

8th August 2013

Mr. WASI AHMED – Advisor (B & CS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg
New Delhi – 110002

Dear Sir,

Re: Consultation Paper on FDI in the Broadcasting Sector

On the captioned subject, we Tata Sky Limited would submit as hereunder.

We had submitted our response to the consultation paper, 1 of 2013 dated 15th February 2013, on 22nd April 2013, giving our views on similar issues raised in this consultation paper. We repeat and confirm the submissions made there and attach here the response submitted for your ready reference.

We are making further submissions based on the latest consultation paper circulated by the Authority and are restricting our response to the views of a DTH service provider.

The current consultation paper has categorised Broadcasting Services into Carriage and Content. We are responding to the Carriage Services under Broadcasting as that concerns us directly.

The Government of India issued Press Note 7 in 2012 under which FDI limits in the Broadcasting sector were enhanced to 49% under the direct route and up to 74% via Government approval. This press note became a policy of the Government in 2013 when it was incorporated under the FDI policy.

However, these enhancements in FDI limits did not lead to inflow of offshore investments. It is important to understand the reason behind this lack of interest on the part of offshore investors before we comment on whether this limit needs to be enhanced further.

The business of providing television service to viewers through DTH is capital intensive and the investments have a long gestation before returns can be expected thus rendering it unattractive for speculative investors, who look for faster returns.

Investment in a DTH business is hence suited for strategic global investors who are already invested in content production and/or distribution, hence understand the business, have an appetite for long gestation, can bring not just money but some best practices too and recognise the commercial benefits that accrue due to integration with their existing businesses in India or abroad.

However, this is not possible as the limits for a broadcaster to own a part of a content distribution platform remained unchanged at 20% while the FDI limits were enhanced from 20% to 49%(automatic) and up to 74% after taking Government approval.

Apparently it is feared that permitting vertical integration would lead to creation of monopolies in the media business. In our view this should not be a cause of concern because the hyper-competitive state of the industry with 6 DTH operators and thousands of MSOs would prevent creation of any restrictive monopolies. Moreover, the DTH and Cable industry are highly regulated and TRAI as a regulator takes immediate actions against any violations of its regulations. Add to that the "Must Provide" regulations in the sector, stipulations of the Competition Act, and you have a deterrent to monopolies.

Hence we would strongly recommend relaxation of Vertical Integration limits if we have to attract some serious, long term investments in the distribution business.


Apart from what has been stated in our submissions in the attached letter, the above reasons also substantiate and justify our submissions that the FDI limits must be raised and be on par with the telecom industry.

We would be happy to meet and discuss the issue with you at your convenience.

Thanking you

Yours sincerely,

For Tata Sky Limited

A handwritten signature in blue ink, appearing to read "Sanjeev Ahuja".

Sanjeev Ahuja

Sr. Deputy General Counsel

22nd April, 2013

Mr. Wasi Ahmed
(Advisor – B&CS)
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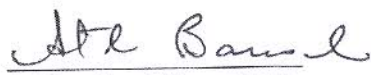
Dear Sir,

Re: Consultation Paper No. 01/2013 dated 15.02.2013
on "Issues relating to Cross Media Ownership"

Please find attached, written submission on behalf of Tata Sky Limited, on the above subject.

Thanking you,

Yours sincerely,
For Tata Sky Limited


Authorised Signatory

Tata Sky Ltd.

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We seek the indulgence of the Authority to make further submission on the issues for Consultation when the DTH guidelines are changed and the Companies Bill is enacted as a law.

General Disqualifications

Q1: In your opinion, are there other entities, apart from entities such as political parties, religious bodies, Government or government aided bodies which have already been recommended by TRAI to be disqualified from entry into the broadcasting and distribution sectors, which should also be disqualified from entry into the media sector? Please elaborate your response with justifications.

