Consultation Paper No. 07/2013

Zee Network response to TRAI Consultation Paper

On

Foreign Direct Investment in Broadcasting Sector In India

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The Zee Network is pleased to enclose its response to the Consultation on FDI in Broadcasting in India.

We note that the consultation paper is in the form of a Table of FDI in various sectors which is proposed to be sent to the Govt.

Zee Network has previously submitted a detailed response on the Consultation paper on FDI in the Media Sector in the years 2008 and 2010 and we would like to reiterate the said response.

Introductory Comments

1. At the outset we would like to point out that the proposed FDI limits in Broadcasting Sector seem to have been issued in complete isolation to the discussions & consultations which have taken place this year.

   In this connection, Zee Network would like to highlight some issues which pertain to the recommendations now proposed to be made. The proposed recommendations for increase in FDI limit pertains to carriage sector as well as content sector (News & Current Affairs Channels). While we are in agreement for proposed increase in FDI limit for carriage/distribution sector (DTH, Cable, IPTV, Teleports, HITS etc) to support digitalization initiative, we strongly oppose any increase in FDI in the News & Current Affairs channels. We would like to point out certain issues/implications even in respect of proposed FDI increase in carriage sector and request the TRAI/Govt. to take care of these issues before effecting any increase in the FDI limit in carriage/distribution sector as a perusal of these issues amply demonstrates that the Indian companies will be severely discriminated if these FDI regulations are brought into effect.

1.1 The increase in FDI is a gateway to allow certain media companies to gain monopolization of the Broadcasting and distribution sector. This is a dangerous trend for the society and the nation as it will mean that people will have the access to the information and news what the monopoly holders will like to disseminate to the common man. We have seen this already happening in certain states where the nexus between the politicians and local distribution networks (Cable Networks) are there. In these states the channels which fail to toe the line of the state government are not available to the common man as they are not carried. This is nothing but state censorship.

Comments on Proposed FDI Limits in Carriage Segment (Teleport, DTH, HITS, Mobile TV, Cable TV Networks)

2. We would like to mention here that even under the current FDI regime, the stipulated sectoral caps are being easily circumvented under the Press Notes 2, 3 and 4 as by using current FDI structure the foreign companies can easily bring investments up to 95% - 98% through downstream investments. Thus the move to increase the FDI in the carriage sector to 100% will facilitate in bringing transparency in the investments. Instead of routing the investments through various investment companies using the cover of corporate veil so as to take the advantages of the Press Notes 2, 3 and 4 and having side agreements with various conditions which are not in public domain, now the foreign investors would be able to invest the funds through proper channels in a streamlined manner.

2.1 However with the changes in the FDI limits there will be a need to bring in appropriate changes in the licensing guidelines and conditions also and appropriate safe guards would be required to be incorporated in these guidelines. With increase in FDI there will be lot of companies from

China and GCC countries who would like to establish their base in India to ultimately control the media through the carriage segment.

2.2 In this context, it is pertinent to mention that there are lot of investors who have companies registered in Dubai with share holders from Pakistan, who are looking to invest into safer markets like India where investors are protected by laws. Similarly there will be Chinese entities willing to enter this market so that they not only control the Media but also sell their products into the Indian market at predatory pricing to outbid Indian industry both in manufacturing as well as in the service sectors. It is also important in this context to note that Chinese companies are aggressively investing in various SAARC counties surrounding India in media – both in content and carriage sectors.

2.3 With the liberalized FDI regime where 100% FDI would be permissible, it will be an interesting scenario when a 100% Chinese Government funded institution would come and run the distribution/carriage business here where it can decide and dictate the content to be carried on the networks. There would be a potential danger of controlling by these entities of the news and views to be carried and disseminated through electronic media. Accordingly, simultaneously a proper **"see through"** mechanism is required to be put in place so as to identify the exact source of FDI flowing into India through web of companies/entities and to filter out the investments which are likely to adversely impact the sensitivity of the media sector and also the security of the country.

2.4 We would like to submit that the issue of FDI to be permitted in India cannot be viewed in isolation as it is intrinsically linked with the investments permitted on a reciprocal basis to Indian companies overseas. Developing a strong multinational presence for an Indian company is dependent on what investment climate it faces in India as against what kind of investment opportunities are offered to India companies for providing and undertaking similar services in other countries and acquiring similar assets overseas.

