Confederation of Indian Industry

FDI in Media & Entertainment

Confederation of Indian Industry commends the Hon'ble Authority in issuing a forward looking draft proposal for consideration by the Hon'ble Ministry.

The enormous positive role that FDI plays in a nation's development is undeniable and empirically established. The massive growth of the services sector in India bears testimony to the fact that public interests have been eminently sub served by infusion of global capital with appropriate checks and balances. The time has come for the removal of artificial FDI caps in all sectors including news media.

We hereby submit our considered views on the Draft Proposals as follows:

I. FDI limits in carriage services:

We agree with the Hon'ble Authority on its recommendation that:

"The Government is contemplating enhancement in the FDI limit for telecomservices to 100% with FDI up to 49% through the automatic route and FDIbeyond 49% through FIPB. ***Carrying the same logic forward, and keeping inmind the fact that the ongoing digitisation of the cable TV services in thecountry would give a big impetus to the convergence of the broadcasting andtelecom infrastructures, the same limits and route ought to be madeapplicable to the carriage services in the broadcasting sector****."*[1]

We however hasten to add that even though in September 2012 the FDI regime for broadcast carriage services has been liberalised and the caps have been increased from 49% to 74%, for all carriage and distribution platforms including direct-to-home (DTH), head-end in the sky (HITS), multi-service operators (MSOs) and cable TV, there is hardly any funding that is coming in from abroad. The reason is that prospective investors who would like to take a stake in India's broadcast carriage services are wary of the restrictions on vertical integration presently in place for platforms like DTH, HITS and IPTV in India. Presently broadcasters on the one hand and carriage services like DTH, HITS, IPTV etc on the other are prohibited from having an equity stake of more than 20 percent in each other. CII believes that removing these restrictions on vertical integration will be going a long way to generate interest and confidence among global players who in their respective jurisdictions are mostly vertically integrated. There is

[1] P 4 of 9 , para 10

hardly any country in the world that imposes a ban on vertical integration or imposes restrictions on equity holdings among broadcasters and carriage services inter se; universally these are acknowledged to be pure business decisions and are not viewed as one requiring ex ante regulations. In any event the Competition Commission of India is well equipped to deal with cases of anti-competitive practices and abuse of dominance and it does consult sectoral regulators on combination related issues. Also it needs to be acknowledged that there is an unprecedented fragmentation in the Indian market place for distribution and carriage services with 7 DTH players and around 6000 MSOs providing signals to about 60000 LCOs on a pan India basis. Also on the content side there are more than 800 Television channels being owned by numerous broadcasters. Accordingly any concern that vertical integration shall impair competition is entirely unfounded. **With the raising of FDI limits the Government should also look at removing VI restrictions for FDI to freely flow in the media space.** CII notes that global media regulations are primarily targeted to terrestrial networks as there are spectrum issues involved. However in India the terrestrial network for television channels is exclusively owned and operated by PrasarBharati who also is a vertically integrated player. In India where private broadcasting and carriage networks are primarily cable or DTH based,there is hardly any impact on terrestrial spectrum. It therefore makes all the more sense to ease media regulations in order to facilitate investments. Accordingly CII requests the Government to usher in an enabling and progressive regime whereby investments in the media space are incentivisedand accordingly CII wholeheartedly supports the recommendations of the Authority in this regard as contained in these draft proposals as stated supra.

II. FDI limits in content services:

CII agrees with the Hon'ble Authority on its contention that:

"*There are existing provisions in the uplinking guidelines to safeguardmanagement and editorial control in news creation. These include: i)requirement to employ resident Indians in key positions (CEO of theapplicant company, 3/4th of the Directors on the Board of Directors, all keyexecutives and editorial staff), ii) the largest Indian shareholder should holdat least 51% of the total equity, iii) reporting requirements when any personwho is not a resident Indian is employed/ engaged etc. If the FDI limit inuplinking of TV channels of the news and current affairs category is enhancedto 49%, then as per provision at ii) above the remaining Indian shareholding(51%) would have to be with a single Indian shareholder. The more generalissue, on which stakeholders may wish to make suggestions, is whether or notany changes are at all required in these conditions****. In fact, a better way toensure that content deemed undesirable or subversive in nature is notbroadcast through TV channels is by having proper content monitoring andregulation through a content code, instead of using FDI limits as the tool forthis purpose."***

CII believes that this is indeed a forward looking approach that is needed when it comes to increasing the FDI limit for the electronic news sector. As the CP notes, the Ministry of Information & Broadcasting's Uplinking Guidelines of 2011 only allows 26 per cent of FDI in news channels. The quality of Indian news channels, sustenance of their professionalism and expertise in journalism and their very survival in the long run indeed questions the present policy regime. It would be pertinent to highlight that the Hon'ble Authority's earlier recommendations of 2008, also found that there was no reason why FDI cap for the electronic news sector should not be increased from 26 per cent to 49 per cent. The Sectoral Innovation Council of the Ministry of Information and Broadcasting under the chairmanship of SmtAshaSwaroop has also reiterated these recommendations and have unequivocally stated that the government needs to review and accordingly enhance these caps to atleast 49 percent.

As we all know the health of the Indian electronic news media is in an extremely bad shape. Even though there are a large number of 24x7 news channels, most of these exist for extraneous and collateral reasons to bolster the power equations and influence of certain domestic groups having interests in other unrelated businesses. Also news channels are primarily dependent on advertisement revenues in the absence of a viable subscription based business model. The news channels are not able to invest adequately on quality, content creation, journalistic talent, introduction of new technologies and also innovation. Infusion of funds from abroad will create enabling grounds for quality journalism, avoidance of sensationalism and it will also entail a healthy transfer of global best practices in news reporting. Needless to say this will also ensure greater employment and increased income generation culminating in a more inclusive growth for the entire country.

The artificial restriction on foreign direct investment in electronic news media hurts the growth of the industry despite the fact that India is home to an abundant pool of human resources. In an age of internet and social media the cap on FDI on news media does not serve any meaningful purpose.

CII strongly believes that there are adequate checks and balances that exist in the extant uplinking and downlinking guidelines and also through regulations playing out at the sectoral level. **In the light of the above we strongly recommend that the Hon'bleAuthority propose increasing the FDI limit for the news and current affairs television channels from the present level of 26% to 49% under automatic route to expeditiously attract foreign investment.However, in the interest of national security, a negative list may be evolved that would set out names of those entities, groups, conglomerates and countries from where investments may not be allowed at all or may be allowed after sufficient scrutiny.**

We would also like to take this opportunity to mention that an increased FDI cap at this point in time will send a right signal to the investor community and will also enliven the news media space.

III. FDI limits in FM Radio

We agree with the Hon’ble Authority’s draft proposal:

“The Phase III policy of the Government for FM Radio also prescribes a similarcondition for safeguard of managerial control of radio channels as in theguidelines for uplinking of news and current affairs channels described inpara 17 above. If the FDI limit for FM radio is enhanced to 49%, then, as inthe case of news and current affairs channels, the remaining Indianshareholding (51%) has to be with a single Indian shareholder. Stakeholdersmay wish to make suggestions, about whether or not any changes arerequired in these conditions.”

In conclusion we would like to take this opportunity to thank the Hon’ble Authority for inviting views from various stakeholders and allowing us to present ours.