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Subject: Inputs on Consultation Paper on Inputs for formulation of National Broadcasting Policy-2024

a. About the Federation of Indian Fantasy Sports / FIFS

The instant submission is on behalf of the Federation of Indian Fantasy Sports (“FIFS”), which is a Section 8 Company incorporated under the Companies Act, 2013, for the purpose of promotion of best practices in online fantasy sports services and contests offered in India. Founded in 2017 as a representative national body to protect the interests of Online Fantasy Sports (“OFS”) contest users and operators in India, FIFS, as on date, has a total of 43 members which are fantasy sports operators offering their services in India (“FIFS members”), whose respective details are available at <https://fifs.in/members/>.

In furtherance of such goals, the FIFS has also promulgated a Charter for Fantasy Sports Platforms (see: <https://fifs.in/charter/>), which serves as a one-stop document for FIFS members to align themselves on and strive towards ensuring that the FIFS’ vision of legality, transparency, disclosure and integrity in OFS is constantly upheld.

Likewise, the FIFS has recently published the Voluntary Code of Ethics for Online Gaming Intermediaries (see: <https://fifs.in/wp-content/uploads/2023/12/Voluntary-Code-of-Ethics-for-Online-Gaming-Intermediariess.pdf>), which promotes best practices towards ensuring safety and well-being of users of online games and OFS services. This Voluntary Code of Ethics thus serves as a *suo motu and* proactive initiative to uphold and promote ethical standards within the online gaming industry, and instill consumer trust and confidence, till such time as formal regulatory oversight is operationalized, as detailed hereunder.

b. Exponential Growth of Online Gaming

Before delving into the specificities of the National Broadcasting Policy 2024 (“**National Broadcasting Policy**”) by the Ministry of Information and Broadcasting (“MIB”), it is key to highlight the exponential growth and stature of the online gaming sector in India, which, as of FY 23, amassed a whopping 42.5 crore gamers and is slated, as per recent reports, to gross an annual revenue of ~\$6 billion and a market size of INR 33,243 crores by as early as 2028. This sector has also attracted investments, from global and Indian sources, worth INR 22,931 crore between FY20 to FY24. Even in terms of employment, the industry directly employs around 1 lakh individuals, including developers and programmers – thereby further signaling its role as a major player in terms of contribution to the national economy and growth. This is also buttressed by the fact that, between FY24 to FY28, the sector is expected to contribute INR 6,800 crore as direct tax revenue and INR 76,000 crore as indirect tax revenue.

While such growth has come on the tails of self-regulation within the online gaming industry (and is arguably testament to the effectiveness of such self-regulation), industry stakeholders are broadly aligned that the full potential of this industry can be tapped further into through the promulgation of a uniform, unambiguous and certain regulatory framework, which will inspire confidence among incumbent players in this industry, attract more investment and facilitate sustainable growth and innovation therein.

c. FIFS' Inputs on the National Broadcasting Policy 2024

At the outset, we appreciate the opportunity afforded to industry stakeholders, such as the FIFS, to voice their concerns, if any, and provide their inputs vis-à-vis the National Broadcasting Policy. Accordingly, FIFS' initial inputs with respect to this policy, insofar as the Indian online gaming segment is concerned, are as follows:

i. Online Gaming is at the core of the Animation, Visual, Gaming and Comics Sector.

In its Draft Model State Policy for Animation, Visual, Gaming and Comics (“AVGC”) sector, the MIB has emphasized that the gaming industry is at the core of the AVGC sector.¹ While online gaming fuels growth in the wider Media and Entertainment industry, it remains a separate entity within the AVGC sector. According to the EY report, the online real money gaming sub-sector makes up a significant portion of the online gaming ecosystem, accounting for 82.8% of the market share in FY23.

ii. Robust self-regulation of online real money gaming, as on date

The online real money gaming industry has *suo motu* undertaken various initiatives and exerted reasonable efforts to ensure that online real money gaming is strictly limited to adults (i.e., participants over the age of 18 years). To this effect, FIFS members, which represent a considerable section within the online real money gaming industry, have universally implemented robust age gating practices. Pertinently, as stated, such efforts have, for the most part, been self-driven and are reflective of the existing self-regulatory ethos within the online real money gaming industry. The FIFS charter and the Voluntary Code of Ethics for Online Gaming Intermediaries, referred to hereinabove, are stellar examples of this *suo motu* regulative framework espoused by members of, *inter alia*, the online real money gaming industry. Such initiatives (which are, in any case, constantly evolving), in the FIFS' view, sufficiently cater to the concerns flagged at para 2.87 of the National Broadcasting Policy.