Response: TRAI vide its recommendations of 28th December 2012 had laid down entities which should not be permitted to enter the broadcasting and distribution of television channels. This recommendation was based on its earlier recommendation of November 2008 and the report of the Sarkaria Commission on Centre State Relationship. As stated in the recommendation, there is already Prasar Bharti to look into the interests of the State. The recommendations of 2008 of the TRAI had suggested that Prasar Bharti was there to look after the interests of the State. We agree with those recommendations and urge that they be implemented without any further delay.

Entities indulging in piracy – as defined under the Cable Television Networks Act and the TRAI Regulations – must be treated as per the laws and their licenses to operate in the media sector should be cancelled after following the due process of law. This may also entail carrying out necessary amendments to existing laws dealing with this issue.

Q2: Should the licensor, either suo motu or based on the recommendations of the regulator, be empowered to disqualify any entity from entering the media sector in public interest? For instance, should the licensor or the regulator be empowered to disqualify (or recommend for disqualification) a person who is subject to undue influence by a disqualified person.

Response: Once the recommendations of TRAI are accepted and put to practise, it should then vest with the Licensor and regulator to disqualify an entity from entering this area or cancelling the license of those entities who indulge in piracy. TRAI has recommended to the MIB that these entities be given a way out to exit the business. It is our submission that this recommendation be acted upon immediately.

Undue influence is a subjective term. The disqualification of an entity should be decided on a case to case basis following the due process of law before disqualifying an entity. Any entity already licensed should be disqualified and license revoked if the entity does not follow the laid down law. This is required more in the DAS regime to ensure a level playing field between all service providers.

Media Ownership/ Control

Q3: Should ownership/ control of an entity over a media outlet be measured in terms of equity holding? If so, would a restriction on equity holding of 20% (as recommended by TRAI in its recommendations on Media Ownership dated 25th Feb 2009) be an appropriate threshold? Else, please suggest any other threshold value, with justification?

Response: The licensing conditions for DTH as laid down by the Government of India declared the 20% threshold limit. The FDI policy of the Government of India, 2012 underwent changes and Press Note 7 changed this by allowing up to 49% through the Direct Route. This can be further increased to 74% subject to Government approvals. In the light of these changes allowed by the Press Note, which includes DTH, the option to increase its stake to 49% / 74% rests with the investor.

The recommendation of TRAI to define Control at the 20% threshold would therefore need to be revisited and changes brought in accordingly. Likewise, the DTH Licensing conditions would also need to be reviewed to bring all the regulations to a parity with each other.

“Control” having been defined in paragraph 4.13(ii) of the Paper for Consultation is on the basis of the ASCI report commissioned by the Government of India. Ownership, we submit, should be based on the laws that are existing. Control, on the other hand should be measured in terms of actual market share enjoyed by an entity. There is already a Competition Act to take care of any dominance position enjoyed by an entity. This dominance would be measured on the basis of relevant market. There is no definition of a “relevant market” under the regulations and as far as DTH is concerned as it has a pan India presence. Defining a relevant market for DTH would therefore, in our submission be inappropriate.

An entity may have an equity stake in a media outlet within the framework of the law and the limitations set out. Does it enjoy “Control” within the equity holding in a media outlet is subjective and should be measured on the basis of the reach enjoyed by it rather than on the basis of the equity holding it has in the Company.

We submit that there are sufficient laws to safeguard the interests of consumers issue and adding one more could lead to confusion in the market place. The issue of Control should be left to existing laws and the Authorities within the laws to decide this.

- Q4: In case your response to Q3 is in the negative, what other measure(s) of ownership/ control should be used? Please support your view with a detailed methodology to measure ownership/ control over a media outlet.

Response: On the issue of Ownership - We suggest the following: Were a foreign investor to increase his stake from the present to up to 49% or 74% (with Government approval being a condition precedent) then he would want to have a say in the running of the business. We recommend that since FDI in carriage and distribution is at a uniform 74 percent, it is only logical that the VI restrictions be removed in order to permit entry of serious stakeholders to invest for the long term.

As regards the issue of control/ownership the metric if any should always be commensurate with the shareholding pattern of the company. Otherwise it would seriously disincentivise genuine investors from participating and infusing funds.

