April 02 2008

Secretary
Telecom Regulatory Authority of India
New Delhi

Through email – traicable@yahoo.co.in

Dear Sir,

Please find attached the response of Entertainment Network (India) Limited to the consultation paper 05/ 2008 on “Foreign Investment Limits in Broadcasting Sector”.

We are re-sending these comments as they appear not to have reached when sent earlier; We apologize for the delay and would request you to consider the same please.

Regards,

Prashant Panday

Chief Executive Officer

Encl.: a/a

Issues for consultation:

5.2.1 to 5.2.3. Whether the foreign investment limits need to be revised as proposed. Whether the proposed limits are acceptable for the reasons given in the reference or there are some other reasons? Any other reasons in favor of the proposed limits may please be elaborated. 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.

FDI limits in FM radio broadcasting:

ENIL's view on the subject of FDI/FII limits in the FM radio sector was intimated to TRAI in an earlier note (TRAI's consultation paper on FM radio Phase III). To re-iterate, it is our view that FDI/FII limits in FM radio should be limited to 24% (in any case less than 25%).

The reason for the same is that as per the Company's Act, an investor who holds 26% equity in a company gets powers to block special resolutions. For eg, altering the capital structure of a company requires a special resolution. Directly or indirectly, this leads to the ability of the foreign investor to influence the editorial and programming policies of the radio station.

Further, the government has itself always stated that the FM radio sector is a sensitive sector. This is the reason that it has withheld, from private FM broadcasters till now, the right to broadcast news and current affairs. If that is the case, then clearly the foreign investor must not be given the right to go beyond 25%.

Further, Governmental rules require all directors of a radio company to be pre-cleared by the Ministry of Home Affairs. This again indicates the sensitive nature of media and the need for it to remain entirely in the hands of Indians.

We must also take note of the fact that FM radio is the only true "mass electronic medium". It is free to air; and with the launch of more private radio stations, the reach of private FM radio is bound to increase to significant levels in terms of coverage of population. The TRAI's recommendations on Phase III of FM radio are progressive in nature and if they are accepted by the Government in spirit, it will mean rapid proliferation of private FM radio on a far larger scale than what we have seen in Phase II – reaching out to the fringe populations of our country. In light of this, our submission is that the operating control of the private FM radio companies should vest with Indian companies and Indian citizens. Foreign controlling ownership, i.e. equal or greater than 25% would mean that editorial and content control no longer rests with Indian citizens.

In many developed countries also like the US, the foreign investment in the radio sector is limited to 20%. The reasons are the same – national security. Even in the UK, the FDI limits have been opened up after nearly 13 years – the radio sector was deregulated in 1990 while the FDI limits were raised only in 2003. The larger experience of the UK is not clear at this stage. It is advised that before India jumps into a high FDI regime in radio, it first studies the effect of this in greater detail. In any case, the FDI limit must be capped at 24% for at least the next 10 years.

It must also be pointed out that the oft quoted reason for allowing FDI in higher proportions is that it helps in raising capital for highly capital intensive industries. It must be pointed out that FM radio is not highly capital intensive. The cost of setting up a station is only between Rs 1 and Rs 2 crores. For small broadcasters who set up 3-4 stations, the total cost is less than Rs 4-5 crores. At these kind of investment levels, anyways no FDI player is interested in investing. The real push for higher FDI comes from larger companies and networks – at the prodding of foreign players who are very keen to enter the country. These large Indian networks really have no shortage of funds. Their real interest is in becoming conduits for foreign players to enter the country. This must be blocked.

FDI limits in Satellite radio

In our view, what applies to FM radio also applies to satellite radio.

In fact, the reach of satellite radio is even higher than the reach of FM radio. The signals of satellite radio reach every nook and corner of the country. Satellite broadcasters can offer several channels from the same platform – including news channels. While receiving satellite radio signals requires a special receiver, and payment of a monthly subscription fee, it is entirely possible that in several sensitive sectors of the country (border areas for eg) that the signals may be mis-used. Radio is a very powerful medium. Under no circumstances must national security be allowed to be sacrificed. It is therefore strongly recommended that the FDI cap on satellite radio also be kept at 24%.

The higher investments required in setting up a satellite radio service cannot be a reason to justify a higher FDI limit. It is our view that the financial markets in the country are strong and robust enough to provide for any amount of capital required to set up a satellite radio service – provided the sector is financially viable. Today, Indian companies are able to raise capital and debt in India to fund their acquisitions abroad. They should have no problems raising capital in India for such investments in India itself. It is incorrect to assume that without FDI limits being raised, the growth of an industry will be stymied.

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.

We are of the view that FDI and FII be treated on par.

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?

It is our view that the current policy must be continued – that FDI must be permitted only post FIPB approval. Obviously for FII investments, through the stock market – no FIPB approval is possible.

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 (FDI limits, 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.

Yes. Different sectors of the media industry have different (a) costs; (b) revenue streams; (c) profitability potential; (d) reach; (e) access by consumers and (f) impact. Hence classification of foreign investment limits should be different for each sector. In case of FM radio and satellite radio our point of view is enumerated above in responses to 5.2.1 through 5.2.5.

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.

As mentioned earlier during this note, we believe that radio is a sensitive sector and the FDI limits on FM radio and satellite radio must be capped at 24%.

If a telecom operator wants to offer radio services, he must either operate FM through a separate company. If the operator wants to use its current infrastructure to pipe radio, then the overall FDI limit of the telecom operator must be limited to 24%.

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.

The entire discussion on FDI/ FII limits is centred around the concept of “control” of the entity. In case of media, it also means editorial control.

In the United States the regulator follows the concept of “lifting the veil” while determining the 20% FDI limit for FM radio. It means that the regulator checks the investments in the investing entity to determine the true extent of foreign investment in the entity. We submit that the antecedents in terms of ownership of the investing entity should be thoroughly scrutinised to check whether the investing entity has prior linkages to the owners of the company in which investment is sought to be made.

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.

In case of FM radio we have submitted in response to 5.2.1. through 5.2.5 that the limit of FDI should be kept at 24%. We strongly believe that the radio sector should not have FDI or FII investments beyond this level.