iii. Online gaming is an occupied field and Ministry of Electronics and Information Technology is the nodal ministry

In addition to the aforementioned self-regulatory measures, the online gaming industry has recently also been brought within the regulatory reach of the Ministry of Electronics and Information Technology (“MeitY”) by way of amendments to Allocation of Business Rules. Notably, MeitY has amended the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

¹https://mib.gov.in/sites/default/files/Annexure%20D_Draft%20Model%20State%20Policy%20for%20AVGC-XR%20Sector.pdf

(“IT Rules”) to bring within their purview online games (defined broadly as, “a game that is offered on the Internet and is accessible by a user through a computer resource or an intermediary”) and online gaming intermediaries. The amended IT Rules also put in place a three-tiered regulatory framework for online gaming intermediaries, whereby:

- **Tier 1** involves self-compliance, due diligence, and grievance redressal by the online gaming intermediary itself;
- **Tier 2** comprises Self-Regulatory Bodies (‘SRBs’) designated by MeitY. These SRBs will operate with limited government oversight by MeitY, aiming to strike a balance between industry autonomy and regulatory supervision;
- **Tier 3** envisages an oversight mechanism by the Central Government.

Further, IT Rules prescribe a comprehensive set of responsible gaming measures, including restrictions on hosting and advertising for non-permissible online real money games. Some of the other obligations imposed on online gaming intermediaries under IT Rules are as follows:

- Online gaming intermediaries are required to prominently display a mark of registration on all games approved by the Self-Regulatory Bodies (SRBs);
- Similar to entities regulated by the Reserve Bank of India (RBI), online gaming intermediaries must adhere to Know Your Customer (KYC) requirements to verify the identity of users;
- Intermediaries are mandated to provide users with comprehensive information regarding online games, potential financial risks, KYC requirements, and the registration process with SRBs, all of which must be outlined in the terms and conditions;
- Online gaming intermediaries are obligated to appoint a Grievance Officer, Chief Compliance Officer, and Nodal Officer, all of whom must be employees of the organization and residents of India;
- Online gaming intermediaries are responsible for ensuring timely grievance redressal and publishing monthly compliance reports;
- Online gaming intermediaries are prohibited from extending financial services, such as credit, and from facilitating financing offered by third parties.

The amended IT Rules are already in effect, albeit they are yet to be operationalized, as MeitY is yet to designate and notify SRBs responsible for, *inter alia*, certifying and verifying online games as permissible online real money games. Once SRBs are appointed and the IT Rules are operationalized, only online games registered with these bodies will be permitted to operate. SRBs will be obligated to certify and verify only those games that do not amount to wagering on any outcome i.e. are not in the nature of betting and gambling. Additionally, these SRBs are mandated to introduce a framework aimed at safeguarding users from the risks of addiction, financial loss, and other detrimental effects associated with online gaming.

It is important to highlight here that in a study conducted by Consumer Voice, it was found, inter alia, that 78% of the users stated that their primary engagement is only with the real-life sports after a match begins, therefore making Fantasy Sports intrinsically non-addictive. Online Fantasy Sports are dependent on actualities, seasonality, and availability of real time sports matches.²

In this regard, it is encouraging to note the recognition of the amended IT Rules, and the self-regulatory organizations which are seemingly at the core of the enabling framework for online gaming thereunder, at para 2.84 of the National Broadcasting Policy.

In addition to the above, it is worth mentioning that the Central Government, through multiple ministries, has been enacting substantial measures to develop a solid regulatory framework for online gaming in India. Through collaborative efforts spanning various ministries and regulatory entities, the Central Government is actively striving to establish a robust regulated environment for the online gaming sector in India.

- Ministry of Home Affairs: Section 69A of the Information Technology Act, 2000 empowers the Central Government to direct any agency of the Government or intermediary to block for access by the public any information generated, transmitted, received, stored or hosted in any computer resource if it considers it necessary to do so in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order. Pertinently, MeitY, on recommendations from the Ministry of Home Affairs, has exercised its powers under this Section 69A to block more than 230 apps which were deemed to provide illegal betting or gambling services;
- Ministry of Information and Broadcasting: MIB has issued multiple advisories³ to newspapers, digital news publishers, and private satellite TV channels, urging them to refrain from publishing advertisements promoting online betting and gambling platforms.
- Ministry of Consumer Affairs: MoCA also recently issued an advisory⁴ stating that any advertisement or endorsement, whether directly or indirectly, of activities which are otherwise prohibited by law, including but not limited to betting or gambling, through advertisements or promotions, shall be subject to rigorous scrutiny;
- Advertising Standards Council of India: In contradistinction, advertisements pertaining to online gaming for real-money winning are scrutinized by the Advertising Standards Council of India ('ASCI') through its Guidelines for 'Online Gaming for Real Money Winnings'. These Guidelines recommend the inclusion, in advertisements for online real money games, of prominent disclaimers pertaining to the financial risks involved in such games.