It would be premature to comment on the issue raised as we are of the view that once the new Act has been enacted, this issue is likely to be addressed by the new law.

On the issue of Control - we submit that there are sufficient laws in place (Competition Act etc) to take care of a dominant position adopted by an entity. The TRAI should not regulate the issue but leave it to the existing laws.

Media Ownership rules

Q5: Should only news and current affairs genre or all genres be considered while devising ways and means to ensure viewpoint plurality? Please elaborate your response with justifications.

Response:

- We recommend that if at all plurality and view point diversity has to be evaluated it should be restricted to the news and current affairs media. Since their prime purpose is to frame, create and disseminate viewpoints and opinions that have the effect of shaping the national/regional narrative and public discourse.

- To ensure viewpoint diversity and plurality is maintained and/or increased, the answer lies in creating enabling investor friendly frameworks that introduces a level playing field and consequently will increase competition amongst news media.

The advancement of technology and the growth of the Internet sectors cannot be ignored. What is available on television and print is also available via the internet. This sector is growing and as technology develops so would the availability of content increase on the internet. Any rules, therefore should apply to all forms of media. Availability of news and entertainment via the internet is not restricted to any area for its origin. How then would the regulator be in a position to control this medium of information?

Q6: Which media amongst the following would be relevant for devising ways and means of ensuring viewpoint plurality?

- (i) Print media viz. Newspaper & magazine
- (ii) Television
- (iii) Radio
- (iv) Online media
- (v) All or some of the above

Response: We agree that all forms of media communications should be taken into consideration however the focus for the purposes of viewpoint diversity and plurality should be restricted to the news and current affairs media.

Q7: Should the relevant markets be distinguished on the basis of languages spoken in them for evaluating concentration in media ownership? If your response is in the affirmative, which languages should be included in the present exercise?

Response: We are restricting our response to the above question purely as a DTH Service Provider. DTH has a pan India presence and is not confined to any area in particular. The issue of relevant market on the basis of language should not be applicable to a DTH Service Provider.

Q8: If your response to Q7 is in the negative, what should be the alternative basis for distinguishing between various relevant markets?

Response: Relevant Market should be defined and understood in the context of the Competition Act. At best, relevant market should be understood in the context of the genre of channel – but in so far as DTH is concerned, this should not apply to DTH for reasons stated above. We repeat that having a pan India footprint, language should not be the basis on which a relevant market is defined.

There are laws to take care of this and we submit that the TRAI should use the existing laws and apply it rather than setting out a new set of rules and regulations for the same. Plurality of regulations and therefore different authorities under it, would restrict growth of this sector – which is projected to grow rapidly.

Q9: Which of the following metrics should be used to measure the level of consumption of media outlets in a relevant market?

(i) Volume of consumption

(ii) Reach

(iii) Revenue

(iv) Any other

Please elaborate your response with justifications.

Response: It is our view that all metrics should be used as the measure to determine the level of media outlets in the relevant markets. Relevant Market, we submit, should be determined on the basis of existing laws. We repeat that since DTH has a pan India presence, the definition of relevant market to it would be an anomaly. Once the determination is made as to the number of people using the media – in any form the other issues like volume of consumption could then become determinable.

Q10 In case your response to Q9 is „Any other“ metric, you may support your view with a fully developed methodology to measure the level of consumption of various media outlets using this metric.

Q11: Which of the following methods should be used for measuring concentration in any media segment of a relevant market?

(i) C3

(ii) HHI

(iii) Any other

Response: We have no preference on the methodology adopted for measuring concentration in any media sector. There are laws in place to take such as the Competition Act and the authority created by the Act is well and sufficiently equipped to deal with any anomaly created in the market.

Q12: If your response to Q11 is „Any other“ method, you may support your view with a fully developed methodology for measuring concentration in any media segment of a relevant market using this method.

Q13: Would Diversity Index be an appropriate measure for overall concentration (including within media and cross media) in a relevant market?

