Written Comments on the Consultation Paper on foreign Investment Limits for Broadcasting Sector

by

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5.2.1. Whether the foreign investment limits need to be revised as proposed.

Comments

We understand that the foreign investment limits requires revision by the Government. In this regard we would like to point out that the disadvantages of FDI in broadcasting sector such as loss of political sovereignty, national identity, enforcement etc., it can be said that as we are living in the presence of 'Internet' which has no national / international boundaries as such and 'media contents' now a days are freely available on Internet. Therefore such disadvantages cannot be considered as a criteria to deprive 'India' of much required FDI in broadcasting sector. Please further note that the FDI is made in an entity which is incorporated in India. Therefore, the entity and its officers are bound to prevailing Indian law regime. The prevailing Indian law had substantially set out the parameters with regard to the "Freedom of Press". Further the prevailing Indian law also provides for various penal reprimands that would curtail the entity and its officers from breaching such parameters.

5.2.2. Whether the proposed limits are acceptable for the reasons given in the reference or there are some other reasons? Any other reasons in favour of the proposed limits may please be elaborated.

Comments

Please note that it would be relevant to revise the existing FDI limits as this would be beneficial to the Indian Public at large. The Indian consumer would have access to better technology at a competitive price. Further such technology should not only be used for entertainment and news but for education as well. A liberal FDI Policy would encourage foreign investors to take the technology to each and every home of rural India as wider reach would bring economies of scale for such businesses.

5.2.3. If the proposed limits are not acceptable then the reasons for non-acceptance may be given. In such a case, the comments should also indicate the appropriate foreign investment limits.

Comment

We respectfully disagree with proposed limits in the FM Radio and TV Channel Segment. The proposed limits are as conservative as the existing limits. We are of the view that services like DTH, Television on mobile phone, in short services carrying content should not be allowed 100% for Foreign Direct Investment. The proposed limit of 74% seems suitable in the light of advantages coming as a package with said FDI.

Entertainment medium like FM Radio and TV Channels should have wider reach. In order to expand their infrastructure support, it would be relevant that a higher limit of FDI may be allowed. These segments may not only be looked upon as mere source of entertainment but as a source of education as well. Such sources may also be relevant to connect the rural India to the main stream. A well informed and educated India would be more powerful and prosperous.

The realistic FDI limits in FM Radio and TV Channel would be 23% FII and 26% FDI.

5.2.4. Whether the foreign investment limits could be revised to some other level with sub limits for FDI and FII within these limits.

Comment

Please refer to our comments to the previous question.

5.2.5. Whether the foreign investments should be permitted through the automatic route or should there be a sub limit beyond which foreign investments would need FIPB approval?

Comment

We are in agreement with the existing policy that every investment in the arena of broadcasting should be monitored at the entry level through FIPB. A thorough background check of the entrants is a must. In other words FDI needs to be properly channelized by raising a dam of strict regulatory procedure and guidelines prescribed by the Government.

5.3.1. Whether it will be more reasonable to classify the different segments of broadcasting sector in terms of carriage services (such as Cable Services, Headend In The Sky (HITS), DTH, Teleport etc.) and content services (such as Private FM radio, Television Broadcasting etc.) for the purposes of laying down foreign investment limits (FDIlimits, FII limits and composite foreign investment limits). Such a classification would enable liberal foreign investment limits for one category and more conservative limits for the other category of services.

Comment

Yes, we do agree that different segments of broadcasting be categorized as Carriage Services and Content Services.

We understand that in the event such a categorization is done, in that case, the Carriage Services may have a higher FDI limit as this would enable Indian Consumers to have access to better and superior technology. As regards, Contents Services is concerned FDI Limits should be fixed keeping in view the convergence of the technology with telecommunications soon. The limits with regard to the Content Services should be lower as this would enable tighter control. Further, with the advent of convergence, telecommunication infrastructure may become a mode to carry such Content Services.

5.3.2. The convergence of technologies in telecom and broadcasting sectors has made it possible to provide many broadcasting services (such as mobile television services, IPTV services) using telecom networks as well as broadcasting networks. Whether the foreign investment limits for such segments of broadcasting sector should be brought in line with the foreign investment limits for Telecom operators.

Comment

We are of the view that the Content Services should be categorized independent of the Carriage Services and therefore, the foreign investment limits may be brought in line with the investment limits for Telecom Operators.

5.3.3. Whether the methodology for calculation of foreign investments in different segments of broadcasting sector should be standardized. If so, the comments may specifically suggest the appropriate method for calculations in this regard. While doing so, the methodology referred to in paras 4.10 and 4.11 may also be appropriately commented upon.

Comment

No comments

5.3.4. Whether the foreign investment limits should be raised to 100% so as to permit companies incorporated in India but with 100% foreign holding to provide broadcasting services in the country with appropriate monitoring mechanism in place coupled with content regulation through programme and advertising codes. Reasons in support of the comments may be given.

Comment

We are not in agreement of providing 100% foreign holding in a company incorporated in India. For control issues it would be necessary that there is an Indian partner in the venture holding at least 26% of the share holding.

***Note**: The abovementioned comments/suggestions are that of Mr. Aditya Tiwari/ Mr. Deepak Dahiya, Advocates presently working with Dhir & Dhir Associates, having their office at D-55, Defence Colony, New Delhi -110024. However, it is mentioned hereto that the above comments/suggestion are the personal comments/suggestions of Mr. Aditya Tiwari/ Mr. Deepak Dahiya.*

Regards,

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