August12, 2013

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Submissions of Multi Screen Media Private Ltd. ("MSMI") and MSM Discovery Pvt. Ltd. ("MSMD") to Telecom Regulatory Authority of India ("TRAI") in response to the Consultation Paper (No. 56/2013) on Foreign Direct Investment in Broadcasting Sector in India ("Consultation Paper")

Kind Attention: **Advisor (B&CS)**

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We refer to TRAI's initiative in releasing the Consultation Paper and thank you for the opportunity to provide our comments on Foreign Direct Investment in Broadcasting Sector in India.

The responseis without prejudice to any of our rights.

COMMENTS:

FDI limits in carriage services:

Currently, the FDI limit in carriage services is 74%, of which 49% is permissible through the automatic route. Any FDI beyond 49% has to go through the FIPB route.

We submit that in carriage services 100% FDI should be permitted without any FIPB approval i.e. by way of Automatic Route. We give the following rationale for our views:

1. Broadcast carriage services are infrastructural services quite distinct from the creation and editing of content.The on-going roll out of compulsory digitization requires investments in infrastructure viz. fibre optic cabling as well as digital head ends, digital set top boxes, addressable SMS systems, back end customer services, etc. running into tens of hundreds of crores of rupees. By raising the FDI limit to 100% under the automatic route, Government will encourage FDI into this sector at a time when investment is critically required. Further such investment will also help ease the country's current account deficit and strengthen the Indian rupee.

2. Investors who wish to bring in state of the art proprietary technology will naturally look at complete ownership as they would have invested substantial amounts in developing the technology. To expect such investors to be satisfied with a minority stake and depend on the vagaries of Government policy to secure majority control does not send out the right signal.

3. Allowing 100% FDI under the automatic route can be the first step in making India an uplinking hub comparable to countries like Singapore and Hongkong. This will give a fillip to India's teleport and satellite service providers and create huge employment opportunities.

4. There is little logic in opening a sector to 100% FDI and yet keeping it subject to FIPB approval. If the Government is of the view that particular sector should be opened for 100% FDI, then there is no rationale torestrict the investment in that sector by prescribing approvals. In carriage services investment up to 49% is any way allowed

under the automatic route. In telecom which is also a carriage service, the automatic limit is 74%. Hence there is no logic for these differing ceilings.

5. FIPB approval process is time consuming and only delays the incoming FDI. Vested interests sometimes get involved delaying the process even further. Sometimes the delay is so long that the original purpose of the FDI itself is defeated and the investor loses the interest in making any investment in India. The result is that existing and local broadcasters with deep pockets develop vertical monopolies which are not in the overall interest of the industry. By having independent carriage providers, healthy competition will exist between broadcasters and upstream content distributors which can only augur well for the industry.

6. 100% FDI through automatic route in broadcast carriage services will enable improvement in carriage services, increase competition in carriage service, lead to better services to the viewers and overall growth of the carriage services industry.

Alternatively, if the Government's concern is regarding origin of FDI, the government may consider notifying a negative list of countries, FDI from whichwould have to go through the FIPB route and investment from other countries could be granted through the automatic route.

In summary, TRAI's proposal to increase foreign investment limits on different carriage services in the Broadcasting sector will accelerate digitization of cable and satellite networks and will help in treating the Broadcasting sector at par with telecom sector for foreign investment. Permitting increased foreign investment in carriage services will permit greater capital inflows into India and encourage growth and development of technology infrastructure essential to India's long term economic success.While the Broadcasting sector has shown consistent growth in the last few years, there has not been a commensurate investment in infrastructureand increase in FDI via automatic route will ensure infrastructure keeps pace.

The responseis without prejudice to any of our rights.

FDI limits in content services:

Downlinking of Channels and uplinking of Non news & current affairs channels:

Currently, 100% FDI is allowed for downlinking of channels and also for up-linking of Non-news and current affairs channels but only through government route i.e. FIPB approval is required to be obtained for this purpose.

