ESPN STAR SPORTS

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April 23, 2013

Telecom Regulatory Authority of India,
Mahanagar Door Sanchar Bhawan,
Jawahar Lal Nehru Marg, (Old Minto Road),
New Delhi – 110 002.

Kind Attention: Wasi Ahmad, Advisor (B & CS)

Dear Sir,

Please find enclosed our response to the consultation paper no. 01/2013 on "*Issues relating to Media Ownership*" dated February 15, 2013, on which comments have been sought from stakeholders.

Please note that this response is without prejudice to any rights or contentions we may have with regard to any of the matters discussed. We reserve the rights to furnish comments/counter comments for the purpose of further clarifying our position on the proposals set out in the consultation paper.

Yours faithfully,
For ESPN Software India Pvt. Ltd.

Vijay Rajput
Chief Operating Officer

Encl: Our response to the consultation paper no. 01/2013 on "*Issues relating to Media Ownership*"

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April 23, 2013

Submissions of ESPN Software India Pvt. Ltd. ("ESI") to Telecom Regulatory Authority of India ("Authority") in response to the Consultation Paper on "Issues relating to Media Ownership" dated February 15, 2013 ("Consultation Paper")

RESPONSE TO ISSUES FOR CONSULTATION

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:

We agree that certain entities such as political parties, religious bodies, etc identified by the Hon'ble Authority may be disqualified from entry into the media sector. In light of the recommendation of TRAI with regard to government or government aided body, it would also be pertinent to examine the desirability of the existence of Prasar Bharti. Ministry of Information and Broadcasting ("MIB") may lay down predefined objective criteria for disqualification for the entry of an entity in the media industry through appropriate legislative process.

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.

<u>Response:</u>

MIB, as licensor, in consultation with the regulator may be empowered to disqualify any entity from entering the media sector if there are sufficient grounds to believe that entry of such an entity will adversely impact the growth and plurality of media sector. However, clear parameters for disqualifications should be arrived after discussion with all the concerned stakeholders and legislative process. At this stage, in absence of parameters for disqualification, it may be difficult to provide insight on this issue. Also, any proposed disqualification of any entity not passing the test of laid down parameters, may be done only after following the due process of law and complying with principles of natural justice.

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?

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.

<u>Response:</u>

In this context first and foremost it is pertinent to mention that there is already a regulator, namely, Competition Commission of India, which examines all mergers and acquisitions, ownership, market share based issues of equity which result in monopoly or abuse of dominant position. Therefore, there is no plausible reason for parallel regulations or rules to be laid down in this regard. Furthermore, the question of control cannot be examined only by taking equity as a standalone parameter. Control can be exercised through inter-corporate deposits, loans and advances, providing guarantees, brand licensing arrangements, common directors, etc. Furthermore, there is no basis for restriction on equity holding of 20% at all whatsoever. The criteria to exercise restriction on vertical integration in media sector should not be based on equity rather be based upon more rational parameters such as market share and other relevant factors that establish actual control.

From the growth projections of the sector it clearly appears that there is bound to be consolidation in the broadcasting and distribution sphere. Therefore, any sort of restriction especially on vertical integration may have prejudicial impact on the overall growth the sector.

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:

In the current scenario there is no need to devise ways and means to ensure viewpoint plurality. However, if at all only news and current affairs genre be considered while devising ways and means to ensure view point plurality. It is noteworthy that TRAI has recorded the certain important facts in the present consultation paper on page 10 which are stated herein:

> *"As far as TV channels are concerned, MIB has as on 20.12.2012 permitted 848 channels in India..., ...around 617 are operational channels and available for viewing in India. Of these operational channels around 300 TV channels have permission under the News and Current Affairs channels category."*

The above data clearly indicates with 617 channels available for viewing in India out of which 300 are under the category of news and current affairs. Hence, in such an environment there is no threat to ensuring plurality of view point. Therefore, currently keeping in view the sheer number of channels operating in India affairs category, there appears to be no requirement for devising means to ensure plurality. The number and diversity of the channels across genere, language, areas, etc itself takes care of view point of plurality.

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:

All the above media are relevant and no one medium can be singularly relevant for devising ways and means of ensuring viewpoint plurality. Moreover, any efforts to ensure viewpoint plurality should be focusing on the news and current affairs alone in various media segments, if at all deemed necessary.

It is relevant to note that in the present scenario, there are a huge number of players currently operating in each media (be it print, television, radio, online) and there is growing cross media competition as well. For example, one piece of relevant news is carried in almost all 300 news channels on television and the same is simultaneously covered by radio, online and print media, thus ensuring viewpoint plurality.

In the present circumstances especially considering the sheer number of players operating in media and competitive environment which exists, there appears to be no requirement for devising any additional ways and means of ensuring viewpoint plurality.

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?

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

Response:

It is also important to keep in mind that language is just one of the factors to distinguish relevant markets but not the only factor which has to be considered while evaluating the relevant market. Relevant market may be determined on the facts of the each case and taking into account geography, language, demography, population, etc. The concept of "relevant market" is already described in detail under the Competition Act, 2002, as amended and is determined by the Competition Commission with reference to relevant product market and relevant geographic market. Therefore in view of already existing regulations and determination factors under the Competition Act, there is no necessity for considering the relevant market by devising parallel regulatory framework. In any event, the relevant market for this issue should only be considered for the news and current affair *genre* across all media segments of print, radio, online internet and television.

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.

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.

