

Consultation

on

Foreign Direct Investment in Broadcasting Sector in India

The Ministry of Information and Broadcasting (MIB) has sent a reference dated 12th July 2013, to the Authority, indicating that the Government is re-examining the current FDI policy and liberalizing the limits/caps with a view to easing FDI inflow. In this context MIB has requested the Authority to examine the FDI limits of various segments in the broadcasting sector and to furnish its recommendations.

Accordingly, a consultation paper containing a draft proposal is enclosed, seeking comments/views of the stakeholders.

Written comments on the consultation paper are invited from the stakeholders by 12th August 2013. The comments may be sent, preferably in electronic form to Mr. Wasi Ahmad, Advisor (B&CS), Telecom Regulatory Authority of India, Mahanagar Doorsanchar Bhawan, Jawahar Lal Nehru Marg, New Delhi - 110002, (Tel No.011-23237922, Fax No.011-23220442; Email: traicable@yahoo.co.in, advbcs@traigov.in). Comments will be posted on the TRAI's website www.traigov.in

Foreign Direct Investments (FDI) in Broadcasting Sector in India

Background:

1. The Ministry of Information and Broadcasting (MIB) has sent a reference to the Authority dated 12th July 2013, indicating that the Government is re-examining the current FDI policy and liberalising the limits/caps with a view to easing FDI inflow. In this context MIB has requested the Authority to examine the FDI limits of various segments in the broadcasting sector and to furnish its recommendations.
2. The Authority has been entrusted with the task of regulating the broadcasting sector in January 2004. Since then, the Authority has in August, 2004, September 2005, March 2006, and October 2007 given its recommendations, *suo motu*, on the subject of FDI in the broadcasting sector.
3. On December 11, 2007, the MIB sought a comprehensive set of recommendations from the Authority on FDI in the different segments of the broadcasting sector. The Authority gave its recommendations on 26th April 2008. In 2009, Department of Industrial Policy and Promotion (DIPP) modified the methodology of assessment of foreign investment in Indian companies vide its Press Note Nos. 2 and 4 of 2009. In view of this, the MIB on September 30, 2009 once again made a reference to TRAI to revisit the recommendations on FDI in the broadcasting sector. The Authority gave its recommendations on 30th June 2010. Based on the views expressed by the Government, these recommendations were partially revised on 3rd June 2011. In line with the last recommendations of TRAI, the FDI limits and approval route for various segments of the broadcasting sector were revised by the Government on 20th September 2012. These may be seen at Annexure I.

Approach adopted:

4. In the context of the present liberalised global economic environment where economies of different countries are closely inter-linked and inter-dependent, foreign investments have a vital role to play. Foreign direct investment is not just a large and growing source of equity investment for developing economies, it also brings with it considerable benefits through transfer of technology, strengthening infrastructure, raising productivity, enhancing

competitiveness of the domestic economy and generating new employment opportunities.

5. The Authority, while making recommendations on the subject of FDI in broadcasting, recognising the growing convergence between the broadcasting and telecom sectors, has been broadly guided by the principles of ensuring a level-playing field between competing technologies and maintaining consistency in policy across sectors.
6. Broadcasting services can be broadly grouped into carriage services and content services. Carriage services essentially provide the medium for carriage of content/ information. This category broadly refers to cable TV services, DTH services, terrestrial TV services, Headend in the Sky (HITS) services, mobile TV services, IPTV services and teleport services. Technically, it is possible for cable TV networks to also provide voice telephony and broadband. Similarly, the modern telecommunications networks are capable of triple play, i.e. offering voice, video and data services; the terms and conditions of the Unified Access Service License (UASL) agreement as well as of the Cellular Mobile Telephone Service (CMTS) license agreement permit the provision of such services. Due to convergence of telecom and broadcasting technologies, telecom as well as broadcasting networks can be used to provide broadcasting carriage services.
7. Content services pertain to creation and packaging of content. Broadcasters fall in the category of content service providers. A TV broadcaster is primarily a provider of content and this content is delivered to the end user by a carriage service provider. On the other hand, FM radio services combine both content and carriage services as these service providers create their own content and also deliver the same to the listeners directly.
8. In short, carriage services are in the nature of infrastructural services. They provide the pipes through which content service providers deliver content to end-users. Some content, especially news and current affairs, can be intrinsically sensitive in nature as it can influence public opinion which in turn could have a bearing on the maintenance of public order, security of the State, and maintenance of communal harmony. Content services that provide such content may, therefore, require differential treatment in the matter of consideration of FDI limits and approval routes for investment.

FDI limits in carriage services:

9. 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. The same FDI limits and approval route were prescribed for broadcast carriage services and telecom services on the ground that both are infrastructural services akin to each other and there is a growing convergence between the broadcasting and telecom infrastructures.
10. The Government is contemplating enhancement in the FDI limit for telecom services to 100% with FDI up to 49% through the automatic route and FDI beyond 49% through FIPB. Carrying the same logic forward, and keeping in mind the fact that the ongoing digitisation of the cable TV services in the country would give a big impetus to the convergence of the broadcasting and telecom infrastructures, the same limits and route ought to be made applicable to the carriage services in the broadcasting sector.

FDI limits in content services:

11. Content services in the television sector are delivered to a consumer in the following manner. First, the content is uplinked to a satellite by the broadcasters; subsequently, it is downlinked and distributed by the carriage service providers. Whereas downlinking has to be done within the country, uplinking can be either from within the country or abroad. Content can be broadly classified into two categories: news related and non-news related.
12. For downlinking of channels, no distinction has been made between the two categories while prescribing the FDI limits. This is because the ingredients of content can only be controlled at the uplinking end. Hence, 100% FDI is allowed in downlinking of channels in India. However, FIPB approval is required. Further, in case of channels uplinked from a foreign land, additional conditions have been mandated for permitting downlinking in the Policy Guidelines for downlinking of Television Channels dated 11th Nov. 2005. These are as below:

“ ...