Response: There are flaws in using the Diversity Index as stated in the consultation paper. It would be our submission that in such circumstances, using a concept like this for overall concentration would not be prudent.

Q14: In case your response to Q13 is in the affirmative, how should the weights be assigned to the different media segments in a relevant market in order to calculate the Diversity Index Score of the relevant market?

Q15: Would it be appropriate to have a "1 out of 3 rule" i.e. to restrict any entity having ownership/control in an outlet of a media segment of a relevant market from acquiring or retaining ownership/control over outlets belonging to any other media segment? Please elaborate your response with justifications.

Response: Restrictions being proposed by the consultation paper in a democracy are not warranted. As stated above, have restrictions within the frame work,of the law but to stop an entity from having a say in all sectors of the media is in violation of it fundamental rights under the Constitution. We submit that there are laws in India (Constitution of India, Companies Act, Competition Act etc) which have sufficient safeguards built into them to take care of any entity having a monopoly. There are also the Authorities created under the Competition Act who watch for such monopolistic situations and take appropriate actions when required. We also confirm our statements made in response to questions 3, 4 and 5 on the same subject.

Q16: Alternatively, would it be appropriate to have a "2 out of 3 rule" or a "1 out of 2 rule"? In case you support the "1 out of 2 rule", which media segments should be considered for imposition of restriction? Please elaborate your response with justifications.

Response: We repeat and confirm our response to Q 15.

Q17: Would it be appropriate to restrict any entity having ownership/control in a media segment of a relevant market with a market share of more than a threshold level (say 20%) in that media segment from acquiring or retaining ownership/ control in the other media segments of the relevant market? Please elaborate your response with justifications.

Response: There are 2 issues here - Relevant Market and Control at the threshold level. Relevant market, should be tested on the actual share of the entity in the market. Control over the market should not be determined on the basis of

threshold (equity holding)- say 20% . The market share of an entity should be based on the reach it enjoys and not on the basis of its equity holding. This holding, by law has to based on the prevailing guidelines.

Having a pan India presence, it would be in appropriate to state that control over a particular market only should be the criteria. The Authority would have to consider the issue holistically and so long as the control is determined on the basis of market share and not on the basis of equity holding in a particular entity then any further restriction would be in violation of the rights of the entity who has been harmed. We repeat that there are sufficient laws - like the Competition Act to take care of any other issue the authority has.

Q18: In case your response to Q17 is in the affirmative, what should be such threshold level of market share? Please elaborate your response with justifications.

Q19: Would it be appropriate to lay down restrictions on cross media ownership only in those relevant markets where at least two media segments are highly concentrated using HHI as a tool to measure concentration? Please elaborate your response with justifications.

Response: We submit that we are not in favour of any restrictions being imposed as there are laws like the Competition Act to take care of those entities which attempt to create a monopoly. Despite our submission, should the Authority choose to place any restriction, then it should be based on the market share enjoyed by the entity and not be based on the equity share of an entity.

Q20: In case your response to Q19 is in the affirmative, please comment on the suitability of the following rules for cross media ownership:

(i) No restriction on cross media ownership is applied on any entity having ownership/ control in the media segments of such a relevant market in case its contribution to the HHI of not more than one

concentrated media segment is above 1000. (For methodology of calculation please refer para 5.42)

(ii) In case an entity having ownership/ control in the media segments of such a relevant market contributes 1000 or more in the HHI of two or more concentrated media segments separately, the entity shall have to dilute its equity in its media outlet(s) in such a manner that its contribution in the HHI of not more than one concentrated media segment of that relevant market remains above 1000 within three years.

Q21: Would it be appropriate to lay down the restrictions on cross media ownership only in highly concentrated relevant markets using Diversity Index Score as a tool to measure concentration? Please elaborate your response with justifications.

Response: In the event cross media ownership restrictions are imposed, then it should be on a pan India basis. Imposing the restrictions on the basis of Diversity Index Score would not be appropriate as the Diversity Index Score itself has issues and has not been accepted in many other geographies. Using this method only in relevant market would be in our view inappropriate.