<u>Response:</u>

Again, all the above are essential parameters to measure the level of consumption of media outlets in a relevant market including for news and current affairs *genre*. Relevant market can only be examined on case to basis without determining one factor as the touchstone to measure the level of consumption of media outlets in a relevant market. The Competition Act, 2002 is sufficient to deal with questions of abuse of dominant position, vertical and horizontal integrations, anti-competitive combinations considering the relevant factors and there appears to no requirement to devise a parallel regulatory framework.

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

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.

Response:

HHI is a recognized and well accepted measure of market concentration world over. The same can be used for measuring concentration of a particular media outlet in the relevant market. However, at the outset there is no requirement to lay down separate principles or regulatory framework at this stage as there is already a competent authority, namely, Competition Commission of India, under the Competition Act, 2002 to examine the issues arising from increase of ownership, combinations, abuse of dominant position, etc.

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

Response:

Yes, Diversity Index can be relied upon for an appropriate measure for over all concentration. However, at the outset there is no requirement to lay down separate principles or regulatory framework at this stage as there is already a competent authority, namely, Competition Commission of India, under the Competition Act, 2002 to examine the issues arising from increase of ownership, combinations, abuse of dominant position, etc. Even, if any parameters are laid down in this context it should be limited to news and current affairs *genre* across media space.

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?

Response:

The weightage and measure to be assigned must be based on sufficient and appropriate data collected from the relevant market by reliable agencies such as TRAI itself. Such data must be analyzed in the context of relevant factors to assign weightage.

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.

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:

At the outset, all issues related to ownership/control fall in the domain of Competition Commission of India for all sectors and would also be applicable to players in media sector. In any case, the presence of an entity in one segment should not automatically operate as a bar for entry in other segments. This will cause an impediment is organic growth of the sector. The market forces should be allowed to govern these issues and if there any abuse of dominant position due to control/ownership then Competition Commission of India may examine it.

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.**

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.

Response:

No, it would not 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. Mere control, share, ownership or equity holding should not be the basis for restricting entities from entering into the media segment. It will act as an unnecessary impediment in the organic growth of the media sector. Therefore, any restriction as proposed above may slow down the current growth rate. Such a proposal if accepted may yield counter-productive results. In any case the Competition Commission of India is always there to look into issues of ownership/control resulting in abuse of dominant position.

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.

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.

Response:

For a regulatory environment which promotes growth it is essential that there are no entry level restrictions or pre-qualifications as concentration per se may not be anti-competitive. The issues related to control/ownership resulting in anti-competitive practice or monopolistic behavior leading to hampering of sectorial growth can always be examined by Competition Commission of India.

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.

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.

<u>Response:</u>

No, it would not be appropriate to lay down any sort of restrictions on cross media ownership. For a regulatory environment which promotes growth it is essential that there are no entry level restrictions or pre-qualifications as concentration per se may not be anti-competitive. The issues related to control/ownership resulting in anti-competitive practice or monopolistic behavior leading to hampering of sectorial growth can always be examined by Competition Commission of India.

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

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.

<u>Response:</u>

Each of the media outlet be it print, radio, television, online sites and distribution all work under a highly competitive environment with a large number of players present in each sector. Hence, in such a scenario there appears to be no imminent necessity for cross media ownership rules of any sort. Any restriction on entrants would only slow down the sectorial growth. Further, it may be noted that the jurisdictions referred to as examples do not have the stringent regulatory framework that include must provide and wholesale price freeze as is prevalent in Indian broadcasting sector today.

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

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.

<u>Response:</u>

No, we do not agree that there is any necessity to apply additional restrictions for M&A in media sector. It is noteworthy that TRAI itself has recognized that there will be consolidation in various media sectors in coming years. Also, with the rapid change in technology and mediums of distribution, it is a logical presumption that most of the investment and innovation in the sector will come from the existing players. Therefore, there should not be any ex ante restrictions on M&A in media sector. Also, the Competition Commission of India evaluates all the mergers and acquisitions if they result in controlling the market or anti-competitive practices.

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:

Yes, any entity should be allowed to have interest in both broadcasting and distribution companies/entities. Vertical integration comes with certain advantages like effective cost management, increase in market value, economies of scale, enhanced consumer welfare, etc. In the current market scenario, no corrective policy measures needs to be implemented to effect cross media ownership restrictions. Moreover, In the interconnection regulations for provisioning of signals on digital addressable platform, there is must carry as well which protects the broadcasters and ensures that they get access on non-discriminatory basis on the network of any multi system operator. Therefore, the strategic players should not be restricted from expanding their growth in the sector. Infact the existing players have more incentive in long term funding of a vertical arm.

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

Q30: What should be the periodicity of such disclosures?

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

Response:

It is to be noted that the existing regulatory framework such as Policy Guidelines for Downlinking of Television Channels and Policy Guidelines for Uplinking of Television Channels from India already lay down exhaustive parameters whereby an applicant company has to make full disclosure of its equity, directors, shareholder agreements, foreign direct investment, etc. The permission to downlink/uplink is granted only after a submission of this information. MIB can always seek more information on case to case basis, if needed before granting the permission subject to maintaining confidentiality of such information. Therefore, keeping in mind that there is already an exhaustive process to get license/permission, there appears to be no requirement to lay down additional parameter or disclosures.

The change in any of the above parameters is always intimated to MIB as and when it happens and there is no requirement to increase the periodicity.

The disclosures made by any media entity are solely for the purpose of evaluation by the sector regulator/authority. No purpose would be served by making it available in the public domain and it may only jeopardize an entity's strategic competitive advantage over the other sectorial players.