Our view is that Non news and current affairs channels (i.e. general entertainment channels) pose no security concerns and hence for downlinking of the channels as well as up-linking of Non-news & current affairs channels 100% FDI should be allowed through automatic route in view of following:

1. Admittedly, it is only up-linking of News and current affairs channels which are required to be monitored in some mannerfor security reasons. As far as downlinking of channels and up-linking of Non-news and current affairs channels are concerned, the government does not have any real concerns since it already permits 100% FDI. There is no rationale to restrict investmentby prescribing FIPB approval for FDI.

2. Currently, there is no level playing field. Foreign broadcasters need a host of approvals for securing equity based funding including FIPB, RBI, etc. Local broadcasters however can raise capital without any such permission giving them a flexibility that is denied to foreign broadcasters though both compete in the same space. Similarly there are other anomalies in Government policies- film production and distribution which is also content related is allowed 100% FDI under the automatic route but television production and distribution which requires broadcasting needs prior Government approval. Both are content based and both are general entertainment- the only difference is the process by which they reach viewers.

Although there are over 800 channels registered with the Ministry of Information and Broadcasting, there are hardly 200 odd pay channels. The rest are all Free to Air channels. Consequently investment in content has lagged behind which is perceivable from the quality of content that is on air. Improving content quality requires huge investments in sets, equipment, lighting, sound, cameras, etc. The world over the trend is towards HD and 3D content and this requires investment in state of the art technology and equipment. All of which requires investment. Without the flexibility to raise capital as and when required and a transparent system for quick grant of uplink and downlink licences, foreign investors will stay away. The suggested increase in FDI will not only allow improvement in quality of content it will also encourage companies to invest in diversification of content ultimately benefiting the consumers, as they will have varied choices.

Uplinking of News & Current affairs channels:

The current FDI ceiling is 26% through the FIPB route with existing provisions in the uplinking guidelines to safeguard management and editorial control in news creation. These include: i) requirement to employ resident Indians in key positions (CEO of the applicant company, 3/4th of the Directors on the Board of Directors, all key executives and editorial staff), ii) the largest Indian shareholder should hold at least 51% of the total equity, iii) reporting requirements when any person who is not a resident Indian is employed/ engaged etc.

Further there are sufficient powers with Government as licences are required for uplink and downlink. In addition, the industry has shown great foresight to govern itself within “self-regulatory” guidelines.

Foreign news channels like Al Jazeera, CNN and BBC News are widely available and these are 100% foreign owned.

Given these industry dynamics and the Government’s ability to intervene in emergent situations where national interest may be compromised, there is no reason why FDI limits even in news cannot be increased to at least to 49% under the automatic route and higher investment brought under the FIPB route. The increase in limit will not result in management or editorial control passing to foreign entities, but will make available sources of funding for the sector.

As far as holding of the largest Indian shareholder is concerned, the Government could consider revising the limit from 51% to 26%.

Besides above, we also have following suggestions for improving the working of FIPB:

1. The applications should be accepted online only. There should be no need of filing hard copies of applications.

2. There should be time bound approval of the proposals. Sometimes approval process takes so long that the original purpose of the investment itself is defeated and the investor becomes dis-interested in making investment.
3. Once the FIPB meeting is over, the outcome should be immediately communicated to the applicant. Currently, it takes approximately one month for the communication of the decision on the application.
4. FIPB should meet more frequently so that there is no backlog of applications. Currently, we understand that there is backlog of applications due to which applicationstake more than a month to be tabled after submission.

CONCLUSION:

To conclude, we urge the government to have an open mind with respect to foreign investment in broadcasting sector. The paranoia about security has led to huge delays in approvals, even in licences for new entertainment channels with delays in excess of two years for a new channel licence. Higher FDI, without requirement of FIPB approval, will go a long way in generating growth opportunities for this industry which has the potential to provide employment to lakhs of people. Open FDI policy could help make India a hub for up-linking of channels and also production of content for films and television. At the same time we would suggest that controls to avoid vertical integration should be effectively put in place to prevent vertical monopolies where the entire distribution from content creation to content delivery to the end consumer is owned by the same entity or its affiliates.

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