² <https://consumer-voice.org/campaigns/online-fantasy-sports/>

³ <https://mib.gov.in/sites/default/files/Advisory%20dated%2025.08.2023%20with%20enclosures.pdf>;
<https://mib.gov.in/sites/default/files/Advisory%20dated%2021.03.2021%20%281%29.pdf>;
<https://mib.gov.in/sites/default/files/06.04.2023%20Advisory%20on%20Betting%20Advertisements.pdf>;
<https://mib.gov.in/sites/default/files/Advisory%20on%20online%20betting%20advertisements%2013.06.2022.pdf>

⁴ <https://mib.gov.in/sites/default/files/Advisory%20dated%2021.03.2021%20%281%29.pdf>

iv. Recognition of relevance of skill element in defining online gaming

As highlighted above, MeitY has already introduced rules to regulate the online gaming industry in India. It is encouraging to note the recognition, at, *inter alia*, para 2.81 of the National Broadcasting Policy, that the decisive factor in determining whether a game constitutes gaming or gambling lies in the predominance of skill over chance. Thus, while there is an element of chance in each game, what is critical is whether in a game the exercise of skill can control and predominate the ‘chance’ element involved, such that the better skilled would prevail more often than not. This criteria serves as the litmus test for distinguishing between the two, and the correct recognition thereof in the National Broadcasting Policy is appreciated and shall serve as a robust foundation for any policies or regulations, if any, which may ensue vis-à-vis online gaming. Although this has been acknowledged in the National Broadcasting Policy, it's equally crucial to note that courts have affirmed that the involvement of money does not change the fundamental nature of the game. Therefore, an online game, whether played with or without money, where skill predominates, will be categorised as a game of skill and not be classified as gambling or betting solely because money is involved.

d. FIFS' Recommendations

Keeping in mind the aforesaid backdrop and current regulatory frameworks concerning the online gaming industry, the following recommendations may be taken into account to finalize the National Broadcasting Policy:

- i. Avoiding regulatory overlap between the IT Rules and the National Broadcasting Policy: The amended IT Rules have been drafted following extensive stakeholder consultations, and incorporate principles aimed at fostering an open, safe, transparent, and accountable online gaming environment. In light of the promulgation of these Rules, the MeitY is best positioned to effectively govern, administer, and regulate the online gaming industry in India through the said Rules.
- ii. Regulation is the need of the hour and MeitY may consider potential regulatory models: As mentioned above, it is apparent that sufficient safeguards and voluntary measures are already in place to protect users within the online gaming industry, and to create a healthy environment for online gaming in India. Thus, at present, the foremost and pressing requirement is the operationalization of the amended IT Rules, in harmonization with such self-regulatory measures and in furtherance of the broader goals of user safety, transparency, disclosure and integrity in online gaming. In addition to the current three-tier regulatory structure specified in the IT Rules, MeitY may consider adopting the following regulatory models to strengthen the regulatory framework:
 - a. A three-tier regulatory framework akin to Over-The-Top (OTT) platforms;
 - b. Introducing a registration mechanism mandating all online gaming intermediaries to register with MeitY. This move would boost transparency, accountability, and consumer protection within the online gaming ecosystem;
 - c. Any other regulatory framework which may be deemed appropriate by MeitY.

- iii. Give force of law to MIB Advisories: To this effect, various advisories by the MIB and the Ministry of Consumer Affairs pertaining to the advertisement of betting and gambling platforms, or even the ASCI's aforesaid Guidelines pertaining to advertisements of online real money games, arguably ought to be formalized into enforceable regulations (through, for instance, a Code of Ethics in the IT Rules for online gaming entities, akin to the Code of Ethics concerning OTT platforms) to ensure stringent enforcement thereof.
- iv. Encouraging development of more online games in India: As stated, the economic impact and growth sparked by the online gaming industry in India, in a relatively short time span, is staggering. It is imperative to further fuel this growth by undertaking, at a governmental level, initiatives geared towards ensuring holistic development and regulation of online games in India. In this regard, policies such as the MIB's draft national promotion policy for Animation, Visual Effects, Gaming, and Comics (AVGC) are commendable and ought to be implemented, at the earliest.

Warm Regards,



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