2.4 *No News and Current Affairs channel shall be permitted to be downlinked if it does not meet the following additional conditions:*

- 2.4.1 *That it does not carry any advertisements aimed at Indian viewers;*
- 2.4.2 *That it is not designed specifically for Indian audiences;*
- 2.4.3 *That it is a standard international channel;*
- 2.4.4 *That it has been permitted to be telecast in the country of its uplinking by the regulatory authority of that country;*

Provided that the Government may waive/modify the condition under clause 2.4.1 on a case-by-case basis.

- 2.5 *For the purposes of these guidelines any channel, which has any element of news or current affairs in its programme content, will be deemed to be a news and current affairs channel.*

...”

13. While granting permissions for uplinking of channels from within the country as well as for downlinking of all channels uplinked from within the country or abroad, MIB takes security clearance from MHA. Since content can be sensitive in nature, it is appropriate to have checks and balances at different stages viz. to screen for any potential hazard from a national perspective. In view of these considerations, the status quo ought to be maintained regarding the route for approval of any FDI.
14. For uplinking of TV channels of the non-news and current affairs category, 100% FDI is permitted through the FIPB route. The status quo may continue.
15. For uplinking of TV channels of news and current affairs category, the existing FDI limit is 26% through the FIPB route. An increase in the FDI limit for news & current affairs channels will enable access to more resources for these channels at competitive rates. These resources can be applied for upgrading news gathering infrastructure and quality of presentation. It could also reduce the dependence of TV channels on advertisement revenue.
16. Therefore, the FDI limit for news & current affairs channels in the uplinking guidelines may be increased from 26% to 49% through the FIPB route.
17. There are 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. If the FDI limit in

uplinking of TV channels of the news and current affairs category is enhanced to 49%, then as per provision at ii) above the remaining Indian shareholding (51%) would have to be with a single Indian shareholder. The more general issue, on which stakeholders may wish to make suggestions, is whether or not any changes are at all required in these conditions. In fact, a better way to ensure that content deemed undesirable or subversive in nature is not broadcast through TV channels is by having proper content monitoring and regulation through a content code, instead of using FDI limits as the tool for this purpose.

FDI limits in FM Radio:

18. The Government has announced the Phase III of expansion of FM radio. In this phase it is envisaged that 839 new private FM radio stations will come up, expanding the coverage of private FM radio stations from 87 cities to 313 cities. The auction of frequencies for FM radio is likely to be taken up by the Government shortly. Easy availability of capital to operators through multiple sources at competitive rates would ensure better participation in the auction by the operators.
19. The phase III policy also expands the sphere of activities that can be taken up by the FM radio operators. These include carriage of information pertaining to sporting events, live commentaries of sporting events of a local nature, traffic and weather, cultural events and festivals, examinations, results, admissions, career counselling and employment opportunities, public announcements pertaining to civic amenities like electricity, water supply, natural calamities, health alerts as provided by the local administration etc. For building up of infrastructure for such services, additional investments will be required.
20. Keeping in view all these aspects, the FDI limits may be enhanced from 26% to 49% through FIPB route for the FM radio sector. In the past, FDI limits for FM radio have been fixed on the same lines as that for TV news channels, on the rationale that FM radio and news and current affairs channels are of a similar nature from the sensitivity point of view. Enhancing the limit to 49% through the FIPB route will also ensure that the FDI policy for FM radio will remain aligned to the FDI policy for uplinking of the news and current affairs channels, which is also being considered for enhancement to 49% through the FIPB route.

21. The Phase III policy of the Government for FM Radio also prescribes a similar condition for safeguard of managerial control of radio channels as in the guidelines for uplinking of news and current affairs channels described in para 17 above. If the FDI limit for FM radio is enhanced to 49%, then, as in the case of news and current affairs channels, the remaining Indian shareholding (51%) has to be with a single Indian shareholder. Stakeholders may wish to make suggestions, about whether or not any changes are required in these conditions.

22. The summary of the proposed FDI limits in various segments of broadcasting sector is attached as Annexure II.

Existing FDI limits in the Broadcasting Sector

S.No.	Segment	Existing limits
1.	Teleport	74%
2.	DTH	Upto 49% -Automatic route Beyond 49% - FIPB route
3.	HITS	
5.	Mobile TV	
6.	Cable Networks- MSOs (provided they undertake upgradation of networks towards digitalisation with addressability)	
7.	Cable Networks- Other MSOs (not undertaking upgradation of networks towards digitisation with addressability and Local Cable Operators)	
8.	Downlinking of TV Channels	Automatic route
9.	Uplinking of non-News & Current Affairs TV Channels	100%
10	Uplinking of News & Current Affairs TV Channels	Through FIPB route
11.	FM Radio	26%
		Through FIPB route

Proposed FDI limits in the Broadcasting Sector

S.No.	Segment	Existing limits	Proposed limits
1.	Teleport	74% Upto 49% -Automatic route Beyond 49% - FIPB route	100% Upto 49% -Automatic route Beyond 49% - FIPB route
2.	DTH		
3.	HITS		
4.	Mobile TV		
5.	Cable TV Networks		
6.	Downlinking of TV Channels	100%	100%
7.	Uplinking of Non-News & Current Affairs TV Channels	Through FIPB route	Through FIPB route
8.	FM Radio	26% Through FIPB route	49% Through FIPB route
9.	Uplinking of News & Current Affairs TV Channels		