2.5 It will be interesting to go through the following few instances which would clearly establish that our current FDI regime, even without taking the impact of the Press 2,3&4 is far more liberal than many developed economies. There are lot of regulations and restrictions specially in media segment in many countries and Indian entities are not allowed to invest in content and carriage segment beyond 25% to 30%. The argument which has been advanced is that in Telecom, the FDI has been relaxed and therefore in view of convergence, this sector also may be treated the same. As has been pointed out earlier also, the media sector is a very sensitive sector and therefore it has been recognized that a differential treatment is needed as is done in various other countries as well. It may be pointed out that the many advanced countries continue to maintain a differential policy on ownership of media sectors / assets and services such as DTH, Cable etc. USA which permits 100% FDI in telecoms still has strict controls in media sector, including the need for citizenship of USA as a precondition for obtaining common carrier licence. This should be enough to reply to foreign companies which under the garb of "convergence" try to seek dispensations which are not permitted in their own countries. Similarly in UK, Canada, France, South Korea & Japan also restrictions on Foreign Direct Investment are in place so as to safeguard the interest of their domestic media entities.

2.6 (i) **<u>Status in USA</u>**

We cite the example of USA where Section 310 of the US Telecommunication Act governs any ownership of Telecommunications Assets.

As per Section 310 of the US Telecommunications Act, no Broadcast or Common carrier or Radio license will be granted to be held by:

(i) Any alien.

(ii) Any Corporation organized under the laws of any foreign government.

(iii) Any US corporation where more than 20% of the Stock is held by any alien or any foreign entity

Effectively the sections 310 (b) (1) to 310 (b) (3) prohibit any foreigner or a foreign company obtaining any license or even holding more than 20% share in any corporation in the US which has a broadcasting or a common carrier license. Section 310(b) (4) sets a benchmark of 25% holding by foreign individuals or entities in companies in the US, which control radio licenses. The above restrictions imply that the Indian broadcasters should solely depend on a US company for broadcasting and carriage of content. However the said approach is not easy owing to the monopolistic holdings in the US markets.

The situation in regard to the bidding for spectrum is the same as no foreign citizen or company can bid for spectrum in the US spectrum auctions.

(ii) **European Union:**

The European Union regulations for broadcasting have been liberalized since the "Television Without Frontiers" directive.(TVWF

Directive). The TVFW directive seeks to create a European Common Market in Broadcasting. However while regulations on broadcasting are country specific, in regard to content there are common elements, which place certain restrictions on foreign content (Non-EU content).

As per the "**Television Without Frontiers Directives"** all states of the EU must permit reception of content broadcast by other signatories to the EU (45 signatories).

However the directive seeks to promote the local production of television programs specifying that a majority should be made in Europe.

The **"Important Events" directive** requires that stipulates that each Member State may take measures to ensure that broadcasters do not broadcast on an exclusive basis events which are regarded as being of major importance for society in such a way as to deprive a substantial proportion of the public of the possibility of following such events on free television. Member States may draw up a list of events that must be broadcast unencrypted (not scrambled) even if pay-tv stations have bought exclusive rights.

These events may be national, or international, such as the Olympic Games, the European Football Championship or the World Cup. This impacts the rights holders and Pay TV operators who have exclusive rights to certain content.

The "**European Content Directive**" requires that a majority of the programs broadcast should be of European origin, rather than imports. Article 4 of the EU Directive and Article 10 of the

Council's Convention both require that Member States shall "ensure where practicable and by appropriate means, that broadcasters reserve for European works a majority proportion of their transmission time" In France, 60% of television programs must be European, including at least 40% made in France. Switzerland, a member of the Council of Europe but not of the EU, requires satellite broadcasters serving Switzerland to broadcast at least an hour of Swiss programming a week, and to contribute to a fund used to subsidize Swiss film production. The average of European works broadcast by the major channels varied from about 53% to 82% in the EU.

The above directives create an Open EU market in broadcasting, but one, which is closed to outside content providers including the USA. Jack Valenti, chairman of the Motion Picture Association of America, told Congress: "The Directive will stifle growth in existing TV markets, and impose severe limits on emerging markets, including private TV and satellite broadcasters. The real impact may not be felt so much in existing markets as in markets just beginning to develop." The House of Representatives unanimously passed a resolution denouncing the Directive and deploring the damage that could be inflicted on the U.S. broadcasting and film industries. Congressmen argued that the local content rules are not, as Europeans claim, a matter of cultural sovereignty, but instead an attempt to protect European industries from foreign competition, particularly from the United States.