Q22: In case your response to Q21 is in the affirmative, please comment on the suitability of the following rules for cross media ownership in such relevant markets:

(i) No restriction on cross media ownership is applied on the entities contributing less than 1000 in the Diversity Index Score in such a relevant market.

(ii) In case any entity contributes 1000 or more in the Diversity Index Score of such a relevant market, the entity shall have to dilute its equity in the media outlets in such a manner that the contribution of the entity in the Diversity Index Score of the relevant market reduces below 1000 within three years.

Q23: You may also suggest any other method for devising cross media ownership rules along with a detailed methodology.

Response: Cross Media Ownership rules differ in case of all media segments. DTH has restrictions under the Licensing conditions and guidelines of the Government of India. To devise a common

methodology for cross media ownership would necessarily have to take into account sectorial restrictions in each media vertical. Ownership rules should differ from market share enjoyed at the ground level. Our suggestion would be that the Authority should monitor that each of the companies are complying with the conditions and guidelines applicable to them. Framing further common rules across media would not be advisable.

Q24: In case cross media ownership rules are laid down in the country, what should be the periodicity of review of such rules?

Response: As each of the Companies have to submit quarterly reports, the Authority could prescribe that they also report compliances of this to the Authority and the MIB.

Q25: In case media ownership rules are laid down in the country, how much time should be given for complying with the prescribed rules to existing entities in the media sector, which are in breach of the rules? Please elaborate your response with justifications.

Response: Please refer to our response to Q 23 and Q 24.

Mergers and Acquisitions

Q26: In your opinion, should additional restrictions be applied for M&A in media sector? Please elaborate your response with justifications.

Response: Mergers and Acquisitions are again governed by specialised laws which have to be read with Sectorial regulations governing them. Any M & A would necessarily have to comply with these regulations. Any addition of more regulations by the Authority is not warranted at this stage.

The new Companies Act, when promulgated into law would have mechanisms to take care of this. There is also SEBI and the authority under it to take care of anomalies.

Q27: In case your response to Q26 is in the affirmative, should such restrictions be in terms of minimum number of independent entities in the relevant market or maximum Diversity Index Score or any other method. Please elaborate your response with justifications

Vertical Integration

Q28: Should any entity be allowed to have interest in both broadcasting and distribution companies/entities?

If „Yes“, how would the issues that arise out of vertical integration be addressed?

If „No“, whether a restriction on equity holding of 20% would be an adequate measure to determine „control“ of an entity i.e. any entity which has been permitted/ licensed for television broadcasting or has more than 20% equity in a broadcasting company shall not have more than 20% equity in any Distributor (MSO/Cable operator, DTH operator, HITS operator, Mobile TV service provider) and vice-versa? You are welcome to suggest any other measures to determine „control“ and the limits thereof between the broadcasting and distribution entities.

Response: The Licensing guidelines for DTH did not place any restrictions on the nature of the Company that could invest in broadcasting or distribution. Vertical integration, so long as there is no violation of any applicable laws, should not be restricted. The threshold limits of 20% was permitted under the guidelines of the Government of India which included FDI guidelines, DTH Licensing conditions. Since the issuance of Press Note 7, this limit has been raised. Changes would then have to be made to take care of the threshold limits to be in line with the FDI policy.

Mandatory Disclosures

Q29: What additional parameters, other than those listed in para 7.10 (j), could be relevant with respect to mandatory disclosures for effective monitoring and compliance of media ownership rules?

Response: In our view, if the laws are complied with and reported to the Authorities, no further disclosures are required .

Q30: What should be the periodicity of such disclosures?

Response: Every three months as reports have to be submitted to the Authorities.

Q31: Should the disclosures made by the media entities be made available in the public domain?

Response: If the media entity is a publicly listed company then they are required by law to make all disclosures. Those entities which are not public companies should not be asked to disclose.

Other Issues

Stakeholders may also provide their comments on any other issue relevant to the present consultation.
