applied. Further, the TRC has actually been used as a tool by the government to block websites and ISPs in the past.¹²¹

(c) What is/are the enforcement mechanism/s? (imposition of sanctions, voluntary agreements, etc.)

There is no reference to enforcement mechanism(s) for the provisions relating to undue discrimination or indicating preference towards particular persons in the conduct of ISPs.

(d) If enforcement mechanisms exist, are they effective?

As noted above, there are no enforcement mechanisms specifically directed towards regulating net neutrality.

(e) Which enforcement mechanisms have been effective, and which have been ineffective?

As noted above, there are no enforcement mechanisms specifically directed towards regulating net neutrality.

(f) What entities do net neutrality norms apply to? / What is the scope of net neutrality regulation? (broadband, mobile, etc.)

The Sri Lanka Telecommunications Act No. 25 of 1991 is applicable to all telecommunication services in the country – and therefore covers mobile operators,

¹²¹ According to an analysis by Verité Research, any directives to ISPs are only lawful when they are effected through the TRC, and therefore directions by the government to ISPs to block websites would have been/have to be effected through the TRC ('Is blocking websites making telecom share prices vulnerable?' Daily Mirror, 31st July 2014, <http://www.dailymirror.lk/50418/is-blocking-websites-making-telecom-share-prices-vulnerable>)

internet service providers, cable distributors and direct to home satellite broadcasting operators.

All these entities would need to obtain licences from the TRC under the abovementioned legislation, and therefore, may have conditions prohibiting discrimination or undue preference.

It is, however, necessary to note that licences **may** include such conditions,¹²² and therefore, the inclusion of such provisions needs to be assessed on a case-to-case basis.

(g) What exceptions exist to the application of net neutrality norms? (traffic management, safety, legality of content, etc.)

There are no exceptions cited in the legislation (i.e. the SLT Act) with regard to licence conditions on undue discrimination and preference towards particular persons, although the actual licences itself do have certain exceptions.

The licences granted by the TRCs to ISPs have standard provisions on 'undue preference and undue discrimination'.¹²³ The specific conditions in the licences listed on the TRC website provide for two exceptions in this context – by providing that the operator will not be considered to engage in undue preference or discrimination if:

- *Required to do the thing in that manner by or under any provision of this licence;*
or
- *Where the operator gives any discount to its large customers provided that such concessions are extended without discrimination to all customers falling within this category.*

¹²² As per the wording in Section 17(7) of the SLT Act No. 25 of 1991

¹²³ The licences granted to ISPs, currently published on the TRC website, all have the same provisions relating to 'undue preference and undue discrimination'. These licences are grant for Dialog Broadband Networks (Pvt) Ltd; Etisalat Lanka (Pvt) Ltd; TATA Communications Lanka Ltd; Lanka Education and Research Network; and Bharti Airtel Lanka (Pvt) Ltd.

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