(iii) In USA, DTH is permitted to only US companies owned by US Citizens. There are only two major DTH networks in the USA, i.e. Echostar and DirecTV. The transfer of DirecTV to NewsCorp was done only under very special conditions as follows. The case involved is the transfer of control application in the matter of

General Motors Corporation, Hughes Electronics Corporation, and The News Corporation Limited, Memorandum Opinion and Order, MB Docket No. 03-124, 19 FCC Rcd. 473 (2004) (January 2004 Order). As per this order the satellite network assets of Hughes including satellite earth station and terrestrial frequencies was transferred to News Corp. The application was submitted pursuant to Sections 214 and 310 of the Communications Act of 1934. Section 214 of the Communications Act and the FCC's rules require prior FCC approval of transfers of control or acquisitions of both domestic and international common carrier authorizations.

(iv) Despite the fact that Australia, is a close U.S. ally, the Executive Branch nonetheless required commitments from Hughes that post-closing, company policies related to U.S. national security and law enforcement would be under the exclusive jurisdiction of a company committee that is comprised entirely of U.S. citizens, and that Hughes make a yearly report to the government on company policies related to national security. (See Petition of U.S. Department of Justice and Federal Bureau of Investigation to Adopt Conditions to Authorizations and Licenses, Application General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, FCC MB Docket No. 03-124, November 18, 2003).

2.7 Security Concerns have been expressed from time to time on the likely impact of raising the FDI, as the DTH has a potential for select messaging in encrypted manner and thus giving the controls in the hand of the foreign entities may not be in the best of the national interests. There are specific clauses in the DTH licensing guidelines on the security aspects and this shows its critical importance as the policy makers had envisaged that such situations may arise.

2.8 Chinese Government is today investing heavily in this region to impact the media sector and satellite communications. A few of their investments are as under:

(a) Nepal : China funded company has taken over the DTH platform and thus can beam into India any content

(b) Srilanka : Chinasat a Satellite company has formed a JV with Supreme group to provide Satellite capacity to Supremesat which will be termed as Chinese Capacity

(c) Pakistan : Chinese government is looking to establish a platform to provide the capacity in C band and Ku band to the broadcasters and potential DTH operators, they are looking to provide long term credit facility to them

(d) Bangladesh : Chinasat is also peddling the satellite capacity to the Bangladesh Government.

The strategy is that - offer the capacity at dirt cheap rates so that it pushes the other satellite operators out of the region and then control the complete communication and broadcasting network, which they can intercept and interrupt at their will and command. With the liberalized regime it will be an easier thing for them, as they will have the necessary controls.

2.9 Similarly lot of companies based out of Dubai with the shareholdings from the Pakistani nationals will also like to come into India and the major concern would be as to how that funding will be used and in which activities. Therefore, a proper monitoring system needs to be put in place to ensure the end use of the funds for the purposes for which the FDI has been permitted.

3. **Anti-Competitive market Behavior Not Considered**

At present there is an ongoing consultation process on Market dominance and Anti-competitive behavior the final recommendations of which are awaited. The issue of virtual dominance of single player in one market with State support (Punjab is live example today where cable is controlled by one player who has political patronage and nothing can be done to ensure it carries all the content) is under active consideration of TRAI which needs to be kept in view while relaxing the FDI regime.

In absence of qualification and lifting of corporate veil, foreign investors which may be in Print, TV or other media in India or overseas will be able to fully buy out companies with FIPB approval. This is not the case for Indian companies.

It is well known that one of the media majors controls DTH/DBS platforms in nearly a dozen countries which include the USA, Australia, UK, Brazil, Japan & others and their market dominance is reflected in their manipulation of content carried on their platforms. Such practices may become rampant in India too unless due care is taken.

3.1 **Foreign Players can combine India with other markets**

While the Indian players are restricted to operate in Indian markets, foreign players can operate in different countries including neighboring countries. This gives them a key advantage.

Comments on proposed FDI increase in News & Current Affairs channels

4. As stated hereinabove in the introductory comments, Zee Network is completely against the proposal to enhance the FDI in News & Current Affairs channels from existing level of 26% to 49%.

4.1 **The underlying rationale for restricting FDI in media sector especially in News segment is to prevent the foreigners from gaining management control of the media entities. It is a well known fact that media plays a very crucial role in shaping public opinions. Through skilful presentation of news & views in a particular manner, the electronic media can manipulate viewers mind. A country like India, which has lot of diversity and socio-economic disparities, is always vulnerable to negative influences. Giving controlling stake in content – especially in News segment to the foreigners may lead to the danger of gradual manipulation of the public views and ultimately can destroy the delicate fabric of composite culture, value system and secular nature of the country.**

4.2 The News segment in India is very well established and is growing continuously using latest technology and infrastructure. The statistics reveal that even the existing 26% FDI limit is not fully exploited. There is absolutely no evidence to suggest that there is lack of availability of required funding which has affected the sustainability and growth of this segment. On the contrary, the growing number of News channels clearly suggests that the necessary capital and technology required for establishing a News channel is easily available in India unlike the carriage segment where large capital outlay alongwith technological advancement may be necessary for implementing digitalization initiative.

4.3 News and Current Affairs segment is a sensitive sector and has political and strategic implications as well for the country. It may be mentioned that whenever the foreign investors bring money in the form of FDI, they demand the control by way of participation in the management and ask for inclusion of their representatives in the Board of Directors. This leads to the dilution of Indian control which may ultimately impact the editorial policies as well. The justification which may be advanced for the need to increase FDI in various other sectors does not apply to the news segment as apart from the issues relating to perceived influence and manipulations of views etc, there are security concerns as well. It is for this reason also, the Home Ministry has opposed the increase in FDI in News segment. The attention is invited to the following PTI report dated 21st July 2013 :

Home Ministry opposes any hike of FDI cap in media: report

New Delhi*: The Home Ministry has strongly opposed any move to increase the FDI cap in the broadcasting and print media, saying allowing more foreign investment in the sensitive sectors may compromise country's security.*

Apprehending undue influence by big global players, the Home Ministry said opening up of current affairs TV channels, newspapers and periodicals dealing with news and current affairs may lead to meddling in India's domestic affairs and politics, official sources said.

Strongly favouring control of media houses by Indians, the Ministry said increase of FDI in broadcasting and print media may also allow foreign players to launch propaganda campaign during any national crisis as well as when interests of any particular country is harmed through any government decision.

Currently, the sectoral cap for FDI in FM radio, uplinking news and current affairs TV channels and in print media is 26 per cent and the Commerce Ministry has proposed to raise it to 49 per cent through the automatic route.

The Home Ministry also said that big foreign media players with vested interests may try to fuel fire during internal or external disturbances and also can encourage political *instability in the country through their publications or broadcasting outlets, the sources said.*

Following Home Ministry's strong objections, a high-level meeting chaired by Prime Minister Manmohan Singh on July 16 did not clear the Commerce Ministry's proposal for increasing FDI in broadcasting and print media to 49 per cent through automatic route, the sources said.

Taking cue from the Home Ministry's strong objection to hike FDI in broadcasting and print media, the Information and Broadcasting Ministry too has sought advice from TRAI and Press Council of India on the matter.

The I&B ministry had earlier informed DIPP that consultations process with TRAI and PCI would take some time so existing limits of FDI caps and entry routes may continue.

4.4 **We are of the strong view that status quo should be maintained in the News & Current Affairs segment i.e. the FDI limit should not be increased from the present level of 26%.**

5. **Other relevant considerations in FDI policy**

5.1 The TRAI while sending its recommendations to the Government should also inter alia cover the following important & critical aspects pertaining to FDI in content & carriage segment of Broadcasting Sector:

(i) What are the commitments of India as well as other countries in the fields relating to media ownership, Spectrum, Telecommunications and broadcasting in Fora such as the WTO, GATT and others?

(ii) What are the offers given by major countries such as USA, Canada, Australia, China and the EU in respect of opening up of their markets in each of the fields i.e. media ownership, Spectrum, Telecommunications and broadcasting in International trade fora?.

(iii) How do these offers compare to the FDI in different sectors opened up in India?

(iv) What are the commitments sought by the ministry of commerce in regard to trade concessions for bilateral trade opening up including maintaining balance of payments with each country?

(v) What bilateral provisions are required by Indian companies such as India broadcasters in each of the fields of media ownership, Spectrum, Telecommunications and broadcasting in foreign countries to operate without discrimination before granting such concessions to these companies in India?

(vi) What is the approach taken by foreign regulators such as FCC, Ofcom etc, in each of the individual fields of media ownership, Spectrum, Telecommunications and broadcasting and correspondingly what should be the approach of the Indian regulator?

5.2 The security consideration and the monitoring of the platform are important issues which are required to be considered while permitting increased FDI in content delivery platforms specially in DTH which if not handled carefully, may result in misuse thereof, thus compromising the vital aspect of security & sensitivity.

5.3 The methodology which provides for a "see through" mechanism is required to be incorporated in FDI Policy as the same is necessary to ascertain the actual holding of interest by the foreign entities so as to eliminate the possibility of bypassing the stipulated limits through indirect holdings and to avoid the backdoor entry by foreign entities and/or flow of funds from the sources which are detrimental to the security and sovereignty of the country.

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